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I. Introduction

The recent moves toward peace in the Middle East make normalized relations in the area a possibility for the first time in two generations. Israeli-Palestinian and Israeli-Jordanian peace accords are in place. Syria and Israel are negotiating an end to hostilities, while other Arab nations are simultaneously easing their economic boycotts on Israel.[1]

Peace, however, is far from a reality. In the Islamic world, militant fundamentalists have waged a bloody campaign to register their opposition to the normalizing of Arab-Israeli relations,[2] while in Israel, the Likud party threatens these diplomatic agreements. Recent terrorist attacks have also made the Israeli populace question the viability of peace.[3]

What role can the study of law play in supporting these fragile peace agreements? Surprisingly, significant potential. This article will focus on an unlikely, but highly plausible and important topic in Jewish and Islamic law. The law of usury may serve as a bridge for extending peace efforts in the Middle East.

Despite the centuries-long histories of both Jews and Muslims as commercial peoples, the usury laws of the two religions forbid the charging of interest.[4] Although many Muslims engage in interest-bearing trans-

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1. *See, e.g.*, Elaine Sciolino, *Saudis and 5 Other Gulf Nations Will Ease Their Boycott of Israel*, N.Y. Times, Oct. 1, 1994, at A1.

2. *See, e.g.*, Clyde Haberman, *Among Israelis, Second Thoughts About Accord With the P.L.O.*, N.Y. Times, Dec. 5, 1994, at A1.

3. *Id.*

4. With the notable exception that Jews are allowed to charge and pay interest to non-Jews.

actions, the Islamic fundamentalists who most oppose the peace process view the law restrictively[5] and have called for the abolition of *riba*[6] in their respective nations. Meanwhile in Israel, the Torah's prohibition on interest is widely observed, even though it is functionally evaded. A common cultural and traditional ground exists between Muslims and Jews through the law of usury.

This convergence of Islamic and Jewish legal traditions can play two concomitant roles. First, Jews and Muslims share an appreciation of and expertise in banking under stringent religious conditions. This sensitivity and experience could lead to substantial profit and economic benefit for the entire Middle East. Second, the very fact that the Jewish and Islamic interest laws are so similar suggests that the mutual opposition to charging interest could be of tremendous symbolic importance. The interest ban could serve as a reminder to Jews and Muslims that they worship the same God, and by extension, help support a lasting peace.

This article begins by examining the jurisprudence of usury in the Islamic and Jewish legal systems in Section II. Section III looks at the economic potential of a Middle East at peace and the viability of interest-free banking as a means of fueling this envisioned boom. Section IV discusses the semeiotics of shared legal meaning. Section V concludes this article with a suggestion that Israeli banks create substantial opportunities for equity investment in Israel that will be satisfactory to Muslim investors.

II. THE JURISPRUDENCE OF USURY IN THE ISLAMIC AND JEWISH LEGAL SYSTEMS

The Jewish and Islamic laws of usury exhibit numerous similarities. The majority of authorities in both faiths prohibit the charging or receiving of interest in any form between co-religionists. Jewish law and a few Islamic schools, under certain conditions, permit lending at interest under restricted circumstances. Yet in practice the Jewish prohibition has been circumvented through *heter iska*, a mechanism that probably would not meet with the approval of strict Islamic authorities. Additionally, many Arab nations openly permit interest or allow transparent ruses that evade the Islamic standard for *riba*-free transactions.

A. *The Islamic Law of Usury*

The starting point for a discussion of the Islamic law of usury is the Qur'an. It states: "Those that live on Riba (interest) shall rise up before God like men whom Satan has demented by his touch; for they claim that Riba is like trading. But God has permitted trading and forbidden

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5. Telephone interview with Saad El-Fishaway, Former Senior Advisor for Middle Eastern Affairs at the World Bank and Professor of Islamic Law at Georgetown University (Dec. 4, 1994).

6. A Qur'anic term interpreted as interest or usury.

Riba."[7] A total of seven other verses spread throughout the Qur'an ban *riba*.[8] Additionally, there are several *hadith* or narrations of the sayings and behavior of Muhammad that deal with interest. In one, it is reported that the Prophet "equated the taking and giving of interest to committing adultery thirty-six times, or being guilty of incest with one's own mother."[9] Other *hadith* report Muhammad saying that "People can exchange gold for silver, and wheat for barley, in different quantities, but the transaction must be spot and not forward"[10] and "[g]old for gold, silver for silver . . . whoever pays more or takes more has indulged in interest."[11]

Multiple interpretations of these verses have arisen.[12] One of the least restrictive, loosely termed "modernist," treats the term *riba* as referring only to its standard English meaning of "usury," which is the charging of excessive interest, and not "interest" itself.[13] This analysis approaches the Qur'anic verses and *hadith* as permitting interest-bearing transactions in four cases: 1) when a government is attempting to induce savings; 2) when financing international trade; 3) when financing investments that will enhance productivity; and, 4) when debtors are being punished for not repaying their debts in a timely fashion.[14]

Another interpretation of these verses is offered by the Zahiri school. This approach rejects all forms of *qiyas* or analogical deduction.[15] Whereas the textual prohibition on interest, stated in relation to goods, can be extended to govern monetary transactions, the Zahiri limit their application of the ban on interest to the half-dozen commodities specifically mentioned in the Qur'an.[16] In this manner, it appears that the Zahiri approach, which is textualist and normally conservative, allies itself more

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7. AHMED ABDEL-FATTAH EL-ASHKER, THE ISLAMIC BUSINESS ENTERPRISE 15 (1987).

8. Alexandra R. Hardie & M. Rabooy, *Risk, Piety, and the Islamic Investor*, 18 BRIT. J. MIDDLE E. STUD. 52, 57 (1991).

9. *Id.*

10. *Id.*

11. *Id.*

12. Book length debates have taken place on the exact meaning and degree of restriction required. One of the most notable exchanges took place in Egypt in the middle of the current century between Ibrahim Zaki Badawi and Abd ar-Razzaq as-Sanhuri. Chibli Mallat, *The Debate on Riba and Interest in Twentieth Century Jurisprudence*, *in* ISLAMIC LAW AND FINANCE 79-83 (Chibli Mallat ed., 1988).

Islamic legal scholars have subdivided the law of usury into *riba al-fadl* (*riba* stemming from an excess of one of the charged countervalues) and *riba al-nasi'a* (*riba* due to delay in completing an exchange). For a good summary of the various Islamic schools' views on the restrictiveness of these categories, *see* NABIL A. SALEH, UNLAWFUL GAIN AND LEGITIMATE PROFIT IN ISLAMIC LAW: *Riba, Gharar* and Islamic Banking 24-34 (1992).

13. David A. Suratgar, *The Impact of Islamic Banking on World Financial and Commercial Relations*, 1984 L. & POL'Y INT'L BUS. 1089, 1102 n.31.

14. *Id.* This fourth exception is the justification generally cited for permitting the use of credit cards. Only if the card-holder does not meet his deadline will interest be added to the debt. Khaled Abou El-Fadl, Lecture at Yale Law School (Nov. 23, 1994).

15. SALEH, *supra* note 12, at 18.

16. *Id.*

with the modernist liberal interpretations of the ban on interest.

Several major Islamic schools share still another view, one that restricts the interest laws to the Islamic world (*Dar al-Islam*). According to many Hanafi jurists, who predominate in Egypt, a Muslim may engage in a *ribawi* transaction outside of *Dar al-Islam* with a non-believer.[17] The Ja'firi and some Sh'ia also accept this interpretation.[18]

Yet enough Islamic scholars interpret the Qur'anic verses as prohibiting all forms of interest, regardless of the circumstances, for a plausible claim to *ijma* or consensus on the issue to be made.[19] The classical standard for *ijma*, "a universal consensus of the scholars of the Muslim community as a whole"[20] at a given period,[21] has clearly not been met. Historically, however, a claim of *ijma* has often been trumpeted when "only a majority consensus had existed within or beyond a particular school."[22] It is relatively safe to say that among fundamentalist scholars, who generally speak for the rapidly growing number of vociferous, politically active, and hard-line Muslims most profoundly opposed to peace in the Middle East,[23] this lesser standard of *ijma* exists.[24]

This discussion thus concentrates on what will be referred to as the "fundamentalist" interpretation of *riba* — i.e. that any interest-bearing transaction is prohibited under all circumstances — not only because it is possibly the most commonly held view in the Middle East,[25] but because it is a hardest case scenario. If fundamentalists can be convinced that a profound legal commonality with Jews exists, it will be comparatively simple to make the point to moderates. The fundamentalist interpretation is not the most textualist exegesis of the Qur'an and *hadith*, this title belongs to the Zahiris. Rather, the fundamentalists have engaged in extensive *qiyas*. Building on centuries of scholarship, they have targeted a number of *illa*, or effective causes, for the interest prohibition. The prevention of unfairness and exploitation in financial transactions,[26] limiting hoarding,[27] the need for either risk or labor to be a part of any investment, and preventing the destabilization of business planning[28] are the

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17. *Id.* at 40-41.

18. *Id.*

19. *Id.* at 15. However, a *caveat* is in order. The definition of *riba* is so politically charged at present that one suspects that scholars sympathetic to the fundamentalist movement could be overstating their case. *See generally* El-Fishaway, *supra* note 5.

20. MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 168 (1991).

21. *Id.* at 169.

22. *Id.*

23. *See, e.g.*, Judith Miller, *Faces of Fundamentalism*, FOREIGN AFF. 123 (Nov./Dec. 1994).

24. *See* S.H. AMIN, ISLAMIC BANKING AND FINANCE: THE EXPERIENCE OF IRAN 25 (1986).

25. MALLAT, *supra* note 12, at 83.

26. *Id.* at 83.

27. *Id.* In this sense, Islamic investment is intended to encourage savers to reinvest. A comparison to the traditionally lower tax rates on capital gains in America is not inappropriate.

28. M. UMER CHAPRA, TOWARDS A JUST MONETARY SYSTEM 120-121 (1985).

most commonly invoked *illa*.[29] As a result, business people have only two types of financing open to them. They may: 1) borrow funds, so long as they are free of all interest, or, 2) enter into a partnership agreement.[30]

The strictest view of interest-free financing excludes any loans calling for returns in excess of principal. Even adjusting for inflation through indexing is prohibited. Scholars cite to the following rationale as support for this prohibition: if indexing were allowed, people would keep their money in savings accounts rather than investing it productively.[31] Less strict approaches justify indexing on the grounds that the investor is not obtaining any increase in real terms.[32] Such truly interest-free loans are very rarely available and are generally given only by close friends and family members.

A far more common action for an Islamic businessman in need of funds is to enter into either a *mudaraba*[33] or *murabaha*.[34] The *sine qua non* of *mudaraba* is the existence of risk. A *mudaraba* is a limited liability partnership in which one or more people provide "a fixed amount of disposable money capital."[35] The party receiving the money, the "agent," will have the funds at his disposal for investment. He is then able to invest the capital in the manner he considers most salutary.[36] Should the agent invest the funds "reasonably," he will have no financial liability.[37] The agent receives a fixed percentage of the profits as compensation.[38] Because the receipt of such fixed percentage return on the principal is contrary to Islamic principles, only profit-sharing agreements are permitted. Although the Maliki and Shafii schools do not recognize *mudaraba* agreements with fixed durations, their position is a minority one.[39] Never-

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29. A number of scholars who accept these *illa* still allow the charging and paying of interest in cases of necessity or, somewhat more controversially, on the grounds that engaging in interest-bearing transactions may further the public welfare (*maslahah mursaleh*). *See* MALLAT, *supra* note 12, at 77. *Maslahah mursaleh*, however, is restricted to actions that are "proper and harmonious . . . with the objectives of the Lawgiver." KAMALI, *supra* note 20, at 267. Conservative Muslim thinkers refuse to accept that necessity and *maslahah mursalah* can exist in anything but extreme individual circumstances and can never justify a policy of permitting interest. MALLAT, *supra* note 12, at 77.

30. *See* Hardie & Rabooy, *supra* note 8, at 56.

31. CHAPRA, *supra* note 28, at 40. However, this reasoning misses the point. Money in savings accounts is lent out by banks, so it will still be used productively.

32. EL-ASHKER, *supra* note 7, at 218.

33. *Mudaraba* is also known as *Qirad* and *Muqaraba*. *Id.* at 76.

34. There are numerous other interest-free devices, such as *musharaka* and *wadia* — but the two mentioned in the text, or variations of them, predominate. *Banking Behind the Veil*, THE ECONOMIST, Apr. 4, 1992, at 49.

35. EL-ASHKER, *supra* note 7, at 76.

36. *Id.* The degree of freedom is generally restricted in the *mudaraba* contract itself, which often will limit the types of goods the agent may buy or the transactions in which he may engage.

37. *Id.*

38. The arrangement has certain similarities to the American mutual fund, whose managers are generally paid primarily through percentages of the profits.

39. SALEH, *supra* note 12, at 140.

theless, the agreements tend to be relatively short-term since no division of profits is allowed until the partnership terminates.[40] It is recommended that the person who receives the *mudaraba* be a Muslim. However, jurists also permit non-Muslims who are well versed in Islamic law to receive funds from Islamic investors.[41] The investor thus generally receives return on his money, but to do so he must take real risk and directly employ his capital in a business venture.

Banks and financial institutions in the Middle East and elsewhere provide *mudaraba* banking by reformulating deposit money as partnership capital. The bank monitors the investment[42] and generally acts as the sole partner. The monitoring costs of *mudaraba* are, as one would expect, significantly higher than in Western banking because active oversight of businesses is required.[43] The potential return on capital in these relationships is also much greater.[44] Large Islamic banks, which are usually involved in numerous equity partnerships, tend to pool their *mudaraba* investments, returning a percentage proportional to the depositor's capital.

A second[45] type of Islamic investment instrument is *murabaha*, a sale and buy-back agreement. In a *murabaha*, someone wishing to obtain a piece of equipment, raw materials, or fixed asset of any type, will have a bank or investor purchase the equipment for her and then repay the bank over a period of time at a cost-plus-profit installment payback that reflects the market rate of lending.[46] One drawback to *murabaha* finance is that it requires banks to deal in commodities,[47] which many lending institutions are loath to do. *Murabaha* is primarily distinguished from *mudaraba* in that "[w]ith murabaha, Islamic financial institutions are no longer to share profits or losses, but instead assume the capacity of a classic financial intermediary."[48] Although *murabaha* has occasionally been criticized as dangerously close to *riba*, because it both defers sales and yields a predetermined profit, "it is a universally recognized concept under Islamic law."[49]

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40. *Id.* at 127.

41. EL-ASHKER, *supra* note 7, at 77. Jewish banks should be able to meet this standard, especially if they hire an Islamic advisor.

42. CHAPRA, *supra* note 28, at 165.

43. Abbas Mirakhor, *The Progress of Islamic Banking: The Case of Iran and Pakistan*, *in* ISLAMIC LAW AND FINANCE 95 (Chibli Mallat ed., 1988).

44. Hashi Syedain, *Counting on the Quran*, MGMT. TODAY, Mar. 1989, at 104. American leveraged buyout firms, which operate as similar equity investment pools, often return spectacular profits. Most recently, the firm of Forstmann, Little and Co. recorded profits in the billions of dollars for its investors, a return of several hundred percent. Diana B. Henriques, *Refilling Forstmann's War Chest*, N.Y. TIMES, Dec. 15, 1994, at D1.

45. There are several other types of relatively minor Islamic financial instruments. *See generally* AMIN, *supra* note 24, at 34-35.

46. *Id.* at 33.

47. *Id.*

48. SALEH, *supra* note 12, at 117.

49. *Id.* at 117-118.

B. *The Jewish Law of Usury*

"[T]he whole body of Jewish law is believed by the orthodox to be divine law, and hence to have absolutely and permanently binding force,"[50] according to Israeli Supreme Court Justice Haim H. Cohn. "Jewish monotheism implies . . . the absolute and indefeasible monopoly of Jewish divine law."[51] The Halacha, the body of Jewish law, is as central to the existence of a religious Jew as the Shar'iah is to his Islamic counterpart.

The Halacha, like Islamic law, addresses business and financial issues in depth. The Talmud[52] states that the first question a Jew is asked when he goes to heaven is: "Did you do business faithfully."[53] For religious Jews, the manner in which monetary affairs are conducted defines their relationship to God. Because the law of usury occupies a central position in Halachic business law, it is integral to the identity of any religious Jewish businessperson.

The Jewish law of usury derives from a trio of Scriptural verses. First, Exodus 22:24 reads: "If you lend money to my people, to the poor who are in your power, do not act toward them as a creditor. Take no interest from them." Second, Leviticus 25:35-37 states that:

> If your brother is poor, and his means fail with you, then you shall uphold him. . . . Do not take interest from him nor increase, but fear your God. Let your brother live with you. Do not lend him money on interest, or give him food on interest.

Third, Deuteronomy 23:20-21 warns: "You shall not deduct interest from loans to your countryman, whether in money or food or anything else that can be deducted as interest. You may deduct interest from loans to foreigners, but not from loans to your countryman."

The Scriptural passages, although stated in less colorful terms than

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50. Haim H. Cohn, *Secularization of Divine Law, in* JEWISH LAW IN ANCIENT AND MODERN ISRAEL (Haim H. Cohn ed., 1971).

51. *Id.* at 6.

52. A brief explanation of the textual sources of Jewish law is in order. Jewish law in its entirety is referred to as Halacha, a term roughly parallel to the Islamic Shar'iah. The Halacha is primarily composed of:

1) the Torah or Pentateuch, the first five books of the Old Testament, which is the written word of God as revealed through Moses on Mount Sinai. The entire body of Halacha is derived from the Torah;

2) the Mishnah, the oral code of law, which was written down in the third Christian century. Because the Torah "is stated only in general terms [it] required explanation and amplification to be applied to daily living." EDWARD ZIPPERSTEIN, BUSINESS ETHICS IN JEWISH LAW 18 (1983). This is the role of the Mishnah;

3) commentaries on the Mishnah known as the Gemara. There are two Gemara, the Babylonian and the Palestinian. The word "Talmud" consists of both the Mishnah and the Gemara; and

4) commentaries on the Talmud. The most important commentaries are those of Rashi, Maimonides, and Jacob ben Asher. *Id.* at 17-19.

53. RABBI EZRA BASRI, ETHICS OF BUSINESS FINANCE & CHARITY 1 (1987).

the relevant Islamic provisions, are clear in their intention. "Because of the severity of the Torah prohibition against usury, the Rabbis took it upon themselves, as a precaution, to ban any payment or transaction which contains either a hint of interest or unearned profit."[54] The Mishnah extended the interest prohibition to sales, barring future delivery transactions.[55]

Other potential loopholes were also closed. Lenders could not live on the property of borrowers while a loan was outstanding.[56] In fact, Jewish authorities went so far as to forbid a borrower from greeting his creditor in an unusually effusive manner.[57] In partnership arrangements, fixed rates of return are forbidden.[58] All forms of interest-bearing transactions are prohibited between Jews.[59]

When dealing with Gentiles, however, none of these restrictions applies. Jews have been known as moneylenders for centuries.[60] Yet the mere fact that this behavior is permitted does not mean that Jews *should* lend to other peoples, and especially Muslims, at interest. A number of Jewish authorities have called for the prohibition of interest-bearing arrangements with Muslims because they worship the same God.[61] Once money is loaned to a Gentile, in contrast, authorities vary as to whether interest must be charged.[62]

Lending in any form to Gentiles should be secondary, however, to providing interest-free funds for Jews. Any loan without interest to a Jew is a good deed (*mitzvot*) and an act of loving kindness (*chesed*).[63] Some scholars go so far as to link the economic success of immigrant Jews to the availability of interest-free loans provided by their communities.[64] There is, however, no restriction on capital partnerships between Jews and Gentiles.

It is difficult to square the careful attention rabbinical authorities have devoted to the interest prohibition with the development and gen-

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54. ARNOLD COHEN, AN INTRODUCTION TO JEWISH CIVIL LAW 211 (1991).

55. ZIPPERSTEIN, *supra* note 52, at 41.

56. *Id.*

57. COHEN, *supra* note 54, at 212.

58. BASRI, *supra* note 53, at 156.

59. Most authorities forbid indexing, although a few feel that it is something of an exception as it can lead to illegitimate profit for the borrower. MEIR TAMARI, "WITH ALL YOUR POSSESSIONS": JEWISH ETHICS AND ECONOMIC LIFE 203 (1987).

60. The Qur'an contains the first non-Jewish reference to Jewish moneylending practices. *Id.* at 163. The Qur'anic portrayal of Jews in this regard, while probably accurate historically, demonstrates the depth of misunderstanding and prejudice between Jews and Muslims.

61. BASRI, *supra* note 53, at 179.

62. TAMARI, *supra* note 59, at 180-81. Maimonides, whose position is a minority one, felt that if a Jew provides interest-free monies to a gentile, the gentile will simply reloan the money for profit; he would thus require Jews to lend to gentiles at interest.

63. *Id.* at 170.

64. *Id.*

eral approval[65] of *heter iska* as Halacha.[66] This term refers to a form of partnership agreement designed to circumvent the textual prohibition on interest in commercial transactions.[67] Evidenced in a document known as a *shtar iska*, a partnership is ostensibly created in which one person supplies capital and the other supplies labor and investment expertise.[68] The person receiving the funds stipulates in the contract that he has previously been paid for his services.[69] If the money is lost through theft or accident, this loss will be borne, at least in theory, by the lender.[70] However, while this rule is the default, *heter iskas* can, and almost always do, contain contractual provisions requiring the borrower to assume responsibility for the funds regardless of what happens to them.[71] Only if the borrower is negligent will she be responsible for the full amount. If the money is lost, two witnesses are necessary to prove that the loss was not an act of negligence. Since *heter iska* contracts can specify which two witnesses they will require, the lender usually requires that the two witnesses be people whose testimony will be impossible to obtain. The borrower thus ends up with responsibility for any loss.[72] A false risk has been created. If a *heter iska* is carefully drafted, it will function identically to a loan.[73] Once the *heter iska* came into existence, "the prohibition on interest lost all practical significance in business transactions."[74]

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65. Not all authorities permit the *heter iska*. BASRI, *supra* note 53, at 167. It is particularly difficult for some scholars to justify *heter iska* when its use is extended beyond business loans whose repayment is contingent on the success of a particular venture. TAMARI, *supra* note 59, at 184-185.

66. There are four primary methods through which *Halacha* is created. They are: 1) support from the Scriptures; 2) acceptance by majority rule; 3) long acceptance though custom, usage and practice; and 4) recognition by a respected authority. ZIPPERSTEIN, *supra* note 52, at 21. *Heter iska*, despite only questionably escaping from the textual prohibition on interest, has become law through a combination of the other three methods.

It is worth noting that once one moves away from the plain meaning of text in interpreting scriptures, the same problem — that there are no natural limits on the interpreter — arises as in constitutional law. For example, Tamari states that in today's world, any interest-bearing transaction is acceptable since it involves an element of risk. TAMARI, *supra* note 59, at 185. The concept of "risk", however, is not mentioned in the scriptural verses but was read in through the exegeses of later generations as a rationale for the law. Tamari turns to the notion of risk to eviscerate the plain-meaning of the text.

The reluctance of many Islamic jurists to accept such legal sources as equity (*istihsan*) because they could "become a means of circumventing [the Shari'ah's] general principles" seems well justified by the Jewish experience with *heter iska*. KAMALI, *supra* note 20, at 246.

67. Non-commercial loans require other mechanisms. For instance, the *heter mechira*, a type of lease/buy back arrangement, is the favored method for structuring a loan for personal consumption. BASRI, *supra* note 53, at 167.

68. ZIPPERSTEIN, *supra* note 52, at 44.

69. *Id.* This stipulation is required by a rabbinic ruling that partnerships in which one party provides capital and the other labor involve payment to the laborer.

70. COHEN, *supra* note 54, at 217.

71. Telephone interview with Rabbi Michael Whitman (Dec. 12, 1994).

72. COHEN, *supra* note 54, at 217.

73. Whitman, *supra* note 71.

74. ZIPPERSTEIN, *supra* note 52, at 44.

Despite the fact that *heter iska* is not mentioned anywhere in the Mishnah or Torah, almost all rabbinical authorities now approve of it. It has been said that *heter iskas* may make the Torah look "like a jest and be treated with derision . . . [but] the just will walk in them."[75] The justification for this device stems from a belief that the underlying rationale for the prohibition is no longer valid. When the Torah was written, Jews were almost exclusively farmers, and loans were needed by the poor to buy the basic necessities of life. Those needing loans were, thus, the least able to pay interest, whereas the wealthiest, those most likely to loan the necessary funds, had little need for the additional return.[76] By the Middle Ages, however, Jews were primarily a commercial people, and these changed circumstances required the development of *heter iska*.[77] The *heter iska* has become law through long-standing customary acceptance and consensus, a process akin to the Islamic *ijma*.[78]

Although *heter iskas* are generally executed in private banking,[79] which preserves at least the facade of observance and reflects the letter of the *Halacha*, they circumvent its spirit. Partially as a result, many orthodox Jews have alienated themselves from the State of Israel due to what they perceive to be a widespread charging of interest.[80] "The State wishes to be a Jewish state . . . but at the same time it does not know how to translate its "Judaism" into the language of reality without affecting its secular nature."[81] The establishment of equity investment, interest-free banking services in Israel, modelled on the equity investment paradigm of Islamic banks, would demonstrate that the Israeli government was, at least in one small area, taking a step toward the letter of the religious law.

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75. COHEN, *supra* note 54, at 217 (quoting Terumat Hadeshan, Responsum 302). Despite the transparency of this sort of device, the great Islamic jurist Abu Hanifa approved use of a similar device known as *heyal*, literally translated as "tricks." El-Fishaway, *supra* note 5.

76. COHEN, *supra* note 54, at 216. This line of reasoning is highly unsatisfactory to those who see interest as a form of *malum in se*. One commentary explains that interest is prohibited because men should labor for their profits lest they forget that God created the cosmos and will provide for mankind. BASRI, *supra* note 53, at 201-02. Other Talmudic scholars have condemned interest because it is selfish to take from others when there is no risk for the lender. *Id.* at 201. Both of these condemnations of interest hold regardless of how the interest is characterized. The undeniable fact is that *heter iska* allows Jews to profit from loaning each other money with virtually no risk and no labor. As Tamari makes clear, Judaism examines interest as a moral-ethical problem. TAMARI, *supra* note 59, at 177. The existence of a dodge or loophole, no matter how ingenious, should not excuse a person taking advantage of it.

77. COHEN, *supra* note 54, at 216.

78. The actual justification for *heter iska* resembles the Islamic concept of *maslahah mursaleh* or public interest.

79. "All financial institutions and banks in the State of Israel operate under a *heter iska*." TAMARI, *supra* note 59, at 185.

80. Izhak Englard, *The Problem of Jewish Law in a Jewish State*, in JEWISH LAW IN ANCIENT AND MODERN ISRAEL 143, 165 (Haim H. Cohn ed., 1971).

81. Izhak Englard, *The Relationship Between Religion and State in Israel* in JEWISH LAW IN ANCIENT AND MODERN ISRAEL 168, 169 (Haim H. Cohn ed., 1971).

It may therefore have a salutary effect on reintegrating previously alienated individuals into the Israeli mainstream.[82]

More tangibly, many of the Jews in Israel most concerned with obeying the *Halacha* have aligned themselves against the current Middle-Eastern peace process. Recognizing that the fundamentalist Muslims, whom they mistrust so profoundly, are pressing for similar interest-free banking services in the Arab world will, at the very least, push ultra-religious Israelis toward a realization that they share some common ground with their current enemies. The commercial benefits likely to accrue from the injection of new Arab capital into Israel will create a pragmatic impetus toward discovering this common legal ground.

The numerous shared characteristics of Islamic and Jewish usury laws are apparent. The major difference between these laws is that Jews are allowed to lend to non-Jews at interest.[83] In a transaction between religious Jews and religious Muslims, even those Jews who consider Muslims potential co-religionists would feel that the Halachic obligation to avoid interest is satisfied by simply executing a *heter iska* when lending between Jewish and Islamic investors. The Islamic investor will probably require a stronger guarantee against interest.

C. *Will Heter Iska Satisfy the Islamic Usury Law?*

Nabil A. Saleh warns against rationalization and flexibility because "an Islamic banking system has no *raison d'etre* and no prospect for success unless it safeguards the much-heralded legitimacy of its means and objectives; otherwise the whole system will be perverted and its adherents betrayed."[84] In a similar vein, the immensely influential Ayatollah Khomeini issued a *fatwa* forbidding any technical mechanism that would circumvent the ban on *riba*.[85] Fundamentalists are unlikely to approve of *heter iska*.

Heter iska, however, may well satisfy the moderate Islamic approaches to usury, as it enjoys a more theoretical basis than most of the devices actually in practice in Arab nations, such as simply referring to interest as "service charges." Second, the very fact that Jews employ a partnership agreement in modern banking, even if it is hollow, publicizes the fact that Jews and Muslims have similar usury laws.[86] It also serves as a reminder that Jews and Muslims share the same concern over the fol-

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82. Although clearly it would not address the Israeli government's financial practices, which openly involve dealing in interest-bearing instruments.

83. Another difference is that Jewish charities are permitted to earn interest on their endowments. COHEN, *supra* note 54, at 214.

84. SALEH, *supra* note 12, at 147.

85. AMIN, *supra* note 24, at 25.

86. The *heter iska* was developed, at least partially, as a mechanism through which the Islamic world could trade with the West via Jews. ZIPPERSTEIN, *supra* note 52, at 11-12. There is thus something of a history of resourceful Jews looking to the law as a means of bridging cultural chasms.

lowing principles: 1) the protection of disadvantaged elements of their respective societies; 2) the moral component of business transactions; 3) the labor theories of value; and 4) adherence to religious authorities interpreting the word of the same God.

D. *Interest-Free Banking As It Currently Exists in the Islamic World*

Middle Eastern governments employ a variety of methods to evade the Qur'anic textual ban on interest. Kuwait technically bans *ribawi* transactions in its Civil Code of 1980, but also permits the charging and collecting of interest in Article 102 of the Commercial Code of 1980.[87] The United Arab Emirates' Code of Civil Procedure explicitly allows the charging of interest.[88] Other Middle Eastern nations opt for semantic ruses. For instance, the "service charges" employed by a number of Arab nations often identically reflect the interest rates charged by Western banks. Some Islamic scholars adhere to the rigid view that labels, and not substance, are controlling. Talib Siraaj Abdus-Shahid, for instance, explains that "[a] service fee cannot be made into interest and vice versa simply by stating that the charge in some way corresponds to an interest rate. If the bank's service is fairly-earned income, it is lawful under SHARIAH."[89] However, the behavior of nations ostensibly observant of the Shar'iah demonstrates the disingenuousness of this line of reasoning.[90] Saad El-Fishaway, the previous Senior Advisor for Middle Eastern Affairs at the World Bank and Special Advisor to each President of the Bank from 1974-87, recalls negotiating a $750 million loan for the Saudi Arabian government in 1974. At first, the Saudi negotiators insisted that the annual increase on the debt be termed "service fees." However, when El-Fishaway explained that this terminology would not suffice for purposes of marketing the bonds, the Saudis agreed to reference the annual increase as interest.[91]

Despite this general failure to observe the Islamic prohibition on interest at the governmental level, individual investors in the Middle East have flocked to Islamic lending institutions in substantial and growing numbers. As a result, a great deal of capital is likely to flow to whomever offers the most attractive riba-free banking services in the near future.

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87. SALEH, *supra* note 12, at 7.

88. *Id.* at 8. However, when commercial issues do manage to reach the Islamic legal courts of the United Arab Emirates, all interest payments are voided.

89. Talib Siraaj Abdus-Shahid, *Interest, Usury and the Islamic Development Bank: Alternative Non-Interest Financing*, 1984 L. & POL'Y INT'L BUS. 1095, 1136.

90. Even Iran, probably the most radical of the Islamic nations, allows its state commercial banks to pay "fees on loans" that vary in relation to governmental policies and the rate of inflation. *Iran: Banks Put Up Rates*, MEED MIDDLE E. BUS. WKLY., June 5, 1992, at 12.

91. El-Fishaway, *supra* note 5.

III. THE MIDDLE EAST AND A FUTURE PEACE: THE VIABILITY OF INTEREST-FREE BANKING AS A FUEL FOR ECONOMIC BOOM

Peace could bring spectacular profits to the Middle East if Israel and the Arab nations reformulate their relationship into one of economic symbiosis. It is likely that much of this growth will be channeled through investments acceptable to religious Islamic investors.

A. *Can Interest-Free Banking Compete in the Modern World?*

The viability of interest-free banking, primarily equity investment and *murabaha* banking, is a central issue. If indeed lending and borrowing at interest are integral to the survival of modern banks, lending institutions in Israel will be loath to offer interest-free financial services.[92] However, experience in the Muslim world has demonstrated that equity investment deposits consistently return rates comparable to floating interest rates.

"Advocates of Islamic banking say the 1990s will be the decade when the industry will break into the commanding heights of Middle East economies and start to beat upon the doors of global finance."[93] This forecast is becoming a reality. Kleinwort Benson, a large international bank, has realized enviable profits in the short-term Islamic trade finance market and is now arranging more than $4 billion annually in finance for Islamic ventures.[94] An executive at the Saudi British Bank claims that, from a banker's perspective, "[w]ith the exception of Hong Kong, [the Middle East] is the best place in the world for a banker to be."[95]

The Economist reports that, "Islamic banking is not merely consistent with capitalism . . . but in certain respects may be better suited to it than western banking."[96] It explains that the Islamic belief that "risk be rewarded only if it leads to productive investment" is likely to help create greater growth and increased monitoring of borrowers, both areas in which Western banking could use some lessons.[97]

There have also been failures of a relatively high magnitude, although most of these occurred in the early years of Islamic banking. The Dar al-Mal al-Islami (DMI) lost $48 million in a short period in 1983-84.[98]

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92. This does not refer to banks merely offering to hold investors' money without any increased return. Banks would without doubt thrive if their depositors refused to accept interest. Yet with the exception of a small number of very religious investors of both faiths willing to lend their money without any sort of increased return as a religious good deed, depositors would simply avoid institutions refusing to pay interest.

93. MEED MIDDLE E. BUS. WKLY., Sept. 25, 1992.

94. *Kleinwort Raises $4 Billion Islamic Trade Finance*, MEED MIDDLE E. BUS. WKLY., Sept. 10, 1993, at 6.

95. *Preparing for the Service Revolution*, MEED MIDDLE E. BUS. WKLY., May 14, 1993, at 9.

96. *Banking Behind the Veil*, *supra* note 34.

97. *Id.*

98. *Id.*

Further, a disproportionate number of scandals seems to have arisen through scurrilous behavior in Islamic banks.[99] Other negatives result from the significantly greater administrative costs of having to document sales and resales in *murabaha*[100] and oversee joint investors in *mudaraba*. Despite these flaws, a sanguine appraisal of the prospects for Islamic banking seems well merited. The early problems faced in Islamic banks are best seen as growing pains and necessary failures arising out of innovation.

For those Islamic investors who do not subscribe to the most radical interpretation of the textual prohibition on interest, banking at interest will always be available. In the case of the most religious Islamic investors, who also happen to be among those most opposed to peace in the Middle East,[101] the creation of interest-free banking services in Israel would present an opportunity for investment, while concurrently laying the foundation for peace through the overlap between the Islamic and Jewish laws on usury.

Whether a modern economy can thrive without interest in any form is a separate question and one that has yet to be answered.[102] The question, however, is immaterial to this discussion, which advocates only use of interest-free banking as a vehicle for Islamic investment in Israel.[103]

B. *The Extraordinary Economic Potential of the Middle East*

Should peace in the Middle East ever become a reality, the potential for economic growth throughout the region is significant. Israel boasts expertise in high technology, while its highly trained work force is compensated at less than 50% of the American average. This makes Israeli products noticeably less expensive than their American counterparts.[104] An even greater potential benefit for the Arab nations lies in their exposure to Israel's agricultural expertise. Israel's agricultural advances could provide massive benefits for the entire Middle East with its arid climate.[105]

The advantages for Israel in the event of a region-wide peace are equally enormous. The Jewish State is currently unable to purchase oil from its neighbor, Saudi Arabia, and the other Arab nations. As a result, it is forced to satisfy its energy needs on the world market at great ex-

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99. *See, e.g., id.*

100. Syedain, *supra* note 44.

101. *See* Miller, *supra* note 23, at 123, 124; *see also* El-Fishaway, *supra* note 5.

102. Although Pakistan may be taking fitful steps in this direction. *See* Lahore, *Pakistan; Islam's Interest*, THE ECONOMIST, Jan. 18, 1992, at 33.

103. There is, of course, potential for reciprocal investment by Israelis in Arab lands, but this possibility will not be explored in this article because the vast majority of Israeli investors are satisfied with *heter iska*.

104. Daniel Lubetzky, *Incentives for Peace and Profits: Federal Legislation to Encourage U.S. Enterprises to Invest in Arab-Israeli Joint Ventures*, 1994 MICH. J. INT'L L. 405, 413.

105. El-Fishaway, *supra* note 5.

pense. Furthermore, the Arab world represents an immense consumer market for Israel's manufactured goods and rapidly-growing economy.[106]

Indeed, the economic advantages likely to accrue to both parties have been a primary motivation for the initial peace efforts. Articles XI and XVI of the Israeli-Palestinian Declaration of Principles "address and recognize the mutual benefit of regional economic cooperation."[107]

Attaining the requisite level of mutual trust needed to realize economic benefit will be an immensely difficult task and is still years in the future.[108] Innovative use of law, however, can bolster this process and accelerate its realization. Until now, the role of law in the establishment of peace has generally been ignored or relegated to unrealistic projects.[109] However, a natural and nearly costless option for aiding the nascent peace while expanding financing in the region already exists as a result of the usury laws of the Jewish and Muslim peoples.

IV. A SHARED LEGAL MEANING

Shared legal traditions represent profound cultural similarities. Both practice and theory indicate that overlapping jurisprudences have the potential to bring groups closer together. Israel and its Arab neighbors should take advantage of this fact, both as a profit-making device and as a bridge for peace, by making *mudaraba* and *murabaha* available to Islamic investors in Israel.

A. *Law as a Symbol of Shared Traditions and Values*

The study of law can serve as a reminder that Jews and Muslims worship the same God. Additionally, it provides a mechanism for linking cultures. Law can, and has, served as a bridge between peoples with overlapping legal traditions.

The profound similarity between the Jewish and Islamic approaches to usury is readily apparent. Some scholars have claimed the Islamic prohibition on usury evolved from the Jewish law.[110] The root of this similar-

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106. The Israeli economy grew from $36.7 billion in 1987 to $58.6 billion in 1991. Lubetzky, *supra* note 104, at 414.

107. *Id.* at 410. Annexes III and IV of the Declaration also focus on economic integration.

108. *See, e.g.*, Haberman, *supra* note 2.

109. Lubetzky, *supra* note 104, at 406. Lubetzky, for instance, calls for using United States trade organizations and tax incentives to encourage Americans to invest in Arab-Israeli joint ventures. However appealing these proposals may seem, the possibility of serious American interest in such projects is remote. The overwhelming support of American voters for smaller government in the last national election coupled with the xenophobia of Jesse Helms, the Chairman of the Senate Foreign Relations Committee, is likely to curtail any expansion of foreign aid programs.

110. Joseph Schacht for one claims that the Quranic law arose directly from the Halacha. He finds evidence for his position in the fact that Jews were money changers in Arab lands at the time of the Prophet. SALEH, *supra* note 12, at 14. El-Fishaway also suggested that the Islamic law was derivative of its Jewish counterpart. El-Fishaway, *supra* note 5.

ity is a deeply divisive issue. The Shar'iah and Halacha are both positively the word of God. Thus, any discussion of one law progenerating the other immediately evokes a fundamental hostility as it sheds doubt on the divine origin of the later source, the Qur'an. A potentially unifying solution to this problem exists in the religious beliefs of the two peoples. Jews and Muslims both worship the same God.[111] "(A)ll divinely revealed laws emanate from one and the same source, namely, Almighty God, and as such they convey a basic message which is common to them all. Indeed, the Qur'an itself explains that 'We revealed the Torah in which there is guidance and light.' "[112] Similarly, Jewish thinkers have explained that the Islamic faith is closer to Judaism than is any other religion.[113] To Muslims, the Qur'an is the last and definitive text that God delivered to man:

> Islamic tradition teaches that the Torah, New Testament, and the Qur'an are all derived from the same heavenly source, but that the Jews and Christians have, over the course of time, distorted the texts of their respective scriptures, whereas the Muslims have in their possession the pure, unadulterated text.[114]

In principle, therefore, the Torah's commands as written, and therefore undistorted, should be applicable to Muslims unless the Qur'an specifically abrogates them.[115] Perhaps somewhat inconsistently, Islamic jurists have, in practice, generally ruled that the Torah's laws are only binding on Muslims if the Shar'iah specifically includes them.[116] But because the Jewish usury law has received explicit divine approval in the Qur'an, Allah's approval of the Jewish law is clearly demonstrated.

The fact that Jews and Muslims worship the same God is easily forgotten in the anger that separates the two faiths. The shared prohibition on interest can help to diminish the fear and mistrust that has characterized Jewish-Muslim dealings for the last half-century. On every occasion that an interest-free transaction between Jews and Muslims takes place, it will remind both parties that in their fundamental spiritual beliefs they are not as far apart as it may appear.

"The problem [in establishing Arab-Israeli commercial ties] lies in breaking the negative cycle of mistrust, violence, and instability."[117] Law

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111. Maimonides, for instance, felt that Muslims, unlike Christians, were true monotheists and hence potential Jews. David Novak, *The Treatment of Islam and Muslims in the Legal Writings of Maimonides*, in STUDIES IN ISLAMIC AND JUDAIC TRADITIONS 233, 238, 246 (William M. Brinner & Stephen D. Ricks, eds. 1986).

112. KAMALI, *supra* note 20, at 229.

113. *Novak, supra* note 111, at 238, 246.

114. David S. Powers, *Reading/Misreading One Another's Scriptures*, in STUDIES IN ISLAMIC AND JUDAIC TRADITIONS 109, 109 (William M. Brinner & Stephen D. Ricks, eds. 1986).

115. KAMALI, *supra* note 20, at 230.

116. *Id.*

117. Lubetzky, *supra* note 104, at 410.

has tremendous potential to bridge cultural chasms and break this cycle.[118] Material examples justifying this assessment abound. For instance, when European Jews immigrated to the United States in large numbers around the turn of the century:

> [R]abbis and lawyers . . . devised the most persuasive synthesis between Judaism and Americanism. As they redefined Jewish legitimacy in American legal terms, they fused Torah and Constitution as the sacred texts of a Judeo-American legal tradition.[119]

Jewish immigrants thus had their transition to the New World eased through similarities between the *Halacha* and the Constitution. This process continued as Jews became increasingly integrated into American society. "The discovery, or invention, of a unitary Judeo-American tradition of law and justice has enabled Jews to feel genuinely American."[120] The Jewish experience demonstrates that the convergence of two legal traditions, even if one is secular and the other divine, can have a powerful acclimating effect. Because the Jewish and Muslim legal systems are both of divine origin, it should be noticeably easier, at least in areas in which there is significant substantive overlap,[121] to forge (or rediscover) a shared Judeo-Islamic cultural identity.[122]

Abstract studies of the theoretical nature of law provide powerful support for the claim that legal similarities, especially when divinely based, reflect profound likenesses, and even cultural bridges, in societies. Philosophers, recently joined by legal anthropologists, "have been discussing the nature of law for more than two millennia."[123] The consensus is that a law's efficacy is dependent on "a state of equilibrium" which reflects the values of most people in a given society.[124] Clifford Geertz

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118. Although there are clearly limits. As Professor Khaled Abou El-Fadl explains, "legal culture is a subculture." Lecture at Yale Law School (Dec. 15, 1994). Thus, the technical legal similarities between Jewish and Islamic law *per se* will only impact on limited segments of society. However, bankers and investors will also gain exposure to the other cultures' usury law in the ordinary course of affairs.

119. JEROLD S. AUERBACH, RABBIS AND LAWYERS: THE JOURNEY FROM TORAH TO CONSTITUTION xvi-xvii (1990).

120. *Id.* at 24.

121. The interaction of two divinely-based jurisprudential traditions is likely to provide little room for maneuver in areas of substantive divergence.

122. Indeed, the limits of the fusion between the Jewish and American legal systems have arisen from their asymmetrical origins. As Suzanne Last Stone has written:

> one cannot fully understand Jewish law without considering the religious framework that makes Jewish law possible and renders it intelligible to its practitioners. . . . concepts [such] as the revelatory nature of Jewish law, the religious qualifications of authoritative interpreters of the law, the veneration of early masters of the tradition, *imitatio dei*, and divine accountability.

Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813, 821 (1993).

123. A.L. Epstein, *The Case Method in the Field of Law*, in THE CRAFT OF SOCIAL ANTHROPOLOGY 205 (A.L. Epstein ed., 1979).

124. ELIOT DISMORE CHAPPLE & CARLETON STEVENS COON, PRINCIPLES OF ANTHROPOLOGY 674 (1978).

expresses a parallel idea. "[M]an is an animal suspended in webs of significance he himself has spun."[125] The deep similarity between the Jewish and Islamic laws of usury, a central concept in the economic structure of two commercial peoples, proves that Jews and Muslims share at least one significant aspect of their respective *volkgeists*.[126]

This analysis garners additional strength from the divine origins of Muslim and Jewish jurisprudence. "[S]acred symbols function to synthesize a people's ethos — the tone, character, and quality of their life, its moral and aesthetic style and mood — and their world view."[127] What is true about the convergence of legal norms and meanings is even more profound when the laws are divine in origin.

Even though Jews have functionally evaded the interest prohibition through the use of *heter iska*, and many Muslims similarly ignore the ban on *riba*, neither Jews nor Muslims can escape their shared heritage. Furthermore, their respective usury laws demonstrate three commonalities: 1) both groups approach business in a principled way; 2) God plays a significant role in their respective cultures; and 3) their basic values derive from ancient traditions.

V. CONCLUSION: CREATE INTEREST-FREE BANKING OPPORTUNITIES FOR ISLAMIC INVESTORS IN ISRAEL

Interest-free financing does not fit easily into standard western concepts of banking. A Governor of the Bank of England has stated that British banking laws simply were not designed to cover institutions dealing with Islamic financial services.[128] As it currently stands in the Arab world, *riba*-free banking "is a minnow in the sea of a global financial system based on *riba* . . . it cannot survive without certain religious compromises. . . . There is no shortage of Islamic money; the problem is finding suitable outlets for it."[129]

Israel is well suited to the task of providing financial services with religious restrictions.[130] Banks in Israel and even the United States[131] that count religious Jews as their clients employ a board of rabbinical advisors

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125. CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES 5 (1973).

126. The writings of the eminent legal anthropologist Leo Pospisil suggest that perhaps the creation of national boundaries separating (for the most part) Jews and Muslims superimposed an artificial and hostile legal level, that of the nation state, on top of the religious laws of Jews and Muslims, which were not wholly dissimilar. *See generally* LEOPOLD POSPISIL, ANTHROPOLOGY OF LAW: A COMPARATIVE THEORY 119, 121 (1971) (suggesting theory of multiple legal levels). Evidence for this theory is found in the relative harmony within which Jews and Muslims lived under the Ottoman Empire.

127. GEERTZ, *supra* note 125, at 89.

128. Suratgar, *supra* note 13, at 1090.

129. Syedain, *supra* note 44.

130. The potential for interest-free investment in Israel is particularly impressive due to the general laxity of Arab governments in enforcing the prohibition on *riba*.

131. The most prominent example is a bank in Baltimore known as the Bank Vaad Hakashrus. Whitman, *supra* note 71.

to approve of all actions and then restructure transactions that fail to meet Halachic requirements.[132]

The central difficulty in realizing this vision is one of disseminating knowledge. Despite the geographical proximity of Israel and the Islamic nations, there is a deep ignorance of Jewish scriptures in the Islamic world.[133] Those who do have some familiarity with Jewish law are unlikely to be familiar with the extent to which it is observed in Israel. *Heter iska* is virtually unknown in the Arab world.[134] El-Fishaway explains: "If they knew in Egypt what was happening in Israel it would make a big difference. The lack of knowledge is unbelievable considering the proximity."[135] Even though *heter iska* itself would probably be insufficient as a means of meeting the strict *riba*-free standard of Islamic fundamentalists, the mere fact that an interest avoidance mechanism exists could lend credibility to the Israeli government's peace efforts in the eyes of Muslims.

If the Israeli, Jordanian, and other governments commit themselves to forging lasting peace in the Middle East, the interest-free commonality may serve as a small[136] step in this direction. Israel's major banks could establish *mudaraba* and *murabaha* accounts. Arab leaders would then be able to publicize the fact that Jewish law requires that financial transactions between Jews be free of interest, and Israeli banks would advertise their interest-free products. Especially for the secular Arab governments,[137] the Jewish legal system's treatment of interest presents a serendipitous means for squaring these two aims. In this situation, the Arab governments can demonstrate that détente with Israel will not be antithetical to the Shar'iah.[138]

For hundreds of years, Jews acted as financiers in the Islamic world.[139] Shared legal traditions could help to revive major financial and

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132. *Id.*

133. Powers, *supra* note 114, at 109.

134. El-Fishaway, *supra* note 5.

135. *Id.* This cultural ignorance is proving highly resilient. As *The New York Times* recently reported, "The Arab world's most famous poet has been expelled from the Arab Writers' Union for meeting with Israeli intellectuals." Youssef M. Ibrahim, *Arabs Bitterly Split on Cultural Links With Israel*, N.Y. TIMES, Mar. 7, 1995, at A8.

136. The author fully realizes that the course this article suggests is far from a panacea and only represents an incremental advance toward peace. Unless joint interest-free investment is accompanied by far-reaching and sensitive diplomacy, peace will almost surely remain elusive.

137. *See* Kristan L. Peters Hamlin, Note, *The Impact of Islamic Revivalism on Contract and Usury Law in Iran, Saudi Arabia, and Egypt*, 22 TEX. INT'L L.J. 351, 353, 380 (1987).

138. Even some of the most vocal fundamentalists have, on occasion, admitted that "there is nothing inherently anti-Islamic in peace between a Jewish state and Muslims." Miller, *supra* note 23, at 139. According to Hassan Abdallah al-Turabi, a major fundamentalist leader, "The first Islamic state itself had a constitutional document between the prophet and the Jews of Medina." *Id.* at 139.

139. EL-ASHKER, *supra* note 7, at 24. Iraqi Jews and Egyptian Copts dominated Islamic

commercial discourse between Jews and Muslims. Joint Arab-Israeli interest-free investment is likely to be profitable for all involved, as the combination of Arab capital with Israeli technology could bring tremendous growth to the Middle East. In the process, Islamic fundamentalists and Israeli hardliners will be exposed to each others' legal traditions. Their enemies will no longer be faceless infidels, but people with profound cultural similarities — and maybe, one day, enemies no longer.

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commerce since 1453.