

## Article

# From Structure to Purpose: Green and Social Narratives, and the Shifting Morality of Islamic Finance in Kuala Lumpur

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**Abstract:** Background: The anthropology of sustainability documents and interprets diverse visions of sustainable and liveable futures. Islamic scholars and financiers are now debating the distinctive contribution of Islamic finance to global sustainability. While mainstream global finance has only recently begun to pay explicit attention to social and environmental sustainability, Islamic economics has always emphasised the need to benefit society, the community, and the environment. Objectives: We ask what has been the influence of the emergence of green and social finance upon Islamic finance in Malaysia, the global centre of Islamic finance. Methods: The study is based on collaborative, co-productive ethnography and autoethnography, and textual analysis of working documents of the Securities Commission Malaysia, focusing on how environmental requirements are expressed in new financial products, known as green *sukuks*, or green Islamic bonds. Results and conclusions: We have found that much of the moral debate in Islamic finance has revolved around the distribution of financial risk: when investors share the risk of failure, they can participate in society rather than merely exploiting social relations, yet the emergence of ‘green’ Islamic finance appears to shift the centre of moral gravity away from risk structuring towards technical criteria of sustainability, replicating the growth-oriented anthropocentric managerialism of mainstream finance.

**Keywords:** Islam; risk; finance; markets; morality and religion



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## 1. Introduction

The global challenge of sustainability has engaged thinkers across the disciplines, and anthropology’s contribution is by no means restricted to documenting how small scale societies experience and respond to climate change or to demonstrating the merits of traditional livelihoods; more than this, it requires ‘re-imagining and reworking communities, societies and landscapes, especially those dominated by industrial capitalism, to help us build a productive symbiosis with each other and the many nonhumans on whom we depend’ (p. 2, [1]). As the Special Issue editors argue in their call for articles, there is a need to requalify sustainability as a ‘total social project: that does real and urgent work in the world, but which is not easily parcelled out into distinct indicators, scalable units, ecosystems, life cycles or named universal goals’. Islamic law can be characterised as a ‘total social project’, which subsumes all areas of life, including government, business, and domestic relations, to an all-encompassing ethos based on what Muslims believe to be the words of God received through the Prophet. Yet, in practice, economic activities require the creation and use of mechanisms, financial instruments, types of contracts, and forms of measurement, all of which become subjected to the scrutiny and approval of religious authorities. Islamic banking and finance are thereby practised in a context of perennial and explicit moral tension. In the midst of ongoing debates about the implications of Shariah law concerning practices such as the charging of interest on debts, Islamic financiers and regulatory authorities have begun to grapple with the challenge of devising a framework for green finance as

businesses seek to raise capital for socially and environmentally sustainable ventures, in response to intense international discussions of the role and responsibility of the financial sector in contributing to a more sustainable economy, and a rapidly growing global stream of new 'green' or 'social' financial products. In 2017, Tadau Energy Sdn. Bhd. emerged as the winner in the race to issue the world's first green *sukuk* (Islamic bond) that began with the launch of the Social and Responsible Investing (SRI) Sukuk Framework by the Securities Commission Malaysia (SC) in 2014. It raised US\$ 59.2 million, with proceeds used to finance its large-scale solar project. By April 2020, 13 SRI (Sustainable and Responsible Investment) *sukuk* had been issued in Malaysia, with proceeds channelled into green building and renewable energy projects as well as social initiatives. This has taken place in a context of unremarkable performance in terms of achievement of the UN Sustainable Development Goals (SDGs): the UN Sustainable Development Solutions Network's 2021 Sustainable Development Report attributes to Malaysia a score of 70.88, similar to some other Islamic countries such as Oman (70.13), the United Arab Emirates (70.13) and Jordan (70.14), but greater than Saudi Arabia (66.8). This kind of data does not tell us a great deal about the role of Islam as a factor in improving sustainability performance, especially when one considers that, while Malaysia's score is greater than those of some neighbouring countries such as Indonesia (66.34) and Cambodia (64.54), it is lower than others such as Thailand (74.19) and Vietnam (72.85) [2] (The SDG scores of the Sustainable Development Report are described in detail in Part 4 of the Sustainable Development Report 2021 [2]). The SDGs themselves have been criticized for a number of reasons, such as privileging economic interests over universal entitlements, undermining social struggles, wrongly assuming the possibility of decoupling growth from unsustainable resource use, and prioritising economic growth over resource use (p. 6, [3]). As Jäger and Schmidt suggest, these features of the SDGs mean that they lend themselves well to being used as reference points for social and responsible investment (SRI) and environmental and social governance (ESG) investing in the private sector, forms of 'neoliberal green finance' that 'tend to obscure the implications of environmental issues and policies on different economic and social groups in (global) society' (p. 10, [3]). As Islamic finance navigates between the social precepts of Islam and the global practices and discourses of neoliberalism, does it offer ways for private finance to overcome these limitations?

As the anthropologist Bill Maurer has documented, there is an ongoing tension in the field of Islamic economics between those who would prioritise the compatibility of Islamic financial products with conventional financial markets and those who emphasise their substantive fit with the precepts of Islam, and the moral debate surrounding *sukuks*, or Islamic bonds, has made these an important focus for exploring such questions [4]. Diversity is a constant feature of Islamic banking and finance (p. 9, [5]). As Timur Kuran argued, Islamic economics 'emerged in late colonial India as an instrument of identity creation and protection' (in p. 11, [5]), and it continues to play the role of exploring alternatives to the 'neoliberalism and market logic' that otherwise appear to be the 'only games in town' (p. 11, [6])—a role whose importance is all the greater when such business as usual bears much of the blame for the crisis of the anthropocene (p. 18–21, 139, [6]), and carries heavy consequences for material processes of unequal exchange [7]. Sustainability has begun to emerge as a moral question in the form of global debates within the conventional financial sector about 'corporate social responsibility' [8] and environmental social and corporate governance (ESG) investment criteria, signalling at least a rhetorical acknowledgement that capitalism's pursuit of profit at all costs is incompatible with addressing global ecological crisis [9].

Anthropology and other disciplines have engaged for some time with Islamic finance, part of whose fascination lies in the ways in which it seeks to 're-embed' the economy, acknowledging and embracing the ways in which economic and financial transactions are embedded in social, cultural, and family life [10]. Much less well known are the religious requirements for sound environmental management in Islam, present in the Qur'an and in the *Hadith*, which have now begun to influence the processes surrounding

the development of new Islamic financial products [11]. Indeed, the requirements of Shariah for environmental stewardship merit interpretation as a form of ‘spiritual ecology’, underlining the role of religion and spirituality in preserving and restoring the natural environment through an ethic of respect and care for nonhuman living beings [12]. We shall return to this point in our conclusion, but rather than delving into an analysis of Islamic environmental teachings, we devote this article to outlining the development of a specific type of green financial product, the green *sukuk*, in Malaysia, and on accounting for the particular character that ethical debates have taken in this field. Our objective is thus to contribute to understanding the debates and regulatory changes that have taken place in Islamic finance as a result of the emergence of green and social, or ‘sustainable’, finance in the world of conventional finance, given that ‘social’ concerns have always been at the core of Islamic banking and finance, while environmental concerns have been less prevalent.

Debates about morality in Islamic finance are as old as Islam itself, which emerged as a religion in a merchant society. We outline here the beginnings of modern Islamic finance against the backdrop of colonialism, globalisation, and the hegemony of global conventional capital markets and describe the rise of the financial sector in Kuala Lumpur with its ambitions to become the global centre of Islamic finance. This is partly a history of moral narratives contrasting Islamic finance with its conventional counterpart as a more ethical alternative, according to the moral precepts and exegeses of Shariah. However, the more recent proliferation of ‘social and responsible investment’ (SRI) and ‘environmental, social and corporate governance’ (ESG) criteria in global finance has led to new debates about the *spirit* of Islamic finance. These give further poignancy to perennial questions such as, should financial products comply with Shariah by using structures that fulfil the letter of religious prescriptions or is it better to focus on the outcomes of investments, how they will benefit society, and the natural environment upon which they depend? In this article, we argue that this shift towards an emphasis upon outcomes entails a new convergence with conventional finance, insofar as both have come to embrace a discourse emphasising social and environmental impacts. However, the comparison between ostensibly ‘sustainable’ conventional finance and ‘sustainable’ Islamic finance suggests a further challenge: can either continue to claim to benefit society equitably without also addressing the longstanding Islamic debates about risk-sharing?

## 2. Materials and Methods

Veronica Strang has argued that an anthropology of sustainability ‘requires us to climb out of a safe disciplinary silo and to engage wholeheartedly with other areas of disciplinary knowledge’ (p. 220, [13]). Her proposal was for developing interdisciplinary research across human-nonhuman relations, but we experiment here with a different type of collaboration: this contribution is the product of a dialogue between Marc Brightman, an anthropologist, and Adnan Zikri Jaafar, who is trained in economics, finance and international development studies, and who has professional experience in Islamic banking, specifically in the field of green *sukuks*. We have thus sought to develop an approach framed by anthropological theory, which draws on the professional knowledge and experience of Jaafar to produce an account of the emergence of new green Islamic regulatory frameworks within the socio-technical assemblage of the Malaysian securities commission. Our research is based upon a combination of archival and bibliographic research and on Jaafar’s experience working in the Islamic finance sector in Malaysia. Our methodological approach is innovative and experimental: in a field such as the Malaysian Securities Commission and in the more diffuse world of banking and finance in Kuala Lumpur, there would be limitations to the possibility for conventional participant observation as established in the discipline of anthropology. Instead, Jaafar’s long term embeddedness in the social world of Malaysian Islamic finance made possible a hybrid form of autoethnography and collaborative ethnography between him and his co-author Brightman. Collaborative ethnography is a well-established approach in anthropology, which involves, as a minimum, ‘community consultants as active collaborators’ in the process of producing ethnography (p. 17, [14]),

but which ideally involves research participants as substantial contributors to research design, analysis, and the production of outputs [15–17]. The anthropological engagement with documents has a long history, and we loosely follow Goody [18] in exploring how the development of new kinds of texts can give rise to social and cultural change (cf. [19]); our approach is also close to that of Allard and Walker [20] who investigate how people in a given social context use, interpret and appropriate documents and bureaucratic forms (cf. [21]). The professional experience of Jaafar allows this approach to be enhanced as he performs a kind of autoethnography, literally writing culture oneself, in a reflexive performance that allows the author's own experience and insight to be transformed into ethnographic writing (see e.g., [22]).

Jaafar was formally associated with the Securities Commission (henceforth SC) in 2017 to research comparative regulatory frameworks for venture philanthropy. During this time, he attended a Shariah Advisory Council meeting, discussion sessions with representatives of the World Bank, discussion sessions on future developments of the Islamic capital market, as well as many conversations with colleagues on Islamic finance in Malaysia. Since then, he has been involved in the Securities Commission-Oxford Centre for Islamic Studies (SC-OCIS) Roundtable every year since 2019. The social world of Islamic finance has close ties to academia, and Jaafar has regularly taken part in discussions between academics and practitioners at the Oxford Centre for Islamic Studies and other forums such as the IFES Annual Conference and the Impact Investment Conference Roundtable Series. He has ongoing discussions with former colleagues from the SC on future developments of the Islamic capital markets, as well with contacts from the Central Bank of Malaysia on the topics of Islamic finance and climate change, in particular, with regard to the issuance of the Climate Change and Principle-based Taxonomy guidance document in April 2021.

The interactions and conversations outlined above were concerned with the discussion, elaboration, interpretation and refinement of texts, especially the working documents of the SC, a statutory body whose roles include developing and regulating the capital markets, both Islamic and conventional, in Malaysia, such that our own textual analysis should be understood as being integrally related to the social world that Jaafar participated in. It is in this sense that we can say that our collaboration produces an ethnography of documents, which forms the basis for our analysis and our engagement with the secondary literature. These working documents include regulatory notes and guidelines, publications and research reports, media announcements, and speeches. We also pay particular attention to the discourses underlying the discussion topics, trends and themes in the quarterly and bi-annual publications of the Bulletin of Malaysian Islamic Capital Market as well as the proceedings of the SC-OCIS Roundtable. The Bulletin of Malaysian Islamic Capital Market, which was first published in 2006, aimed to develop greater awareness and understanding of Islamic capital market issues among market participants. The SC-OCIS Roundtable is an annual 'thought leadership' event organised by the SC and the OCIS to share best practices and discuss emerging issues and challenges facing the Islamic finance industry. The roundtable has been attended by Islamic finance scholars, industry practitioners, regulators, financial intermediaries and investors, and the discussions that take place during each roundtable are recorded and published in the proceedings.

The editors of this special issue ask 'how does anthropology's propensity for studying things that do not add up to coherent and fixed wholes play into other disciplines' approaches to sustainability that might rely on things like indicators, factors, assessment tools, numbers, etc.?' We hope that our interdisciplinary experiment offers an illustration of one possible answer to this question by reflecting anthropologically upon some of the processes behind these things. This research was carried out as part of the Hau of Finance research project funded by a European Research Council consolidator grant and received ethical approval from the University of Bologna ethics committee.

### 3. Results

#### 3.1. Morality in Islamic Finance

Malaysia has positioned itself in recent years as the global centre of Islamic finance characterised by moral requirements drawn from the Qur'an and the *Hadith*. As Pitluck has noted, 'for social scientists, the case of IBF [Islamic banking and finance] demonstrates the possibilities and constraints facing activists in reducing financialization and exploitation in economic relationships' (p. 431, [23])—in other words, it proves that a morally transformed (and transformative) finance is possible. Islamic finance has its roots in Islamic economics, which can be defined as 'the knowledge and application of injunctions and rules of the Shariah that prevent injustice in the acquisition and disposal of material resources' (p. 50, [24]). Modern Islamic economics emerged in late-colonial India as an anti-colonial project of the Indian subcontinent by Islamic modernists seeking to 'create a modern Islam that would stand in opposition to Western dominance' while protecting and preserving the religious and traditional culture of the Muslim minority (p. 648, [25]). Demands for the implementation of an Islamic economy are a result of the decline of Arab and Muslim socialism and a resurgence of Islamic piety and activism, as well as increased efforts to bring about an Islamisation of knowledge [26]. Islamic economics is, in a way, a reaction to counter 'the failure of economic development in the Muslim world' (p. 94, [27]).

Three main developments globally helped spur the growth of the Islamic financial industry. First, the rise of neoliberalism created an opportunity for a new alliance between Islamists and economic liberals. The Islamist critique of statism emphasised the Islamic commitment to private property, private enterprise, and contracts and the privatisation of welfare through reliance on *zakat*, *waqf*, and other forms of Islamic charity [28]. Second, the transformation of the financial sector, whereby liberalisation and globalisation of the financial sector and the blurring of the lines between commercial and investment banking intensified competition among financial firms, increased reliance on fees and commissions rather than on interest income, and encouraged innovation in financial products and creative risk management techniques [28]. These developments in banking and finance encouraged the growth of 'interest-free' finance and new financial contracts, such as risk-sharing arrangements, that are consistent with Shariah. Third, the global rise of Islamism played an important 'ideological role', as calls for enhancing the role of religion in all aspects of public and private lives provided further support for the growth of Islamic finance (p. 194, [29]).

The Islamic financial industry comprises three main sectors, namely Islamic banking, *takaful* (Islamic insurance), and the Islamic capital market (ICM). The Islamic banking sector remains the largest sector, accounting for 70% of total Islamic financial assets, followed by the ICM and *takaful* sectors [30]. By the end of 2018, Iran, Saudi Arabia, and Malaysia were the largest Islamic financial markets, with all three countries combined recording more than US\$ 500 billion in assets [30]. There were 1447 Islamic financial institutions operating across the globe, 44 countries reported to have Islamic financial regulation, and 1166 Shariah scholars representing Islamic financial institutions [30]. Although the value of global Islamic financial assets was estimated to be about US\$ 2.5 trillion, this represents under 1% of global financial assets [30].

The specific characteristics of Islamic finance are based on religious moral discourses. Islamic rituals and practices vary considerably depending on the schools of Islamic theology, the schools of Islamic jurisprudence and other socio-cultural factors. Similarly, Islamic finance scholars and practitioners vary significantly in their epistemological openness and methodological flexibility and in their acceptance of multiple jurisprudential sources and interpretations. As such, there is 'no one 'Islam'' in Islamic finance and 'no one understanding of the basis' of Islamic finance (p. 9, [5]). Islamic finance shows 'great variation both in the ways it is understood, enacted and reacted to' (p. 564, [31]). It is a 'project under construction, underpinned by a host of definitional, language and doctrinal debates' (p. 315, [32]). As we shall see, these debates have been further complicated and influenced by discourses on morality and sustainability in conventional finance.

In general, Islamic financial institutions are ‘those that are based, in their objectives and operations’ on principles derived from the Qur’an (p. 5, [28]). Islamic financial practices are rooted in the rules and norms derived from Islamic ontology (p. 2012, [27]) and are fundamentally concerned with ‘embedded elements of morality and ethics’ (p. 78, [33]). They aspire to embody the Islamic principles of socio-economic justice and realise *maqasid al-shariah* (the objectives of Shariah). Modern applications of Shariah in Islamic finance, however, have been largely based on a fundamental principle of Islamic jurisprudence which states that ‘everything which is not explicitly prohibited is permissible’ (p. 78, [33]). As such, the modern Islamic financial industry has been characterised as a prohibition-driven industry, whereby Islamic financial practices differ from conventional financial practices ‘only insofar as some conventional practices are deemed forbidden’ under Shariah (p. 8, [34]).

The development of the global Islamic financial industry over the last few decades has revolved around modelling and structuring Islamic financial instruments and practices to avoid *riba* (usury), *gharar* (uncertainty), and *maysir* (gambling), although their meanings, definitions, and translations remain debated, challenged, and disputed. The key prohibition that has received by far the most attention has been the injunction against *riba* [35]. The prohibition of *riba* is often regarded as the *sine qua non* of Islamic economics [36], and the distinction between ‘legitimate compensations and forbidden *riba*’ has been the ‘most fundamental distinguishing feature’ of Islamic finance (p. 49, [34]). *Riba* is often narrowly interpreted as the paying or receiving of interest, though some scholars and practitioners have disputed this interpretation. A guaranteed interest rate determined prior to investment is often seen as ‘exploitative, socially unproductive, and economically wasteful’ (p. 5, [28]). It allows for a transfer of risk from the lender to the borrower, whereby the lender receives unearned profit from lending money without having a financial stake in the use of the money. Islamic teachings encourage a sharing of risk between parties in a business venture to ensure a just distribution of wealth that is ‘more representative of real economic productivity’ (p. 1176, [35]). Because of the many shades and ambiguities that can arise, as we shall see, the debate about *riba* can be compared to the distinction between debt (risk transfer) and equity (risk-sharing) in conventional finance that Pitluck argues has been becoming increasingly meaningless [37].

The second key prohibition is the injunction against *gharar*. In the context of commercial exchanges, *gharar* refers to ‘uncertainty regarding future events and qualities of goods’, resulting from ‘one-sided or two-sided and intentional or unintentional incompleteness of information’ (p. 60, [34]). As one of the main objectives of Islamic finance is ‘a close coupling of the financial and the real economy’ (p. 314, [32]), the trading of an object whose ownership is uncertain and whose quality is unknown is considered impermissible. The prohibition of *gharar* helps prevent one party from unjustly benefitting from the ignorance of the other transacting party and the possibility of ‘unanticipated loss’ to one party (p. 60, [34]). In practice, *gharar* has generally been regarded as a general prohibition of ‘the unbundled and unnecessary sale of risk’ (p. 60, [34]).

The injunction against *maysir* is related to the injunction against *gharar*. Gambling is characterised as a zero-sum activity whereby ‘one party gains from the other party’s loss’ (p. 79, [33]). The prohibition of *maysir* has been interpreted as a broader injunction against ‘speculative commercial action of any kind’ (p. 88, [38]). It prevents excessive risk-taking and encourages transacting parties to seek sufficient knowledge and information before entering into a commercial venture [39]. The prohibition of *maysir* has been used as a justification against the use of derivative products, which are commonly used by conventional financial institutions as risk hedging instruments. These prohibitions all turn on the problem of risk distributions, such that the nature and structure of risk distributions can be said to be the central concern in the morality of Islamic finance.

### 3.2. Islamic Finance as a Moral Discourse

Islamic finance scholars generally agree that Islamic financial principles are derived from the understanding of Shariah and that Islamic financial practices should be rooted in the rules and norms of Islam. These principles and practices inform the objectives and operations of the Islamic financial industry and the structures and designs of Islamic financial products. Islamic finance should embody the ‘substantive spirit’ of Shariah both in its legal form and its ethical and economic substance (p. 25, [34]). However, they disagree on how Shariah should be understood and interpreted, how Islamic financial principles should be derived and formulated, and how these principles should be implemented. Indeed, one of the most fundamental debates in Islamic finance thus far is the form-versus-substance debate.

Critiques of modern Islamic finance question the authenticity and legitimacy of current Islamic financial practices, which conform to ‘the letter but not necessarily the spirit’ of Shariah (p. 125, [40]). They argue that the modern Islamic financial industry engages in *hiyal* (analytical or semantic tricks) in structuring and designing Islamic financial products, which tend to mimic conventional banking products in substance while achieving ‘a ‘form’ that appears compliant with Islamic norms’ (p. 40, [4]). In this so-called Shariah-compliant approach, existing conventional financial products are evaluated against the requirements of Shariah, and the portions of those products that are not Shariah-compliant are restructured and remodelled. Critics argue that, instead of offering a legitimate alternative to conventional finance, the practices of Shariah-compliant Islamic finance conform to ‘the hegemony of interest’ as upheld by debt-based conventional finance (p. 125, [40]).

In contrast, Islamic finance reformers advocate Shariah-based finance, an approach, they claim, that is ‘true to the substance of Islamic fundamental principles’ and upholds commitments to ‘social justice, collective responsibility, and community investment’ (p. 40, [5]). A Shariah-based approach aims to develop ‘real economy embedded financing’ based on the principle of mutuality (p. 99, [27]). It emphasises a strict prohibition against *riba* and encourages risk-sharing and partnerships grounded in the principles of equity-based finance. As Pitluck writes, similar to the concepts of ‘debt’ and ‘equity’, the concepts of ‘shariah-compliance’ and ‘shariah-based’ are highly contested [37]. Yet these ideas set the terms of an important debate about the morality of the distribution of risk, which has largely focused on the issues of *sukuk* structures.

### 3.3. Islamic Finance in Malaysia

The growth of Islamic finance in Malaysia is inextricably intertwined with ethnic politics and the role of Islam in the state’s development strategy. As a result of the ‘divide and rule’ policies adopted by the British, post-independence Malaya recorded a high incidence of poverty, especially among the *Bumiputera* (so-called indigenous population, the majority of whom are Muslim Malays) (p. 37, [41]). In the aftermath of the post-election race riots in 1969, the state announced the New Economic Policy (NEP) aimed to eradicate ‘poverty regardless of race’ and restructure society to ‘eliminate the identification of race with economic function’ (p. 45, [41]). One of the targets of the NEP was to increase *Bumiputera*’s economic equity to 30%. It was considered a form of positive discrimination ‘to advance the *Bumiputera*, especially the position of Malays in the modern corporate sector’ (p. 474, [42]).

Indeed, Islam has played a pivotal role in disciplining the population and fostering an environment conducive to economic growth [43]. The state strategically promoted a form of Islam that is compatible with capitalism and presented the ideal Muslim citizens as ‘self-disciplined, able and wealth accumulating, but in a way that is cast within the precepts of Islam rather than of capitalism’ (p. 204, [44]). Islam was also used by the ruling party as an instrument to satisfy the demand of Islamists for ‘enhancing the role of religion in political and economic life’ (p. 105, [28]) and lessening ‘the possibilities of an Islamic resistance’ (p. 11, [45]) to the state’s development agenda.

As the state's development strategy shifted from export-oriented growth, which focused on high-tech assembly and offshore industry, towards the provision of services in the new so-called knowledge economy, the state began focusing on developing service-oriented sectors 'labelled Islamic' (p. 835, [38]), including developing the country's halal industry. The increasing importance of the financial sector to the economy, beginning in the late 1990s and early 2000s, the state endeavoured to establish Malaysia as an international ICM centre. The state hoped that the development of Malaysia's ICM would be a catalyst for 'the expansion of other key areas of comparative and competitive advantage' in Malaysia's capital market (p. 108, [46]).

By the end of 2018, the size of Malaysia's Islamic financial assets was estimated to be US\$ 521 billion, accounting for more than one-fifth of global Islamic financial assets. Malaysia also remained among the top markets across the Islamic banking, takaful, and ICM sectors. In addition, Malaysia had the highest number of Shariah scholars (192 out of 1166) as by the end of 2018, produced the highest number of Islamic finance research papers (876 out of 2550), peer-reviewed journal articles (604 out of 1786) between 2016 and 2018, and hosted the most number of Islamic finance seminars (60 out of 302) and conferences (24 out of 137) throughout 2018 [29].

### 3.4. Shariah Advisory Council

The establishment of the Shariah Advisory Council (SAC) in 1996 under the Securities Commission Malaysia Act (henceforth: Act) has been regarded as 'the single most important impetus' for the growth and development of Malaysia's ICM (p. 14, [47]). Further amendments to the Act made the SAC the sole authority for the ascertainment of the application of Shariah principles in the ICM. Any courts or arbitrators are required to refer to SAC rulings in any disputes pertaining to Shariah matters in relation to the ICM [48]. In addition, the Act also guarantees that the Shariah ruling of the SAC shall prevail where any other ruling is in conflict with the ruling given by the SAC [49]. The SAC advises the SC on all Shariah matters relating to the regulation and development of the ICM. The SC's extensive power as the regulatory authority of Malaysia's capital market enables the SAC to issue legally binding guidelines and requirements, approve financial products, establish eligibility criteria for Islamic financial intermediaries, respond to inquiries and proposals relating to the ICM, and deliver fatwa (non-binding legal opinions) pronouncements regarding the application of Shariah principles in the ICM [48].

Members of the SAC may include Islamic scholars, academicians, Islamic finance experts, and Islamic finance practitioners who are knowledgeable in Islamic jurisprudence, Islamic finance, and any other related discipline. Malaysian Shariah scholars are often perceived to be more 'innovative and flexible' compared to scholars from other countries, especially from Pakistan and the Gulf states (p. 294, [49]). One of the most controversial rulings issued by the SAC has been the resolution on the permissibility of the application of *bai inah*, commonly used in *sukuk* issuances. The SAC defines *bai inah* as follows:

*Bai inah* refers to trading whereby the seller sells his assets to the buyer at an agreed selling price to be paid by the buyer at a later date. After that, the buyer immediately sells back the assets to the seller at a cash price lower than the agreed selling price (p. 20, [50])

The majority of past Islamic jurists were of the opinion that *bai inah* is not permissible because they considered it a form of *hiyal* to legitimise *riba*. However, the SAC concurred with the Shafi'i and Zahiri Madhhabs, which argued that the basis of this opinion is weak and that the validity of a contract should be dependent only on what is disclosed by the participating parties and not on their intentions (p. 22, [50]). Shaharuddin [49] highlights the importance of *maslahah* (public interest) as a justification for the application of *bai inah* as it allows the infant Islamic finance industry to adopt a simple financing structure comparable to the existing structures used in conventional banking institutions to remain competitive.

Indeed, pragmatism and practicality have been the key considerations of SAC members in performing *ijtihad* (juristic deliberations). SAC juristic deliberations would take

into account practical considerations such as legal jurisdictions, market localities, market conditions, and the degree of maturity of the Islamic financial industry. Malaysia's ICM has been a strong proponent of a progressive approach to developing the Islamic financial industry. The SAC has also exhibited a willingness to continue assessing and revisiting its resolutions depending on the changing circumstances of the Islamic financial industry. In the next section, we explore how the morality of Islamic finance is discursively constructed, performed, negotiated, and transformed through the emergence of the SRI *sukuk* market.

### 3.5. *Sukuk*

Since the issuance of the first *sukuk* in 1990 in Malaysia, *sukuks* have become increasingly popular and have been regarded as one of the most successful Islamic financial products. *Sukuks* are an Islamic alternative to conventional bonds to meet the capital requirements of issuers. They have also played a key role in facilitating efficient liquidity management among Islamic financial institutions. Conventional bonds are not permissible in Islamic finance since they often provide pre-determined, fixed interest payments to investors, which are often likened to *riba*. In contrast, *sukuks* guarantee investors' ownership of tangible assets, usufruct, and services. Depending on their structures, *sukuks* provide returns in the form of profits, rents, or agency fees.

*Sukuk* structures can be grouped into three different contract categories, namely *uqud muawadah* (exchange contracts), *uqud isytirak* (participation contracts) and *uqud wakalah* (agency contracts) [51]. *Uqud muawadah* combine the sale and purchase transactions of an asset by one or more parties. The sale of the asset by an issuer to investors allows the issuer to raise capital [51]. The purchase of the asset by the issuer from the investors at a higher price than the original price, in turn, allows the investors to earn a profit (often at a pre-determined rate prior to the *sukuk* issuance) from their capital investment and the issuer to keep the ownership of the asset [51]. Examples of *uqud muawadah* include *ijarah*, *salam*, *istisna* and *murabahah* contracts. Islamic finance reformers seek to shift away from widely used *uqud muawadah*-based *sukuks* with pre-determined profit rates that closely resemble conventional debt-based bonds.

*Uqud isytirak* have been regarded as the preferred contractual structure as they are based on risk- and profit-sharing. *Uqud isytirak* allow an issuer to raise capital from investors to fund a business venture with a promise to distribute the profit from the venture to the investors according to a pre-agreed profit-sharing ratio [51]. Apart from fostering equitable partnerships between issuers and investors, *uqud isytirak* ensure that financial returns on capital invested are directly linked to real economic activities [51]. Examples of *uqud isytirak* include *mudharabah* and *musharakah* contracts.

*Uqud wakalah* take place when investors appoint an agent to manage investment capital on their behalf for a specified duration [51]. The *wakalah* agreement (agency agreement) dictates the nature of the relationship between the agent and the investors, including fees payable to the agent [51]. The agent is responsible to manage investments on behalf of the investors with duty and care to achieve the objectives specified in the *wakalah* agreement [51]. The global *sukuk* market has remained one of the most important segments of the global ICM, and to date, Malaysia has remained the world's largest *sukuk* issuer.

### 3.6. Malaysia's *Sukuk* Market

Malaysia has dominated the global *sukuk* market since its inception. By the end of 2018, there were 2887 *sukuks* outstanding globally, with a total value estimated to be US\$ 470 billion [30]. Malaysia maintained its leading position in terms of both the number of *sukuks* outstanding and the total value of *sukuks* outstanding, estimated to be 2136 and US\$ 219 billion, respectively, accounting for 74% of global *sukuks* outstanding and 46% of their value [30]. Between January 2001 to December 2018, Malaysia issued 6355 *sukuks* with a total value of US\$ 670 billion, accounting for 60.8% of global *sukuk* issuance [29].

In the early years of Islamic finance in Malaysia, the majority of *sukuks* issued were structured using *uqud muawadah*. Supported by a facilitative regulatory environment and

favourable policies, the *sukuk* market recorded considerable success and became one of the key segments of Malaysia's ICM [47]. By the 2010s, the situation had changed. While Islamic financial institutions had been lauded for weathering the 2008 financial crisis better than their conventional counterparts, critics began questioning whether Islamic finance was really a true alternative to conventional finance [52]. The SC responded to these criticisms by claiming that because Islamic finance operated within the conventional financial framework, replicating existing conventional products was necessary to facilitate 'understanding and acceptance' of Islamic financial products (p. 3, [52]). The SC further claimed that it was its willingness to 'unravel conventional products and structures and address those portions that are not Shariah-compliant that have brought success to the ICM' (p. 16, [47]).

Nevertheless, market developments and a shift in investor preferences in the years after the 2008 financial crisis were hard to ignore. As the SC aimed to strengthen Malaysia's position as a global ICM hub, 'greater internationalisation' of Malaysia's ICM was crucial (p. 47, [53]). To attract larger participation of international investors, especially those from the Middle East, in Malaysia's *sukuk* market, the SC began promoting a shift 'from a Shariah-compliant approach to a Shariah-based approach' by popularising the use of *uqud isytirak* in structuring *sukuks* (p. 48, [53]). It claimed that *uqud isytirak*-based *sukuks* would encourage 'equitable risk-sharing based on real economic activities' (p. 11, [54]). In addition, they would 'absolve the dilemma faced by Shariah scholars' as the use of *uqud isytirak* combines both the legal form and economic and ethical substance that are consistent with Shariah (p. 9, [55]).

The emergence of the SRI *sukuk* market, we argue, has transformed the ways the morality of Islamic finance is discursively constructed, performed, and negotiated. The shift in investor demographics and the growing environmental and social concerns have facilitated the growth of sustainable and responsible investing globally. The SC launched the SRI Sukuk Framework (henceforth: Framework) in 2014 to capitalise on this trend and to boost Malaysia's leading position in the global *sukuk* market. The SC promotes Malaysia's SRI *sukuk* market to both Islamic and conventional investors globally by emphasising 'strong synergies and complementarities' between Islamic finance and sustainable and responsible investment (p. 2, [56]).

We argue that the green and social vocation of SRI *sukuks* shifts emphasis away from their largely debt-based and only formally Shariah-compliant structures towards their overall purpose and effects that are compatible with *maqasid al-shariah*. The specific way in which the shift occurs is through a centring of the moral discourse on the morality of Islamic finance around the concept of *maqasid al-shariah*. The SC defines *maqasid al-shariah* as 'the aim, objectives, intention or secrets which are desired to be achieved in connection with the legislation of a particular Shariah law' (p. 12, [43]). These objectives, as outlined by Al-Ghazali, include the safeguarding of *din* (faith), *nafs* (life), *aql* (intellect), *nasl* (lineage), and *mal* (property) [54].

The focus on *maqasid al-shariah* in Islamic finance moral discourse shifts emphasis away from *sukuk* structures toward their uses of proceeds. As the proceeds from SRI *sukuk* issuances are destined for environmental and social projects, SRI *sukuks* are perceived to intrinsically embed the core values of Islamic finance and inherently fulfil *maqasid al-shariah*, regardless of their structures. So far, all SRI *sukuks* that have been issued in Malaysia have been structured using *uqud muawadah*. The centring of Islamic finance moral discourse around the concept of *maqasid al-shariah* allows the SC to emphasise the similarities between Islamic finance and sustainable and responsible investing in order to continue promoting the growth and development of Malaysia's ICM as well as to respond to Shariah-based criticisms.

### 3.7. The Green and Social Turn in Malaysia

The idea for the creation of an SRI market in Malaysia was first introduced in the SC's Capital Market Masterplan 2, which outlines several growth and governance strategies

to strengthen the competitiveness of Malaysia's capital market. An SRI market would allow Malaysia's capital market to promote new capital formation through innovative financing instruments [53]. Furthermore, it would facilitate the internationalisation of Malaysia's capital market by widening and diversifying Islamic investment products and strategies and Islamic intermediation activities [53]. The creation of an SRI market was also conceived as a governance strategy that would promote greater active participation among capital market stakeholders in providing a 'moral compass' for business activities, hence promoting 'a culture of integrity' and strengthening 'a more positive relationship between businesses and society' (p. 84, [53]).

The proposal for the framework was first announced by then Prime Minister and Minister of Finance, Najib Razak, during his presentation of the Malaysian federal budget for the 2014 fiscal year at the Parliament [57]. The framework was one of several state-sponsored initiatives to promote Malaysia as a market for SRI. The SC officially launched the framework in August 2014. The framework specifies additional requirements for the issuance of SRI *sukuks*, which include eligible SRI projects, utilisation of *sukuk* proceeds, governance requirements, disclosure and reporting requirements, and the appointment of external reviewers [58]. Because the framework was formulated as an extension of the existing *sukuk* framework, all requirements for the issuance of *sukuks*, including the additional Shariah requirements, remain applicable.

In November 2019, the framework was revised to enhance its alignment to international standards and principles such as the United Nations' (UN) Sustainable Development Goals (SDGs) and the International Capital Market Association's (ICMA) Green Bond Principles (GBPs), Social Bond Principles (SBPs), and Sustainability Bond Guidelines (SBGs). The framework was revised primarily to increase its 'profiling and branding', attract international SRI *sukuk* issuances, and ensure wide acceptance of the framework as process guidelines for the issuance of SRI and SRI-themed *sukuks* (p. 19, [58]). In the revised framework, the eligible SRI projects are presented to directly match specific SDGs, and the additional requirements for the issuance of SRI *sukuks* were revised to closely resemble ICMA's GBPs, SBPs, and SBGs [59].

The framework defines an SRI *sukuk* as a '*sukuk* in which its proceeds will be applied exclusively for funding of any activities or transactions relating to the Eligible SRI projects' (p. 50, [47]). The Eligible SRI projects include green projects, social projects, projects that combine both green and social projects, and *waqf* (Islamic endowment) projects [46]. The inclusion of *waqf* projects as part of the Eligible SRI projects was regarded as unique and transformative in promoting the development of *waqf* and linking SRI with the Islamic social agenda. The focus on *waqf* is also consistent with the SC's efforts to 'identify new growth drivers to broaden and strengthen the development of the Islamic finance industry' (p. 1, [60]).

Unlike ICMA's GBPs, SBPs, and SBGs, the framework strictly regulates the use of the SRI *Sukuk* label. An issuer is not allowed to use or adopt the term 'SRI *Sukuk*' unless the *sukuk* issuance complies with the framework [58]. The framework also specifies several governance requirements, including proceed utilisation, project evaluation and selection processes, and proceed management [58]. SRI *sukuk* issuers have complied with these requirements by establishing their own internal SRI *sukuk* frameworks, which define the internal processes that the issuers use to evaluate and select Eligible SRI projects.

Furthermore, the framework requires that the proceeds raised from the issuance of an SRI *sukuk* be utilised only for financing or refinancing activities and transactions relating to the Eligible SRI projects [58]. These activities and transactions may include the purchase of Shariah-compliant receivables, acquisition of Eligible SRI projects, and spending on other related and supporting expenditures [58]. SRI *sukuk* proceeds must be properly marked and tracked or otherwise credited into a designated account [58].

The disclosure and reporting requirements of the framework are distinctive. To comply with these requirements, an issuer needs to disclose various information relating to its SRI *sukuk* issuance and make the information 'publicly accessible via a designated website'

beginning at the point of the issuance and updated throughout the tenure of the *sukuk* (p. 50, [58]). The information that needs to be disclosed includes the issuer's SRI objectives, proceed utilisation, the Eligible SRI projects and their details and impact objectives, project evaluation and selection processes, management of material environmental or social risks, proceed management, and external review reports [58]. In addition, the issuer needs to report annually to investors the original amount allocated, the amount utilised and the amount unutilised for the Eligible SRI projects, the impact of the Eligible SRI projects, and the methodology or assumptions used in determining the impact [58].

The framework also requires the appointment of an external reviewer, whose role is to assess and report on the Eligible SRI projects or on the issuer's compliance with the requirements of the framework [58]. External review reports must also be made publicly available via the designated website along with other information [58]. External reviewers provide an evaluation of the robustness of the environmental, social, or sustainability potential of the Eligible SRI projects and an assessment of the issuer's ability to successfully implement the projects to achieve their impact objectives [58]. External reviews may include second party opinions, verifications, certifications, and ratings [58]. So far, all SRI *sukuks* that have been issued in Malaysia have been reviewed by one of the three external review providers, namely the Center for International Climate and Environmental Research, RAM Consultancy Services Sdn. Bhd. and Malaysian Rating Corporation Berhad.

The launch of the framework in 2014 has led to the creation of a robust SRI *sukuk* market in Malaysia. To issue an SRI *sukuk*, an issuer has to abide by both the additional Shariah requirements for the issuance of *sukuks* and the additional requirements for the issuance of SRI *sukuks*. The SAC and external reviewers have been entrusted as the gatekeepers of the 'Shariah' and 'SRI' labels to ensure the integrity of the labels. The involvement of the SAC and external reviewers in the SRI *sukuk* market alters the behaviours, organisations, and institutions of the capital market. The SAC and external reviewers deploy rules and conventions, technical and scientific knowledge, texts, discourses, and narratives, as well as technical and material devices in their efforts to regulate and shape capital market practices. In so doing, the SAC and external reviewers participate in 'the design, elaboration, experimentation, change, maintenance, extension, and operation' of the SRI *sukuk* market (p. 23, [61]). These developments bind existing and new capital market players together in a morally-inflected, market-making socio-technical agencement.

#### 4. Discussion

The emergence of the SRI *sukuk* market makes apparent contested visions of Islamic finance. Rethel [31] identifies three competing images of Islamic finance: 'Islamic finance as 'business as usual', Islamic finance as 'other' and Islamic finance as 'socio-economic project' (p. 563, [31]). In the Malaysian context, similar categorisations can be observed in the moral discourse of Islamic finance, albeit with different meanings, which we elaborate on here before offering some final reflections through the lens of the anthropology of sustainability.

The first vision of Islamic finance as 'business as usual' describes Islamic finance as a financial system 'constrained by what is deemed as not permissible according to the Shariah' (p. 565, [31]). This vision of Islamic finance, as seen in the early phase of the development of Malaysia's Islamic financial industry, often emphasises similarities of Islamic finance with conventional finance and the universal acceptability of Islamic financial practices and products to Muslims and non-Muslims. The second vision of Islamic finance as 'other' describes Islamic finance as a distinct financial system whose objectives and operations are derived from the fundamental principles of Shariah [31]. This vision of Islamic finance, as seen in the post-2008 financial crisis period, highlights the distinctiveness of Islamic finance from conventional finance centred around the Islamic injunctions against *riba*, *gharar*, and *maysir* and the Islamic endorsement of risk-sharing and partnerships. The third vision of Islamic finance as a 'socio-economic project' describes Islamic finance as a financial system with an explicit normative commitment to 'greater economic fairness and social justice' as well as environmental stewardship (p. 568, [31]). This vision of Islamic finance, as seen in

the emergence of the SRI *sukuk* market, is less concerned about portraying Islamic finance as a distinct financial system but more concerned about emphasising its role in promoting socially responsible and ethical financial practices with the aim of realising *maqasid al-shariah*: it emphasises broad moral aims rather than the avoidance of un-Islamic practices.

The emergence of the SRI *sukuk* market also makes visible how these distinct visions of Islamic finance are mobilised by Islamic financial players. They do not only act upon and respond to the different visions of Islamic finance, but they also actively shape, negotiate and perform the visions for Islamic finance. In the early phase of the development of Malaysia's Islamic finance industry, replication of existing conventional products was considered necessary to encourage understanding and acceptance of Islamic financial products. The SC encouraged the adoption of the Shariah principles that were considered 'universally acceptable', hoping that it would allow for the creation of ICM products accepted by 'all issuers, intermediaries and investors, irrespective of their faith' (p. 15, [47]). The SC asserted that Islamic finance 'serves the same economic purpose' as conventional finance and that the design of Islamic financial products should focus on 'convergence rather than differentiation; on similarities with, rather than differences from, conventional products' (p. 14–15, [47]). The 2008 financial crisis significantly challenged existing beliefs in the conventional financial system. Critics of modern Islamic finance began questioning whether the current Islamic financial practices offered products that were true to the essence of fundamental Islamic principles. Recognising a shift in investor preferences towards Shariah-based financial products, especially among investors from the Middle East, the SC began promoting Shariah-based Islamic financial products. This new vision for Islamic finance was also consistent with the SC's aspiration to encourage greater internationalisation of Malaysia's ICM. By promoting a new vision for Islamic finance centred around the Islamic injunctions against *riba*, *gharar*, and *maysir* and the Islamic endorsement of risk-sharing and partnerships, the ICM would be able to broaden its customer base to include investors seeking risk-participatory instruments. With the rise of sustainable and responsible investing and the growing environmental and social concerns among investors globally, the SC began promoting a new vision for Islamic finance centred around economic fairness and environmental and social justice. Instead of portraying Islamic finance as a distinct financial system, the SC emphasised the similarities between the underlying principles of Shariah and the core values of ethical and responsible investing. By 'connecting these overlapping core values' beyond religious boundaries, Islamic finance would be able to offer its products to a wider international investor base and to 'access the large amount of SRI funds available in global markets' (p. 1, [62]). Whether Islamic finance can deliver on its promise remains an open question. Even the specific characteristics of the promise of Islamic finance are still debated. The visions of and for Islamic finance will continue to be a site of struggle over competing intentions, meanings, purposes, and motivations. For now, the desire for the growth and development of the ICM seems to prevail.

## 5. Conclusions

In this special issue, Dalsgaard and Hastrup call for anthropology to 'maintain its critical stance towards managerial and technological fixes and processes of dispossession, while still contributing to a perceived global good and maintaining a productive dialogue with those in power.' In the same spirit, we conclude with some final critical reflections upon the SC's approach to sustainability, with a closing suggestion to offer it. We began by noting the diversity of approaches that exist within Islam in general and within Islamic banking and finance in particular, alongside the emphasis on diversity that has been placed by anthropologists of sustainability. Our outline of the recent and ongoing greening of Islamic finance in Malaysia shows that it turns out to bring its regulatory framework closer to concerns in mainstream finance, a homogenizing tendency in line with the globalization that finance thrives upon and contributes towards. The debate over green *sukuks* led to a shift of emphasis away from the technical structure of these instruments and towards the

inclusion of SRI criteria, but these criteria were imported directly from the UN SDGs and ICMA, which is concerned with mainstream debt securities markets. In other words, there was no substantive discussion about what sustainability means within Islam, and existing sustainability criteria were presumed to be both adequate in themselves and compatible with Shariah law. Qur'anic interpretations of the relationship between Islam and ecology tend to agree on the centrality of the concept of *khalifa*, 'the idea that human beings are created as God's viceregents or stewards in the world' (p. 81, [63]). Bagir and Martiam ask whether this concept allows room for potential non-anthropocentric interpretations and find that some texts in the Qur'an and *hadith* do at least articulate the view that nonhuman animals have intrinsic value and that humans and nonhumans are 'regarded as equal persons' (p. 82, [63]). There are examples of non-anthropocentric, animistic practices and beliefs in some Islamic communities, such as the Ammatoans of Sulawesi, who treat certain nonhuman entities, including mountains, birds, stars and trees, as 'beings that glorify God . . . [indicating their] personhood as *muslim*' (p. 83, [63]). Bagir and Martiam give several other examples of non-anthropocentric practices among Muslims, which are understood and justified in terms of local interpretations of Islam, confirming the diversity that exists in this regard. Nevertheless, a clerical interpretation of Shariah law in the case of the SC appears unproblematically to be able to approve the adoption of managerial, anthropocentric approaches to sustainability which are well aligned with the objective shared with mainstream finance for promoting economic growth. As Veronica Strang has underlined, two central factors that have led to unsustainable practices are the 'widespread inability to detach from progressive notions of development the idea that this requires continual growth', and the 'ingrained assumption that humankind has, by right, directive control of the world' (p. 210–211, [13]). Strang argues that this anthropocentrism may lie at the heart of the problem because 'managerial control carries with it key assumptions about elite managerial rights and ownership' which came to prominence with the neoliberal economic boom and has roots in 'Biblical concepts of patriarchal "dominion"', citing terms such as 'ecosystem services' as expressing the idea that 'other species and the material world are there simply to serve and provide for humankind' (p. 211–212, [13]). The wholesale adoption of sustainability criteria by the SC can thus be read as consolidating the anthropocentrism that is already dominant in global financial approaches to sustainability and which may prove to be detrimental to the goal of a sustainable future. The attachment to managerialism derives from the preoccupation with growth, which is in continual tension with the Shariah doctrine on societal concerns. If the discussion of a distinctively Islamic approach to sustainability has yet to develop, it must be hoped that it will seek ways to address these questions of anthropocentric managerialism and growth. Arguably one way to do this could be to extend the debate over risk-sharing to nonhuman living beings so that returns on investments in ventures that caused harm to the biosphere would be considered *haram*. Such a move could extend the moral high ground that Islamic finance already claims over mainstream finance to the sustainable investing field. However, it would entail bringing Islamic religious scholarship to bear upon a problem that is already raised by finance's burgeoning ventures into the field of sustainability: the calculation of environmental risk. There is extensive discussion of this subject in the social sciences highlighting how risk has become central to government and institutional decision making and the management of society [64,65], while in finance, it is even further abstracted and globalized [66]. Some authors have used ethnography to explore how criteria for the calculation of risk are produced. For example, as Tripathy has shown, in order to bring environmental factors to bear upon financial calculations, they must be rendered quantifiable, a process he defines as 'translating to risk', and this translation of scientific knowledge into economic criteria favours the ongoing marketisation and commodification of environmental goods themselves [67]. The commodification of nature can undermine ecological processes and human livelihoods [68], contrary to the objectives of Islamic law, *maqasid al-shariah*, which among other things, include protecting life. Jan and Asutay have argued that 'the commercial nature of IBF [Islamic banking and finance] has led to

further financialization of Muslim economies rather than being an instrument of Islamic development. In other words, IBF has been successful in transactional accumulation, but it has not developed any strategy for IME [Islamic Moral Economy]'s transformational objectives' [69]. If the expansion of Islamic finance into the sustainable arena cannot avoid deepening processes of financialisation, these questions about the effects of translating to risk may be too challenging for authorities to seriously ponder.

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