



Shari'a Finance and the U.S. Constitution

By Katharine C. Gorka

With little fanfare, the term “Shari'a finance” has slipped into the American lexicon as if it were just one more unremarkable feature of America's ever-evolving ethnic landscape. To the extent that it is remarked upon at all, a common argument is that Shari'a finance is like kosher food: each is mandated by its respective religion, and neither threatens the basic freedoms of other Americans. Both arguments are wrong. Whereas

Jewish dietary laws were laid out in the Old Testament more than two thousand years ago and pose no threat to the constitutional order, Shari'a-compliant finance is a construct of 20th-century radical Muslim scholars. Shari'a finance is part of a broad ideology that aims to strengthen and impose political Islamic rule around the world, even in the United States. It is therefore a very direct threat to American freedoms.

Institutions offering Shari'a Mortgages in the United States:

University Bank, Michigan

Devon Bank, Chicago

HSBC, New York

Samad Group Islamic Home
Finance, Kettering Ohio

SHAPE Financial Corp., Falls
Church, Virginia,

Guidance Residential, Reston,
Virginia

Lariba: American Finance House,
Pasadena, California

Minnesota Housing Agency (the
first state agency to offer the
product)

Shari'a finance refers to any instrument or institution that is compliant with Islamic Law. The principle strictures forbid interest, and any business involving pork, gambling, alcohol or pornography. Currently, the most common form of Shari'a finance in the United States is Shari'a home finance, or mortgage-alternative products. Shari'a mortgages were introduced in the United States in the 1980s. They grew slowly through the 1990s but then received a major boost when Freddie Mac and Fannie Mae started to back them in 2002. As a result of this backing, the number of Shari'a mortgages increased significantly. Today, Shari'a mortgages are available in 25 states, with providers hoping to expand further.

The idea that Muslims require a unique set of financial instruments originated in the 20th century. It was rooted in the radical teachings of Abul A'la Mawdudi, founder of the militant *Jama'at-i Islami* movement in Pakistan and an ideological forefather of modern-day Islamist movements. Mawdudi argued that Islamic economics would be a vehicle to help establish Islamic rule and that it would then supplant all other economic systems:

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“...as soon as the nation of Islam seizes state power, it will outlaw all forms of business transacted on the basis of usury or interest...it will curb all forms of business and financial dealings which contravene Islamic Law.”

--Abul A'la Mawdudi

This idea was further developed by other major Islamists of the 20th century—including Hassan al-Banna, founder of the Muslim Brotherhood, and Sayyid Qutb, the Egyptian Islamist whose writings inspired Al Qaeda and who is considered the ideological forefather of modern-day terrorist movements. Each of them promoted Islam as an all-encompassing, totalitarian system in which religion, law, politics, economics and personal life would be inseparably interwoven. All aspects of life would be controlled by religious law, or Shari'a.

“The fatherland is that place where the Islamic faith, the Islamic way of life, and the Shari'a of God is dominant; only this meaning of 'fatherland' is worthy of the human being.”

--Sayyid Qutb *Milestones*

Who decides whether an institution or instrument is Shari'a compliant? The Shari'a boards or councils of these institutions, which are composed of Muslim clerics who are both religious authorities and economic experts and the ultimate arbiters for Islamic financial institutions. In their rulings on financial issues, their driving goal is the renewal and expansion of Islam, which also necessarily requires the defeat of the non-Muslim countries. Justice Muhammad Taqi Usmani, chairman of the Shari'a Supervisory Board for Guidance Residential, based in Reston, Virginia, operating in 19 states, has written, “For a non-Muslim state to have more pomp and glory than a Muslim state itself is an obstacle. Therefore, to shatter this grandeur is among the greater objectives of jihad.”



Sheikh Al- Qaradawi, Shari'a Authority
And terrorist ideologue



Muhammad Taqi Usmani
Shari'a Authority

LARIBA, a shari'a-finance provider based in Pasadena, California, operating in 17 states, cites another Shari'a authority—Sheikh Yusuf Al-Qaradawi, who has been banned from the United States since 1999 for his extremist views and support for Palestinian suicide bombers. Underscoring the fact that economic decisions are subordinate to

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religious considerations, in 2004 Al-Qaradawi issued a fatwa ordering all those who were able to boycott American and Israeli goods:

“Each riyal, dirham ...etc. used to buy [the enemy’s] goods eventually becomes bullets to be fired at the hearts of brothers and children in Palestine. For this reason, it is an obligation not to help [the enemies of Islam] by buying their goods. To buy their goods is to support tyranny, oppression and aggression...If we cannot strengthen the brothers, we have a duty to make the enemy weak. If their weakness cannot be achieved except by boycott, we must boycott them.”

--Sheikh Yusuf Al-Qaradawi, Shari’a Authority

The intertwining of the religious with the economic and political is in direct contrast to the Western worldview, according to which religion is a strictly private matter. This fact is lamented by some on the grounds that it has removed religion too far from the public square, but in fact it was originally conceived as a means of protecting religion: America’s founders desired that one’s beliefs should be absolutely free of any form of coercion by the state. In order to preserve this freedom, they recognized the necessity of keeping the civil domain free of religion. Economics, law, and politics in America were all designed to operate independently of any religion, even if in their design they were influenced by religious values and beliefs. America’s founders learned very early on that to bind the civil with the religious leads inevitably to conflict and oppression. Not so with Islam. The Islamic revival that has been accelerating over the past century is an all-encompassing, indeed a totalitarian Islam. As one scholar explains,

“Islamic resurgence is...the endeavor to re-establish Islamic values, Islamic practices, Islamic institutions, Islamic laws, indeed Islam in its entirety, in the lives of Muslims everywhere.”

--Chandra Muzaffar¹

Hence, Islamic finance cannot be looked at in isolation. It did not emerge simply as one more initiative by banks to find and exploit a new market niche. It is an integral part of a broader effort to advance Islam. As Dr. Patrick Sookhdeo has written, “Islamic finance is part of the wave of Islamic resurgence and specifically part of the Islamist agenda.”²

Islamic finance furthers the Islamist agenda in a number of concrete ways. First, Islamic finance “purifies” individual Muslims by helping them adhere to a more orthodox version of Islam. Like the wearing of the veil for women, it strengthens their identity as Muslims and weakens their ties to the non-Muslim community. Islamic finance thereby

¹ Muzaffar, Chandra, “Islamic Resurgence: A Global View,” in Abdullah, Taufik and Siddiqui, Sharon (eds.), *Islam and Society in South East Asia*, Pasir Panjang (Singapore): Institute of Southeast Asian Studies, 1986.

² Sookhdeo, Patrick, *Understanding Shari’a Finance: The Muslim Challenge to Western Economics* (McLean, VA: Isaac Publishing, 2008), p. 7.

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serves to create a parallel society, with a distinct ethnic and religious identity, rather than expanding and enriching the existing society. Secondly, Islamic finance serves the cause of Islamic renewal because it provides direct financial assistance to those fighting for Islam. In order to be deemed Shari'a compliant, a financial institution must pay *zakat* (tithing): they must contribute an amount that is typically cited as 2.5%, although it can also be more. According to the Qu'ran (9:60), recipients of *zakat* include the poor, the needy, those who serve the needy, and to free the slaves, but recipients also include "those who fight in the way of Allah": "people engaged in Islamic military operations for whom no salary has been allotted in the army, or volunteers for jihad without remuneration." (*Reliance of the Traveler, The Classic Manual of Islamic Sacred Law*). Therefore, any organization which is Shari'a compliant is required by Islamic Law to support jihad.

It is no surprise, then, that within one year of the attacks of 9/11, the U.S. government had blacklisted almost 180 Islamic banks, associations and charities as financiers of terrorism. Moreover, recent studies have shown that the largest single source of funds for Islamic terrorism is *zakat*, which typically goes through the Islamic banking system: "Al-Qaeda was able to receive between \$300 million and \$500 million" over a decade... "through a web of charities and companies acting as fronts, with the notable use of Islamic banking institutions."³

Given that the impact of Shari'a finance is clearly so negative, why have the government of the United States and its regulatory bodies not done more to stop it? In part the answer is our own understanding of religion. Because Americans see religion as a private matter, they have difficulty comprehending an economic system that is shaped and driven by religious dictates. At the same time, the desire to not offend members of a religious minority has led U.S. officials to be overly accommodating, to the detriment of the principles of equality before the law and separation of church and state.

Dr. Mahmoud El-Gamal, who served as the Department of Treasury's scholar-in-residence, wrote, "If we take the universal message of Islam seriously...then we must believe that Islamic finance will be better finance. In fact, it should be so good as to attract those who do not care whether or not it is called Islamic, and whether or not professional

"They shook America's throne and struck at the US economy in the heart. They struck the largest military power deep in the heart, thanks to Allah the almighty. This is a clear proof that this international usurious, damnable economy—which America uses along with its military power to impose infidelity and humiliation on weak people—can easily collapse...If their economy is destroyed, they will be busy with their own affairs rather than enslaving the weak peoples. It is very important to concentrate on hitting the US economy through all possible means."

***Osama bin Laden
December 27, 2001***

³ Jean-Charles Brisard, "Terrorism Financing: Roots and Trends of Saudi Terrorism Financing," report Prepared for the President of the Security Council, United Nations, December 19, 2002, p. 3.

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financial jurists approve its contracts.”⁴ When the U.S. Department of Treasury held a seminar in 2008 entitled “Islamic Finance 101,” it was co-hosted by the Islamic Finance Project at Harvard Law School, a project which is in turn sponsored by four Islamic financial institutions: Abu Dhabi Islamic bank, Arcapita Bank, HSBC Amanah, and Kuwait Finance House. In its annual report, Arcapita writes, “...we embrace the values of originality, integrity, transparency, professional excellence and, above all, adherence to Islamic principle.”⁵

The adherence to Islamic principles among those advising the U.S. government and shaping U.S. policy would not be an issue if those principles were compatible with the values and principles enshrined in the United States Constitution. But they are not. Islam’s leading ideologues and spokespersons have openly and repeatedly declared ideological war on America. They have stated that American values are incompatible with the values of Islam. They believe our freedom leads to corruption and exploitation. They disregard the reality of the long sustained record of American prosperity. They disregard the reality of America’s religious freedoms, the fact that for four centuries America has been able to provide a home to every race, every creed, every ethnicity, because it holds all men and women as equal, and it enshrines that equality in its laws. For Mawdudi, Al Banna, Qutb, Qaradawi, and bin Laden, the only equality is that of Muslim with Muslim.

The United States has done so much through the course of its history to serve the greater cause of freedom and opportunity for advancement and fulfillment based purely on one’s merits, rather than on racial, religious, or tribal membership. It is an imperfect nation, to be sure, but by dispersing power, and allowing private belief to remain private, it has come closer than any other nation to preventing one man or one group from tyrannizing or subjugating others. Fundamentalist Muslims would do away with that. Ultimately they would do away with our economic system, our equalities, our constitution, because in their version of Islam, the two cannot co-exist: **“The Islamic State is...a world order, with a government, a court, a constitution and an army.”**⁶ This is the fundamentalist voice of Islam. It may not yet be the majority voice of Islam, but it is the loudest voice, and it is the voice that is behind Shari’a finance.

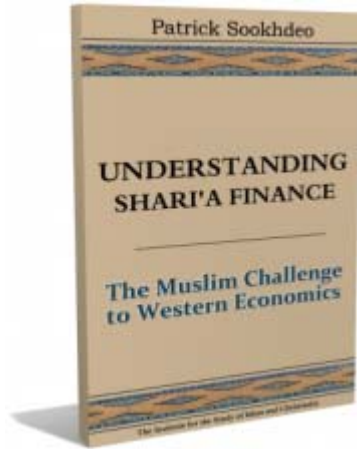
⁴ Mahmoud A. El-Gamal, “Limits and Dangers of Shari’a Arbitrage,” <http://www.ruf.rice.edu/~elgamal/files/Arbitrage.pdf>, accessed 8/4/2009.

⁵ Arcapita Annual Report 2004, http://www.arcapita.com/about/fininfo/pdf/Arcapita_annual_report_2004.pdf, accessed 7/28/2009.

⁶ Isma’il Raji al-Faruqi, *Islam* (Beltsville, MD: Amana Publications, 1985), p. 65.

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To learn more about Shari'a Finance, The Westminster Institute recommends *Understanding Shari'a Finance*, by Dr. Patrick Sookhdeo:



The last twenty years have seen a distinctively Islamic financial system become a major player on the world economic stage. The Islamic view that Islam must control all areas of life has led many Muslims to reject Western financial products and institutions, which they believe to be incompatible with shari`a law. They have also generated a wide range of alternative economic tools, initially in the Muslim world but more recently in the West, and have developed an increasingly lucrative international market.

This stimulating and accessible study will interest anyone concerned about the worldwide Islamic resurgence and its possible implications for global finance and politics. \$12.99.

To order: www.isaac-publishing.us or call 1-703-288-2885.

For a fuller discussion of the legal risks inherent in Shari'a finance, we recommend "*Shari'ah's Black Box: Civil Liability and Criminal Exposure Surrounding Shari'ah-Compliant Finance*," by David Yarushelmi:

This article examines the multitude of legal issues - both criminal and civil - that Shari'ah-compliant finance (SCF) presents to U.S. financial institutions and their professional advisers. While SCF is marketed as primarily the avoidance of transactions involving interest and also includes a prohibition on investing in vice industries, this appearance ignores the reality of Shari'ah as determined by the contemporary and authoritative historical Shari'ah scholars. With a modicum of due diligence, one learns that the SCF black box fails to disclose the fact that leading Shari'ah authorities have issued authoritative Shari'ah legal rulings calling for violent Jihad against the non-Muslim world. As such, SCF presents U.S. investors and legal advisers with considerable risk under securities, anti-terrorism, antitrust, and racketeering laws.

The civil liability and criminal exposure surrounding SCF have been ignored by legal academia. Although some scholars have broached the topic of SCF, these scholars have merely trumpeted the practice's virtues without questioning its legality. In an area that begs for vigorous analysis, only those with a vested interest in the success of SCF has been presented in the legal literature. This article, by identifying both professional responsibility and substantive legal issues inherent in SCF, seeks to fill in the current gap and instigate a much needed critical examination among practitioners, scholars, and policymakers.

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