

# Muhammad's Social Justice or Muslim Cant?: Langdellianism and the Failures of Islamic Finance

Haider Ala Hamoudi

And We sent you not,  
Save in Mercy to the  
Peoples of the World.  
Quran 21:07

## Abstract

Though it is advertised and promoted as the bulwark of an alternative economic system based on populist Muslim notions of social justice and fairness, Islamic finance as a practice has failed to meet these objectives. The causes of that failure and the question of whether alternative approaches are possible are the subject of this Article.

The failure of Islamic finance to provide that which it promotes is the direct consequence of the application of an Islamic logic driven interpretive system through which rules are derived, which its adherents claim was formalized and systematized by the early jurist Muhammad Ibn Idris Al-Shafi'i. The system bears remarkable resemblance to the jurisprudential theories of Christopher Columbus Langdell. As with Langdellianism, particular cases (the reports of Muhammad, or *hadith*) are selected and expanded into fundamental principles, or at least fundamental rules, through a doctrine known as *qiyas*, or analogical reasoning.

The result is a financial system characterized by an incoherent web of rules, convenient and specific blindness respecting those rules in particular contexts, and deceptive and obfuscatory measures intended to lend the entire affair a patina of legitimacy as Islamic. Social justice and fairness are not significant components of the system. The jurisprudence is therefore disingenuous, unworkable and not capable of significant alteration, much as Langdellianism was in the American experience.

While an approach towards commercial jurisprudence akin to Legal Realism in the American context seems infeasible, an alternative modality does seem possible so long as it remains within particular parameters, among them faithful adherence to Qur'anic verse, substantial respect for the *hadith* and sufficient systematization and methodological rigor to avoid what some Islamic jurists call "subjectivity", or lack of interpretive control. Specifically, the Article engages and expands upon the ideas of Abdul Razzaq Sanhuri and Muhammad Baqir al-Sadr as potential avenues for reform that lie within these parameters. For the full text of the Article, please see 40 Cornell International Law Journal 89 (2007), currently available at <http://organizations.lawschool.cornell.edu/ilj/>.