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Islamizing finance

From magical capitalism to a spiritual economy

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Fig. 1. As a testament to Malaysia's ambitious Islamic finance project, logos for Islamic financial services firms, such as Bank Islam and the Islamic insurance firm Etiqa, adorn the crowns of buildings that soar above the popular public park and shopping mall in Kuala Lumpur City Centre, the world's tallest twin office buildings.

On the streets of Kuala Lumpur and other large cities in Malaysia, the ubiquity of Islamic finance cannot be missed. Eye-catching advertisements by the more than 20 Islamic banks operating in the country offer customers no shortage of special offers, gifts, and prizes for opening new accounts. Prospective consumers have ready access to shariah-compliant credit cards, mortgages, insurance policies, and savings accounts. Spurred by the Malaysian state, and especially the country's Central Bank, Islamic financial firms across the country have readily sought to develop this industry. Today the Malaysian state is seeking to position the country's capital, Kuala Lumpur, as a global 'hub' for Islamic finance and a 'gateway to the Islamic economy'.

Kuala Lumpur & Islamic finance

Since 2010, I have been documenting plans to create a standard, transnationally valid definition of Islamic finance and efforts to position Kuala Lumpur as the 'New York of the Muslim World'. A central question in this work has been to try to understand what a large-scale alternative to the global financial network might look like. Work in the anthropology of finance has for the most part focused on the centres of the existing conventional financial system (Ho 2009; Holmes 2014; Miyazaki 2013; Riles 2011; Zaloom 2006). Previous ethnographic work on Islamic finance has represented it as a marginal alternative to global finance (Maurer 2005). In contrast, I have sought to document efforts to devise a large-scale Islamic alternative that aspires to eventually rival conventional finance.

These efforts started in the early 2000s when the former Malaysian prime minister, Mahathir Mohamad, successfully lobbied the Organization of the Islamic Conference (OIC) to locate the headquarters of the Islamic Financial Services Board in Kuala Lumpur. The board is responsible for developing global standards for Islamic finance and is analogous to the Basel Committee in conventional banking.

The Central Bank of Malaysia has also made a massive investment in the knowledge infrastructure of Islamic finance, spending over \$200 million to establish what are, arguably, the world's leading institutions for research and postgraduate education in Islamic finance. This has enabled the establishment of two prominent institutions: the International Centre for Education in Islamic

Fig. 2. The headquarters of the Islamic Financial Services Board (IFSB) is located in an opulent office complex in central Kuala Lumpur.



Finance (INCEIF) and the International Shariah Research Academy for Islamic Finance (ISRA). ISRA was founded in 2008 and conducts 'applied research' on shariah while also serving as a repository of *fatwa* (rulings) on Islamic finance to redress differences in shariah opinions across the Muslim world. INCEIF, with which I was affiliated as a visiting researcher during the tenure of my fieldwork, was established in 2005 to redress a chronic shortage of professionals with specialized training in Islamic finance. The Central Bank expected that it would become the premier global institution for the creation of knowledge and professional experts in Islamic finance.

Furthermore, Malaysia has sought to spur growth and innovation by opening its borders to competition from Islamic financial institutions headquartered in the Persian Gulf region and elsewhere, and it is now easy to find Saudi, Kuwaiti, and Qatari-held banks offering retail Islamic banking services, even in some of the countries' most non-descript shopping malls and suburban neighbourhoods.

Nonetheless, amidst the rapid growth of this sector in Malaysia and beyond, a vigorous debate has emerged regarding the religious authenticity of Islamic finance. Islamic finance is a relatively new initiative that seeks to comply with religious injunctions for economic action: the core tenet, based on repeated Qur'anic injunctions, is that any financial transaction involving interest-bearing debt is prohibited. A central concern is the extent to which Islamic finance relies on what some experts refer to as 'tricks' to transform conventional financial contracts into ones deemed 'shariah-compliant'.

The 'magic' of Islamic finance

I analyze the contours of this debate by contrasting two commonly invoked contracts. The first is viewed as a 'trick' and is dependent on a literalist approach to Islamic texts and doctrine that focuses on the formal properties of

Fig. 3. An advertisement for the Oversea-Chinese Banking Corporation's Islamic subsidiary, OCBC Al-Amin in central Kuala Lumpur. The copy reads: 'Before your intent was to go to the Holy Land, now it is about saving for the pilgrimage. Achieve your dream by saving to fulfil the fifth pillar of Islam'.

the economic exchange. In contrast, the second contract discussed is viewed as Islamic not only in form but also 'in substance'. Favoured by those seeking to reform Islamic finance, this contract is considered exemplary of what one Central Bank regulator referred to as 'pure Islamic finance from the time of the prophet Muhammad'. Importantly, the debates over these contracts and their respective zones of permissibility reveal some of the obstacles to achieving the global integration of Islamic finance.

In anthropology, 'magic' has been taken to include a range of supernatural orientations, such as superstition, illusion, trickery, miracles, and fantasies (Malinowski 1935; Mauss 1990). Nonetheless, in analyzing these competing visions of Islamic finance, I treat magic not as an occult or supernatural practice that indicates the supposedly mystifying nature of capitalism (Comaroff & Comaroff 1999, 2000). Rather, I draw on Graham Jones's ethnography of magicians in France (Jones 2011). In this 'culture of expertise' (Holmes & Marcus 2005), Jones understands magic as the tricks and 'sleight of hand' techniques deployed by professional magicians. In their efforts to move beyond magical capitalism, I argue that reformers in Islamic finance are creating what I have referred to in previous work on Islamic corporate management practices in Indonesia as a spiritual economy: a regime of production and capital circulation grounded in the ethical principles and ascetic pieties of Islam (Rudnyckyj 2009, 2010).

This argument is primarily based on participant observation and interviews conducted between 2010 and 2014 with four key groups of experts active in Malaysian Islamic finance: banking regulators, practitioners, shariah scholars, and Islamic economists.¹ Regulators are primarily employed by either the Malaysian Central Bank or the Islamic Financial Services Board, and create the laws and standards that govern Islamic finance in Malaysia and around the world. Practitioners include executives and employees of actually existing banks and financial institutions, such as the ones I mentioned earlier. These experts face the often daunting challenge of reconciling Islamic prescriptions for economic action with the pragmatics of modern, institutionalized finance.

Shariah scholars, the third category of expert, generally hold specialized training in the discipline of Islamic jurisprudence (*fiqh*) and are hired by Islamic financial institutions to sit on specially ordained committees that evaluate and approve the products offered. These jurists must be fluent in Arabic and hold degrees in Islamic sciences, often from institutions of higher education in the Middle East, such as the Islamic University of Madinah in Saudi Arabia or Al-Azhar University in Cairo. The responsibility and actions of shariah scholars perhaps distinguish Islamic finance the most from its conventional counterpart, as it would be somewhat analogous to having a group of Christian clergy and theologians tasked with approving the products offered by Citibank.

Finally, I interacted with self-described 'Islamic economists' who typically had advanced degrees in conventional economics from departments in the United States or Europe and held positions at universities or worked in institutions such as the World Bank or International Monetary Fund. Islamic economists emphasize the compatibility of Islam and secular economics, but are generally more comfortable deploying the theories and mathematical models of economists such as Keynes, Friedman, and Irving Fisher, rather than the hermeneutic methods deployed by the shariah scholars.

Given their responsibility for ensuring that the instruments and contracts deployed in Islamic finance are concordant with Islam, shariah scholars occupy a pivotal position in debates over the authenticity of Islamic finance. Despite the presence of shariah scholars on the boards of



Islamic financial institutions, a vocal and increasingly influential cadre of reformers is raising doubts about the religious permissibility of some of the most commonly used contracts in Islamic finance. Invoking the Arabic word '*hiyal*' which refers to 'legal tricks' deployed by shariah scholars to evade religious prohibitions, reformers claim that Islamic financial institutions rely on contracts and instruments that, in their words, are Islamic only in 'form, but not in substance'. These critics further contend that such 'tricks' create a system that simply 'replicates' what they call 'conventional finance' and the debt-based capitalism on which it is premised. In contrast, these reformers, who have garnered the support of powerful officials in Malaysia's influential and well-respected Central Bank, are working to abandon such 'tricks' and reformulate Islamic finance around investment and equity, rather than debt.

In describing these 'tricks' and the responses to them, I seek to correct dominant scholarly approaches that have represented Islam as incompatible with capitalism. Recent events in the Middle East and North Africa, such as the so-called 'Arab Spring' and the rise of ISIS (Islamic State of Iraq and Syria), have often resorted to materialist interpretations of the wave of discontent that appears endemic to the Islamic world.

A number of scholars, the economist Timur Kuran of Duke University perhaps most prominent among them, have argued that Islam is inimical to economic growth because Islamic law has hindered the emergence of large-scale firms and the ability of entrepreneurs to mobilize the capital necessary for capitalist economic action (Kuran 2011). Kuran's argument has been widely covered in the popular press, with such venerable organs as *The New York Times*, *The Economist*, *The New Yorker* and US Public Radio's *Marketplace* enthusiastically covering his explanation for economic underdevelopment in the Muslim world.

As a counterpoint to this influential analysis, I contend that Islamic finance experts are seeking to redress the very problem that Kuran identifies. Rather than seeing Islam as an obstacle to development and modernization, I seek to

Fig. 4. Shariah scholars speaking on a panel at the Kuala Lumpur Islamic Finance Forum, September 2013.



show how some Muslims today are seeking to create an alternative financial infrastructure to mobilize capital for economic growth.

The question of interest

The central feature of Islamic finance is a prohibition on the payment and collection of interest. Indeed, Bill Maurer has argued that Islamic finance is characterized by ‘the debate over its own origins and the debate over *riba* [interest]: how it is defined, how it is avoided, and how it has become the absent center of IBF [Islamic Banking and Finance] practice today’ (Maurer 2005: 39). The practices of applying this rule vary and have precipitated current debates over religious authenticity. In the 1980s, the first Malaysian Islamic bank, Bank Islam, created a ‘shariah-compliant’ contract that met the letter of Islamic law, but today the mechanisms of validation are increasingly viewed as legal ‘tricks’. Nowadays, most Islamic financial institutions, both within and outside Malaysia, primarily rely on devices which critics claim might be Islamic in form, but which they contend are contrary to the religion ‘in substance’.

In part, this is due to the global diversity of Islam and the different traditions that characterize distinctive schools of legal reasoning around the world. Virtually since the inception of the industry, elaborate invocations of Islamic juristic precedent have been mobilized to justify a formalist approach in Malaysia. Most shariah scholars identify with one of four major *fiqh* schools of thought or ‘doctrines’

(*madzab*). While there is general consensus on most matters among these schools, there are slight differences of methodology that distinguish them.

In Malaysia (and indeed the rest of Southeast Asia) the Shafi’i tradition is the predominant jurisprudential tradition. Shafi’i scholars have typically emphasized form over substance and avoided legal decisions that ascribe intent to actors, asserting that only Allah can discern individual intentions. Thus, when evaluating the permissibility of an act, they have sought to judge the act on its own terms and external appearance, without ascribing motivations to the actor.

In contrast, jurists (*fuqaha*) from the Hanafi School, which is common in South Asia and parts of the Middle East and North Africa, take a different methodological stand. They generally emphasize substance over form and aver that intentions can be deduced from actions. In practice, this has led to a situation in which certain financial and banking instruments endorsed by scholars in Southeast Asia have been explicitly prohibited by scholars in South Asia and the Middle East.

These differences have led to somewhat surprising interventions, such as cases in which bankers have weighed in on matters of religious scholarship. For example, Badlisyah Abdul Ghani, the publicly outspoken Chief Executive Officer of CIMB Islamic bank (Malaysia’s second largest Islamic financial institution), was particularly vocal, stating that while other *fiqh* traditions emphasize form over content ‘only the Hanafi School of Law advocates for “the substance over form” outlook, putting emphasis on the intention of both parties’ (Abdul Ghani 2009: 14). In Malaysia, the formalist emphasis in the knowledge economy of Islamic finance facilitated an approach in which the replication of conventional instruments was enabled and few questions were asked about the content of the resulting Islamic devices. Thus, as a strategy of state subjectification, formalist Islamic finance was directed more toward facilitating an Islamic identity that could be readily governed by the state and was conducive to the creation of an economically prosperous population.

This population was dependent on public largesse due to efforts to enhance the economic well-being of the Malay Muslim majority. Because this majority was perceived to have been disadvantaged during the colonial economy, especially in comparison to citizens of Chinese descent,

Fig. 5. Using an ATM at a CIMB Islamic branch at Kuala Lumpur International Airport.



Fig. 6. The state development bank referred to by Nuraini.

they had been given special privileges under race-based affirmative action policies in everything from consideration for civil service positions to university admissions to receiving government contracts (Peletz 2002: 7-9). However, efforts to reform Islamic finance marked a departure from making Malay Muslims dependent on the state to making them independent entrepreneurs instead.

Formalist Islamic finance and legal magic

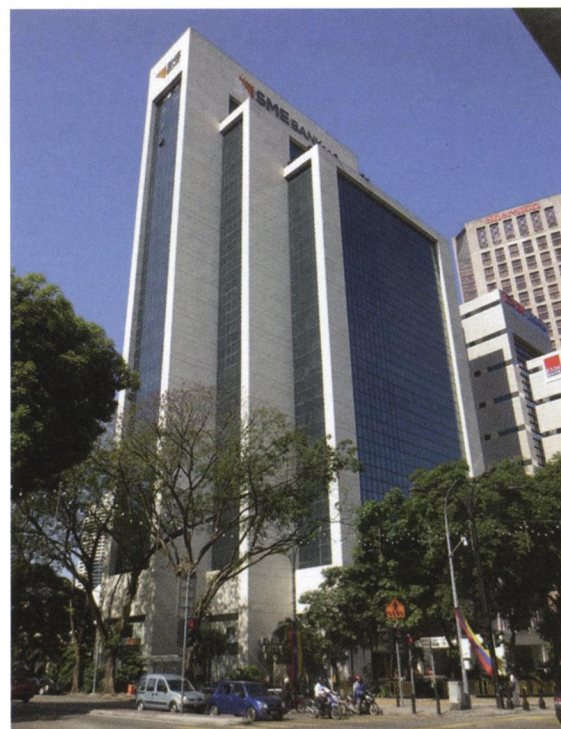
These practices of formalist Islamic finance were increasingly viewed as legal trickery, a fact that was vividly illustrated to me in early 2014 when I was discussing Islamic finance with Nuraini. Formerly, Nuraini was a high-level Islamic banking executive who had helped to create some of the early infrastructure for Islamic finance in Malaysia, but by the early 2000s she had become disillusioned with the industry. Much of Nuraini's discontent derived from her conviction that Islamic finance was, in her words, Islamic 'in name only' because it 'reverse engineered' interest-bearing contracts by deploying 'paper sales' of tangible assets to replicate the debt contracts that are commonly used in conventional finance. In Malaysia, the most commonly used contract of this type is called *bai al inah*: a 'sale and buy back' transaction in which a customer sells an asset to a bank for cash on the spot and then buys the asset back shortly thereafter at a markup on a deferred payment basis.

Thus, shariah-compliant contracts were synthesized through the roundabout means of two sales – the markup and the deferred payment – essentially mimicking interest-bearing debt contracts. Indeed, the rate of the markup over the payment period mirrors the prevailing interest rates established on KLIBOR, the Kuala Lumpur Interbank Offered Rate. This is the interest rate at which banks extend loans to other banks and is analogous to the Federal Funds Rate in the US or LIBOR (London Interbank Offered Rate) in the UK. However, due to the fact that the *bai al inah* contract complies with a literal interpretation of Islamic scripture, from a strictly formal perspective it can be accepted as 'shariah-compliant'.

With no shortage of sarcasm, Nuraini described an example of how such an arrangement would work in practice. In the 1990s she was working in an executive capacity at a state-owned development bank, which was seeking to raise capital to provide financing for small and medium-sized enterprises. She described how the capital was generated:

We [owned] a building that was priced at 600 million ... then we sold the building to the Ministry of Finance. Then, the second transaction was when the ministry sold the building back, at say for example 700 million [on a deferred payment basis]. So it became a transaction of sale and purchase ... The shariah part was, they said that you cannot have two contracts in one ... it has to be two clean contracts ... so what we did, in order to have ... a separate agreement, was have two distinct events. At the first event we had representatives of the bank and representatives of the Ministry of Finance. Here we had the chairman of the Islamic development bank and here we had the vice president of the ministry. They came and met and exchanged the key to the building. They were shaking hands and they were transferring the key. One said 'I am selling you the building for 600 million', the other one said 'I accept this transaction'. So we did that in one room witnessed by the muftis!² We had the mufti of Penang, the mufti of Selangor, the mufti of Perak, and we had the mufti of Perlis.³ They came to witness the whole ceremony. Then the whole transaction was adjourned ... We went for tea. Later we came back again and we did the reverse! It became like a show! And this, we called it Islamic financing. *Sabhanawatala!*⁴

The asset used to facilitate the transaction was the headquarters of the bank, which still stands in central Kuala Lumpur. Referring to such contracts in Arabic (*bay al inah*) and the presence of Islamic scholars further enhanced the



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Islamic authenticity of these transactions. Contracts like this are considered 'debt-based' because they create an obligation to repay funds previously extended through the paper sale of an asset. Today, many reformers and critics argue that contracts such as the *bai al inah* are 'hiyal' or 'tricks'. As one self-described Islamic economist stated at a public forum: 'the problem with these instruments [is that they] are *hiyal* ... [tricks]: they obey the letter of the law but not its spirit'. Such references to the formalist strategies of Islamic financial forms as 'tricks' were perhaps some of the most extreme forms of criticism, but they reflected a pervasive sense that the existing system of Islamic finance in Malaysia needed revision.

In response, reformers seek to substitute investment-oriented contracts for the 'debt-based' ones that predominate in Islamic finance but rely on what are increasingly considered legal 'tricks'. Reformers and critics most often invoke a contract called a *mudarabah* as the epitome of investment-based Islamic finance. These are profit-sharing contracts that were commonly used on the Arabian Peninsula even prior to the revelation of Islam and were standard commercial arrangements in the classical Islamic world (Udovitch 1970: 170-248).

A *mudarabah* is a contract between an entrepreneur (*mudarib* in Arabic) and an investor in which the latter provides the capital for a business venture and then is granted a pre-agreed percentage of the profits from the enterprise, while the entrepreneur provides only his or her skills, labour, and managerial expertise. Proponents of *mudarabah* liken these contracts to the venture capital arrangements that have financed Silicon Valley firms such as Facebook, Twitter, and Google and argue that they could facilitate similar entrepreneurial dynamism in the Muslim world. One Islamic economist extolled the virtues of this contract, saying 'I became aware of venture capital in 1982, when I learned about *mudarabah*. Venture capital has been applied with enormous success ... but it turns out we are talking about a classical Islamic partnership that was practiced by Muhammad. And today, 21st-century California, Silicon Valley is doing the same thing ... They learned it from us, but we have forgotten it!'

Calls to abandon legal 'tricks' in favour of practices that are considered more authentic to Islam, such as the *mudarabah*, have not been in vain. State institutions have gradually sought to transition from debt-based contracts

Financial support for the research described here was provided by the American Council for Learned Societies and the Social Sciences and Humanities Research Council of Canada (SSHRC).

1. These groups are 'native categories' insofar as this was how members would identify both themselves and others who worked in the industry.

2. A mufti is an Islamic scholar qualified to give legal opinions or *fatwa*.

3. Penang, Selangor, Perak, and Perlis are all Malaysian states. Nuraini was remarking on the fact that the chief Islamic authorities from each of these four states were all in attendance at the transaction.

4. This phrase literally means 'glory be to God', but Nuraini meant it more as 'for goodness sake', with no small measure of exasperation.

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Fig. 7. An advertisement for a bank account structured according to *mudharabah* principles.

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to investment-based ones. The first indication of success on the part of reformers was apparent in late 2012 when the Central Bank required Islamic banks to remove the interconditionality clause for *bai al inah* contracts. The head of one Islamic bank provided a dramatic account of how Islamic banks were notified of the change: 'It was December 2012 and all CEOs were called away from their London homes at Christmas by the Central Bank. We were told that we had to revamp our contracts to account for the new structure. It ruined our holidays!'

Prior to this removal, Islamic banks were permitted to require that the first of the two sales in a *bai al inah* transaction be conditional on the second. But the new regulation broke this link, thus there was now a period when the bank would have to hold the asset. This raised the possibility that the customer would sell an asset to the bank and then abandon the deal without buying it back from the bank at an increased price, leaving the bank holding an asset that it had no real interest in owning.

Syarif, a shariah scholar for a major Islamic bank, told me that the rationale for moving away from interconditional sales was due to the fact that Malaysia had frequently been 'criticized by [shariah] scholars' from the Arabian Gulf region. They viewed the clause as contrary to shariah on the premise that 'there should be no conditions on a sale ... [because this] affects the free will of the buyer or seller'. The interconditionality clause contributed to the opinion that the validity of *bai al inah* was based on legal trickery because it bent Islamic prescriptions on economic action to enable Islamic banks to act in essentially the same manner as conventional financial institutions.

Syarif attributed the removal of the clause as part of an effort to deploy 'universally accepted contracts' in Malaysia as part of a broader effort to make Kuala Lumpur a central node in international Islamic finance. He reasoned that only by eliminating contracts that were viewed with suspicion in the Gulf region, would it become an appealing destination for Middle Eastern capital, intoning 'if they [Malaysia] want to be the hub, they have to do things the right way! There can't be any questions'.

The second example of moving beyond the magical capitalism dependent on legal stratagems occurred in mid-2013 when the Malaysian parliament passed a new Islamic finance law, the Islamic Financial Services Act (or IFSA), which created and defined a type of equity-based partnership account premised on the risk calculating and profit-sharing principles of the *mudharabah*. The creation of this account was interpreted as an endorsement of investment-oriented Islamic finance.

As one shariah scholar who sat on the board of HSBC's Islamic bank said to me, the redefinition of *mudharabah* was 'a big change' because it moved to 'a true risk and profit-sharing model of Islamic finance'. This sentiment was echoed by another shariah scholar who said that the revisions to rules regarding *mudharabah* showed that the Central Bank sought to abandon the use of legal 'tricks' in Malaysia and make Islamic finance 'more truly representative of shariah contracts'.

Conclusion

A century ago, Max Weber demonstrated how modern capitalism was the unintended and contingent effect of the ethics of worldly asceticism characteristic of Protestantism. As has been well documented, Weber saw rationalization and what is awkwardly translated as 'demagification' as characteristic of modernity. At the conclusion to his greatest work, *The Protestant ethic and the spirit of capitalism*, he wrote: 'No one knows who will live in this cage in the future, or whether at the end of this tremendous development entirely new prophets will arise, or there will be a great rebirth of old ideas and ideals, or, if



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neither, mechanized petrification, embellished with a sort of convulsive self-importance' (Weber 2001: 124). Islamic finance entails the rationalization of Islam to create an economic form that simultaneously adheres to religious principles and is capable of serving to structure the flows of capital critical to contemporary capitalism.

Islamic finance today is characterized by two central problems. On the one hand experts seek to abandon magical capitalism and its legal 'tricks' in favour of what I have elsewhere called a spiritual economy by improving the religious credentials of Islamic finance. Thus, experts and reformers have sought to create a means for the circulation of capital grounded in the ethics and ascetic principles that they viewed as characteristic of Islam, rather than seeking to recreate conventional financial forms with an Islamic veneer.

On the other hand, even as these debates rage over the authenticity of Islamic finance, these experts are working to make Islamic finance a viable alternative to conventional finance. In so doing, Islamic finance experts are developing a response to the global financial predicament that differs from that offered by both Wall Street and the Occupy movement.

In the wake of the 2008 financial crisis, major financial institutions requested loans and other financial guarantees from government to maintain the solvency of the financial system. The Occupy movement called for forgiveness for those mired in debt and those adversely affected by the sharp decline in the value of real estate. However, both of these interventions continue to take debt for granted as the central tool of finance. In contrast, experts seeking to reform Islamic finance challenge the epistemology of finance by posing investment, rather than debt, as the central mechanism for the mobilization of capital today. ●