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BEING AND BELONGING

MUSLIMS IN THE UNITED STATES
SINCE 9/11

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RUSSELL SAGE FOUNDATION
NEW YORK
CHAPTER 8

FAITH IN THE FORM: ISLAMIC HOME FINANCING
AND "AMERICAN" ISLAMIC LAW

BILL MAURER

A CASUAL observer of Muslim American social life after September 11, 2001, might assume that visible practices that mark someone as Muslim—the headscarf is perhaps the most commented upon example—would decline in prevalence if Muslims newly feared being singled out for discriminatory treatment or harassment. At the same time, however, one might also assume that the prevalence of such practices would increase, as a sign of political assertion, or a testament to Muslim Americans’ presence in and importance to the American social fabric. The same assumptions have been made since September 11 about Islamic banking, a less visible practice, and one linked in the popular imagination to terrorist financing. When Islamic charities were suspected of having played a role in the financing of the 9/11 plotters, Islamic banking was thrust into the spotlight. One might assume that Muslim Americans who had been using Islamic financial alternatives for their banking and borrowing might have quietly transferred their assets and debts to conventional alternatives.

The evidence does not bear out any of these assumptions, however, and, perhaps more than anything else, demonstrates the continual development of Islamic institutions in the United States, despite events like those that took place on September 11 and their aftermath. That development may have taken a few unexpected detours, as we will see here, particularly with respect to Muslim Americans’ understanding of Islamic jurisprudence. But those detours ultimately had little to do with September 11 and much more to do with an American faith in bureaucratic rationality and the market, specifically, the faith that, with the correct formal procedures, any group can be turned into a niche market, and that this is a kind of equality offered by the United States to all its inhabitants. Additionally, the evidence on the effect of 9/11 on Islamic banking demonstrates that Muslim Americans’ understanding of Islamic jurisprudence owes much to their understanding of law generally, and a specifically American legal consciousness that assumes that the law consists of forms and procedures which one may not understand but the very formality of which indexes its legitimacy. September 11 did have a measurable impact on American Islamic banking and finance. But in several key respects this had much less to do with the Islam part and much more to do with the banking, finance, and American parts.

Islamic banking and finance begins from the Qur’anic injunctions against riba. Riba literally means increase but is often translated as usury or interest, and occurs twenty times in the Qur’an.

Those that live on usury [riba] shall rise up before God like men whom Satan has demented by his touch; for they claim that trading is no different from usury. But God has permitted trading and made usury unlawful. He that has received an admonition from His Lord and mended his ways may keep his previous gains; God will be his judge. Those that turn back [turn again to riba] shall be the inmates of the Fire, wherein they shall abide for ever. (2:275)

God has laid His curse on usury and blessed almsgiving with increase [yurbi, root: RaBa]. God bears no love for the impious and the sinful. (2:276)

Believers, have fear of God and waive what is still due to you from usury, if your faith be true, or war shall be declared against you by God and his apostle. If you repent, you may retain your principal, suffering no loss and causing loss to none. (2:278–79)

Believers, do not live on usury, doubling your wealth many times over. Have fear of God, that you may prosper. (3:130)

That which you seek to increase by usury will not be blessed by God; but the alms you give for His sake shall be repaid to you many times over. (30:39)

The last verse brings two forms of increase together so that they cancel each other out: riba and alms (also literally increase).

Islamic banking and finance consists of experiments taking place around the world to create financial products and banking institutions that do not rely on interest. Much of the activity is taking place in Malaysia, Indonesia, the United States, the United Kingdom, the Arabian peninsula, the Indian subcontinent, and, to a lesser extent, west and east Africa. In other words, this activity has not just taken place within the financial systems of nation-states that have officially at one time or another Islamized their economies, such as the Sudan, Brunei, Iran, and Pakistan. The broadest definition of Islamic banking and finance includes all activities understood to be financial or economic
that seek to avoid riba—its term of considerable definitional anxiety—
generally through profit-and-loss sharing, leasing, or other forms of equity-
or asset-based financing.

This chapter distills the findings of two years of research into Islamic home financing in the United States, the complete results of which are documented in the book Pious Property: Islamic Mortgages in the United States (Maurer 2006). Islamic home mortgages are a relatively recent Islamic financial innovation. I attempt here not only to provide a history of the development of Islamic home financing, but also to convey a sense of the wider conversation about Islamic mortgages that is taking place in the United States today and the effects of 9/11 on those conversations. My research involved ethnographic, interviewing and quantitative methods, focusing on Muslim Americans in southern California who were interested in Islamic mortgages, as well as the creation of a data set on demographic features of all applicants for Islamic home mortgages to two main Islamic financing companies in 2002 and 2003 (the first years for which such data were available; n = 2507). I also conducted face-to-face, email and telephone interviews and conversations with professionals involved in creating and marketing Islamic mortgage products, as well as archival research on the development of Islamic home financing, including mass media stories, legal documents, religious and regulatory rulings and the proclamations of prominent individuals in the field.

Classical Greek and medieval Christian injunctions against usury are echoed in contemporary Islamic financial practice, although there is considerable debate over whether the Qur'anic riba can in fact be simply translated as interest or usury (see El-Gamal 2000a, 2000b; Saleh 1986). The Aristotelian objection to money's fecundity is found in the Pasadena, California-based American Finance House LARIBA's statement of its organizing concepts: "Money is not a commodity. It is a measuring scale. It also does not reproduce. It only grows when used in an economic activity. Money is man-made." The American Finance House LARIBA was one of the earliest entrants into the Islamic mortgage market. The medieval Christian concern that a contract should be clearly bound to a physical, tangible asset is echoed in the Guide to Understanding Islamic Home Finance, a booklet published by Lightbulb Press and introduced by Shaykh Yusuf Talal DeLorenzo, who sits on the sharia supervisory board of the Guidance Financial Group, which offers a competing Islamic home mortgage product:

A conventional mortgage loan is a loan of money secured by a lien against property. A halal [lawful, Islamically acceptable] home acquisition agreement, on the other hand, is either a partnership in property, a loan of property, or a sale of property. In other words, the essential difference between a Shariah-

compliant method of home finance and a conventional loan is the difference between:

An acceptable transaction that involves acquiring something of tangible value—in this case, real estate—for cash.

An unacceptable transaction that involves borrowing cash and promising to repay that cash plus an added amount. (Morris and Thomas 2002, 3)

Finally, the medieval Christian concern that the lender should not be insulated from the risks of business is found throughout the Islamic banking literature (for example, Vogel and Hayes 1998) and is embedded in the profit-and-loss sharing contracts that animate a good deal of Islamic financial activity (see Maurer 2005). The American Finance House LARIBA mortgage model explicitly invokes risk sharing.

Before September 11, 2001, Islamic home financing had just begun to achieve some national prominence and reach. After September 11, it expanded considerably. There are a number of reasons for this. First, Islamic investment companies that had been focusing on developing mutual funds and other investment vehicles for devout Muslims suffered from the same economic shocks as all other investment companies after the market reacted to September 11. To put it bluntly, Americans in general, Muslims included, took their money out of the stock market after 9/11 and started investing in real estate, buoyed by historically low interest rates. Second, Islamic mutual funds had been able to maintain their Islamicity in part by contributing a portion of their profits to charity in order to religiously cleanse the funds; as charities came under governmental suspicion for being a possible route for terrorist money laundering, many Muslims withdrew their investments. It is unclear from my research, however, whether people’s claims that they took their money out of Islamic mutual funds for fear of government scrutiny merely provided a religious veneer to an essentially economic decision to get out of the market. Third, Muslim Americans’ desires to “own a piece of the rock,” as one put it, and claim a stake in American society only seem to have increased after September 11, as a form of political assertion and claim to national belonging. Home financing, people told me, is the cornerstone of the American dream, and they were eager to demonstrate their commitment to that dream. Mortgage financing has also taken on such prominence in the American Islamic banking scene compared to other countries because of the manner in which American tax policy subsidizes home ownership through incentives like the mortgage interest income tax deduction. One might just as well ask, therefore, whether 9/11 spurred the mortgage and real estate markets generally, not just for Islamic mortgages or Muslim homeowners.

The American Finance House LARIBA (American Finance House) wrote the first Islamic mortgage in 1987 for the purchase of a home in Madison, Wisconsin (see generally, Abdul-Rahman and Abdelaziz 2000; Abdul-Rahman
and Tug 1999; Ebrahim and Hasan 1993). The mortgage contract followed a cost-plus model (murabaha) according to which the finance company purchased the house and the client paid the cost of the house plus a pre-set and unchanging markup over a period of time. It is the pre-set and unchanging amount of the markup that distinguished this contract from a conventional interest-based mortgage, from the point of view of Islamic finance. Later mortgage products developed by the American Finance House used lease-to-purchase agreements based on ijarah (leasing contracts) from classical Islamic jurisprudence, or hybrid ijarah-musharakah contracts in which the lender and the borrower form a joint partnership (musharakah) which holds the leads and which the borrower buys from the lender over a period of time.

Two Middle Eastern financial companies had attempted to offer Islamic financial services in the United States as well, but with limited success, as did a small financial services company based in Houston, Texas. The Saudi firm Dallah al-Baraka opened a subsidiary in California in 1988, only to move to Chicago shortly thereafter and to shift its emphasis from consumer finance to real estate and industrial investment. The United Bank of Kuwait (UBK) opened a mortgage company, al-Manzil, in 1998, but closed shop in 2000. In its two years of operation, it provided loans for sixty households. The Ameen Housing Cooperative in Palo Alto, California, has been helping Muslims buy homes using ijarah contracts since 1998. MSI, an outgrowth of the Islamic Circle of America, offered various loan products to consumers based on lease-to-purchase and co-ownership models in the Houston area, but never achieved the visibility or scale of the American Finance House. Unlike MSI and the American Finance House, UBK and al-Baraka lacked a constituency in the communities in which they attempted to operate, and, as a result, could not mobilize the networks into which the other two companies had tapped through community connections, mosques, and political and social organizations. Significantly, however, UBK’s brief foray into Islamic home finance sparked an interpretive ruling from the Office of the Comptroller of the Currency (OCC) that has had enduring significance for the field. The OCC issues interpretive rulings on banking and financial activity in the United States. It issued two rulings in the 1990s that determined that because mortgage-replacement products were functionally equivalent to mortgages, they could be understood as extensions of a bank’s financing powers, not as a bank’s acquisition of real property or leasing. This functional equivalence of Islamic and conventional mortgages remains a point of debate among professionals and laypeople alike, many of whom see Islamic mortgage alternatives as a smokescreen for interest-based activities or a clever marketing ploy with no real Islamic content.

In March 2001, the Federal Home Loan Mortgage Corporation (Freddie Mac) signaled its support for American Finance House’s Islamic mortgages by investing $1 million in existing American Finance House contracts. By 2005, it had invested a total of $45 million. Freddie Mac support has been hailed as an incredible milestone in the growing visibility and legitimacy of Islamic mortgage alternatives. Before September 11, Freddie Mac had begun to expand its purchase of Islamic mortgage alternatives. In August 2001, it invested $10 million to purchase lease contracts from Standard Federal Bank and United Mortgage of America in Detroit. Freddie Mac support has been crucial to the success and expansion of the Islamic mortgage alternative sector. In 2003, the Federal National Mortgage Association (Fannie Mae) also agreed to purchase $10 million in Islamic financing contracts.

Since Freddie Mac got involved in Islamic home finance, Islamic and conventional banks have devised a number of new home financing options for American Muslims. The most significant new entrant into the field is Guidance Residential, incorporated in 2002, which entered into an agreement with Freddie Mac for an initial commitment of $200 million. It quickly established a national reach and has emerged as American Finance House’s chief competitor nationally. The multinational bank HSBC (formerly, the Hong Kong and Shanghai Banking Corporation) opened its Amanah Islamic finance window in 2003 and began offering a home finance product based on the murabaha contract. In 2004, SHAPE devised a lease-to-own home ownership program it calls MALT (Mortgage Alternative Loan Transaction) based on an ijarah contract; it offers a mortgage-alternative calculator on its website (http://www.shapecfinancial.com) so that potential borrowers can compare its product with a conventional mortgage. In 2004, University Bank in Michigan hired a specialist in Islamic mortgage financing to implement the MALT model under its community banking division. In Minnesota, the Federal Reserve Bank of Minneapolis, seeking a way to serve the financial needs of Somali Muslim immigrants, began exploring home financing alternatives together with a consultancy firm called Reba-Free, the St. Paul Neighborhood Development Center, the Northside Residents Redevelopment Council, and other community organizations (Tyndall 2001; Bennett and Foster 2002; Minnesota Housing Finance Agency 2002, 9). The Neighborhood Development Center began offering both murabaha and ijarah based mortgage alternatives for business financing. Devon Bank in Chicago also began offering murabaha and ijarah based mortgage alternatives in 2003, and has grown considerably since 2005.

These new entrants into the field of Islamic home finance have helped to address one of the chief shortcomings of Islamic mortgage alternatives: long waiting lists for financing. Before Freddie Mac and Fannie Mae, potential clients might wait as long as five or six years to get an Islamic mortgage, because the lender’s capital would be bound up in its currently held properties and it could not attract deposits without violating the separation of commercial from investment banking that was mandated by national banking laws until the 1999 Financial Services Modernization Act. Furthermore, the National Bank Act and state-by-state banking charters generally treat mortgages as liens...
against the collateral of the property, rather than as the actual holding of the title to the property (see Bennett and Foster 2002).

For Freddie Mac, investing in Islamic mortgage alternatives fell under its mandate to expand opportunities for underserved populations to gain access to home ownership.10 Freddie Mac's commitment has endured, unchanged, since September 11, 2001. Indeed, among mortgage professionals, according to one interviewee, the only change brought about by September 11 has been "a new sense of resolve that what we're working on is more important now than it was on 9/11."11 Indeed, Islamic financial institutions offering mortgage alternatives saw an increase in business and inquiries since 2001. Some attribute this increase to the general turn away from the stock market and into real estate. Others, however, attribute it to a feeling that American Muslims after September 11 want more than ever to assert their position as full members of American society. They also see a sort of political progression or evolution growing from Muslim homeownership. As one Islamic mortgage professional remarked:

The most intangible thing is that, when you take puritan Muslims who refuse to participate in interest, and have lived in apartments and so on, and put them in decent neighborhoods, they will start mixing with the American community and become responsible American citizens and this will grow in the neighborhoods and develop relationships and friendships and so forth.

At the same time, however, it is difficult to know whether professionals' faith in Muslims' newfound political assertion is actually pointing to an economic phenomenon that has little to do with political identity and more to do with identity-based niche marketing, and the developing realization among Islamic finance professionals that there is a wide untapped market. Both Islamic and conventional banking professionals see incredible economic potential in home financing alternatives:

At this point we're dealing with a sleeping giant. But . . . it's about to hit in a big way. And the reason for that is the appearance very shortly of home acquisition programs. . . . The home acquisition programs, they address an essential need, and they basically put something in people's pockets, whereas the other programs, I mean the investment things, the different funds that are developed, those are either aimed at high net-worth individuals or institutions, or, at the retail level, they're for people with extra money.

In other words, where Islamic mutual funds or more exotic instruments like derivatives may appeal to the Muslim investor with a lot of room for experimentation in their portfolio, Islamic home financing has the potential for a much wider and ultimately more profitable reach. If September 11 made Islamic finance professionals aware of that potential, it was because of the stock market's failures at least as much as it was Muslims' possibly newfound sense of political assertion.

The role of Freddie Mac cannot be understated. Freddie Mac also spurred the Islamic home financing community to begin to conceptualize the securitization of Islamic mortgage alternatives for the purposes of selling Islamic mortgage paper on the secondary market to investors seeking Islamically acceptable investment vehicles. An interviewee remarked that this created an incentive for "organizations with the deep pockets" to step in. Securitization also made Islamic mortgage alternatives scalable in a way they had not been before, when they were primarily local or regional affairs backed by small and often local or regional investors.

In addition to providing liquidity, stability, and scalability, the support of Freddie Mac generated competition among Islamic financial service providers. Islamic banking professionals pride themselves on their civility and collegiality, and the spirit of cooperation, mutual trust and inquisitive experimentation that underpins their activity. When debate gets heated, it usually occurs in private and over very technical matters of the interpretation of fiqh (jurisprudence). Increased business for Islamic mortgage providers since 9/11 has led Islamic banking to take on the qualities associated with other forms of competitive enterprise. Professionals are actively involved in marketing their products and emphasizing the benefits (financial, spiritual, or otherwise) of their products over those of their competitors. There has also been increasing market differentiation and fragmentation, with different products being marketed to different communities of Muslims.

Ijara is an Islamic finance company that offers a mortgage replacement product that can be used for a home purchase as well as a refinancing loan.12 Ijara prides itself on a carefully articulated product modeled on an ijara contract from classical Islamic jurisprudence. Its product also has a clear exegetical basis, that is, it has a clear basis in Islamic traditions of jurisprudence and interpretation. An ijara contract is essentially a lease-to-own contract. The client and company enter into a partnership agreement whereby the client agrees to pay back a pre-determined amount of the principal every month, plus a proportion of the property's fair market rental value. That proportion is determined by the client's share of the ownership of the property. Over time, the rent paid decreases as the client's ownership share increases. In other words, if Bilal wants a mortgage with Ijara for a house worth $100,000 and has the money for a 20 percent down payment (Ijara's standard until recently, which may account for its higher than expected frequency of wealthier applicants), he becomes a 20 percent co-owner and Ijara becomes an 80 percent co-owner of the property. In the first month, he will pay back a predetermined amount of the principal together with 80 percent of the monthly fair market rental
value of the property. In effect, he pays the remaining 20 percent of the rent to himself. The next month, his share ownership of the house has increased, and so the proportion of the monthly rent due to Ijara decreases.

Searchlight is Ijara’s main competitor, and its mortgage-replacement model is quite different. Based on a musharaka contract from Islamic jurisprudence, the mortgage replacement product looks on the surface like a conventional mortgage because it appears to include a rate-based interest payment. It functions rather differently, however. A musharaka contract is a co-ownership contract without any specification as to whether or how ownership might change over time. Searchlight and the client enter into a corporate partnership and form a limited liability company (LLC) together. The object of the contract they create is that LLC, not specifically the property the client seeks to purchase. The LLC owns the property, and the company and the client re-calculate their percentage share in the partnership—not the property—over the term of the contract (fifteen, twenty, or thirty years). Searchlight also invites other potential investors to share in the ownership of the LLC. This provides a mechanism for Freddie Mac, for example, to add capital to the Islamic mortgage market. Freddie Mac can first purchase a share in several LLCs held jointly between Searchlight and its clients, and then create securities in its co-owned assets for trade on the secondary market. As with Ijara, Searchlight’s relationship with Freddie Mac has required the use of standardized mortgage application and disclosure forms; those forms include terms like loan, interest, lender, and borrower. Searchlight’s Sharia supervisory board has determined that such usages do not invalidate the essential nature of the diminishing musharaka contract at the heart of Searchlight’s mortgage alternative model.

Searchlight’s model consists of a musharaka partnership grafted onto a declining balance component, whereby one owner (the client) gradually buys out the other owner (the company). This makes it look similar to an ijara contract, but with one exception: where in ijara a monthly rent is assessed based on market values, and this rent determines the monthly markup (which takes the place of an interest payment in a conventional non-Islamic loan), in Searchlight’s diminishing co-ownership model the monthly markup is an administrative fee added to Searchlight’s profit from the co-ownership arrangement. It is arbitrarily set by Searchlight. It may resemble rent, and may be described as rent, but it is not necessarily set by rental market values and is not technically speaking a payment for the enjoyment of the property. Searchlight calls this portion of the monthly payment the profit payment. The portion of the monthly payment for the client’s additional shares in the LLC it terms the acquisition payment. The occupant-client is responsible for all applicable property taxes and maintenance costs, as these are considered to benefit the occupant because he or she maintains sole enjoyment of the property.

Searchlight explicitly states that it seeks a profit payment that is competitive with interest rates available in the broader home finance market. It also states that its profit payments might be linked to an interest rate index (such as LIBOR, the London Interbank lending rate). The profit payment is not technically interest because it is not based on the capital Searchlight extends to the client but rather based on the business partnership that the company establishes with its clients.13

For the following analyses, a data set was created from the 2,507 applications to both companies in 2002 and 2003 from data collected by the Federal Financial Institutions Examination Council (FFIEC) for compliance with the Home Mortgage Disclosure Act (HMDA). The data set includes all applications for conventional loans and refinancing loans, whether they were accepted, denied, or withdrawn.14 Data for Ijara and Searchlight seem on the surface to be of better quality than HMDA data for other lenders, although there is a substantial degree of nonreporting of race as well as some other glitches in the reporting (for example, missing or incomplete data for some census tracts).

From the point of view of fair lending concerns, which usually have to do with differential denial rates, it is striking that Ijara and Searchlight have not had much of a denial rate. In 2002, Searchlight did not reject any applications for either conventional loans or refinancing out of a total of twenty-nine and 116, respectively. Ijara rejected one conventional loan application of a total of 251; four applications were withdrawn, for a total denial rate of 2 percent. It rejected none of the seventy-seven refinancing applications. In 2003, there were more denials overall, but not significantly so when compared with national averages. Searchlight rejected seventeen of 475 refinancing applications (4 percent) and eighty-nine of 890 conventional loan applications (1 percent). Ijara rejected three of 201 refinancing applications (1 percent) and thirteen of 253 conventional loan applications (5 percent). The denial rate nationally for all lenders is about 18 percent.

In what follows, I use the terms conservative and progressive to refer to some mortgage applicants, but am not comfortable with these terms because they seem inadequate to describe the complexity of emerging Islamic legal norms in the United States. When I first presented an overview of the patterns in this quantitative data to a non-Muslim colleague, she had assumed that when I referred to conservative Muslims I meant women who dressed modestly, covered, and keep silent, and men who make their wives walk three paces behind and don’t listen to what they have to say. In using the term, I am aware that I may call up this stereotype in the minds of some readers. In addition, the proxy measure for conservatism here—whether a person is listed as a male instead of a joint applicant despite marital status—may have more to say about belief (or aspiration) than actual practice. A man who wishes to be or thinks he is in charge of a household’s finances, of course, may be living a fantasy. Furthermore, a strict interpretation of the sources of Islamic law may, ultimately, warrant what many in the United States would consider a progressive politics, a commitment to social justice, and a strong belief in gender equality. And this kind of
strict interpretation of Islamic law, when wedded to American minority struggles for political recognition, may even further confound the stereotypical assessment of conservative Islam. As one young woman explained to me, "I am Muslim, I am a woman, I wear hijab, but I am a woman of color."

Both companies have a wide geographic distribution of lending activity. Ijara, an older company with licenses to operate in all states except New York, has a broader national scope than Searchlight. Searchlight, in business only since 2001, operates in eleven states and the District of Columbia. In 2002, though there was overlap in the regions in which each operated, the companies only seemed to be in direct competition in two MSAs: the Chicago area and the Baltimore area. In 2003, the two companies were in direct competition in Ann Arbor, Baltimore, Chicago, Detroit, the states of California, Florida and New Jersey, and the Washington, D.C., metropolitan area. Table 8.1 lists the states from which applications originated in 2002 and 2003. One of the striking things about the geographic data is the extent to which Ijara has a presence even in smaller, southern and central states, compared to Searchlight, whose activity is concentrated in states with large urban centers. Because Ijara has a longer history and has relied on word of mouth and the Internet, whereas Searchlight advertises mainly through Muslim organizations, Ijara has been more successful in reaching isolated Muslims who may not have a large community around them. The geographic data suggest that Searchlight, which has had a tightly focused marketing campaign since its founding, has concentrated on reaching areas with potentially large Muslim communities and thus a potentially large market. Ijara, by contrast, has concerned itself since the beginning with reaching out to Muslims anywhere who seek an interest-free alternative.

The two companies have virtually opposite profiles in terms of the types of loan applications they receive. For both years combined, Ijara received more than one and a half times as many conventional loan applications as refinancing applications; Searchlight received twice as many refinancing applications as conventional loan applications. Searchlight better approaches the national statistics: in 2002 and 2003, 26.5 percent of all loan applications nationally were for conventional mortgages and 73.5 percent were for refinancing loans. This reflects the period of historically low interest rates. Searchlight’s initial business model and marketing campaign focused on encouraging Muslim homeowners to refinance their existing interest-based mortgage with an Islamic mortgage; it has continued to emphasize refinancing over new home purchases. Ijara focused on first-time homebuyers but in 2003 began to branch out into the refinancing market. This points to Ijara’s mission to reach Muslims who may have stayed out of the housing market altogether because of their views on Islam’s prohibition of interest, and to Searchlight’s strategy of reaching Muslims who already have an interest-based mortgage and are looking for a more sharia-compliant alternative.

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*Source: Author’s compilation from Home Mortgage Disclosure Act (HMDA) data, 2002 to 2003.*
The gender and income profiles of applicants to each company differ, as well. Ijara’s applicants tend to file their mortgage paperwork jointly, that is, each partner in a married couple signs the paperwork and is legally responsible for the contract. Searchlight’s applicants are overwhelmingly more male. The differences are statistically significant. It is important to note that the male and female applicants might either consist of single adults applying for loans and mortgages (who, with only one income, are more likely to be in the lower income ranges in their metropolitan statistical area), or married couples in which only the husband or only the wife (and probably the former) fills out the loan paperwork. Fair lending advocates have found that as income rises fewer women tend to apply for loans singly (for example, New Jersey Citizen Action 1997), representing a sort of marriage effect as more apply jointly with their husbands. In the case of Ijara and Searchlight, however, anecdotal information suggests that most loan applicants are married. It is not surprising that the gender category chosen by the applicant varies together with income level, whether the effect is due to the presence of two incomes in a household or, possibly, more progressive views on the marriage relationship correlated with higher socioeconomic status.

The data on race are tricky. A large proportion of applications are marked Other or Race Not Available. It is also difficult to interpret the HMDA racial categories. South Asian and Arab Americans might record themselves as Asian-Pacific Islander, Other, or white. Still, there are significant differences between the two companies and a weak relationship between race and choice of lender. Anecdotally, Ijara attracts more white converts than Searchlight, whose client base is more South Asian. Ijara is also thought to attract more Arabs than South Asians, though it is impossible to confirm this with HMDA data. If we assume that most people in the Asian-Pacific Islander category are South Asians, then it appears that the applicant pool for Islamic mortgages is overwhelming South Asian. There are few African American Muslims applying for Islamic mortgages. Karen Isaacs Leonard (2003, 4–5) summarizes various surveys of Muslims in the United States, showing that African Americans make up between 33 percent and 42 percent of all Muslim Americans in these surveys. They are not being served by these two companies, nor do they seem to be targeted by any of the other, smaller companies.

There is, of course, no HMDA data on sectarian allegiances such as Shi’a or Sunni. Leonard (2003, 34) reports that 15 to 20 percent of Muslim Americans are thought to be Shi’a. People who market Islamic mortgages say their primary market is Sunni Muslims but that Shi’a are drawn to them, as well. There are no Shi’a represented on the sharia supervisory boards of American Islamic mortgage companies, however.

There is a significant but very weak relationship between income level and choice of company. HMDA data reports income level in five ordinal categories based on the applicant’s income as a percentage of the median income in their metropolitan statistical area. Searchlight’s applicants tend to be poorer than Ijara’s relative to those living around them. This may in part be an effect of Searchlight’s concentration in urban areas where incomes are higher, although data from individual metropolitan statistical areas from which both companies have received applications suggests that Searchlight’s applicants overall are less wealthy than Ijara’s. This may also reflect the fact that, historically, Ijara has required higher downpayments (sometimes 20 percent) than Searchlight (usually, 5 to 10 percent), although in the years for which data is reported Ijara increasingly accepted lower downpayments in order to be competitive with Searchlight.

Searchlight’s and Ijara’s applicants can be compared to all mortgage and refinance loan applicants in the United States. Ijara is more similar to the aggregate data for all American lenders than Searchlight, which has far more male applicants. Ijara and Searchlight’s applicants have slightly lower incomes than other American mortgage applicants. This may be an effect of their living in areas with higher median incomes, or it may be that, as anecdotally reported, truly wealthy Muslims prefer conventional (that is, non-Islamic) mortgages.

In summary, Ijara seems to be attracting applicants who tend to be wealthier and who tend to apply for mortgages jointly. Searchlight tends to be attracting poorer applicants who file as male rather than joint. Anecdotal evidence suggests that these applicants file singly even if they are married. There are a number of ways to explain the relationship between income and gender category. Married couples with two incomes are wealthier than single people with one. Yet many male Islamic mortgage applicants who apply singly are married. The wealthier couples may have more progressive views on marriage and finance, and take for granted that married couples would engage in financial activities like borrowing jointly. A more detailed statistical analysis (described in Pious Property) finds that Ijara’s poorer joint applicants may also have more progressive views on marriage and finance than Searchlight’s poorer single-filers. Ijara thus may have a more progressive client base overall than Searchlight, regardless of income level.

Why choose one mortgage replacement product over the other? People cited two factors, and these two factors usually worked in Searchlight’s favor: perceived cost, and perceived level of sharia-compliance. Most people thought Ijara’s mortgage alternative would end up costing them more than Searchlight’s. “There really is no difference” between the two, one person said, “it’s just that one is a little cheaper than the other.” Speaking of Ijara, one person said, “I think the way it turned out was that our mortgage was like going to pretty much like double if we were going to go with them.”

The issue of sharia-compliance came up quite a bit in discussions about the difference between the two companies. Those who had an opinion tended to think that Searchlight was more sharia-compliant than Ijara. Their reasons were at first confusing to me, because many of the same people who expressed doubts about Ijara also stated that its product was identical to Searchlight’s. Of course,
there are differences between the products. But it was not an assessment of the products themselves that led people to see Searchlight as more compliant. It was an assessment of the scholars and shaykhs who were believed to have endorsed each company, and an elision between the idea of endorsement and the idea of a universality or global reach that was afforded to Searchlight but not Ijara.

“We wanted to make sure we did something Muslim,” one woman stated. “Ijara hasn’t been approved by a lot of shaykhs.” People cited Shaykh Taqi Usmani of Pakistan and the American Shaykh Yusuf Talal de Lorenzo. “Well, I mean, I don’t know if they particularly didn’t endorse Ijara, but they didn’t, umm, it wasn’t a public endorsement. But with Searchlight, like, all these scholars publically endorsed it.”

Searchlight’s website and application packet contains copies of the fatwas issued by its Sharia Supervisory Board, the signatures of famous and well-respected sharia scholars and shaykhs prominently displayed. One couple explained:

A: Actually, even in our loan application—
B: There was like a written, ummm—
A: —yeah, there’s like a page just with their endorsement—
B: —just saying it’s part of the application.
A: Yeah, it’s proof to the consumers that this is legit as far as we’re concerned.

People were impressed with the caliber of the scholars who endorsed Searchlight’s product. “He’s like a world renowned faqih [jurist] and stuff, and he’s like really hard line, like really hard line when it comes to things like riba.” People also relied on their friends for advice, especially friends who said they were against riba. Friends advised them to look for products with a lot of backing. Indeed, the word backing or other terms expressing an anterior warrant came up a lot in my informal conversations with Muslims in southern California. People said of Searchlight things like, “It’s got good people behind it,” or “It’s really got a lot of backing.” That anterior warrant translated into global reach. Almost everyone I talked to identified Ijara as a California company and Searchlight as national or as everywhere. This is despite Ijara’s broader national reach. People had broad exposure to Searchlight’s marketing materials; some had met representatives of the company at conferences. “They’re, they’re everywhere! Like, Searchlight is at every single conference, at every single event.” Of Ijara, people said, “You don’t really see them anywhere.” Searchlight, by contrast, has “crossed the nation.”

People also felt that Searchlight was more professional or more organized. People cited with approval the formality and professionalism of the paperwork they were required to fill out. “They even did credit checks!” “They looked at all our W2s.” People were pleased that Searchlight did not trust them as potential clients, but required all the information a traditional lender would demand. Mortgage scholar Ann Burkhart (1999) laments that the nationalization and standardization of the mortgage business has led to ever-decreasing social connections—and therefore social obligations—between lenders and the communities in which they operate. Those I spoke with had exactly the opposite assessment of the quasi-anonymous quality of their relationship with Searchlight. They appreciated being catered to as Muslims. But they also appreciated being treated “like, as a real client or something,” as one put it to me. Muslim companies, it was thought, were too lackadaisical or overly trusting of other Muslims. Not Searchlight. “It wasn’t like traditional... Muslim companies, ‘oh, it’s OK, just let it go, whatever!’” Professionalism here meant anonymity achieved through bureaucratic rationality. People preferred the formality of bureaucratic and market mechanisms that made them anonymous—and, indeed, that gave them no advantages even for being Muslim. If being Muslim meant getting a break from a Muslim company, such potential clients rejected the enterprise as suspect.

Ijara has essentially the same paperwork as Searchlight. With Freddie Mac involvement in the Islamic mortgage business, in fact, almost all Islamic home financing companies now use standard Freddie Mac mortgage application forms. Every company does credit checks; they all require W2s and other proof of income and continued employment. And, of course, considering the quantitative data, Searchlight has not in fact crossed the nation. Ijara has. Its distribution of clients, while not as deep in any particular area, is much wider than Searchlight’s.

There has been a large and lengthy debate in Islamic banking and finance about the relative status of contracts like musharaka or partnership contracts compared to ijara (leasing) and mudarabah (profit and loss sharing). Scholars and practitioners often deride the former because they insulate the company from the risks of doing business. Ijara contracts are deemed more pure because they have a clearer exogenous basis, and mudarabah is deemed more equitable because it spreads the risk by sharing losses between company and client. Musharaka (and its close cousin, murabaha, a cost-plus contract) are seen as more efficient, but their theological status is in some doubt (see El Gamal 2000b; Saleh 1986). Islamic banking and finance scholars and professionals have agonized over the merits of these contractual forms; although many tend to feel better about leasing and profit-and-loss sharing than they do cost-plus or profit based contracts, many also recognize that the latter are simpler, more efficient, and more profitable in the long run. Because of this debate, and because Searchlight’s profit payment is tied to an interest rate, I assumed at the start of my research that Ijara would attract more conservative Muslims who sought to adhere as closely as possible to the Qur’anic prohibition of riba, and that Searchlight would attract those willing to experiment, or those content with a Sharia stamp of approval from known public figures even if the product looked like an interest-based mortgage from an end-user’s perspective.
Searchlight has a strong and persuasive marketing operation, as well as a Web presence that looks high-tech, savvy and professional. Its animated logo consists of the words, *modern values*, juxtaposed to one another, and then separating apart as the words *finance* and *timeless* interject themselves to produce, *modern finance, timeless values*. It has a sharia supervisory board made up of truly prominent individuals, who have issued fatwas on Searchlight's products which are then posted on the company webpage for all to read (and to see the signatures of the jurists warranting the products). It is interesting, however, that the content of these fatwas seems less important than their form. They actually say very little, other than statements like, "After reviewing the mechanism as well as the agreements and documents, and after suggesting amendments that have been incorporated, the sharia supervisory board is of the view that given the circumstances prevailing in the United States, this arrangement conforms to the rules and principles of the sharia; and therefore, Muslims may avail themselves of this opportunity to acquire homes and properties by means of this method." There is no citing of authority or text or school of law. There is only the affirmation that the sharia supervisory board warrants the model.

Ijara, for its part (which has never had as snazzy a corporate marketing strategy but has relied more on the charisma and leadership of its founder) has gone on the attack, offering advice on how to select a home finance company that includes the following admonitions: "Please: Do not get overly impressed by intensive advertising that features 'Shariaa [sic] Boards' with religious rulings [or] 'fatwas.' It also advises that clients ask of their finance professionals, "Is it a model that uses interest as a foundation for its calculations? If they immediately quote themselves a rate, this is nothing but interest." "Does the institution use intensive marketing concepts using religious slogans to 'sell' its services and operations?" "Does the company re-invest in the community?"

Often in the course of this research, I have been called upon to adjudicate the status of Ijara's versus Searchlight's models. I have resisted the call. Ijara's seems more correct, but only if what counts as sharia compliance is a literalist interpretation of religious texts, and only if the work of Islamic banking is understood to proceed from those texts, rather than to constitute, in itself, its own kind of religious or exegetical activity. This is a key point. My sense is that those who are intellectually captivated by Ijara's model will prefer it over Searchlight's. Indeed, Ijara makes an effort to engage the potential client (or interested researcher) in the exegetical act and the work of interpretation itself. It is fun and intellectually interesting to work out the legal-religious warrants of an ijara contract, to read hadith on leasing, and to ruminate on the market mechanism as a manifestation of the divine. Searchlight does not offer the same kind of hands-on relationship with its model. The model simply exists and is offered to potential clients as an already-worked-out, authorized contractual form. Its warrants are the fatwas. Their form trumps content and the mere fact of their existence underwrites the entire enterprise.
The determination of the choice between Ijara and Searchlight thus seems to have little to do with the actual product. People think the products are the same, and that they are both ijara contracts. It also has little to do with the interpretation of the product. People think ijara contracts are "really sharia" and mistakenly believe that Searchlight has a "really sharia" ijara-based product. But what makes many choose Searchlight over Ijara is not the product and not its sharia status, but the public backing of prominent scholars. This may explain the gender differences between applicants to each company. Those who choose Searchlight are not necessarily more conservative as much as they hold a particular understanding of Islamic law. Islamic law, for them, must look like law in the abstract sense. This interpretation, as requiring the public and formally bureaucratic backing of prominent scholars, may represent a transformation of sharia in the United States where charisma is actually becoming less important than bureaucratic rationality.

Achieving the backing of prominent scholars and thereby having the weight of an anterior warrant issued by such figures creates the illusion that Searchlight has a national presence. Scholars of global significance have endorsed the product, so the product must be of wider reach than Ijara. Wider reach translates into more sharia-compliant, given that sharia is supposed to be universally applicable. The illusion of national coverage also means formal anonymity—the anonymity of the nation-form itself, the anonymous horizontal solidarity of the "imagined community" Benedict Anderson (1983) characterized as having been forged through public print media such as newspapers. Here, the public print media are bureaucratically rendered, publicly available fatwas and standardized Freddie Mac application forms. Anonymity also translates into professionalism. Muslims debating mortgages are creating a world that brings into alignment standardized print media, public endorsements of prominent figures, and universal reach. It is something that resembles Islam itself: a standard, unalterable and untranslatable written text, chains of exegetical authority via hadith, and the universality of Islam expressed in the global horizontal solidarity of the umma, the global community of believers.

Furthermore, Islamic mortgages may be animated by a form of routinized charisma, but not necessarily in the Weberian sense. In making a farwa look like an American legal document and concretizing it on paper, and in mobilizing Freddie Mac mortgage application packets for mortgage seekers and for international investors, Islamic home financing is routinizing people's pre-existing understanding of law—not what it does or what it is, but what it looks like, how it appears on paper. Prominent shaykhs can now derive their authority and achieve greater prominence by publicly signing such pieces of paper. This is not the charisma of office so much as the charisma of form.

If Ijara represents sharia as a textualist endeavor backed by the intellectual activities of human beings talking and debating with one another as they assess the property's rental value, its living yield as a tangible asset, Searchlight represents sharia as a practical activity best understood as the working-out of their model and its form itself under the guidance of the esteemed fiqh scholars and experts who sit on its sharia supervisory board. "We do not change the math," Searchlight proclaims. The form is the same, and it is not the content that is different from a conventional mortgage so much as the form's own activity as it moves from farwa to monthly payment.

This formalism dovetails with an American legal consciousness that places faith in formality and bureaucratic procedure—even if cynically so—to warrant any legal contract's legitimacy. If it looks like a legal document, it must be law. And if it is a legal document generated by an Islamic company, it must be Islamic law. In the context of the aftermath of 9/11, Muslim Americans may even be placing a renewed faith in the bureaucratic formality of liberal law and its guarantee of equality of opportunity, a promise that takes shape in the very textual bareness of the blank administrative form, in paperwork and documents in themselves rather than in their exegesis or interpretation. In doing so, Muslim Americans demonstrate both the durability of Islamic institutions in the United States, and the wide embrace of America itself.

I would like to thank Katherine Ewing and Stephanie Platz for their comments on earlier versions of this chapter.

NOTES
1. All quotations from the Qur'an are taken from the Dawood translation (2004).
3. Islamic banking and finance employs Arabic terms from classical jurisprudence for its contractual forms. I will set to one side here the interplay of Islamic jurisprudence and Arabic terms on the one hand and the dynamics of product positioning on the other (for a more complete discussion, see Maurer 2005).
4. The Federal Home Loan Mortgage Corporation was created by Congress in 1970 to provide liquidity to the real estate market by purchasing and securitizing mortgages, and selling the securities on the secondary market. The Federal National Mortgage Association, created in 1938, originally only purchased Federal Housing Authority loans but since 1968 has been allowed to purchase and resell any mortgages.
10. Indeed, Freddie Mac’s involvement with Islamic home finance came under the rubric of its “Summer of Homeownership” initiative which sought to bring greater access to underserved populations, particularly lower-income individuals and immigrants. According to some estimates less than 60 percent of Muslims in the United States are homeowners, compared to the American average of 69 percent (Thomas n.d., n9).
11. Unless otherwise indicated, all interviews conducted by the author 2002 to 2004, under conditions of anonymity.
12. I use pseudonyms here to protect the identities of the clients of these companies.
13. I discuss the exegetical basis of Searchlight’s and Ijara’s products in detail in Pious Property.
14. HMDA refers to primary mortgages as conventional loans and second mortgages or refinancings as refinancing loans. Although it may cause some confusion, since Islamic banking professionals refer to non-Islamic interest-based mortgages as “conventional loans,” I maintain this terminology here.

REFERENCES