

CONSTRUCTING JUSTICE:
A PRACTICE-DEPENDENCE
APPROACH TO ISLAMIC FINANCE

by

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Abstract

This thesis seeks to better understand and evaluate the practice of Islamic finance. In order to do this, the thesis employs a practice-dependent, or constructivist, approach with the aim of identifying the principle or principles that inform, constrain and guide Islamic finance practices. The thesis proceeds by arguing that Islamic finance is a salient site of justice, with a clearly identifiable set of participants and shared set of aims. Having established this, the thesis goes on to demonstrate, through an analysis of the rules and operation of Islamic finance, that a distinct conception of justice can be identified as informing the practice. The central claim of the thesis is that the practice of Islamic finance is guided by a sufficiency-constrained luck egalitarian principle. This principle, it is argued, not only helps us to better understand Islamic finance, but can also help us to evaluate existing Islamic finance practices and, where they are found wanting, offer guidance on how best to reform those practices.

To my trio

Malak, Hamza and Maria

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Contents

Abstract	ii
Acknowledgements	iv
Contents	vi
Acronyms	ix
Introduction	1
1. Background	1
2. The Absence of an Islamic Conception of Distributive Justice	2
3. Importance of Islamic finance Justice in Practice.....	3
4. Approach and Contribution	8
5. Argument and Structure.....	9
Chapter I: Comparative Political Theory	14
1.1. Political Theory: Setting the Parameters.....	15
1.2. Approaches to Comparative Political Theory	23
1.2.1. Fred Dallmayr - a Gadamerian hermeneutical approach.....	24
1.2.2. Roxanne Euben – A postcolonial travel.....	32
1.2.3. Andrew March – Justificatory CPT.....	36
1.3. Islamic Distributive Justice: A CPT Project.....	44
1.4. Conclusion.....	51
Chapter II: Distributive Justice: A Conceptual Analysis	54
2.1. What Makes a Theory of Distributive Justice?.....	55
2.2. The Site of Justice:	57
2.2.1. Rawls and the Basic Structure	58
2.2.2. Objections to an institutional site of justice – Cohen and Caney	61
2.3. The Scope of Justice	63
2.3.1. Statist Scope of Justice	64
2.3.2. Global Justice.....	66
2.4. Principles of Justice (How?)	69
2.4.1. Desert.....	69
2.4.2. Equality.....	71
2.4.3. Need.....	76
2.5. Goods for distribution (what?)	77
2.5.1. Welfare.....	79

2.5.2. Resources.....	80
2.5.3. Equality of opportunity and capabilities.....	83
2.6. Moral Justification.....	84
2.6.1. Moral realism.....	85
2.6.2. Cultural Conventionalism.....	87
2.6.3. Constructivism.....	90
2.7. Conclusion.....	94
Chapter III: Practice, Interpretation and Construction of Principles	97
3.1. Why a Practice-Dependence Theory?.....	99
3.1.1 The Approach.....	100
3.1.2 Three Types of PDA:.....	103
3.1.3 Objections to PDA:.....	107
3.2. Interpretation and Constructing Principles in PDA.....	113
3.2.1. Dworkin’s Constructive Interpretation:.....	113
3.2.2. Constructivism in PDA:.....	118
3.2.3. Rawls’s Constructivism and PDA:.....	120
3.3. Islamic Finance as a Social Practice:.....	126
3.4. Conclusion:.....	129
Chapter IV: Islamic Finance as Site of Distributive Justice.....	133
4.1. Defining Islamic Finance Practice.....	134
4.2. Philosophical Background and Axioms.....	139
4.3. Historical Background and Evolution	143
4.4. The Practice.....	155
4.4.1. Islamic Finance as a ‘Prohibition-Driven Finance’ System:.....	156
4.4.2. Financing Practices	163
4.4.3. Regulatory Practices (Shariah Boards and Shariah Units):.....	168
4.4.4. Economic and Social Development Practices:.....	170
4.5. Why a Site of Distributive Justice?	175
4.6. Conclusion.....	178
Chapter V: Interpretation of Islamic Finance Practice.....	180
5.1. Requirement of a Comprehensive Interpretation:.....	181
5.1.1. The point and purpose of Islamic finance.....	182
5.1.2. Viewpoint of the participants:.....	188
5.2. Principles of Islamic finance distributive justice:.....	199
5.2.1. Luck Egalitarianism.....	200

5.2.2. Sufficiency and Social Floor.....	212
5.2.3. Islamic understanding of a Sufficiency-constrained Luck Egalitarian Principle	220
5.3. Conclusion:.....	224
Chapter VI: Implications.....	226
6.1. The Role of Practice-dependence Principles	226
6.2. Implication of a Sufficiency-constrained luck egalitarian Principle	231
6.2.1. Sufficiency Obligations	235
6.2.2. Luck Insensitivity and Choice Sensitivity	241
6.2.3. Mitigation through Financial Inclusion.....	248
6.3. Conclusion.....	254
Conclusion.....	258
1. Islamic Finance and Distributive Justice	258
2. Justice in Islamic Finance.....	260
3. Contribution.....	262
4. Limitation and Future Research.....	267
5. Conclusion.....	269
Bibliography	271

Acronyms

CPT	Comparative Political Theory
GCC	Gulf Cooperation Council
IBB	Islamic Bank of Britain
MENA	Middle East and North Africa
NZF	National Zakah Fund
OIC	Organization of Islamic Cooperation
PDA	Practice-Dependence Approach

Introduction

Whenever a theory appears to you as the only possible one, take this as a sign that you have neither understood the theory nor the problem which it was intended to solve.

KARL POPPER (1972: p. 226)

1. Background

While theories of distributive justice, which are concerned with distributions of burdens and benefits within a society or across societies, have been highly prominent in normative political theory since the early 1970s (Rawls 1971; see Lamont and Favor 2016), relatively few theorists of distributive justice have looked outside Western political theory traditions or economic and political practices. One aim of this work is to reinforce the importance of expanding the dialogue. It does so in part through pursuing its central aim of demonstrating the coherence and significance of an Islamic theory of distributive justice.

Islam comprises a religious and social tradition that is fundamentally concerned with socio-economic objectives such as wealth distribution, poverty eradication, abolition of inequalities, to name but a few. Yet it is almost wholly absent from the distributive justice dialogues. This absence can be attributed to two factors. First, as critics of political theory as it currently stands (Ball, 1995; Carver, 2004; Bleiker, 2004) observe, the political theory canon continues to be Eurocentric. A number of theorists (Dallmayr 1997, 2004, 2009; Euben, 2002, 2004; March, 2009) have sought to address this shortcoming in calling for a 'comparative political theory' as an alternative discipline or sub-discipline to integrate non-Western political ideas. Second, there is another clear gap in the

Islamic literature itself, in terms of treatments of distributive justice. To date, there has been no comprehensive theorization of Islamic distributive justice.

2. The Absence of an Islamic Conception of Distributive Justice

There are, in fact, extensive literatures on Islamic economics and Islamic finance, and these will be crucial to the development or extrapolation of a conception of Islamic distributive justice. Islamic economics as a discipline was established in the 1970s with the *First International Conference on Islamic Economics*, which established some basic common concepts (Zaman, 2008: 27-28, Ahmad, 1984: xviii) as reflected in concerns for Islamic philosophy and its moral and ethical dimension in regulating an economic system. Prominent Islamic economists (Naqvi 1984, 1994, 1997; Mannan 1984, 1986; Siddiqui 1981, 1996; Kahf 1991, 2004) produced an extensive canon of literature on the Islamic worldview, features of an Islamic economic system and how it differs from a capitalist or socialist system.

Discussions of different economic ideas from an Islamic viewpoint in many instances, however, did not produce widely accepted Islamic conceptions. Islamic economists responded to different stimuli producing thereby a wide range of different understandings, interpretations and ideas (Haneef, 2005: p. 3) and “no comprehensive attempt has been made to compare and categorize the views of Muslim economists based on their understanding of certain major areas in economics such as ownership and distribution” (Haneef, 2005: p. 3-4). Thus, distributive justice, albeit noted in Islamic economic literature (Ahmad and Hassan, 2000; Heidari, 2007; Baidhaway, 2012), has not been systematically

theorized in the context of Islam, and there has been no comprehensive effort to reconcile tensions in the underlying normative suppositions among varying accounts of Islamic economics.

To illustrate, while Naqvi, a prominent Islamic economist, explains that Rawls's principles of justice, particularly the difference principle, is the most relevant to the Islamic view as it promotes the maximization of welfare of the least advantaged (1997: 5), Choudhury, on the other hand, criticises and objects to Rawls's theory, asserting that "despite his claim, Rawls is altogether a neoliberal libertarian and utilitarian" (2011: 94). This gives a glimpse into how diverse the ideas of Islamic economists are, and into the absence of a systematic understanding of what distributive justice entails within the Islamic economic discourse. There are also a number of other attempts to conceptualise distributive justice from an Islamic perspective such as *Distributive Justice and Need Fulfilment in an Islamic Economy*, which entails a collection of six papers delivered at The Second International Conference on Islamic Economics held in Islamabad in March 1983.

3. Importance of Islamic finance Justice in Practice

The second, highly salient Islamic literature is concerned with Islamic finance practice, understood broadly as lending and related banking activity that conforms to principles of Sharia law; Islamic law produced primarily from the Qur'an. The academic literature on Islamic finance has developed alongside the successful, steady and rapid growth of the practice over the past decades. It is reported that Islamic financial institutions exist and operate in at least 105 countries, and Islamic finance products are multiplying and attracting more

customers every day (Warde, 2012) and are expected to cater for a growing Muslim population of 2.5 billion by 2020 (Global Islamic Finance Report).

A remarkable phenomenon is how Islamic finance practice is multiplying in non-Muslim majority countries. The UK, for example, has repeatedly announced its intention to become a global hub for Islamic finance. It is now the home of almost half of the Islamic finance institutions in non-Muslim majority countries, and comes globally as number eight in terms of the total amount of Shariah compliant or Islamic assets. While attempting to establish its reputation as an Islamic finance hub, the UK adopted a number of regulations and taxes to serve this purpose, and the UK Treasury has stated objective of guaranteeing that no person in the country to be denied access to financial products due to his/her religious beliefs (Pollard and Samers, 2013: 8-9). Islamic finance has been viewed in Britain as a means of further integrating a Muslim community that reached more than 2 million, as well as economically attract more foreign investment (Pollard and Samers, 2013: 8-9).

Apart from the UK, other non Muslim majority countries also have expressed strong interest in the sector. Singapore, a country with a Muslim minority of only 14% of the population also announced its intention to become a hub for Islamic finance. Other countries, including Australia, France and South Korea, are undertaking major legislative changes to attract Islamic finance into their economies (Warde, 2012: 10).

The global prevalence and growth of Islamic finance is also reflected in the significant increase in the number of academic programmes and modules, publications, conferences, etc. that are concerned with this sector. In this respect,

the UK, second only to Malaysia, comes in the leading position, with 28 academic programmes.

No doubt, Islamic finance practice is very dynamic and its development is not completely detached from political events both domestically and internationally. Islamic finance is known for its political nature, and for the way it was continuously shaped by its political surroundings. As will be explained in more depth in chapter IV, the rise of Islamic finance in the 20th Century took place as a response to the identity problem faced by Muslim nations, particularly after their independence from Western colonization. Their attempt to search for their Islamic identity and values, from which they were long disconnected during colonization, was reflected in their demand for Islamic financial institutions and for the infusion of shariah teachings into the financial sector. The political nature of Islamic finance is also evident during most global political and economic circumstances, which also had direct impact on the development of the practice. For example, the massive increase in oil prices in 1973 led to a vast amount of petrodollars to flow into the Muslim Gulf countries. The wealth resulting thereof needed shariah-compliant investment opportunities, which led to further expansion of the sector. Within similar context, Islamic finance was also affected by the suspicion and financial scrutiny Muslim countries faced after the terrorist attack in 9/11. This resulted in a counter-effect of greater religiosity among Muslim nations and more pressing need for Islamic financial institutions. Clearly, Islamic finance practice is continuously responding to political and economic circumstances both in specific countries and on the global level, thereby incorporating new tools, products and transactions to serve the growing demand for shariah-compliant financial services.

The global financial crisis of 2007 is another important example of the political and dynamic nature of Islamic finance. The practice has continuously presented remarkable prevalence complemented by superior performance during the crisis. An IMF paper on *The Effects of the Global Crisis on Islamic and Conventional Banks* revealed that Islamic banks have performed relatively better than conventional banks. Alternative measures used by Islamic banks did not only include additional buffers, but also made “their activities more closely related to the real economy and tend to reduce their contribution to excesses and bubbles” (Hasan and Dridi, 2010: 33). It also appears that “adherence to Shariah principles precluded IBs [Islamic Banks] from financing or investing in the kind of instruments that have adversely affected their conventional competitors” (Hasan and Dridi, 2010: 33). Consequently, the better performance and rapid development of Islamic finance attracted attention to its political nature as well as to the moral paradigm it is based on, particularly due to the number of concerns raised regarding the ethical dimension in the conventional financial practice. The financial crisis highlighted a number of questionable aspects of practices in conventional finance, including a lack of transparency, financial incentives which encouraged excessive risk taking, among others. Such ethical failures of the conventional financial practice attracted more attention to Islamic finance practice, particularly as it is continuously promoted as an alternative to the conventional system that infuses ethical and moral dimension into the financial sector.

There is a misconception about Islamic finance, however, that it is primarily concerned with the elimination of interest-based transaction. Although indeed avoidance of interest is an integral part of Islamic finance, it is not limited

to that tenet. Islamic finance is established and designed to provide all ranges of financial services, e.g. loans, investments, insurance, etc. It is a comprehensive financial system, offering similar products and services to those offered in the conventional system, yet according to the ethical and moral rules of Islamic law (El Gamal, 2006: 8). Accordingly, three main transactions are prohibited in Islamic finance. First, interest-bearing transactions are prohibited. Second, transactions including excessive or unnecessary risk, uncertainty or gambling are also prohibited. This is not to say that risk and uncertainty are totally impermissible, as this is impractical in the financial world. However, these elements need to be kept to a minimum level. Finally, Islamic finance also prohibits hoarding and accumulation of idle wealth.

Based on these prohibitions, alternative Shariah compliant practices are established, such as financial partnership practices. These are financial contracts that aim to create partnership between financiers and entrepreneurs according to which profits or losses resulting from investments are to be shared between them as partners. By sharing the outcome of the investment the practice also distributes risk between partners. Other practices include Zakah, or compulsory wealth tax. This taxation is of utmost importance, as the rules governing its collection and distribution clearly shapes the distribution of wealth between participants.

Thus, it is clear that Islamic finance is a complicated practice that has evolved and developed over 14 centuries since the beginning of Islam. It provides its participants with a range of services, all formulated according to Islamic moral principles. The way these transactions are established, creates a different set of relationships and interdependence between the participants that is distinct from

conventional finance. The practice also results in a different scheme for the distribution of burdens and benefits among participants.

4. Approach and Contribution

Three important gaps in the relevant literature are identified so far. The first is that the longstanding debate on distributive justice has neglected the Islamic tradition. Second, Islamic economists who attempted to examine the notion of distributive justice in the Islamic economic literature attempted only very limited engagement with Western theories of distributive justice. Third, the successful performance of Islamic finance practice and its worldwide prevalence is not reflected in any attempts to employ the practice to construct principles of justice that reflect the Islamic worldview.

Accordingly, this thesis explores the Islamic conception of distributive justice as could be interpreted from the established practices of Islamic finance. It examines how Islamic finance practices shape the distribution of burdens and benefits within the society in which they operate. The objective of the thesis is to put forward an Islamic practice-based distributive justice theory; or principles of justice that dictate how benefits and burdens ought to be distributed to adhere to the Islamic moral and ethical code. Accordingly, the overall research question of this thesis can be stated as this: *What are the principles of distributive justice that govern Islamic finance practice and dictate the just distribution of burdens and benefits among its participants?*

Since the focus will be on an existing and well established practice, the most appropriate approach to address the question is a practice-dependent

constructivist approach. As an alternative to the practice *independent* approach that aims at abstract theorizing, the practice-dependent approach places high importance on existing practices, institutions and arrangements in moral theory. It focuses on the interpretation of existing social practices and the construction of principles of justice accordingly. That is, the existence of social practices that are endorsed by participants to achieve a common goal is the starting point from which principles of justice are to be constructed (James, 2005a; Sangiovanni, 2008; Valentini 2011; Banai, Ronzoni et al, 2011; El Kholi, 2013). Accordingly, as this thesis is presenting a practice-dependent theory, it relies in essence on two theorizing tools; interpretation and constructivism. In the context of practice-dependence, the role of constructive interpretation is to connect the constructed principles to the objectives of the practice and the viewpoint of the participants (James, 2005a; Sangiovanni 2008). Constructivism, on the other hand, is a moral reasoning and justification approach that constructs principles of justice in the light of the context in which they operate. This approach aims to identify principles that are consistent with the ideas and values rooted in the society, in the form of the prevailing conceptions of the society and conception of the individual (James, 2007, 2013).

5. Argument and Structure

This thesis presents a comparative political theory project to reveal the principles of justice that underpin the practice of Islamic finance. It uses a practice-dependent approach to offer a systemic conception of Islamic distributive justice. The theory reveals that the most appropriate principle to be constructed from the

interpretation of Islamic finance practice is a sufficiency-constrained luck egalitarian principle. To clarify, the practice is interpreted as being governed by two principles simultaneously: sufficiency and luck egalitarianism. Although both principles appear in the first instance as contradictory bases for justice, in practice they supplement each other. That is, Islamic finance, in the way it is organised and according to its philosophical framework, is primarily endorsing a luck egalitarian conception of justice. However, a sufficiency principle is also operating. The constructive interpretation employed in this thesis demonstrates how both principles operate alongside each other in guiding Islamic finance practice.

The thesis argues that the constructed principles are of explanatory as well as evaluative and action guiding values. Practice-dependence theories are said by some critics to be *only* descriptive theories, not capable of playing critical or constructive roles (see Meckled-Garcia, 2013). This idea is contested on the grounds that a reliance on the shared values and viewpoint of the participants in fact allows practice theories to perform critical and reformative roles (James, 2013; Valentini 2011). This thesis, illustrates how practice-dependent principles are capable of evaluating the practice, identifying existing injustices and guiding the practice to eliminate them and prevent future injustices.

The thesis is divided into six substantive chapters. The first three chapters deal with contextualising the thesis, conceptualising the problem and introducing the methodology and approach. In chapters four, five and six I present my actual practice-dependent constructivist theory, showing how aspects of Islamic finance practice align with the elements of a theory of distributive justice, and examining the implications of the derived principles on the practice.

Chapter one aims to contextualise the theory within the overall project of comparative political theory. I illustrate how political theory, as it currently stands, is mainly focused on a Eurocentric canon and rarely provides adequate attention to non-Western traditions, thinkers and perspectives. This limitation of the literature alienates many salient non-Western traditions and ideas. Consequently, there was an important call for their integration in a wider comparative political theory project that aims to achieve political understanding across philosophical and political discontinuities. I present this thesis as a justificatory CPT project, as the demarcation between the Western and the Islamic tradition is clear and unchangeable, and the topic of inquiry is common and of mutual interest across traditions.

In chapter two, I illustrate the complexity of the notion and the richness of the debate addressing it in political theory. To this end, I provided a conceptual analysis of distributive justice and theories dealing with it. Much has been written about the distribution of burdens and benefits between persons and arguments in this respect are diverse and in many instances contradictory. Theories of distributive justice vary in who they include in the distribution, what the currency of distributive justice is, how to distribute it and their moral justification for their arguments. Each theory and every theorist appears to have answers, yet what is certain, as could be seen from the analysis, is that the debate is ongoing, as the notion of distributive justice is complex and multifaceted. The importance of this conceptual analysis was to highlight the main elements of a distributive justice theory and how to address each one of them.

This is followed by chapter three in which the practice-dependent approach and the role played by constructivism and interpretation are detailed,

and I make the case for viewing Islamic finance as a salient social practice. Practice-dependence is a new approach to political theorizing and it relies on the interpretation of social practice in the light of its cultural context to construct principles of justice that best describe the practice. This thesis is using an institutionalist approach to practice-dependence. To this end, the thesis identified Islamic finance practice as a salient social practice for interpretation.

In chapter four I demonstrate why the practice should be viewed as an appropriate site of distributive justice. The thesis explains the Islamic philosophical axioms that guide our identification of a correct course of action to establish an Islamic economic system that corresponds with the Islamic tradition and philosophy. This is combined with a historical account of the development of the practice and the existing rules, regulations, procedures and tools used. The identification of these important background information highlighted the significance of recognizing Islamic finance as a salient site of distributive justice that has a profound impact on the lives of the participants and the distribution of burdens and benefits between them.

Chapters five and six are the paramount contribution of this thesis. In chapter five I provide an interpretation of the Islamic finance practice and construct the principles that guide it. By presenting the point and purpose of the practice and the reasons of the participants to take part in it, I offer the two requirements of a comprehensive interpretation of a practice. This is followed by a construction of justice principles as could be understood from all the different aspects of the practice. The interpretation reveals that the practice is guided by both sufficiency and luck egalitarian principles.

Finally in chapter six, I present the implications of the theory by using the principle to evaluate the practice and to guide it towards becoming more just and in coherence with its point and purpose. I use the sufficiency-constrained luck egalitarian principle to evaluate the practice and to assess if it is achieving its distributive role. Following the assessment, I use the principles to guide the practice towards reformation to become more just.

Overall, the thesis aims to develop a systematic and coherent conception of distributive justice from the increasingly prevalent practice of Islamic finance. It offers potentially significant contributions in expanding the dialogue and literature on non-Western conceptions of distributive justice, in systematizing the conception of distributive justice that underlies Islamic finance practice, and in showing how critical contestation within the practice itself can be analysed to develop a fully coherent conception of Islamic distributive justice.

Chapter I: Comparative Political Theory

We are all humiliated by the sudden discovery of a fact which has existed very comfortably and perhaps been staring at us in private while we have been making up our world entirely without it.

GEORGE ELIOT (2008, p.407)

Our world today is defined by a dynamic globalisation process that undermines the importance of geographical boundaries and makes coexistence between different cultures and traditions inevitable. This has created a growing need for an academic approach that can address globalisation's challenges and bring the study of Western and non-Western traditions closer. Critics, however, argue that traditional political theory projects continue to centre on Western ideas, perspectives and thinkers, neglecting thereby extensive academic knowledge that exists outside the Western tradition. Consequently, an important call for a new approach to integrate non-western perspectives emerged, in Comparative Political Theory (CPT). It has slowly gained ground as an attempt to draw more attention towards traditions and thoughts outside the West.

One of the non-Western traditions that require more attention in political theorizing is Islam. No doubt it has attracted some attention from academics, yet this has mainly been through a negative lens. Much has been written about Islamic radicalisation and extremism, yet little attention is given to Islam to

understand how conscientious it is to issues of mutual concern such as benevolence, fairness, compassion towards the worst-off, etc. These issues, although integral in the Islamic tradition, are rarely considered for examination in traditional political theory projects.

Accordingly, the aim of this chapter is to contextualize my practice-dependent Islamic distributive justice theory within the overall comparative political theory project. The discussion is structured as follows. I start in section I with a brief account of the common types of political theory, followed by some of the challenges facing the discipline. This section elucidates why my project cannot be contextualized within normative political theory, by highlighting the limitations of the political theory canon and the discipline's inadequacy in addressing the challenge of coexistence between traditions. This is followed by section II, in which I give a detailed account of the different CPT approaches. I highlight how CPT can overcome political theory limitations, theorize political ideas and issues in the light of the traditions in which they exist and compare them across boundaries of geography, culture, language and religion. Finally, in section III, I explain why this project is a comparative political theory project that aims to examine Islamic distributive justice as practiced within the context of the Islamic tradition and offer it for engagement with the existing distributive justice debate.

1.1. Political Theory: Setting the Parameters

It is not an easy assignment to contextualise a project within the discipline of political theory, as there is no clear consensus even among political theorists as to

how to define the discipline (Farrelly, 2004: p. ix). As Vincent explains, “one should be careful of the idea, often fostered within conceptually-oriented analytical political theory, that there is just ‘one’ abstract method or subject *called* political theory” (2004: p. 2). There is indeed no such thing as a single identity of political theory, and activities within this discipline are diverse, and maybe even sometimes ‘mutually hostile’ (March, 2009: p. 534). This complexity is further exacerbated as discussions about the nature of political theory and what it involves are usually only very briefly tackled in introductory chapters of textbooks (Vincent, 2007: p. 1). What political theorists tend to do is to get over such discussions quickly in an attempt to dive straight into their analysis (Leopold and Stears, 2008: p. 1). Thus, most political theory books include a main body of texts aiming immediately at what may be called substantive normative analysis of concepts such as justice, democracy, citizenship...etc. and lack detailed discussions on political theory as a subject.

Only in recent years have more theorists attempted to define political theory, its approaches and methodologies, etc.¹ Yet, it remains the case that political theory is a massive discipline that is challenged due to its ill-defined boundaries and complex relation with other disciplines such as philosophy, politics and history. It is a discipline that relies on a vast canon of knowledge “often referred to as Plato to NATO,” and its subject matter is often stretched to include subjects from outside the political realm such as cultural artefact and events from social and even natural science (Dryzek, Honig and Phillips, 2008: p.

¹ See for example Andrew Vincent *The Nature of Political Theory*, which was published in 2007 in an attempt to detail the evolution of the discipline during the 20th century. Vincent offers a full length work on the nature, domains and practices of the discipline, which are usually only briefly tackled in the introductory chapters of the different books on political theory of the discipline during the 20th century.

5). This dilemma is clearly expressed in the description by Dryzek, Honig and Phillips of political theory as an

interdisciplinary endeavour whose centre of gravity lies at the humanities end of the happily still undisciplined discipline of political science. Its traditions, approaches and styles vary, but the field is united by a commitment to theorize, critique, and diagnose the norms, practices, and organization of political action in the past and present, in our own places and elsewhere...Political theory is located at one remove from this quantitative vs. qualitative debate, sitting somewhere between the distanced universals of normative philosophy, and the empirical world of politics (2008: p. 4-5).

Accordingly, aiming to set a clear cut definition of the discipline is a daunting task that can even alienate and exclude projects that should otherwise be part of the discipline.

Similarly, the attempt to categorize the activities within this diverse field is problematic and requires diverse ways of classification that rely on different conceptions of political theory². For example, one way of categorizing political theory projects, albeit controversial, is to differentiate between ‘scholarly’ and ‘engaged’ political theory. The former type is interested in how we understand something (text, phenomenon, etc.) while the latter is interested in exploring to what extent a specific idea or set of ideas are right and suitable for our lives (March, 2009: p. 534). A different way of classifying political theory is to differentiate between traditional attempts that explore the history of political thought and formal political theory that “draws upon the example of economic theory in building up models based on procedural rules” (Heywood, 2004: p. 10).

² More details about these categories and others are to be found in March, Andrew F., What Is Comparative Political Theory?, *The Review of Politics*, 71, 2009, Glaser, William A. The Types and Uses of Political Theory, *Social Research*, Vol. 22, No. 3 (Autumn 1955), Heywood, *Political Theory: an Introduction*. 3rd ed. New York: Palgrave Macmillan

Broadly following Vincent, I will briefly present five types of political theory. I will note that I do not include empirical political theory, as it is important to differentiate between political theory as theorizing about empirical phenomena and the theorizing of morally-laden political concepts. That is to say that political theory as discussed here is not primarily interested in explaining why certain political events did or did not happen, how those events were viewed by elites or non-elites, which lessons should be learned from them for foreign policy or by international organizations, etc. While some of the methods of explanatory theory, in particular those found in comparative politics, will be discussed where they are salient to comparative political theory, this thesis will not be concerned with the substance of explanatory theories per se. Rather, important for this project are 'justificatory' theories that are related to morally-laden political concepts such as justice, power, right action for individuals, etc. Generally, there is a commitment to such normative accounts among justificatory projects within political theory (Farrelly, 2004:p. ix).

Most of political theory has an irreducibly normative component – regardless of whether the theory is systematic or diagnostic in its approach, textual or cultural in its focus, analytical, critical, genealogical, or deconstructive in its method, ideal or piecemeal in its procedure, socialist, liberal or conservative in its politics (Dryzek, Honig and Phillips, 2008: p. 5).

Accordingly, the five main approaches to political theory can be summarized as follows:

- 1) *Classical Normative Political theory*: This type of political theory is presented in the conceptions of political theory by the end of the twentieth century, and

particularly from the 1970s. It is considered a generic category of political theory that “covers all theories whose primary focus has been concerned with setting standards, prescribing forms of conduct and recommending certain forms of life and institutional structures” (Vincent, 2007: p. 23). The basic idea behind this category is to point out the continuous nature of political theorizing since the ancient Greek.

There has been a clear commitment within this conception of political theory to common themes and universal concerns with the ‘polis’ or the state. Thus, theories falling within this type of political theorizing tend to describe the state of affairs, explain what ends in political life we need to work to achieve and prescribe how we may achieve these ends. Accordingly, common themes within this category include the nature of public institutions, significance of community life, realization and conception of the good, etc. Thus, themes do vary widely but can be seen to focus on three main issues. The first is *‘order and nature’*, which identifies the divine and pre-established order we live in and how to regulate political life accordingly. Second is *‘empiricism’*, which focuses on the human will and separates reason from faith by relying on empirical knowledge. Third is *‘historical reason’*, which is concerned with the relation between life and sociological and historical circumstances (Vincent, 2007: pp. 22-23).

- 2) *Institutional Political Theory*: This type of political theory is concerned with the meaning and practice of the state or ‘staatslehre’; meaning to learn about the state both empirically and constitutionally, as well as about its normative

ideals. Political theory projects falling under this category typically encompass historical, legal and philosophical dimensions (Vincent, 2007: p. 28).

It is worth pointing out that the concern with the state was crucial in classical normative political theory, and that this tradition focused on the state as a unifying theme. However, institutionalism was subject to criticism in the 1920 due to the rise of empiricism and the call for separation of empirical and normative aspects. The argument for this dichotomy was that theorizing about the state requires empirical rather than normative studies. Accordingly, institutional political theory was weakened until the 1980s when it revived in the form of 'new institutionalism' (Vincent, 2007: pp. 29-36).

- 3) *Historical Political Theory*: within this conception, theory is considered as an ongoing/historical contribution. In other words, political theory is viewed as an ongoing dialogue or conversation that extends through history. The complexity of this conception, as can be expected, lies in the understanding of what history is. There are various methods to understand history and its domain is wide and diverse (Vincent, 2007: p. 37).
- 4) *Ideological Political Theory*: Ideology within this context is understood to be the 'truth' about political theory. Hence, it engages practically in the political domain to change perception and construct public policy. It is directly concerned with political action as "ideology draws our attention, minimally, to one important dimension of theory — the practical, engaged dimension —

which can occasionally and unexpectedly get ignored in the sheer welter of abstract theorizing” (Vincent, 2007: p. 65).

- 5) *Justificatory Normative Political Theory*: This has been the most dominant stance in political theory since the second half of the 20th century and in many ways overlaps with (Classical) Normative Political Theory. According to Vincent, the belief in concepts like freedom, equality, justice, etc. is not an ideological orientation but rather a conviction stemming from good justificatory reasons (Vincent, 2007: p. 73). Standard theories of distributive justice, such as the ones discussed in this thesis, would generally fall under this category. They are concerned with identifying morally defensible principles regarding the fair distribution of burdens and benefits amongst a set of persons who usually are understood to share political, economic and other kinds of institutions.

In spite of these various approaches to political theory and the immensity and diversity of the discipline, contextualizing a project that examines Islamic distributive justice within it remains surprisingly challenging. Although Islamic distributive justice is mainly concerned with theorizing a normative and morally-laden political issue, it still cannot be easily integrated into the discipline. According to the discipline’s critics, alienation of some projects (such as Islamic distributive justice) may be attributed to a couple of concerns regarding the inadequacy of the discipline’s canon and its limited ability to address a few challenges of the 21st century.

The first concern, and one of utmost salience to this project, is the discipline’s reliance on an inadequate canon of work. The political theory canon consists

primarily of the Western political thought, or as Ball sarcastically describes it, a “‘canon’ of works by ‘dead white men’ whose ideas are pickled and preserved” (1995: pp. 3-4). In other words, the discipline relies “on an established canon of ‘great texts’ by ‘great authors’” that are traditionally white males of European origins (Carver, 2004: p. 1). Thus, there is a strong critique of the Eurocentric focus of the political theory canon by theorists of different backgrounds and interests such as feminists, cultural theorists and non-Western theorists. Critics study texts from the canon and highlight “their andocentric and Eurocentric content and limitations” (Carver, 2004: p. 2). Such limitations entail the exclusion and marginalization of all that is non-male, non-white and non-European. In other words, it is said to alienate women and non European peoples, cultures and perspectives. This argument is used against political theory by both empirical and analytical political theorists. The former group claims that the canon is impeding the development of genuinely scientific theories, while the latter group argues that the inadequacy of the canon is distracting our thinking for ourselves about contemporary issues of our modern times (Ball, 1995: p. 4).

The second concern with regards to political theory is how to address changes attributed to globalization, such as the need for coexistence between different identities. The uncertainty created by the openness and rapid change associated with globalization has led to a widespread fear over loss of identity. Consequently, in our search for stability we tend to hold on to ‘stable identities’ (usually with roots in our religion, tradition, etc.) that are usually politicised by being contrasted with other different identities. This tension between difference and identity has always been a part of the political, and conflicts arising thereof become in many instances violent. Thus, there is an ongoing need for optimising

the relationship and coexistence between different identities. There is an urgent need to coexist and to handle difference “be it of an ethnic, racial, engendered, cultural, religious, political, ideological or any other nature” (Bleiker, 2004: p. 124). Accordingly, political theory is hindered by its currently Eurocentric and limited canon. Widening its canon to include non Western perspectives is a necessity for political theory to be able to address these changes and challenges.

The task here consists of conceptualizing otherness within and across national boundaries in a way that optimizes possibilities for respectful, or at least nonviolent, relationships between identity and difference (Bleiker, 2004: pp. 124-125).

1.2. Approaches to Comparative Political Theory

The foundational premise for the establishment of comparative political theory is that it fills the important gap in the essentially ethnocentric, or rather Eurocentric, canon of political theory, as explained earlier, by identifying similarities and meeting points between cultures without giving in to stereotypical images (Bleiker, 2004: p. 138). It is about understanding across philosophical and political discontinuities, and not only across borders. Accordingly, in this section I will examine the approaches of three of the most prominent theorists that called for CPT as either a new sub-discipline in political theory or as a separate one. The aim here is to demonstrate ways in which these theorists -- Fred Dallmayr, Roxanne Euben and Andrew March -- have attempted to identify the gap that CPT is intended to fill, and how they have defended their claims about the best approaches to fill it.

1.2.1. Fred Dallmayr - a Gadamerian hermeneutical approach

Dallmayr is regarded as the founder of CPT not only for his inauguration of the discipline in 1997, as I will explain in this section, but also for his proposal to adopt a dialogical approach in CPT. For him, to achieve the all crucial dialogue with the 'other' requires that all parties engage into a mutual learning process. Hence, his main contribution in CPT is his own practice and work that entail hermeneutical dialogue and the fusion of different traditions, as shall be described below.

Dallmayr called for the establishment of comparative political theory as a separate discipline, as he was sceptical of the attentiveness of political theory to contemporary issues. He identified two main factors that necessitate the establishment of CPT. The first factor is the unprecedented and ongoing process of globalization that resulted in the geographic reshaping of the world. Geographical boundaries have declined in importance and human lives have become more and more affected by the forces of globalization. He argues that not only radical and shocking events like 9/11, ethnic cleansing and genocide affect the global community, but also economic globalization, in particular the rise of global markets, technological advancements, etc. All these factors take the political life into a global context that needs to be taken into consideration when theorizing it. Hence, a new mode of theorizing that can reflect the geographical proximity that distinguishes our world today is needed (2004: pp. 249-250).

The second reason Dallmayr sees for situating CPT as a separate discipline is the limitation of the academic Western intellectual discourse to a Eurocentric canon. Dallmayr believes that the intellectual canon remains ironically

inadequate in spite of its attempt to gain insight into a universal political life that is affected by globalization. While disciplines like anthropology, cultural studies, post colonial studies, religious studies, etc. have to a large extent kept pace with the global changes, political theory in the West continued to rely on the western intellectual canon (2004) “with occasional recent concessions to strands of feminism and multiculturalism as found in western societies” (Dallmayr, 1997: p. 421).

Dallmayr also sceptically acknowledges the attempts within comparative politics to become more attentive to contemporary developments and to fill the gap in the academic discourse. He frequently addresses the shortfalls of comparative research projects caused by the existing universal approach. He explains that cross-culture comparative theorists should in practice be better universalists than other theorists, because they include and take into consideration multiple cultures and ideologies (2004: p. 253). However, the hegemonic influence of the universal approach is hindering theorists and is preventing non-western theorizing from being genuinely inclusive. For Dallmayr, comparative politics is too empirical, descriptive and governed by formal models of analysis. The explanatory models developed by political comparativists are derived from key features of the modern Western political structure. Features like secular nation state, separation of power, etc. are considered the yardstick according to which non-western societies and systems are being measured (1997: p. 421).

Consequently, the hegemonic influence of the universal approach is said to be negatively affecting comparative research in two ways. First, political theorizing is attempting to come to terms with western political ideas. It is

concerned with the universalisation of the western culture rather than the inclusion of different ones. It is portraying a global picture of the world based on the Western perspective (Dallmayr, 2004: p. 254), thereby transforming comparative research into a cataloguing of diversity rather than focusing on its broader goal of examining a problem or question that can be better understood through different examples from different cultures (Dallmayr, 1997: p. 423). Second, the Western critique of non-Western texts and ideas proceeds from a presumed self-righteousness or hegemonic arrogance and not from a shared engagement and willingness to engage in a mutually transforming learning process (Dallmayr, 2004: p. 254). Such a mode of study, according to Dallmayr, can only allow for the assessment of the relative proximity or non-proximity of non-western societies to the established western model (1997: pp. 421-422).

Hence, his cynical stance from political theory's ability to address the non-West as well as his sceptical view of the different attempts outside of political theory prompted him to call for the launch of CPT as a new field of academic enquiry. Even though other remarkable and important CPT work, like Parel and Keith's *Comparative Political Philosophy: Studies under the Upas tree* (1992), have been published before his call for the discipline's inauguration, this was the first open and explicit statement of this kind. In his introduction to a special issue of *The Review of Politics* published during the summer of 1997, Dallmayr explained that the issue "is meant to inaugurate or help launch a field of inquiry which is either nonexistent or at most fledgling and embryonic in contemporary academia" (1997: p. 421). He elaborated that CPT is an inquiry and mode of theorizing that deliberately and notably reflects on the political life outside of geographical restrictions and within the process of globalization (1997: p. 421).

Dallmayr, therefore, has a unique understanding of CPT as a mode of theorizing that sheds the light on the status and meaning of political life within a global arena (1997: p. 421). For him, CPT detaches itself from formal theory that transcends diverse phenomena to a universal law “revealing its debt to the universalist claims of the European Enlightenment” (2004: p. 249) and allows for the emergence of a global society that is not monopolized by or limited to one dominant part of the world population (2004: p. 249). It is a new outlook that is capable of capturing the human diversity without considering any one culture, ideology, region or civilization as superior or ideal and is dedicated to regard non-Western ideas with their complexities and diversity in the same manner like Western ideas. Hence, CPT complements, transgresses and unsettles the established fields of comparative politics and political theory and allows for theorists to accept a more humble position as co-participants with the non-West in search for the truth that none of the cultures can claim (Dallmayr, 1997: p. 422).

CPT, for Dallmayr, is a mode of theorizing that calls for familiarity with different cultures as serving the highest good as represented in Aristotle’s concept. In other words, it is an inquiry undertaken for its own sake and is serving the progression of the good, because it is virtuous to know the other. To be living in a world full of complexities, it is advantageous to enquire and learn more about the people we share our world with. However, it is important to assess this point cautiously, for this good represented in knowledge can be utilized for the pursuit of self interest leading to selfishness. Knowledge becomes a selfish act if the other is not studied for the sake of genuine learning but for the purpose of gaining strategic advantage and increasing one’s sense of superiority. A clear example of such selfish form of comparative inquiry is ‘orientalism’, which corresponded to

such policy of domination. The intellectual agenda was associated with political selfish ambitions presented in imperialism and colonialism (2009).

Thus, to experience a balance between self interest and the interest of others, the 'other' in Dallmayr's approach is studied not only, or even primarily, in his/her difference, but in a search for the common and similarities in humanity. According to Dallmayr, the end served is the 'moral-universal good' and the attainment of truly universal principles of human conduct. This level of the good presents itself clearly in the very prominent example of International Law. Another example that is often given by Dallmayr is 'the golden rule' and how it can virtually be found in every culture. This can be extended to many maxims and principles (2009).

However, existing commonalities among different cultures is not the sole focus of CPT as it also examines why and how they differ, which serves the 'ethically transformative good'. This higher level of the good, as Dallmayr explains, requires the descent to a 'thick' fabric of CPT. This understanding can only be acquired through the exploration and immersion into the 'other's' distinct life style. This experience allows us to understand the limits as well as the particularity of our own tradition and the special character of our customs and preferences. This awareness in its turn reduces our claim of superiority, enhances our modesty and leads to a higher level of tolerance and genuine recognition of the other (2009).

For CPT to serve such an understanding of the 'other', Dallmayr adopts a dialogical approach by which he transfers the application of the Gadamerian hermeneutical dialogue from reading texts to cross-cultural and/or inter-cultural dialogue (2009: p. 24). In hermeneutical dialogue, the reader (the self) when

approaching the text (the other) brings her personal 'fore-meaning' of the whole then triggers an ongoing adjustment of parts and whole to reach a better understanding of the meaning through applying her understanding to her own situation. One questions what she reads and applies what she reads to her own background and her own frame of reference. However, both frames of reference may not correspond, so one has to open his frame of reference in a broader way to come closer to the meaning of the text or the other. Within this process, understanding is no longer a method through which an enquiry targets a given object. "Rather, it means being situated in a temporal happening, in an ongoing 'process of tradition'" (Dallmayr, 2009bb: p. 29). Through this process, the self brings in her own pre-understanding and exposes it to revision in an interactive dialogical process; called the 'hermeneutical circle' (Dallmayr, 2009bb: p. 31).

As one should note, this circle is not a closed sphere permitting only an empty turning 'round and round,' but an open circle fostering a learning process or a steady amelioration and transformation of understanding...Seen in this light, the circle is not 'formal in nature' but ontological; it is 'neither subjective nor objective' but rather pinpoints understanding as 'the interplay of the movement of tradition and the movement of the interpreter.' The anticipation of meaning that governs the interpreter's understanding of a text is 'not an act of subjectivity' but proceeds from 'the commonality linking us with the tradition.' But this commonality, Gadamer adds, is never finished but in 'a constant process of formation (Bildung).' (Dallmayr, 2009bb: p. 28)

Associated with the hermeneutical circle is the 'fusion of horizons', an important concept that differentiates dialogical hermeneutics from appropriation, where one recovers the other's meaning (Shapcott, 2011: p. 230). The fusion of horizons requires a moment of application during which one applies the situation of the other to his own. Or better, one fuses his own situation with the horizon of

the other through application. Therefore, truths in CPT using hermeneutical dialogue cannot be fixed but “rather mediated through the realm of application, or practice. Thus universals and particulars are mutually entwined” (Shapcott, 2011: p. 231).

However, an important critique to Dallmayr’s hermeneutical approach to CPT is based on the ‘incommensurability’ thereof. For example, the ‘clash of civilizations’ theory, attributed to Samuel Huntington, emphasises the complexities of cultures and their internal diversity and accordingly rejects the possibility of cross-cultural hermeneutics. It argues that such a dialogue is deemed impossible due to the incompatibility between cultures that come from different backgrounds (Dallmayr, 2009b: p. 24).

Dallmayr, although he acknowledges the difficulties encountered due to differences, answers his critics by proposing two main prerequisites for the success of the dialogue. The first precondition requires the removal of inequalities between the participants in the dialogue, which could prevent a successful dialogue from taking place. If participants are not on the same level, the stronger participant will dominate the dialogue and the outcome. Hence, it is crucial to establish a rough equality between the participants. The second precondition is the existence of ‘good will’ to dialogue between the participants. It is an ethical foundation to dialogue, which will allow the process to start by a will to engage in the dialogue. Much of the critique that has been targeting dialogue is based on the absence of good will. Hence, it is crucial to work on the existence of virtue ethics before the engagement into hermeneutical dialogue (2011).

For Dallmayr, then, the aim is not to reach a bland consensus but to allow for a progressive learning process involving transformation. It is a process that

neither allows for the attrition of one's tradition nor the subjugation of the other (Shapcott, 2011: 231). Rather it is aiming at a mutual understanding, recognition and appreciation of plurality and cultural differences. Hence, in an age of globalization, the significance of hermeneutical understanding is not in reaching a global uniformity but rather a form of unity in diversity. It reaches one level beyond toleration. As Dallmayr puts it, the 'I don't like you but tolerate you' attitude is not enough. One needs to reach appreciation, recognition and respect³ (Dallmayr, 2011).

Dallmayr's approach is crucial for my project, as the thesis will highlight an important similarity between Western thought on distributive justice and the practice of Islamic finance. The examination of Islamic finance, as will be explained in the next chapters, reveals the practical existence of a recently coined distributive justice principle. In other words, a principle which is relatively a new notion in the literature on distributive justice, appears to have been operating and regulating Islamic finance practice for hundreds of years. Hence, in an attempt to examine Islamic distributive justice as a set of practices within its own tradition, a clear similarity with Western ideas will emerge.

As will be explained in depth in my interpretation of Islamic finance practice, the practice appears to be guided by two different principles that seem in the first instance contradictory: luck egalitarianism and sufficiency. Both principles are popular distributive principles, and I will explain them in depth in several sections in the rest of this thesis. However, the way both principles operate alongside each other resemble a principle that is only recently coined in

³ As Dallmayr translates Goethe's words "*Toleranz ist nicht genug – Anerkennung ist gefordert*" English translation: "Toleration is not sufficient, recognition is required".

distributive justice literature. As sufficiency is guiding the practice to temper extreme consequences of luck egalitarianism, the practice resembles a practical example of what was recently coined in distributive justice literature as sufficiency-constrained luck egalitarian principle. This commonality between a non-western practice that has been operating and developing for over 1400 years and a relatively new concept of a combination of both principles is an important contribution to the distributive justice literature.

1.2.2. Roxanne Euben – A postcolonial travel

Similar to Dallmayr, Euben is an eminent comparative political theorist who is regarded as one of the key contributors to the shaping of the discipline. Her full length, first of its kind, book, *Enemy in the Mirror*, is a work of CPT that broke the boundaries in presenting the possibility of handling ideas and thoughts of radical Islamic thinkers and comparing them to contemporary western thoughts. Although she agrees with Dallmayr on the importance of CPT, Euben, as I will explain in the coming paragraphs, differs with him with regards to her conception of political theory, her approach to CPT as well as the boundaries of the subject matter of CPT.

Unlike Dallmayr, whose justification for a call for CPT is primarily based on the shortcomings of political theory and comparative politics, Euben openly acknowledges and believes in the ability of political theory to progress to face contemporary events. This is not to say that Euben did not clearly highlight that political theory is produced by, associated with and sometimes even limited to Western civilization. However, she complements her critique of political theory

with her expressed confidence that the discipline is still well equipped to offer both substantive and methodological perception of the world from the other side. She sees political theory as an inherently comparative discipline and that it always has been. For her, political theory is comparative by nature, because comparison with other ways of living allows for the coherence and naturalness of our own (2002: pp. 25-26). Since political theory is inherently comparative, it contains the resources for understanding other traditions. As Euben explains,

the Western philosophical tradition contains within itself the methodological resources for problematizing Western parochialism, even or especially in its most universalizing forms; decentering what political theorist Fred Dallmayr aptly refers to as the Western "conceit of superiority"; and bridging cultural and linguistic divides of meaning without erasing them (2002: p. 25).

These abilities present themselves in political theorizing of issues like deterritorialization of democracy, postcolonial cosmopolitanism, etc (Euben: 2002: p. 25).

Accordingly, and fundamentally for this thesis, CPT for Euben is designed as a project that transforms the focus of existing and accepted debates of political theory from Western dilemmas to human concerns through the integration of non-western perspectives into these debates. She sees it "as the attempt to ask questions about the nature and value of politics in a variety of cultural and historical context" (2002: p. 25). It is the type of political theorizing that entails open investigations of coexisting problems and seeks to ask questions rather than search for specific answers. Hence, CPT for Euben is an explicit argument that knowledge about the political outside the western canon of political thought is noteworthy, and a claim of the possibility of conversation between disparate and

fundamentally different cultures despite moral and political disagreement (Euben, 2002: pp. 25-26).

Thus, Euben introduces distance and travel as her preferred approach for CPT. Travel in this context signifies not only the important physical movement across lands and cultures, but also an epistemological journey to unknown worlds (2004: pp. 148-149). She acknowledges the fact that the connection between travel and knowledge is not usual, yet she also emphasises that theorizing entails a journey to a different perspective that allows us to see the larger patterns and connections that inform our lives as well as the lives of others. These journeys not only pave the way for better attentiveness of the world of the other but also allow for a significant distance from the familiar (2004: p. 149).

Relevant to Euben's discussion of the distance that the theorists need to attain from the familiar is the blurring of theoretical boundaries that resulted from globalization, modernization and imperialism. Globalization not only declined the importance of geographical boundaries, but more importantly it paved the way for the further proliferation of Western lifestyles, thereby maintaining and exacerbating inequalities. Hence, the most important challenge of globalization as identified by Euben is the identification of authentic non-Western traditions. Non-Western traditions are surrounded by Western paradigms, making it more and more difficult to define distinguishable non-Western perspective. Euben emphasises that this challenge is neither due to superiority of the West, nor due to complete isolation between the West and non-West before colonialism. However, the hybridity between the West and non-West is a result of a postcolonial world that is characterized by globalization (Euben, 2002: pp. 27-28).

As boundaries between the West and non-West begin to blur, non-Western traditions start to appear as examples of cultural amalgamation of Western and non-Western traditions. Hence, she explains that distinguishing between ‘us’ and ‘them’ is very difficult in an increasingly globalized world, and this difficulty should not be mistaken for sameness of Western and non-Western perspectives or more importantly for non-existence of non-Western perspectives. Consequently, this difficulty and increasing hybridity requires CPT to take “these borders as appropriate subjects of analysis rather than a premises of it” (2002: pp. 27-28).

This hybridity creates two ‘methodological implications’ for CPT according to Euben. First, CPT is becoming essentially linked to historicizing the meaning of modernity and is required to be attentive to those factors that are at times the product of colonialism and globalization yet falsely appear to be essential to non-Western traditions. Second, symptoms of the globalized world include Colonialism, which was a fundamental step in the construction of modern societies in the metropolises as well as the colonies. Consequently, the west consists of diverse and maybe even opposing ethnic, religious and racial identities. Hence, “borders stopped marking the limits where politics ends because the community ends. Geographical location-itself often contingent, fluctuating, and transient-is hardly coterminous with the political, cultural, religious, and ethnic identities of those who live there (2002: pp. 47-47-8).

Euben’s understanding of CPT is fundamental for this project, as I am aiming to present research that will attract attention from distributive justice theorists, thereby introducing principles of justice embedded in the practices of Islamic finance to the overall debate of distributive justice in political theory.

Minimal is the work of political theory and CPT that integrates the Islamic conception of distributive justice into this extensive debate. As explained in the introduction, this is partially the result of the absence of a systemic conception of the notion in Islamic economic and finance literature. Thus, this thesis is introducing a systemic Islamic conception of distributive justice as a CPT project that presents a non-Western perspective on an important normative issue.

1.2.3. Andrew March – Justificatory CPT

Similar to Euben, who integrates travel and distance in her approach to emphasise the blur in theoretical boundaries between the West and non-West, March calls for CPT to require a strong level of alienation between the West and those traditions that are being studied. He calls for a CPT that addresses first order of normative argumentation from traditions that extend beyond mere difference from the Western culture to a status of alienation. His approach relies on the clear demarcation between those Western and non-Western traditions, thinkers and ideas examined in CPT. He introduces the justificatory CPT account, which fruitfully contributes to the overall discipline of political theory and is salient for the purpose of this thesis as shall be discussed later.

Although he bases his CPT approach on an important critique of the justifications typically used to call for CPT, March does not reject the call for the discipline/subdiscipline. March acknowledges how important comparative research questions can easily be asked in political theory. However, his concern with regards to CPT is how it can be “comparative in a meaningful and rigorous way” (2009: p. 536). For him this is a particularly important concern as, like

Euben, he believes that political theory is already comparative by nature. This is the case either because it is always interesting to compare Western traditions to non-western ones or because the wide and ill-defined nature of political theory means that much of the work associated with it is produced in other disciplines where comparative methods are already well established such as sociology, law, ethics, etc.

March explains that comparison projects require two main assumptions, which are usually not given full attention in political theory in the west. The first assumption is to have a 'specific common object of inquiry', in the sense that there is a specific issue or problem that will benefit from a comparison between different cases. This comparison is thus used as a method for a better understanding of the issue. The second assumption is 'distinction' of the tradition that will be examined. There need to be distinct entities that can easily be distinguished from each other (2009: p. 537). However, most of the comparative projects in the West do not highlight the underlying importance of studying non-Western traditions and do not associate the comparison to specific areas of common concern. Within this context he identifies the main reasons that are given for the call for CPT as follows:

- *Epistemic Justification*: From this viewpoint, CPT is advocated in order to enrich the Western canon with non-Western experiences and practices. Universalism, as sought after by political theorists, cannot be attained without the inclusion of the non-Western perspectives into the discipline's canon. Advocates of CPT claim that this inclusion of non Western perspectives is crucial for filling a gap in the literature that neglects much of what is taking place outside of the

Western tradition. Some even expand this argument to claim that the discipline is missing out on much of what is going on outside of the Western tradition and which could entail substantive ethical knowledge from which much could be learned (2009: pp. 538-540).

- *Critical-Transformative*: This claim is an expansion of the epistemological justification, as it calls for CPT as an approach to prevent the hegemonic power of the Western perspective over the non-West. It is a justification connected to the postcolonial claim that Western perspectives have hegemonic influence on the non-Western traditions and thus there is a need for CPT to counter-combat this influence. Critical transformative justification aims to transform political theory by exploring how the non-west is theorizing the political. This shall allow the non-West to challenge, offer alternatives and even point failures of Western views and ideas (2009: pp. 540-541).
- *Explanatory-Interpretive*: This is the claim that CPT highlights the political problems in common between the West and non-West. It allows for more comprehensive theorizing in different contexts and requires textual interpretation. As March puts it, justification for CPT is that “studying non-Western perspectives illuminates common problems at the intersection of political theory and comparative politics” (2009: p. 541).
- *Rehabilitative Justification*: This seeks to identify similarities between Western and non-Western perspectives, thereby restoring the fact that any tradition is not as alien, irrational or irrelevant to the other

traditions as it may be presumed. As March explains, “the point here is not so much to justify a given norm or practice... but to rehabilitate a non-Western tradition or trend by showing that it is less alien or hostile than its crudest opponents charge” (2009: p. 542). This justification is particularly advocated when Islamic or Chinese traditions are examined. It invokes a sense of appreciation to and familiarity with these traditions.

- *Global-Democratic*: This is the claim that CPT is fundamental for achieving the desired universalism during a time of heightened globalization. Theorizing in a globalized world requires an equal weight to all theoretical frameworks and perspectives. This shall be the only way to achieve what Dallmayr calls “planetary political philosophy” (2009: p. 540).

Not entirely satisfied with the justifications given for the call for CPT, March presents his own approach of a justificatory CPT. For March, CPT needs to be distinguishable from anthropology and area studies. Hence, it needs to reflect more than a mere interest and scholarship in the non-Western tradition. He acknowledges that the Western canon of political theory is undeniably inadequate when it comes to the representation of non-Western traditions, perspectives and thinkers, and that a deeper understanding and reflection of the non-Western political thought is needed to enhance the canon. However, CPT needs to show more than mere interest in non-western traditions that are not represented in the Western academic canon. He believes that a simple justification of a cross-cultural

understanding or a decentralisation of the Western canon will only produce zoological CPT work (2009: pp. 547-548).

Alternatively, March introduces what he calls 'justificatory CPT' as a type of activity that can engage the interest of non-comparativists and theorists who have no particular interest in the specific tradition under study. It takes the traditional idea of CPT as a discipline one step further, by requiring an important 'first order' of normative argumentation or explanation to be present in order to justify the comparison. In other words, cross-cultural dialogue should not be merely treated as Dallamyr uses the hermeneutical approach, to deepen our understanding, tolerance of and respect for the other. Rather, cross-cultural dialogue should serve as a means to a more important end of identifying first-order moral argumentation (2009: pp. 549-550). To illustrate, March explains that Ghandi's views on tolerance and civil disobedience are often "invoked as bearing an independent normative force outside of their original cultural context" (2009: p. 540).

However, March warns that although first order normative explanations from non Western traditions provide genuine justifications for the study of the tradition and stimulate the interest of theorists whose primary scholarly interests may not include the tradition, they also produce political value conflicts. He explains that through highlighting differences between traditions, CPT directs attention to important normative disputes. These disputes create a dilemma; if CPT is aiming to clarify the distinction between the Western and non-Western traditions and demarcate the boundaries between them, then in case of value conflict no tradition should be faulted on the grounds of the perspectives of 'the

other'. In other words, any tradition should be evaluated and examined in its own right. The fact that they challenge or disagree with Western tradition should not be a justification for acceptance as correct. As a matter of fact some non-Western, or third world, perspectives regarding neoliberal ideology may be faulty and may be forms of subaltern fault consciousness. For example CPT projects can highlight the non-Western disagreement and critique of Western imperialism. This in essence represents a genuine first order moral argument. However, what if this argumentation fails to stand against the Western tradition? Should this happen, will it implicitly justify imperialism? (2009: pp. 550-551).

To overcome such challenges, March requires CPT to look beyond mere differences between the traditions to a deeper factor that allows for alienation. This requirement distinguishes his approach towards CPT from other conventional comparative political theorists. For March, non-Western traditions have to remain alien to the west no matter how long and how deeply they engage with it. Alienation in this respect does not mean unfamiliarity, as March acknowledges the fact that engagement can lead to understanding, appreciation, acceptance, toleration and respect. However, alienation should be understood in the sense that the boundaries between the traditions remain clear in order to alienate 'us' from 'them' (2009: 552). March explains that for a tradition, thinker, perspective, etc. to be 'alien' does not indicate mere difference. Alienation requires "something that seals it from us, so that it will remain alien to us no matter how long we engage with it" (2009: p. 553).

Accordingly, March explains that religious doctrines are the most suitable entities for CPT projects, especially in an era where boundaries between traditions have become blurred with imperialism and globalization. Hybridity

between the west and non-west has reached a very deep level, making the distinct differentiation between the traditions continuously more difficult. However, particularly religious political thought entails the best entities that clearly mark the boundaries between traditions, or as March puts it, “religious doctrine best accounts for the comparative element in CPT” (2009: p. 552) as they help in setting the boundaries between traditions without ‘patronizing non-Western thinkers’.

To clarify, when examining religious doctrines, boundaries create a sense of alienation that arises from the distinct semiautonomous application of reason. This alienation allows for a clear demarcation between traditions no matter what level of appreciation is reached. Alienation in this respect comes not only due to conflicting value commitments but more importantly from incompatible ‘source of authority’. In other words, the adherents of each tradition do not regard the adherents of the other tradition as part or members of a common community of moral argumentation (March, 2009: pp. 553-554).

Accordingly, the distinctiveness of the religious traditions combined with the claim of genuine first order argumentation results in moral disagreement. For this moral disagreement to represent an important moral issue for both the west and non-west it needs to revolve around important questions of common concerns. Issues like justice, war, etc. offer cases of moral values that matter between multiple and conflicting systematic doctrinal systems (March, 2009: p. 558).

Accordingly, the examination of the normative implications of the conflict should be the greater goal for CPT work. CPT should aim at demystifying and interpreting moral disagreements within multiple moral traditions. Therefore, the

best justificatory comparative political theorists will be experts in multiple traditions, who have something to say about moral conflicts from different moral perspectives: “A post colonial argument that uses epistemically distinct non-western experiences, perspectives or views to show Westerners that they ought to change their minds about their present normative commitments or beliefs” (March, 2009: pp. 561-562).

March’s CPT approach is criticised for the many valuable and important projects that will be excluded due to the alienation requirement, or the doctrinal orthodoxy he emphasise. His CPT proposal highlights the “deeply moral disagreement between highly distinct modes of political thought, focusing on the most orthodox and ideal-type representatives across this divide” (Godrej, 2009: 568). As a result to this centrality of doctrinal orthodoxy, many non-ideal thinkers will be neglected and excluded. For example thinkers such as Al-Qaradawi and Al Ghazali can be included in the overall CPT project, as “they represent the authoritative center of orthodox Islamic theology and jurisprudence” (Godrej, 2009, 568), yet great thinkers like Ibn Khaldun and Al Farabi are not. Accordingly, the justificatory approach proposed by March is criticised for its limitation and narrow focus.

In spite of the critique addressed to March’s CPT proposal, it remains salient to this project, due to the doctrinal orthodoxy of Islamic finance practice. The relevance of March’s understanding of CPT will be explained in depth in the next section, which is primarily concerned with contextualizing Islamic distributive justice within the overall CPT project.

1.3. Islamic Distributive Justice: A CPT Project

In this section I will contextualize my project within the CPT and illustrate its relevance to Dallmayr, Euben and March's proposals for CPT. March believes that the comparison aspect in CPT as it is now does not reflect an approach or method, but rather a research interest and substantive commitment. It no longer refers to an approach but rather to a commitment to the study of non-western cultures as a means to enrich the Eurocentric political theory culture. This justification, according to March, does not identify the benefits of this inclusion and comparison (2009: p. 537). Indeed, in many instances the specific justification behind CPT work is quite unclear. This may be particularly true with regards to Dallmayr's work, where the study and understanding of traditions and perspectives of the non-West is regarded as a target in itself, and knowledge about the non-West is considered a measure of the good of CPT. Although important and indeed serving the good, this justification does not go beyond regarding study of the non-West as a target in itself.

However, apart from Dallmayr's philosophical argument for the inclusion of the non-West in political theorizing, Euben for example highlights the importance of studying common issues in the non-Western context and introducing these non-Western perspectives into common and existing debates. This, I believe, is a fundamental justification for the inclusion of non-Western perspectives in political theorizing. Normative issues such as justice, freedom, equality, etc. are values debated in western and non-western cultures alike, as March noted. However, the way these issues are perceived, debated, addressed, aspired for and achieved differ according to the culture and tradition. Thus,

studying these issues in non-Western contexts and introducing these studies into the existing debate will enhance our understanding and analysis of these values. It is, therefore, quite evident in Euben's work that the study of the non-West is a means to a better understanding of the political. She clearly explains that the call for CPT is in itself a claim that there is much to learn from the long forgotten political thought, traditions, and perspectives of the non-West. Moreover, the concept of distance and travel assumes that the study of non-Western texts or traditions allows us to understand the tradition we are familiar with better through asking more questions about the political life.

Accordingly, CPT offers different perspectives regarding issues of interest. This challenges the Western knowledge and pushes its existing debates further. The mere inclusion of the ideas, perspectives and thoughts of the non-West leads to better understanding of specific political issues at stake. Ideas are not merely different because they originated in different places, but because the perspectives and traditions are different. Thus, these differences in their turn expand our knowledge of the political issues under investigation. Shedding light on different traditions, even without pointing out failures, can challenge existing and accepted ideas and arguments.

Therefore, this justification is very important for the call for CPT, and is fundamental for studying Islamic distributive justice. Examining distributive justice in an Islamic context and introducing it to the rich debate taking place in political theory on distributive justice allows for a more comprehensive understanding of distributive justice as a value. Understanding how practices of Islamic finance aim to achieve distributive justice enriches our knowledge about

how principles of justice guide practice and how universal principles are at work in different philosophical contexts.

It is worth noting here, however, that the actual dialogue between the Islamic theory of distributive justice and the existing debate on distributive justice is out of the scope of this project. The main objective of the project is to develop a practice-dependent Islamic distributive justice theory. It is a project that required an intensive research in the fields of distributive justice and Islamic finance, and the outcome is a theory that is groundbreaking in both fields. Hence, it is presented as an important academic contribution not only to the Islamic finance literature, but even more importantly to distributive justice theorists, who will find a fruitful project they can engage with regarding core issues such as egalitarianism, sufficiency and practical implications of justice principles. As I explained earlier, the way Islamic finance offers an established institutional arrangement and practice that resembles a new principle that was only coined in 2007 in distributive justice literature is a genuinely important contribution. The apparent commonality between a non-western practice that has been operating for hundreds of years and a new principle in western distributive justice literature should be considered an important contribution to the existing literature.

What is worth noting here, though, is what to look for in non-Western perspectives to be able to achieve such an enrichment of the canon. While Dallmayr highlights the importance of finding the commonalities between different cultures within their own cultural particularities, March stresses the importance of differences and disagreement without superiority of either tradition. However, what should be more important, in my opinion, is to address similar issues objectively and within the particularity of their distinctive tradition. One

should not aim to find either differences or similarities. One should rather aspire to objectively understand the different culture, tradition and perspective within the context where they originate and then the comparison will automatically fall into place. Only through an objective understanding of the non-western culture we can achieve the higher good sought for by Dallmayr, the global democratic objective of March as well as the introduction of different perspectives into familiar and existing debates as aspired by Euben.

To elaborate, in my attempt to derive distributive justice principles from the practices of Islamic finance, as I will illustrate in the rest of this thesis, an important similarity seemed to be in place and a western principle appeared to be operating to regulate the practice. At first glance, this may seem like an example of the hegemonic role that the Western tradition assumes. In other words, it appears as if the project is imposing the Western perspective on a non-Western tradition. However, this should not be regarded as the case. Throughout my examination of the established Islamic finance practice it appeared to resemble a newly coined principle of distributive justice. As I will explain in the coming section as well as the rest of the thesis, Islamic finance practices that emerged longer than 1400 years ago appeared to resemble a principle of justice that was coined a decade ago. Thus, this connection between the Islamic and the western tradition was not highlighted to impose a western principle on the Islamic tradition. To the contrary, it was a remarkable point of similarity that successfully illustrated how a relatively new and limitedly used principle in the ongoing debate on distributive justice has been operating in a non-Western tradition for longer than 1400 years. It was not a hegemonic imposition of a Western principle, because the practice is interpreted in the light of the Islamic tradition, its

philosophical axioms, historical development, etc. Thus, the particularity of the context in which the practice is operating was fully integrated into the construction of the principles as I will illustrate in the rest of this thesis.

Finally, I believe that March's justificatory CPT approach is of importance to this project. As explained by March, a justificatory CPT project requires a tradition that can present a high level of alienation and prove the existence of first order of normative argumentation and this is evident in my research on Islamic distributive justice. This is not to claim that March's proposal of CPT is the most appropriate for the entire reformation of the discipline, as in deed the restriction of the discipline/subfield to doctrinal orthodoxy will limit it and may even "reinforce the substantively and methodologically Eurocentric focus of political theory" (Godrej, 2009: 567). However, in the particular case of Islamic finance practice this doctrinal orthodoxy is present as will be explained next. Therefore, I claim that the thesis represents a good example of March's account of justificatory CPT. This contextualization of my project will be further illustrated in the rest of this chapter.

'Islamic tradition' – Alienation and first order moral argumentation

There is a very clear gap in literature and research when it comes to looking at moderate Islamic traditions. Islamic fundamentalism has attracted a large amount of interest and generated research within and from outside CPT. Especially after 9/11, the danger of Islamic fundamentalism has presented itself clearly, thus becoming a priority on research agendas in many areas of political scholarship. However, it is quite unjustifiable to presume that the Islamic tradition is

associated with fundamentalism and terrorism only. There is an academic gap in addressing the moderate and non-terrorist Islamic tradition. As a matter of fact, in addressing Islamic finance practices similarities were revealed and Western principles appeared to be functioning in a non-western tradition. Such similarities that appear in comparisons between traditions are fundamental in easing the tension of difference and identity and in promoting coexistence between cultures and traditions.

Moreover, I claim that the moderate Islamic tradition is one of the best traditions that illustrate March's proposal of CPT. As a religious doctrine, the boundaries between the Islamic tradition and the Western traditions are clearly marked, thereby providing a clear example of alienation and distinction. As will be discussed in depth in chapter IV, its authoritative moral justification arises primarily from the Holy Book (the Qur'an) and the Prophet's sayings and deeds (sunnah), which are interpreted in Shariah law, the framework that regulates the Muslim's worship practices and day-to-day relationships and practices. Alienation in this respect flows in both directions. Non-Muslims, no matter how much they respect and sympathise with the Islamic tradition, still will not follow the doctrine and will remain non-adherents and non-members of the Muslim community. The doctrine is not imposing any moral authority on the non-Muslims as it is strictly addressing Muslims. Hence, the boundaries between the Islamic tradition and other western traditions remain well demarcated and the blurring thereof is almost impossible.

Furthermore, Islamic finance practice is a salient practice for this purpose as it presents itself as a manifestation of the Islamic 'first order' moral argumentation. As will be discussed in detail in chapter IV it is based on the

Islamic Shariah law and it claims to be a reflection of the Islamic tradition. Islamic financial practices prevailed predominantly in the Muslim world as prophet Muhammad was a businessman and merchant and many Muslim merchants led long distance (international) trade and managed a system for recording financial transaction. The rules regulating the Islamic financial and commercial systems are derived from Shariah, which clearly distinguishes the system's rules, standards and tools from the conventional system.

'Distributive Justice' – existing moral debate

Distributive justice is an issue of common concern both for western and non-western traditions. The distribution of benefits and burdens within any society is a core issue that reflects the level of justice, equality, welfare, freedom, social responsibility, etc. There has been extensive work in the Western tradition examining possible premises of distributive justice theories and assessing the impact of distributive systems. However, and in spite of the vast and extensive literature that tackles Islamic finance and the fact that Islamic economics is in essence a normative discipline that comprehensively tackles issues of justice, morals and ethics, there is no extensive and comprehensive work that examines the ethical foundations of Islamic finance in order to identify the principles of a theory of Islamic distributive justice.

'Practice-dependence' Approach

The practice-dependence approach, which is thoroughly addressed in chapter III, rejects abstract theorizing and aims to present theories and principles that are

constructed from, and should be regulating of, existing practices (James, 2013b: 43). This approach to moral theorizing has recently become more popular between theorists as it overcomes the critique of practice-independence approaches that detach theorizing from the existing establishment and offer abstract and ideal theories. Accordingly, I claim that adopting a practice based approach to theorizing is taking CPT a step further.

Within this context, Islamic finance practices offer a significant subject for a CPT project. Islamic finance practice has proliferated within Muslim and non-Muslim societies alike. Although it has been first launched to fulfil the financial needs of the Muslims within the Islamic world and Muslim communities in the West, it is attracting more and more non-Muslims who prefer the ethical component of Islamic finance practice over the conventional financial system. Although this will be addressed in detail in Chapter IV, what is important to highlight here is that while the geographical boundaries seem to blur, the authoritative boundaries remain solid when it comes to this practice. Thus, examining and interpreting Islamic finance practice is a crucial exercise that benefits CPT in highlighting how globalization and blurring boundaries does not necessarily affect how distinguishable the entities of comparison are. Although Islamic and conventional financial practices exist alongside each other, they remain clearly distinguishable and distinct from each other.

1.4. Conclusion

In an era of globalization, when boundaries blur and there is a pressing need for coexistence, normative political theory, in spite of its wide variety of activities

and projects, has mostly continued to rely on a Eurocentric canon that does not integrate perspectives, thoughts and thinkers of non-Western traditions. This shortfall has encouraged many theorists to call for the development of a CPT discipline that would include the study of non-Western traditions. CPT is a project that aims to take political theory one step further in addressing non-Western traditions. Justifications for CPT and approaches to conducting such work varied between theorists, yet relevant to this thesis are Dallmayr, Euben and March.

Fred Dallmayr, the founder of CPT, based his call for the launch of the field on the drawbacks of practices of political theory and the hegemonic stance that precedes the work of comparative politics. He is sceptical of the ability of political theory to address global issues and/or theorizing the political within a global context and he believes that comparative politics is dominated by Western modes of theorising that allow the West to assume a superior stance. Hence, he borrows the hermeneutical dialogue approach from Gadamer and applies it on inter-cultural and inter-civilizational relations and illustrates how the hermeneutical dialogue can lead to the fusion of horizons leading to not only toleration, but more importantly to acceptance, acknowledgement and respect between different traditions and perspectives.

Euben, unlike Dallmayr, explains how political theory is inherently comparative and holds the required tools for overcoming the challenges imposed by globalisation. She introduces the element of distance, both spatial and theoretical, that allows for asking questions about the meaning of our own traditions. She emphasises the importance of the blurring boundaries between the West and non-West that creates a difficulty in identifying distinct non-Western

traditions, and she highlights the significance of historicising modernity as a prerequisite for demarcating the boundaries between traditions.

March, on the other hand presents a ‘justificatory CPT’ project, which relies on the first order moral value of the tradition in question, a distinct separation between the tradition that reaches a level of alienation and finally the existence of the moral disagreement or value conflict. He explains how religious doctrines are considered the best examples to be used in CPT work, because no matter how sympathetic one is with them, the element of alienation is always existent.

This chapter, thus, contextualizes my thesis of a practice based Islamic distributive justice theory within the overall CPT project and illustrate the relevance of Dallmayr, Euben and March’s proposal for the discipline. The Islamic doctrine provides distinctive first order normative judgments about many issues of common concern, one of which is distributive justice. Moreover, the practice-based approach allows for an interpretation of Islamic finance practice, which exists alongside conventional financial systems. Thus, it is a good example of how geographical boundaries occur while maintaining alienation from the Western perspective.

Chapter II: Distributive Justice: A Conceptual Analysis

All for ourselves, and nothing for other people, seems, in every age of the world, to have been the vile maxim of the masters of mankind.

ADAM SMITH (1981, p. 418)

The objective of this chapter is to situate my theory of Islamic distributive justice in the context of the existing distributive justice dialogue. This is not to say that I will provide a detailed description of each and every distributive justice theory as put forward by prominent theorists such as Rawls, Nozick, Dworkin or Walzer. Rather, the aim here is to provide a conceptual analysis of what the notion of distributive justice entails. This analysis will have a twofold consequence. First, it will offer an understanding of the core elements that constitute a distributive justice theory. This will provide a general guideline for my proposed practice based Islamic distributive justice theory and shall assist in deciding whether there is indeed an identifiable and significantly distinct Islamic theory of distributive justice. Second, it will highlight how specific distributive justice theories flesh out the elements and develop their specific accounts. This will enable a systematic comparison with the account of Islamic distributive justice to be developed in this thesis.

I discuss in this chapter five main elements common to theories of distributive justice. These are (1) *site of justice* or the entities that are assessed for

being just or unjust, (2) *scope of justice* or who is included within the just distributional scheme or system (3) *principles of justice* or the rules that dictate what a just distribution entails, (4) *goods for distribution* or what exactly we need to distribute, and (5) *moral justification* or how we come to decide which principles to endorse. Each of these aspects of distributive justice theories will be treated in a discreet section of the chapter and will include relevant examples to illustrate how different theories of distributive justice have addressed the specified issue. The discussion will lay the foundation for assessing the coherence of a theory of Islamic distributive justice embedded in the practice of Islamic finance.

2.1. What Makes a Theory of Distributive Justice?

In an era marked by scarce resources, tenacious poverty and increasing inequality, it comes as no surprise that the idea of distributive justice remains at the forefront of much of political theory and political philosophy. This current academic interest in distributive justice can be traced to the 1970s, with the publication of two of the most fundamental and influential works in this field; John Rawls's *A Theory of Justice* in 1971 and Robert Nozick's *Anarchy, State and Utopia* in 1974 (Allingham, 2014: p. 4). The influence of Rawls's work in particular in reviving interest in distributive justice and in stimulating other work cannot be overestimated. Thus, his work will be frequently cited and referred to throughout this chapter.

Distributive justice will be understood as fundamentally concerned with the just allocation of goods, resources, burdens and benefits. Miller, for example,

describes it as the “fair allocation of valuable resources such as income and marks of prestige” (1992: p. 558). Accordingly, there are various conceptions of distributive justice (liberal, communitarian, libertarian..etc), different justifications for adopting them (realist, constructivist, conventionalist, etc.) and diverse criteria for distribution (sufficiency concerns, egalitarianism, self-ownership).

In general terms then, a theory of distributive justice is concerned with the meaning and nature of a just distribution (Allingham, 2014: p. 1). To this end, theories need to answer certain questions and address specific issues in order to offer comprehensive rationalizations of what just distributional schemes require. However, theorists rarely specify which issues or elements need to be present in theories of distributive justice. Theorists tend to address concept analysis very briefly and seem to be keener on presenting their theorising of the subject matter rather than conceptualising it. Thus, to map the elements of a distributive justice theory for the purpose of my project, I will primarily rely on the criteria put by Caney (2005) and Cohen (1987), as they offer the most extensive analyses of what a theory of distributive justice should entail. Both analyses agree on the importance of three main elements that need to be addressed in distributive justice theories. These are; (1) the recipients of goods, who is obligated to distribute these goods, and the entities included within the system of distribution, whether it will be humans, all creatures, collective entities, etc. (all referred to by Caney as the scope of justice), (2) the goods that require fair distribution, such as income, happiness, etc., and (3) the criterion according to which the distribution will take place, whether according to equality, desert, etc. (the principle of justice). In addition to these three elements, Cohen highlights the importance of providing

a (4) justification, or the standard according to which this criterion is chosen; (Caney, 2005: p. 103 and Cohen, 1987: p. 20-21).

Undoubtedly, all these elements are interrelated and cannot be completely separated. However, I will attempt to address all of them over the next five sections in the order that reflects the logical sequence used in offering a theory of distributive justice. For the sake of clarity of a conceptual analysis, however, I will discuss the site and scope of justice separately. I will start in the first section with a discussion on the site of justice, which theories of distributive justice, following Rawls's identification of the basic structure, tend to identify before they address the other four elements. The specification of the site of justice has a direct impact on the identification of the scope of justice, which I will discuss in the second section. In the following two sections I will address the two questions any theory of justice needs to answer; i.e. '*what* are we looking to distribute justly?' and '*how* should we distribute it?'. I will start with the 'how' in the third section, as it has a direct impact on the identification of 'what' we want to distribute, which will be addressed in the fourth section. In the final section I will discuss the moral justification of a theory of justice, or how a theory of justice can justify the principles of justice it construes.

2.2. The Site of Justice:

A theory of distributive justice needs, in the first instance, to clarify the site at which its principles apply, or the entities, practices or actions it is assessing. As Arash Abizadeh explains "the site of justice refers to the kinds of objects

(individuals' actions, individuals' character, rules, or institutions, and so on) appropriately governed by principles of justice, that is, to which the principles of justice rightly apply" (2007: p. 323). Thus, different theories of justice may endorse different sites of justice by specifying different entities or practices that are expected to be governed by the principles of justice.

To better understand what a site of justice specifies, it is useful to determine what sorts of things can in practice be governed by principles of justice. Pogge explains that these will be things that are actually capable of being just or unjust and accordingly can be considered as possible 'judicanda'⁴ for justice. Thus, he identifies four categories of judicanda to which distributive justice can apply. These include 1) individuals and collective agents; 2) the conduct of such agents including their acts and omissions: decisions, policies, etc.; 3) social rules, including social institutions, laws, conventions, practices, economic arrangements, educational and economic systems; and 4) states of affairs, including facts or combination of facts, particularly regarding distributions (2005: p. 101). Accordingly, theorists use different judicanda for their theories, and their sites of justice vary. I will illustrate how sites of justice can vary by examining Rawls's influential institutionalism and objections addressing it.

2.2.1. Rawls and the Basic Structure

The literature on distributive justice has been dominated by a concern for institutions as the site of justice, especially since the publication of John Rawls's *A Theory of Justice*. According to his approach, principles of justice would apply in

⁴ Judicanda is derived from the latin word 'judicandum' meaning 'that which is to be judged'.

the first instance to institutional schemes and orders. The judgement of 'just' and 'unjust' in this respect is relevant to the institutional structure. Thus, in developing his theory Rawls uses the basic structure of society as his site of justice.

He explains;

The primary subject of the principles of social justice is the basic structure of society, the arrangement of major social institutions into one scheme of cooperation... these principles are to govern the assignment of rights and duties in these institutions and they are to determine the appropriate distribution of the benefits and burdens of social life (Rawls, 1999: p. 47).

Within this context, institutions for Rawls are institutions of 'promising' that represent the rules that structure relationships and interactions among agents. The rules of these institutions determine which interactions between agents create a promise (Pogge and Kosch, 2007: p. 28). Moreover, an institution exists and is part of the basic structure when actions determined by it are regularly taking place based on a public understanding that the rules defining this institution need to be followed (Rawls, 1999: p. 48). Accordingly, all fundamental political, economic and social arrangements, e.g., the constitution, the economic structure and regulations, private means of production, and even the family, are included in the 'basic structure' (Rawls, 1999: p. 6).

Rawls justifies his choice of the basic structure as the site of justice by its profound effect on individual lives. The institutional structure of a society does not only affect the lives of its members but it also has a strong impact on what sort of persons they are and want to be. People's position in the basic structure can limit their perception of the opportunities available. "The basic structure shapes the way the social system produces and reproduces over time a certain

form of culture shared by persons with certain conceptions of their good” (Rawls, 1993: p.269). Moreover, the basic structure can entail significant inequalities, both economic and social, which can have a strong impact not only on the way they lead their lives, but also on their futures. These inequalities can depend on social origin, natural talents or historical contingencies. Even if these inequalities are not profound, their effects may be great and over time they can have increasing consequences. Hence, a theory of justice is to regulate how these inequalities are to affect people’s life prospects (Rawls, 1993: pp. 270-271). Accordingly, principles of justice should in the first instance apply to the inequalities in the basic structure of the society by regulating the basic institutions. The resulting social scheme will be considered just depending on how it distributes and assigns fundamental rights, duties, economic opportunities and social conditions in the various sectors of society (Rawls, 1999: p. 7).

I will note that such an institutional approach does not deny that principles of natural duty need to apply to individual conduct. According to Rawls in his discussion of justice as fairness, a conception of justice will be “incomplete until these principles have been accounted for” (Rawls, 1999: p. 293). Accordingly, natural duties are presented in the individual’s support of the just institution. These duties are discharged through supporting, and complying with, the rules of existing just institutions and arrangements, or by assisting in the establishment of just institutions if they do not already exist.

An understanding of the basic structure as a site of justice is of fundamental importance for this thesis. As will be explained in the next chapters, Islamic finance practice represents an institutional structure that has a profound effect on the lives of its participants. The practice does represent a promise, where

its rules indicate which promises are to be effective between members. Moreover, the practice affects the wealth, income and risk distribution among participants, as well as financial opportunities which have a profound impact on their financial lives. The influence the practice has on the lives of the participants will be discussed throughout the rest of the thesis.

The next section notes some alternatives that have been offered to an institutional approach, by way of further clarifying its parameters.

2.2.2. Objections to an institutional site of justice – Cohen and Caney

Some theorists have argued that the site of justice should not be limited to institutions, as other entities also affect justice. Cohen, for example, rejects Rawls's basic structure as a sole site of justice and emphasizes the importance of the conduct of agents alongside the structure as a site of justice. For him, the main concern for distributive justice is the actual pattern of benefits and burdens. Accordingly, he is primarily concerned with the results of the structure alongside the individual choices within it. He explains;

[m]y own fundamental concern is neither the basic structure of society, in any sense, nor people's individual choices, but the pattern of benefits and burdens in society: that is neither a structure in which choice occurs nor a set of choices, but the upshot of structure and choices alike...My root belief is that there is injustice in distribution when inequality of goods reflects... myriad forms of lucky and unlucky circumstance. Such differences of advantage are a function of the structure *and* of people's choices within it, so I am concerned, secondarily, with *both* of those (Cohen, 1997: p.12).

Consequently, Cohen believes that justice, or the lack thereof, could exist *within* the basic structure, as it can be the result of the rules and conducts that operate inside the structure. Thus, the basic structure on its own should not be the exclusive determinant of justice or considered solely as the site of justice (1997: p. 10-11). Hence, he includes, alongside the basic structure, three other independent factors that affect the conduct of agents and would need to be taken into consideration when considering the site of justice; 1) non coercive structures or conventions (e.g. prevalent division of household labour); 2) social ethos affecting interpersonal attitudes (e.g. ethos celebrating concern for the worst off); and 3) personal choices (i.e. decisions) (Pogge, 2000: p. 138).

Separately, some cosmopolitans⁵, understood as theorists who grant no fundamental moral significance to the state, are critical of an institutional approach as it impacts the idea of a 'global' justice. Some argue that justice or injustice could exist even without an established institutional structure. Thus, for these cosmopolitans, individuals should have their rights met and should have equal access to certain opportunities. Caney, for example, in *Justice Beyond Borders* argues for the primacy of "three principles: the worth of individuals, equality, and the existence of obligations binding on all" (2005: p. 4). In such a non-institutional approach, the site of justice is effectively construed as the actions, practices, discharge of duties, etc., of all of humanity.

⁵ This is not the viewpoint of all cosmopolitan theorists. Others, notably Beitz, Moellendorf and Pogge, have argued that there already is a global basic structure in place and thus an institutional approach would apply. I explain this in more details in section 2.3.2 Global Justice.

What is worth noting here is that theories identify different sites of justice based on which entities they consider as the contributors to the state of justice. The identification of the site of justice is fundamental for constructing an Islamic finance distributive justice theory. As I will explain in chapter IV, Islamic finance is a salient site of distributive justice as it appears to be governed by principles of justice and accordingly has a profound impact on the lives of the participants and on the distribution of burdens and benefits among them. This will be explained in depth as I present Islamic finance practice.

2.3. The Scope of Justice

The identification of the site of justice as explained has a direct impact on determining the scope of the theory or entities to be included within the system of distribution. Abizadeh explains that the scope of justice “refers to the *range of persons* who have claims upon and responsibilities to each other arising from considerations of justice” (2007: p. 323); in other words, those who will be included in the distributive scheme and will have the right to have a just share in the benefits and burdens.

There has been an ongoing debate over whether distributive justice should be addressed nationally or globally. Issues such as poverty and inequality of income can clearly be seen both on the national and international levels, and, thus, theories vary with regards to whether the scope of distributive justice should be limited to the state, or whether there should, and actually could be a global scope of distributive justice. I will now discuss both the statist and the global scope of justice.

2.3.1. Statist Scope of Justice

The more traditional stance with regards to the scope of distributive justice is the statist approach, which limits the scope of justice to the state. Although statist, or theorists who argue for a national scope of distributive justice (the most influential of which is Rawls), do not deny that injustices exist on the global level, they reject the application of norms of justice globally. In other words, they reject inequalities within states yet not globally. Undoubtedly, this stance is directly influenced by the identification of the site of justice, as I will explain.

It is appropriate to begin with Rawls's statist scope, which profoundly influences the argument both for and against limiting the scope of justice to the state level. Rawls's basic structure as the site of justice for his principles is the fundamental reason for limiting the scope of distributive justice. As explained in earlier sections, Rawls presents his principles of justice to govern *only* the basic structure. Or as Nagel explains, they are not intended to govern "personal conduct of individuals living in a just society, nor the governance of private associations, nor the international relations of societies to one another, but only the basic structure of separate nation-states" (2005: p. 123). Rawls, according to Nagel, limits the role of the principles, as it is the comprehensive control of the state "over the framework of their citizens' lives, that creates the special demands for justification and the special constraints on ends and means that constitute the requirements of justice" (2005: p. 123).

Thus, for Rawls the scope of justice is limited to those persons who share the basic structure. For him, citizens who share the basic structure have responsibilities and consideration of distributive justice towards each other yet

not towards individuals who do not share the basic structure. Consequently, the scope of justice is limited to the nation state where the basic structure operates.

Rawls's scope of justice to a nation state is extended by other theorists such as Nagel, Freeman and Blake. Nagel for example links the scope of justice to the issue of sovereignty. He explains that the political conception of justice is associative and dependent on positive rights that come to being only as a result to sharing "a political society under strong centralized control" (2005: p. 127). We can *only* claim the right to certain benefits such as democracy, equal opportunity or just distribution of goods from such a system, its members and institutions.

Accordingly, Nagel bases his rejection of a global scope of justice by differentiating "between duties of humanity and duties of justice" (Moellendorf, 2009: p. 1128). For him duties of justice are perfect and enforceable, thus, they need to be fulfilled every time and in every case. To the contrary, however, duties of humanity are regarded as imperfect duties that are not enforceable. Accordingly, we do not fail if we do not fulfil them each and every time they exist. Hence, although he does not deny the existence of inequalities and injustices globally, he denies the existence of positive moral duties towards global justice (Moellendorf, 2009: p. 1128).

Freeman, on the other hand, links state justice to cooperation. He argues that if distributive justice principles take as their site of justice basic institutions that rely on social and political cooperation, then the scope of the principles should be the state, which is a scheme of social and political cooperation. Accordingly, they are not applicable on the global scale, as there is no existing set of global basic institutions of cooperation. This is not to say that Freeman denies the existence of global social cooperation, but he argues that this form of

cooperation is the result of decisions made by states. Thus, states are the main actor in this global cooperation (cf. Caney, 2008: p. 491-492).

Similar to Nagel and Freeman's statist scope, Blake links state justice to coercion. He claims that principles of justice that apply to the state are different from those that apply globally. For him, the state plays a coercive role to maintain its autonomy and therefore it needs to justify its policies to those who are being coerced by it. This commitment to justification includes a commitment to relative principles of distributive justice. Consequently, since there is no coercion in the global order, then there is no commitment to distributive justice on a global level (cf. Caney, 2008: pp. 498-499). "In the international arena...no institution comparable to the state exists. No matter how substantive the links of trade, diplomacy, or international agreement, the institutions present at the international level do not engage in the same sort of coercive practices against individual moral agents" (Blake, 2001: p. 265).

There is no doubt that my illustration of the statist scope of justice is an oversimplification of the theorists' arguments, yet the objective of this section and the chapter as a whole is not to present the details of the arguments, but rather to map how theorists vary in identifying the scope of their theories of distributive justice. Hence, I will move now to the arguments in favour of a global scope of distributive justice.

2.3.2. Global Justice

Theorists such as Charles Beitz, Darrell Moellendorf, Simon Caney and Thomas Pogge, advocate conceptions of global justice. According to Caney, cosmopolitan

principles of distributive justice share a few important characteristics. First, they affirm that duties of distributive justice attach to individuals and not states. Second, they differentiate between fundamental and derivative principles and accordingly understand that while all individuals are included within the scope of distributive justice, some principles “may sometimes best be realized if people comply with special duties to some” (2005: p. 105). A common example would be duties to children discharged by their own parents. Third, while some moderate cosmopolitans argue for principles of distributive justice with global scope alongside statist ones, more ambitious cosmopolitans claim that no distributive obligations are due to “fellow national or fellow-citizens”. Fourth, some ‘institutional’ approaches argue that principles are to be applied to existing institutions such as global trade, while other ‘interactional’ approaches argue that principles are to be applied globally even if institutions are absent (2005: pp. 105-106).

Accordingly, Caney suggests that the claim for a global scope of distributive justice should be understood as follows:

the standard justifications of principles of distributive justice entail that there are cosmopolitan principles of distributive justice...the very logic that underpins most domestic theories of justice actually implies that these theories of distributive justice should be enacted at the global, and not (or not simply) the domestic, level (2005: p. 107).

According to this account of a cosmopolitan approach to global justice, Beitz and Moellendorf, for example, argue that global phenomena such as current regional and economic integration, global markets, global trade and investment,

etc all imply that there are existing global forms of cooperation, or a global basic structure in Rawlsian terms. Moellendorf explains;

Contrary to Rawls's empirical assumption it seems reasonable to conclude that individual interaction mediated by market institutions is extensive and complex with profound effects on important human interests. Regardless of whether persons are directly engaged with the global economy, their local economy is significantly affected by international trade, FDI, finance and speculative investing. For theorists, such as Rawls, who take justice to be a property of institutions, there seems to be no reason to deny that the institutions of the global economy are subject to the standards of justice (2009: p. 1132).

This argument for an already existing global system of cooperation and global interdependence, is further strengthened with Beitz's argument regarding the distribution of natural resources. Beitz explains that the natural resources are arbitrarily distributed and that no individuals can claim desert of those natural resources they happen to find they own. Thus, for Beitz, the application of Rawls's principles of distributive justice should not be limited to domestic spheres and should be of global scope. Further, as Moellendorf argues, "if a global original position were to include representatives of persons from around the world, one would expect principles of egalitarian distributive justice to be chosen" (2009: pp. 1132-1133).

So far I explained the first two of five characteristics of a theory of distributive justice; the site and scope of justice. In other words, I explained what it means to identify the entities that we think are governed by principles of justice as well as those who are entitled to be included in the distribution. The two questions that naturally come to mind after we identify the site and scope of the

theory are “*what* are we looking to distribute justly?” and “*how* should we distribute it?”. Over the next two sections, I will first address different principles that answer “how?” and that have direct impact on the following section regarding ‘what’ we are looking to distribute justly.

2.4. Principles of Justice (How?)

Theories of distributive justice need to offer a coherent set of principles that dictate the just distribution of burdens and benefits, or *how* goods ought to be distributed. Principles of justice answer questions about the distribution of goods and services such as; “should they, for example be distributed equally? Or in a way that maximizes total happiness? Or according to merit? Or according to who is most needy?” (Caney, 2005: p. 103). To this end, theories endorse different principles of justice.

I will briefly discuss three of the most dominant principles of justice, those based in desert, equality and need. Each will be salient to the later discussion of a theory of Islamic distributive justice. I will start with desert based principles. After highlighting some practical challenges associated with them, I will move on to egalitarian and need based principles, which are of closest relevance to my thesis.

2.4.1. Desert

Desert-based theories are rivals to egalitarianism. For desert based principles justice is only attained when benefits and burdens are distributed according to what people deserve (Vallentyne, 2003). Desert, in this sense, can be understood as a claim to deserve something in virtue of a reason. It is, thus, understood as “a

three-place relation of the form *A* deserves *X* in virtue of *f* (the desert-basis).” (Lamont, 1994: p. 45). The desert-basis virtue in this context is usually “a quality possessed by a person, including a quality such as ‘having performed action *a*’” (Lamont, 1994: p. 46).

According to Dick, there are four desert-basis virtues (derived from Joel Feinberg’s work on justice and personal desert). First, ability-based principles of desert dictate that a personal trait or characteristic can serve as a fair basis for differences in distributions (Dick, 1975: p. 259). However, since ability is an arbitrary quality that is beyond voluntary control, it is said to need to be combined with a principle affording persons fair opportunities to develop their characteristics or traits. “Ability as the product of effort may satisfy the fair opportunity principle, but ability as such cannot do so any more than mere height or strength can” (1975, p. 259).

Second, effort as a desert-based principle is an appealing concept as it decides just distribution based on the effort a person exerts. The idea behind an effort based distributional scheme is mainly to commemorate a person’s free will to give more time and exert more hard work. It is envisioned as a principle that can take appropriate account of a worker’s choice to work longer hours or to try harder at achieving a task. However, it is a challenging basis due to the impracticality of calculating the amount of effort (Dick, 1975: pp. 259-160).

Third, contribution-based criterion aim to reflect the product or outcome of the effort exerted (Dick, 1975: pp. 259-260). Contribution-based principles consider a just distribution to be reflective of the individuals’ contributions to the economic well being of their society. In other words, an individual’s effort is translated into the product of economic well being. Accordingly, individuals are

entitled to the proportion of national wealth that resulted from their achievement or contribution. Yet again, it is considered an impractical principle, as many challenges face the calculation of each individual's contribution to a production process (Dick, 1975: pp. 260-264).

Finally, a compensation based principle dictates that individuals are to be compensated for any costs they bear at work. Compensation is determined by equalizing differences and compensating for non-monetary differences in jobs. Hence, jobs that are considered to be not worth having become more appealing within a compensation-based distributive system. Within this criterion, jobs of unattractive nature (dangerous, boring, dirty, etc) will be filled because of the compensation. Persons who have greater responsibilities and/or burdens due to their jobs are compensated with greater benefits in order to achieve justice (Dick, 1975: pp. 264-266).

However, desert-based justice is, more often than not, difficult to achieve due to its impracticality and the integration of arbitrary qualities such as ability. Desert-based principles also impose a challenge particularly to the egalitarian idea of justice, which is mainly concerned with either an equal initial status for people or an equal outcome. Accordingly, I will illustrate now egalitarian theories that hold equality as the basis for justice.

2.4.2. Equality

Egalitarianism is a stance in political thought that is primarily concerned with the equality of people. It is based on the idea of moral equality of persons, and is

accordingly translated into distributive justice theories that endorse different forms of equal distribution between people. Egalitarian principles consider equal distribution of goods as the just distributional criterion and specify the exceptional cases under which unequal distribution may be permissible. Thus, such principles are usually comparative in the sense that they determine how much a person is being allocated in comparison to others, i.e. they are not only concerned with the alleviation of inequalities, but also with how persons fare in relation to one another. Thus, they are expected to remain operational as long as inequalities still exist (Tan, 2012: p. 11).

In strict egalitarianism, which is not a common stance among egalitarians, a just distribution is achieved when people's share of distribution is identical. Based on the idea that persons are capable equals, strict egalitarianism promotes identical equal shares. As Vallentyne describes it, a strict egalitarian principle "would require the homogenization of human differences, to the extent possible we should all look the same, have the same skills, etc" (2003). Accordingly, from a non-strict egalitarian perspective, such a distribution is far from optimal, because uniform allocations have "no clear sense for respect, self respect, satisfaction of needs, or attaining the best life of which a person is capable" (Nielsen, 1979: p. 210). Identical allocation between people with different preferences and dislikes will only lead to making everybody worse off.

Thus, egalitarian principles need not necessarily promote identical shares, but rather different shares that produce or reflect equality. Each person has an equal right to certain treatment, but that is not to say that each person is to have identical or uniform amounts. Equality is achieved when each person has F1, F2, F3, etc., consistent with equal treatment. So, each person will be treated with

respect, but not necessarily treated identically (Nielsen, 1979: pp. 211-212). To illustrate, we can examine some of the different egalitarian principles of justice endorsed.

- *The Difference Principle*

The difference principle is a classic egalitarian principle, according to which distribution can entail inequalities that are to the greatest benefit of the least advantaged in the society. It is concerned with equality alongside the enhancement of the position of the worst off (Brighouse and Swift, 2006: p. 483). Hence, if a system of strict equality were to maximize the position of the least advantaged, then the difference principle would support and advocate strict equality in distributions. If, however, distributional inequalities can enhance the absolute position of the least advantaged, then such inequalities should be endorsed until the absolute position of the least advantaged can no longer be raised (Altham, 1973: p. 75). Hence, the difference principle calls for a basic socioeconomic structure that entails inequalities that work to the benefit of the citizens in the lowest-socioeconomic group.

In Rawls's account, the basic premise is equality, or that inequalities are morally arbitrary unless justified (Fried: 1983: p. 45). Hence, he uses the difference principle to show the acceptability of inequalities that otherwise could not be accepted under an egalitarian system. Rawls defines the socioeconomic circumstances, positions and inequalities through an index of the social primary goods including "powers and prerogatives associated with professional positions, income and wealth, and the residual social bases of self-respect" (Pogge and

Kosch, 2007: p. 107), although he does not explain how the goods are to be quantified or indexed for each person (Pogge and Kosch, 2007: pp. 106-7).

- *Entitlement Principle*

By contrast, equality in the libertarian context is understood to be equality of liberty and self-ownership. Although not traditionally regarded as an egalitarian principle, libertarianism is based on the idea that the most fundamental human right is the right to liberty: each person's right to choose freely, provided the rights of others to do the same are respected. Thus, it can be understood as promoting "radical equality. Every person, regardless of ability, virtue, or social class, has fundamentally the same moral standing. We are all equally sovereign over ourselves and equally nonsovereign over others" (Brennan, 2012: pp. 3-4).

Consequently, the libertarian principle of justice is based on the right to self ownership, or to be more precise the equal right of self ownership among people. Relationships among people are seen as appropriately voluntary, and "[t]o respect one another as equal human beings, we must not force people to serve society, each other, or even themselves" (Brennan, 2012: p. xi). Thus, instead of describing a just pattern of distribution, libertarian principles of distributive justice explain the sorts of acquisitions or exchanges which are just. For Nozick, individuals have rights so strong and far reaching that questions of 'what, if anything, the state role should be?' come to the forefront. For a libertarian account of distributive justice, it is not enough to look at distributions to decide whether they are just or not, rather it is crucial to look at 'how' this distribution came to be.

Libertarianism is usually attributed to Nozick's work, or his entitlement theory, which is more of a process of moving from one distribution to another through legitimate means. For a distributive system to be just, everyone needs to be entitled to what they possess within this distributive system. Hence, the theory consists of three aspects and each is required to be just in order for the entire distributive system and process to be just. First, the theory requires the '*principle of just acquisition*'; it is the just means of how unowned things become possessed, or the original acquisition of holdings that governs the appropriation of unheld property. If the means is just it should lead to a just distribution situation. Second, the movement from one just distributive position to the next needs to be through the '*principle of just transfer*', which is a principle that "preserve(s) justice" (Nozick, 1973: p. 48). However, on its own this principle does not guarantee justice in the actual distributive situation. A distributive process that entails past injustices would still be regarded as just by the justice in acquisition and justice in transfer principles. Therefore, the theory entails a third part to guarantee distributive justice, pertaining to the rectification of unjust holdings. This is intended to guarantee that the distribution process is abiding to the first two principles of acquisition and transfer justice (Nozick, 1973: 153).

- ***Luck Egalitarianism***

A third example of egalitarian principles salient to this thesis is luck egalitarianism. For luck egalitarians, equality is achieved through the mitigation, or elimination, of the effect of bad brute luck on the lives of people. As Richard Arneson puts it "[i]n the ideal luck egalitarian society, there are no inequalities in people's life prospects except those that arise through processes of voluntary choice or faulty conduct, for which the agents involved can reasonably be held

responsible” (2000: p. 339). Thus, it appears to be affirming a conditional form of equality; i.e. “it is morally desirable that everyone’s condition should be the same unless differential merit or differences in people’s voluntary choices give rise to inequality” (Arneson, 2000: p. 340).

Luck egalitarianism is highly salient to the practice of Islamic finance, As I will show in Chapter V, luck egalitarianism is the set of principles primarily governing the practices of Islamic finance. The brief introduction here is simply intended to situate luck egalitarianism among other possible principles of distributive justice.

2.4.3. Need

A different basis for distribution that shifts our attention from equality is distribution according to need. This basis also will be shown to be significant within Islamic finance practice. According to Casal, three approaches take need as their main concern for distributions. First, the egalitarian difference principle gives priority to needs fulfilment, especially the needs of those in the worst off societal group. Second, prioritarions also favour the worse off and distribute according to need as they “assume that the moral value of a benefit, or disvalue of a burden, diminishes as its recipient becomes better off” (Casal, 2007: p. 296). Accordingly, distribution to the needy is of more moral value than distribution to the better off. Finally, the sufficiency principle also prefers distribution according to need, as it is concerned that everyone should have enough, or be above a certain threshold (Casal, 2007: p. 296-297).

Most important to the interpretation of Islamic finance practice will be the sufficiency principle, or the view that unmet need or deprivation causing a person to fall below a sufficiency threshold is morally wrong irrespective of where individuals stand in relation to others.

When we consider people who are substantially worse off than ourselves, we do very commonly find that we are morally disturbed by their circumstances. What directly touches us in cases of this kind, however, is not a quantitative discrepancy but a qualitative condition-not the fact that the economic resources of those who are worse off are *smaller in magnitude* than ours but the different fact that these people are so *poor*. Mere differences in the amounts of money people have are not in themselves distressing (Frankfurt, 2007: 146).

Sufficiency plays a major role in Islamic finance. The interpretation of Islamic finance practices reveals this role and highlights the importance of needs fulfilment and sufficiency in the Islamic conception of distributive justice. I will elaborate on the sufficiency principles and its role in Islamic finance in chapter V.

2.5. Goods for distribution (what?)

A *distributive justice theory* also needs to specify the goods or services that are to be distributed. It needs to identify which goods are included in the proposed distribution scheme and what the characteristics of these goods are. In other words, it needs to explain what exactly we need to make sure that there will be a just amount of. This element of distributive justice theories is identified in many instances according to how they answer the questions of 'how' distributions are to be arranged, as explained in the previous section. Before elaborating on how both

questions are connected I will first illustrate the different characteristics of what is to be distributed.

When considering the goods to be distributed an important condition that needs to be taken into consideration is the supply thereof. A general presumption about the goods is unsurprisingly the 'moderate scarcity' of their supply. In a world where all goods and resources that are subject to distribution are freely available all the time and in any quantity, such as air, distributive justice would be considered useless. At the same time, a complete and grave shortage of supply would indicate that no form of cooperation would ever be successful in producing just distribution. Thus, a 'moderate scarcity' is assumed, where whatever will be allocated to one recipient will necessarily mean allocating less to the rest of the recipients (Barry, 1989: p. 154).

In addition to the supply and scarcity, characteristics of goods for distribution are also seen as possibly varying in two dimensions; particularism and concreteness (Foa and Foa, 2012: pp. 15-18). Particularism, in this context, is the extent to which the value of the resource is relevant to and derived from the identity of the provider. For example, money would be the least particularistic and consequently the most universalistic. On the other hand, concreteness is the degree to which the resource is tangible in the form of activity or product. For example, information and status would be the most abstract and least tangible (DeVoe and Iyengar, 2010: p. 165). Clearly these two elements of particularism and concreteness have direct impact on principles of justice that would be adopted for distribution.

Accordingly, there are different resources that need to be distributed fairly and that vary in their characteristics according to their scarcity, particularity and

concreteness. Answers from distributive justice theories on what we need just distribution of include happiness or welfare, capability functions (Caney, 2005: p. 104), material or social goods, conditions, opportunities, roles, etc. (Cohen, 1987: p. 21). I will present in the rest of this section the three dominant approaches to answering the ‘what’ question: welfare, resources, and equality of opportunity.

2.5.1. Welfare

Welfarism is one form of material egalitarian theories that was more popular “in the olden days” (Vallentyne, 2002: p. 529), and its critique is in many cases the first step many theorists take to propose alternatives bases for justice. As stated by Dworkin, welfare egalitarianism can be understood as the distributive scheme that “treats people as equals when it distributes or transfers resources among them until no further transfer would leave them more equal in welfare” (1981: p. 186). Arneson explains that according to welfarism goods and services are to be equally shared between persons “to the degree that the distribution brings it about that each person enjoys the same welfare” (1989: p. 82). Thus, it bases distributive justice on the level of welfare it produces and considers other elements as derivatives to a more important goal, which is the overall welfare of people (Dworkin, 1981).

Utilitarianism remains a prominent welfare theory in moral philosophy. It appears in various forms, but all utilitarians agree about measuring justice according to the welfare of individuals, specifically the sum total of individual utilities. As defined by Sen, outcome utilitarianism dictates that “[a]ny state of affairs x is at least as good as an alternative state of affairs y if and only if the sum

total of individual utilities in x is at least as large as the sum total of individual utilities in y” (1979: p. 494). According to this understanding one should choose the option that produces the highest sum total of individual utilities or welfare, for the greatest number of people.

2.5.2. Resources

Resource egalitarianism calls for equal distribution of resources. Dworkin (1981) defines equality of resources as a theory that adopts egalitarian principle during the distribution of resources and ensures that no further transfer could create more equal shares of the total resources. As explained by Arneson, “to achieve equality the agency ought to give everybody a share of goods that is exactly identical to everyone else and that exhausts all available resources to be distributed” (1989: pp. 77-78). However, this basis of justice raises a number of objections, with regards to disabilities and inborn talents and differences. If equal shares of resources are distributed among people of different talents, abilities and personal qualities, then some will be able to make much greater use of the same bundle of resources than others, and the justice of the distribution can be questioned (Arneson, 1989: pp. 78-80).

Consequently, Dworkin suggests that abilities and natural endowments, or the lack thereof, are to be considered among the distributed resources. Arneson explains that “equality of resources ethics ... count personal talents among the resources to be distributed” (1989: p. 78). Dworkin envisions the hypothetical condition where people enter into a fair auction with each individual having the exact same purchasing power to bid on the different available resources. The

auction will end with each person having his own chosen and unique bundle of resources, that suits her/his needs, ambition, tastes, etc. (1981). The resources auction is expected to get rid of any trace of 'envy' since each person will find that no other bundle of goods would better suit her taste or preferences (Dworkin, 1981).

Another important form of resource egalitarianism is Rawls's theory of primary goods. According to Rawls, his theory attempts to "incorporate only widely acceptable ideas" (Pogge and Kosch, 2007: p. 54). Thus, the primary goods are a criterion of justice that is informed not by all needs and interests of individuals but rather "by their needs and interests as citizens of a free democratic society" (Pogge and Kosch, 2007: p. 54). Individuals are to translate their envisioned good into a rational plan that highlights their main goals, and consequently, a person's well-being will be attained through the successful implementation of this plan (Barry, 1973: pp. 26-27). Freeman, a well-known interpreter of Rawls, explains;

The plan of life a person would choose under the ideal conditions of "deliberate rationality". Rawls assumes a partial similarity in free and equal moral persons' rational plans...they all have a "highest-order" interest and corresponding desire to develop and exercise the moral power that enable them to engage in social cooperation...on the basis of the account of rational plans together with these essential interests, Rawls argues for the primary social goods as necessary ingredient for the rational plans of free and equal moral persons (2003: p. 69)

Hence, the core idea of 'primary goods' is that there are certain things which are means to a very wide range of ends, making them a want for any rational person, irrespective of ambitions, tastes, or beliefs. Regardless of the plan,

any rational individual will want more of these primary goods, since access to as much as possible of these primary goods is not only advantageous, but also necessary for the realization of the individual's interest and for the development of moral powers (Pogge and Kosch, 2007: p. 73). As a result, "with more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be" (Rawls, 1999: p. 79).

Within this context, Rawls puts forward a list of the primary goods that includes five categories, (1) certain basic rights and liberties (2) freedom of movement and free choice of occupation (3) Powers and prerogative of offices (4) income and wealth (5) and residual social bases of self respect. Rawls claims that these goods "are social goods in view of their connection with the basic structure; liberties and opportunities are defined by the rules of major institutions and the distribution of income and wealth is regulated by them" (1999: p. 79).

Rawls's theory of the good is particularly important for this thesis as it illustrates the relation between these social goods and the basic structure. An Islamic theory of distributive justice would be especially concerned with two categories of Rawls's social goods: financial opportunities and income and wealth. Practices of Islamic finance, as will be detailed, are concerned with financial inclusion through provision of financial opportunities, as well as with wealth redistribution. The structure of the Islamic financial system, the rules governing it, the objectives behind it and the practices operating within it are all designed to regulate the distribution of these primary social goods, which have direct impact on the realisation of any rational plan of any of the system's participants.

2.5.3. Equality of opportunity and capabilities

Opportunities constitute an alternative answer to ‘equality of what?’. Amartya Sen, for example, gives emphasis in his capabilities approach to “what people are actually able to do and to be” (Nassbaum, 2003: p. 33). Sen sees his concern for basic capabilities as an extension to Rawls’s primary good; “shifting attention from goods to what goods do to human beings ... there is evidence that the conversion of goods to capabilities varies from person to person substantially, and the equality of the former may still be far from the equality of the latter” (Sen, 1979: p. 219).

The two most challenging objections to Sen’s basic capabilities approach, as he foresees them, are the indexing and relativity thereof. He explains that indexing and ordering a bundle of basic capabilities cannot be based on a universal uniformity due to the relativity of such capabilities. Accordingly, indexing of capabilities is dependent on the cultural context of their application (Sen, 1979: p. 219). Sen explained in a later interview that the problem is not in the actual listing of capabilities, but rather in “insisting on one predetermined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning” (Sen, 2004: p. 77).

Another example of equality of opportunity is Arneson’s *equal opportunity for welfare*.⁶ Arneson attempts through his proposal to shift welfarism from being an outcome based approach to be concerned with equality in initial conditions or equality in distribution of opportunities. According to this approach, justice is attained by providing every person equal opportunities to achieve welfare. To

⁶ It is worth noting here that Cohen also endorses this version of welfare

achieve equal opportunity for welfare between people, “each must face an array of options that is equivalent to every other person’s in term of the prospects for preference satisfaction it offers” (Arneson, 1989: p. 85). However, the actual outcome of how each person uses up these opportunities is not a concern of justice. Arneson explains;

Suppose it is agreed that equal opportunity for welfare obtains among a number of persons in a given society and that the fact that this is so indicates that (one aspect of) distributive justice is satisfied in that society. No claim is thereby being made about the goodness of the lives that people live when equal opportunity in this sense obtains. The claim is rather that if equal opportunity for welfare obtains, to that extent individuals have received fair treatment at the hands of society. Suppose that one of the individuals who has equal opportunity for welfare squanders his opportunities recklessly and leads a terrible life the badness of which is squarely his own fault (1991: p. 188).

For Arneson, individuals should be held responsible for their own bad decisions when those are made from appropriately equal initial conditions.

It is clear from this brief listing of goods of justice, how complicated the matter is and how competing and challenging ideas emerged to answer the question of what we’re looking to distribute justly. However, irrespective of what we distribute, and how we distribute it, a theory of justice needs to provide an account of moral justification, and this I will examine in the next section.

2.6. Moral Justification

The fifth and final element of a theory of distributive justice is how principles of justice to be applied at the site of justice are derived or constructed. For a theory to be comprehensive it needs to be able to justify to non-adherents of the theory

the principles it considers as just and the conception of distributive justice it endorses (Pogge and Kosch, 2007: pp. 160-162; Roberts, 2007). To this end, a theory of distributive justice aims to directly connect the principles it endorses with 'substantive moral claims' (Scanlon, 1995: p. 347). It puts forward a morally justifiable process that reflects the reasons for adopting specific principles in order to establish this connection between the principles and moral claims (Roberts, 2007). Such reasoning models or processes increase the possibility of reaching consistent conclusions; and, consequently, strengthen the authority of the moral claims. As Jaggard and Tobin explain, "a moral claim that is justified through good reasoning has rational warrant and is morally authoritative" (2013: p. 385).

Theories use different processes for the justification of distributive justice principles. I will start this section by illustrating moral realism and cultural conventionalism as two alternative approaches to moral justification, followed by the constructivist approach, which according to Rawls offers an answer to objections of both approaches.

2.6.1. Moral realism

Moral realism, which was defended by a number of anti-realists such as Dworkin, is a justification approach based on the acceptance of the independent existence of moral reality. Most moral realists endorse the idea that when people issue moral judgments about what is right and wrong, they are in essence representing an already existing moral reality (Shafer-Landau, 2003: p. 13). Thus, they believe that moral reality is mind independent. As Russ Shafer-Landau explains:

Realists believe that there are moral truths that obtain independently of any preferred perspective, in the sense that

the moral standards that fix the moral facts are not made true by virtue of their ratification from within any given actual or hypothetical perspective...realism...insists that the truth of any first-order normative standard is not a function of what anyone happens to think of it (Shafer-Landau, 2003: p. 15)

Consequently, most realists believe that moral beliefs are self evident. In other words, beliefs or principles, such as ‘lying is wrong’, or ‘helping someone in need is good’, are self evident if “one doesn’t need to infer them from one’s other beliefs in order to be justified in thinking them true” (Shafer-Landau, 2003: p. 248). Kaspar explains, the truth of a proposition such as the wrongness of lying is self-evident “and we grasp that truth” (2012: p. 11). Ross in *The Right and the Good* explains this self evidence as follows:

That an act...is prima facie right, is self-evident; not in the sense that it is evident from the beginning of our lives, or as soon as we attend to the proposition for the first time, but in the sense that when we have reached sufficient mental maturity and have given sufficient attention to the proposition it is evident without any need of proof, or of evidence beyond itself (Ross and Stratton-Lake, 2002: p. 29).

Therefore, moral realism is not only a dominant justification approach in moral theory, but it is also of relevance to theism. This is not to say that moral philosophy and theism are traditionally connected, for “it is a common thought that moral and theological realism can easily be prised apart” (Shafer-Landau, 2007: p. 311). Modern moral philosophy, at least since Kant, has been based on the assumption that there is no theoretical knowledge of God and that morality is, and should be, separated from theism. However, these moral assumptions are problematic from a theistic viewpoint (Meyer, 1997: p. 150). In religion, or religious ethics, “moral convictions would have no validity at all were they not

grounded in the nature of human existence and its relation to the ultimate nature of things or the character of ultimate reality” (Gamwell, 1993: p. 475). Thus, the moral validity of religion lies in the belief in a ‘fundamental nature of reality’, and accordingly, “it is clear...that any religious ethic in the sense mentioned must assert that the fundamental grounds of moral claims are realist in character” (Gamwell, 1993: pp. 475-476).

This understanding of the relation between moral realism and theism, makes a theological realist approach the most natural justification to use in this thesis. This, however, is not the case, as I am not in a position to prove the existence of God, or to prove any religious claim. As will be clearer throughout the thesis, I construct those principles that guide the practice of Islamic finance from the rules that govern the practice. In other words, I claim that principles of justice are already operating and guiding the distribution of burden and benefits in financial practices governed by the Islamic tradition. Accordingly, I do not aim to defend any particular Islamic principle, but rather to construct those principles from the existing practice. Therefore, as I will explain later, my theory uses a practice-dependent constructivist approach.

2.6.2. Cultural Conventionalism

Instead of basing justification on our independent moral convictions, cultural conventionalism bases the justification of principles of justice in the cultural context in which they operate. It highlights the role of culture in shaping people’s identities and conceptions and “construe(s) principles of justice as a direct articulation of participants’ beliefs and self-understandings” (Valentini, 2011: p.

408) in a process that is “more a matter of cultural interpretation than a philosophical argument” (Kymlicka, 2002: p. 211). Accordingly, it is an approach of moral justification that explains and reflects how each society puts different values to social goods.

To this end, cultural conventionalism justifies an institutional structure by its relation to the culturally accepted distributive standards within the community or society. In other words, the structure is examined in light of how it incorporates within its rules and laws the values of the culture within which it exists. Hence, a “just institutional system realizes and embodies, in its law and public policy, the values implicit in its cultural practices, in this case values governing the distribution of social goods” (Sangiovanni, 2008: p. 7).

It is crucial to note here, however, that participants are not expected to accept the criteria of justice in which they live simply because they belong to the culture. “Quite the contrary, the point of conventionalism is to show that participants have good reasons to honor the criteria of justice intrinsic to their cultural practices” (Sangiovanni, 2008: p. 9). These reasons could be either to respect social meanings as constitutive of people’s identity, or to respect social meanings as a product of mutual commitment “that stops just short of actual contract, but with the same normative consequences” (Sangiovanni, 2008: p. 9).

A classical form of cultural conventionalism is Walzer’s ‘spheres of justice’ (Sangiovanni, 2008: p. 8). Walzer believes that there cannot be a conception of justice external to the community and that the only way to identify requirements of justice is through the community’s particularistic understanding of the social goods. Accordingly, he explains that

different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and all these differences derive from different understandings of the social goods themselves... the inevitable product of historical and cultural particularism (Walzer, 1983: p. 6).

Consequently, a society is to be assessed as just or unjust according to how relevant practices are to the shared understandings of the members (Walzer, 1983).

Walzer's morally justifiable process for adopting specific principles of distributive justice can be described as follows. First, one needs to identify a good that is being examined for just distribution. Second, the social meaning of this particular good within the specific community that is being examined needs to be determined. Finally, according to the specific good that is being distributed, and its social meaning, appropriate principle of distribution can be construed (Trappenburg, 2000: p. 343).

A similar approach of justification, albeit in a different context, is used by Miller in his argument for territorial rights. Miller argues that an adequate justification of a state's territorial right must treat people within the state or political community as the primary bearers of this right, which they acquire "by adding material value to the territory in question and endowing it with symbolic value" (2012: p. 252). Thus, he introduces the relation between the state and the people into traditional state theories. Accordingly, for a state to claim territorial rights it needs to "legitimately represent(s) the people who occupy that territory" (Miller. 2012: p. 255).

Within the context of his territorial rights theory, Miller explains that for such a theory to be successful it needs to address three issues, two of which are concerned with the people inhabiting the territory. First, it needs to highlight the characteristics of the group that makes it a “kind of collective that is capable of having territorial rights” (2012: p. 258). Second, it needs to identify the ethical force of the relation between the group of people and the territory. Thus, Miller is actually arguing that territorial rights are justified “by the material and symbolic value that becomes embedded in territory with the passage of time” (2012: p. 266).

2.6.3. Constructivism

Alternatively, constructivism attempts to reach a mid way between moral realism and cultural conventionalism. Constructivists try to avoid the shortfalls of both stances by being committed to objectivity and truth without denying the importance of ordinary moral values and judgments (James, 2007: p. 3). As Rawls explains, constructivism “does not require an idealist or a verificationist, as opposed to a realist, account of truth...a constructivist moral doctrine requires a distinct procedure of construction to identify the first principles of justice” (1980: p. 565).

Thus, constructivist moral justification construes principles through a moral reasoning process that is based on distinct conceptions of the person and of practical reasoning or as Kauffman puts it “an appropriately designed decision procedure” (2012: p. 227). The principles produced through this moral reasoning process are ‘reasonably’ constructed based on these previous conceptions and are considered objective given that all parties in the decision procedure reach the

same conclusion. Thus, the objectivity of the principles is obtained from the objectivity of the reasoning process and deliberations (Freeman, 2002: pp. 27-28).

Rawls's theory of justice is one of the most notable examples of political constructivism (Freeman, 2003: p. 348). Rawls identifies four distinctive features of political constructivism. First, principles of justice are the product of a process of construction, within which "rational agents, as representatives of citizens and subject of reasonable conditions, select the principles to regulate the basic structure of society". Second, the procedure of construction is mainly based on practical rather than theoretical reasoning. Third, it uses a complex conception of society and individual that helps in shaping the structure of the construction. Fourth, it also specifies an idea of the reasonable and uses it to various subjects; conceptions, principles, judgements, grounds, persons and institution (Rawls, 1993: pp. 93-94).

Based on this notion of constructivism, Rawls presents the original position; a hypothetical reasonable decision procedure. Parties in the original position have a specific task to achieve, which is to agree on a justice criterion for the design of the basic structure of the society. The participants are rational, not moral, actors who aim to maximize and safeguard their own interests. They also assume that citizens have three fundamental interests; (1) the capacity for a sense of justice, which is the ability and desire to govern one's conduct in accordance with a shared public conception of justice; (2) the capacity for the conception of the good, which is the ability to form, revise and pursue a conception of a life worth living; and (3) the interest in being successful with regard to the conception of the good one chooses (Pogge and Kosch, 2007: pp.63-64).

Moreover, participants in the original position are behind the hypothetical veil of ignorance, where they lack factual knowledge that can affect their impartiality in the decision making. The veil of ignorance guarantees that the participants do not know facts such as their social positions, their talents, their conception of the good, their religion, the state of development within their societies, etc. This condition in its turn allows for impartial judgments (Barry 1973: pp. 10-11). Rawls always stresses these limitations placed on knowledge behind the veil of ignorance to highlight the virtues of the original position. However, he also explains that the choices in the original position will coincide with the requirements of justice, because the participants acquire psychological generalizations and elements of social and economic theory that enable them to predict the implications of choosing one principle rather than the other (Barry, 1973: pp. 17-18).

Another example of constructing principles is Onora O'Neill's attempt at constructing an account of practical reasoning that addresses pluralism without relying on either metaphysical arguments nor subjective values of cultures. O'Neill, like Rawls to a large extent, works on finding a middle way between realism and relativism by emphasising the role of reflective reasoning. She constructs a Kantian account of practical reasoning that identifies objective reasons by using a process of ongoing reflection "that highlights and eliminates the partial assumptions underlying our reasoning and picks out less subjective assumptions on which we can provisionally rest our reasoning" (Roberts, 2007: p. 82).

According to Roberts, O'Neill identifies concepts of the society and the individual to serve as underlying assumptions.

The basic concept of the person is of an agent of indeterminate rationality and varying capacities for independence. The basic concept of society is of a plurality of potentially interacting agents with no necessary pre-established harmony. Any form of activity, social life or conception of justice must assume at least these abstract accounts of society and person (2007: p. 98).

Accordingly, we can justify principles if and when they can be “based on reasons that could be followed and adopted in a situation laid out by reference to the bare accounts of society and person” (Roberts, 2007: p. 99). This process of deriving and justifying principles is O’Neill’s ‘choice situation’.

Constructivism is of particular importance for this project, as I will use a practice based constructivist approach to construe principles of justice for Islamic finance practice. As will be discussed in depth, I will explain in detail in the next chapters, a practice-dependence approach, or political theorizing that construes principles of justice from established and existing practices and institutions, mainly relies on an interpretation process of the objectives of these practices. It “uses Ronald Dworkin’s three-stage account of “constructive interpretation” in order to clarify how the point and purpose of practice conditions the construction of a conception of justice” (Gledhill, 2013: p. 65). Details of constructive interpretation will be presented in chapter III and constructive interpretation of Islamic finance practice will be offered in chapter V.

2.7. Conclusion

The objective of this chapter has been to provide a conceptual analysis of what distributive justice theories must address. The chapter has discussed five essential elements of distributive justice accounts:

I first discussed the importance of the *site* of justice, or the entities or practices that are considered to be subject to assessment for their justice. Sites of justice range from individuals to institutions and from conduct of agents to state of affairs, and it is clear that the identification thereof has a significant impact on all other elements of the theory. However, the debate with regards to the site of justice is to a large extent influenced by Rawls's basic structure. Nevertheless, some theorists object the use of the basic structure as the site of justice and either included other *judicanda* such as personal conduct in addition to the basic structure as the site of justice, or they go a step further to argue that distributive justice does not require the existence of any institutional structure and is relevant to the rights of the individual.

Second, I discussed how theories of distributive justice also need to address the *scope* to which they apply, or those persons who have claims and responsibilities of justice. Theories range with regards to their scope between statist and global approaches to distributive justice. Statist theories claim that the scope of justice should be limited to the state where a scheme of cooperation exists. The arguments behind limiting the scope of justice to the state range between sovereignty, cooperation and coercion of the state. On the other hand, other theorists argue for a global scope of distributive justice. They claim that individuals have distributive duties and responsibilities and accordingly, the scope

of justice should not be limited to the state level. Arguments for global distributive justice claim that either a global system of cooperation already exists and principles of distributive justice should apply to it, or that duties of justice are due whether an institutional cooperation exists or not.

Third, I considered the 'how question': the element of theories of distributive justice which explains how burdens and benefits are to be distributed. This element pertains, in other words, to the principles of distributive justice in play. I considered principles of desert, equality and need, with emphasis on types of egalitarian approaches, in particular the Rawlsian difference principle. Fourth, I considered the *what* element: what sorts of goods would be specified for distribution within an account of distributive justice. I examined accounts which would apply principles of distributive justice in distributing welfare, resources, and opportunities.

Finally, the moral justification process used for constructing or deriving the principles is a further crucial element in putting forward a theory of distributive justice. Moral justification is the logical process used by different theories to convince non-adherents of the theory of why it endorses specific principles. For example, moral realism relies on the existence of moral reality. Realists claim that there is no need for moral justification when moral claims are in accordance with moral reality. On the other hand constructivists depend in their moral justification on a moral reasoning process such as Rawls's original position. Constructivists justify the constructed principles by the acceptance of all participants in the process. Meanwhile, a conventionalist justification depends on the social and cultural context and the participants' understandings.

With this comprehensive understanding of what distributive justice theories entail, in the next chapter I will present my practice-based approach to political theorizing. I will illustrate why practices are important for political theorizing, and how constructive interpretation is employed to construe principles from practices. This account of practice and interpretation will present the required background for the rest of this thesis, where I will consider Islamic finance practice as a site for distributive justice and will use constructive interpretation of the practice to construe Islamic finance distributive justice principles.

Chapter III: Practice, Interpretation and Construction of Principles

All meanings, we know, depend on the key of interpretation.

GEORGE *ELIOT* (1988: p. 46)

In the first chapter of this thesis I discussed how the Eurocentric academic canon of political theory and the discipline's inability to address globalization issues such as coexistence paved the way for an important call for comparative political theory as a discipline that can integrate non-Western perspectives, thinkers and traditions into political theorizing. Accordingly, I contextualized my Islamic distributive justice theory as justificatory comparative political theory. It is a project that claims the existence of first order normative arguments in a tradition that is under-represented in normative political theory. Islam, as a non-Western tradition, is rarely considered in political theorizing except when examined for religious extremism, thereby excluding a tradition rich with moral arguments. Accordingly, I claim that the construction of an Islamic distributive justice theory can enrich the existing debate and attract the attention of not only comparativists and CPT proponents, but also theorists who are concerned with distributive justice in general.

In this chapter I will present the Practice-dependence Approach (PDA), which I will apply in constructing my conception of Islamic distributive justice.

PDA is a relatively new approach that assumes a more fundamental role of practice in theorizing justice, as it relies on the interpretation of the existing practices and the construction of principles according to that interpretation. The constructivist approach is directly linked to the interpretation of the point and purpose of the practice and how it corresponds with the viewpoint of the participants. It aims to move beyond the meta-ethical nature of justice “to justify specific principles as a reasonable basis for public agreement in particular areas of social life” (James, 2013a: pp. 251-252). Constructivism and interpretation are the key PDA tools that I will use in developing an Islamic distributive justice theory.

Accordingly, over this chapter’s four sections, I will present PDA and illustrate how interpretation and constructivism both play key roles in it. In the first section I introduce PDA by explaining why social practices are key in political theorizing and how to identify relevant practices for this matter. I also answer a few of the important objections to PDA. In the second section I present how interpretation is used to construct principles of justice from existing social practices. Here I will present Dworkin’s constructive interpretation account, the most prominent approach employed by PDA accounts. This is followed by the third section where I give a detailed account of constructivism as a key step in PDA. For this purpose I will use Rawls’s constructivism to illustrate how principles are constructed from practices: a different reading of Rawls’s work that practice theorists regularly use to support their arguments. In the final section, I explain how I use a constructive account in my practice-dependent Islamic distributive justice theory.

3.1. Why a Practice-Dependence Theory?

Most normative political theorists have endorsed a practice independent view, which does not accept a relation between the content of justice and the justification of principles, on the one hand, and the context where these principles are to be applied on the other (Erman and Moeller, 2015: p. 4). It aims for an *a priori* moral premise, and accordingly, considers practice as useful for providing examples of justice and cases for application of principles, but not for determining principles of justice themselves (Gledhill, 2013: p. 64). Consequently, a widely accepted criticism of the practice independent view is that it gives too little attention to the fundamental moral importance of the political and social context in which principles of justice are to take effect.

The practice-dependence approach became popular in post millennium political theory and political philosophy as a response to this criticism. For PDA, it is these social and political circumstances, which the practice independent view ignores, that explain the motive of individuals for accepting specific principles (Erman and Moeller, 2015: 4). Therefore, practice-dependence theorists consider the relationship between individuals and their membership in communities and practices as fundamental factors in construing the content of justice. For practice theorists political, social and relational factors are not to be considered arbitrary, as they do not aim to offer substantive arguments about the nature of justice, but rather principles of justice that are constructed from the interpretation of the practice they aim to regulate (El Kholi, 2013b: pp. 10-11).

The next sections will discuss what PDA theorizing involves in practice, the types of PDA accounts, and some objections that have been raised to it.

3.1.1 The Approach

As explained above, PDA is relatively new in political theory. It gained attention as an approach in particular with the 2005 publication of Aaron James' article. 'Constructing Justice for Existing Practice: Rawls and the Status Quo' (Ibsen, 2013: p. 83) Since its publication and over the past decade, PDA has been further defined and shaped by eminent theorists such as James (2007, 2013a, 2013b), Sangiovanni (2008), Ronzoni (2009, 2011), Valentini (2011) among others, whose work about PDA mainly aimed to "sketch the contours of PDA as a distinct approach to the identification of principles or conceptions of justice" (Banai, Ronzoni and Schemmel, 2011: p. 49).

According to most practice theorists, PDA is to be understood as an approach which rejects constructing principles in the abstract without reference to existing practices and claims that principles are to be justified, both for and from practice. As explained by Banai, Ronzoni and Schemmel, "the fundamental idea of PDA is that conceptions of justice have to start from an account of the practices they are supposed to apply to" (2011: p. 49). Thus, instead of assuming a prescriptive role about which practices ought to exist, PDA starts by accepting existing social practices and constructs relevant normative principles that present constraints on these practices to make them more just (Ibsen, 2013: p. 81). Accordingly, the practice-dependence thesis as articulated by Sangiovanni, and widely accepted by PDA theorists, is that;

the content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern (Sangiovanni, 2008: p. 138).

Within this context, relevant practices are not restricted to the political realm, because basic practices that define and enable the life of a particular community are also significant. Accordingly, social practices are understood as behaviours that are organized among a group of people because the participants introduced rules of conduct that aim at achieving some purpose or end. The desired social end is expected to be worthwhile and legitimate, although it does not need to be endorsed by *all* participants. “If enough participants simply presume that enough other participants endorse a goal as valuable and legitimate, they may stably organize around the end as established expectations require” (James, 2013b: p. 44).

Fundamental to this understanding is the idea that when the relationship between people is organized by social practice it needs to be regulated by justice as a political value, which detaches itself from any connection with a comprehensive worldview and remains grounded in particular and reasonable worldviews that offer good reasons for participants to endorse (El Kholi, 2013b: p. 10).

[W]hen the relationship is mediated by a social practice, it should be regulated...by justice understood as a strictly political value. For in a socially mediated relationship, individuals do not get together on their own initiative in order to realize some private end that they happen to share in common. Rather, they are brought together in view of realizing some common social end that is most often imposed on them. So it makes at least intuitive sense that the structure and point of the practice in question be regarded as normatively relevant when determining the content of the principles of justice (2013: p. 11).

Practice theorists, as will be explained in depth in section III, commonly rely on Ronald Dworkin’s ‘constructive interpretation’ approach for identifying

and interpreting the practice. In constructive interpretation the identification of a relevant social practice is the first stage of a three-stage process. The practice theorist identifies the form of social cooperation in the first, *Individuation stage*. The identified practice serves as a proposed object for interpretation. This is followed by the *Characterization stage*, which is mainly concerned with the moral elements of the practice; stated or implicit rights, goals, or principles described in moral language. These moral elements serve as part of a general interpretation and will override the need for attention to the idea participants have about their practice. Finally, in the *substantive argument stage*, the theorist engages in a substantive moral theorising process about what it takes for the practice to be 'just'. It is a stage for a reasoning process about what makes the practice just against its objectives, structure, differences to alternative practices, etc. (James, 2013b: p. 45).

Thus, PDA relies on two fundamental concepts or steps: interpretation and constructivism. Interpretation, specifically 'constructive interpretation', explores the practice and connects it to its point and purpose and the viewpoint of its participants, while constructivism serves as the reasoning process according to which principles of justice are constructed. Both interpretation and constructivism will be discussed in the next section. However, before moving on to these discussions, I will first present the main types of PDA and the objections that the approach needs to address.

3.1.2 Three Types of PDA:

In this section I will start with Sangiovanni's influential, twofold classification of PDA into cultural conventionalism and institutionalism. This will be followed by functionalism, a third approach identified by Valentini.

1) Cultural Conventionalism:

Cultural Conventionalism emphasises the role played by the culturally distinct practices of distribution. It asserts that the "moral identity of individuals is at least partly constituted by their membership in a community having distinct cultural practices" (EL Kholi, 2013b: 15). These cultural practices are regarded as responsible for giving social goods their value and meaning. Simultaneously, these value-laden meanings "give content to and bound the scope of first principles of justice" (Sangiovanni, 2008: p. 2).

The most distinctive aspect of this type of PDA is the belief that culture should play a decisive role in the distributive justice question (El Kholi, 2013: p. 15). According to cultural conventionalism, a just institutional system needs to be directly connected to the cultural practices and the distributive values and criterion it promotes. In other words, it needs to reflect these values in its laws and policies. Thus, a conception of justice is constructed through interpreting the meaning of social goods within the society or culture and deriving the criteria or principles that reflect this meaning. Interpretation, therefore, is successful if participants can envision themselves, and their beliefs, in the conception constructed by it. If the interpretive account reflects the beliefs and norms, and produces a conception of justice that entails the beliefs of the participants about justice in distribution, then the conception can be affirmed by the participants.

Accordingly, the normative force of the criteria of distribution does *not* stem from the mere fact that participants adopt them in their cultural practices, for this would be a relativist rather than a conventionalist account. The authority of the principle rather stems from the valid and good reasons the participants have for adopting this culturally laden criterion. These reasons can be understood in two ways, either the social meanings and criteria of justice are constitutive of the identity of the participants, or these meanings are the product of mutual commitments that have normative consequences and force, similar to actual contracts. Hence, to honour this commitment, we need to respect the best interpretation of the social practice and the obligations thereof (Sangiovanni, 2008: p. 9).

As mentioned in the previous chapter, Walzer's *Spheres of Justice* offers a strong form of this stance. Walzer explains that the political community is the closest form of a collective with common meanings, and it is where language, history and culture come together to produce a collective consciousness. Members within the political community share sensibilities and intuitions. He elaborates that sharing usually takes place in smaller units, and this is the reason why we should take closer looks at these communities to assess the distributive decisions according to the requirements that depend on the shared understandings among the citizens about the value of culture diversity, autonomy, etc. (Walzer, 1983). Walzer's theory, thus, "does not rely on the traditional philosophical approach, which accounts for objectivity in general in terms of *a priori* truth, but rather on commonsensical approach limited to these objects to which we attribute social significance" (El Kholi, 2013b: p. 17).

2) Institutionalism:

Institutionalism, the second type of PDA and most important for this thesis, does not reject the conventionalist claim of the influence of culture, yet it denies “that this influence should be *decisive* and points instead at a concern for the structure and point of already existing social and political institutions” (El Kholi, 2013b: p. 18). For institutionalists, principles of justice vary not according to the societal culture but rather according to the existing institutional form. Although this institutional form may depend on cultural norms, beliefs and values, it is not exclusively dependent on them. In other words, the factors affecting the form and structure of the institution are not reducible to cultural beliefs and norms. Thus, culture is not enough of a determinant for the construction of a conception of justice (El Kholi, 2013b: p. 18).

Institutionalists claim that institutions create special network of relationships, “that is, they establish a set of background conditions which alters the way in which participants interact” (Sangiovanni, 2008: p. 11). Accordingly, it is these relationships and not cultural identity or commitments that make us accept or reject principles. For this approach, it is these relationships, determined by the institution, that ‘condition’ (rather than determine) justice. It is the structure of existing institutions, which relies on the purpose for which they are created, that serves as a background condition that influences and changes how participants interact (El Kholi, 2013b: p. 18). Thus, “the normatively relevant factor, in this instance, is the influence of existing institutions over the interactions of individuals within the community” (El Kholi, 2013b: p. 19). Objectivity for institutionalism comes from accounting “for the decisive influence

of existing institutions in fixing social and political objectivity” (El Kholi, 2013b: p. 19).

The distinctiveness of this PDA type stems from how it stands mid-way between universalism and contextualism. This is particularly so due to the importance it places on specifying the practices that it considers as “creating special obligations of justice. This account must explain what is so special about these practices that it justifies regarding them as normatively relevant when it comes to matters of justice” (El Kholi, 2013b: p. 22). The best example to illustrate this point is Rawls’s justification for choosing the basic structure as his site of justice, as explained in the previous chapter. Rawls emphasises how the practices within the basic structure have profound influence and impact on the participants’ lives, and how they can create inequalities and injustices within the society.

Accordingly, interpretation of institutional practices aims to understand the motivation behind the participant’s affirmation of the practices and puts forward considerations and constraints that are fundamental for the construction of a conception of justice. The role of interpretation here is “to provide structure to the justification of a conception of justice” (Sangiovanni, 2008: p. 13). The interpretation is providing the conception with the relevant constraints that determine its content and application. The role of interpretation will be illustrated in depth in the next section.

3) Functionalism

Functionalism is a third type of PDA that, according to Valentini, cosmopolitan theorists use to argue for a global distributive justice “in virtue of the existence of

appropriate practices at the global level” (2011: p. 414). According to this type of PDA, principles of justice guide existing institutions and practices, yet “the content, scope and justification of principles of justice” are *independent* of these institutions and practices (Gledhill, 2013: p. 66). Valentini explains that functionalists determine the global scope of distributive justice “in terms of its practice-independent function,” after which they question the relations and practices to which the principles will be applied (2011: p. 414). To better explain the idea of functionalism, she presents a few examples of theorists who discuss patterns of practices that indicate the global functionality of distributive justice, including Thomas Pogge and Iris Marion Young among others. They highlight how current and existing practices and interactions require distributive justice principles to be applied globally. Valentini explains that “the functionalist version of practice-dependence offers a general account of the function of distributive justice...and selects the practices or types of interaction to which distributive justice should apply, in light of its function” (2011: p. 415). Accordingly, the idea behind this type of PDA is that moral equality of individuals is owed through the interconnectedness of people’s fates and lives on the global level (Gray, 2015: p. 167).

3.1.3 Objections to PDA:

Now that it is clearer why and how practices are significant and how a practice-dependent approach would be applied, we can address the main objections to the approach. It comes as no surprise that an approach that defies the mainstream

practice-independent and abstract methodology to political theorizing faces several objections.

1) Communitarian inclination

The first and most important objection PDA faces is how it allows the boundaries of the practice to have substantive influence and consequences on the scope of distributive justice. It is accused of discriminating in favour of membership to specific societies and fellow citizens, since principles of justice are derived from specific practices and are to be applied to participants who share the practice and endorse the objectives of the practices (Valentini, 2011: pp. 410-411). This limitation of the scope of justice to the “functional role of the practice” is considered morally problematic and unjust, particularly as it is jeopardising the basis of cosmopolitanism that regards the individual as the ultimate unit or source of moral concern (Meckled-Garcia, 2013: p. 107). For example, in the case of my project, the principles derived from Islamic finance practices are operating within the scope of the practice. Thus, they are not to be considered an *a priori* conception of justice and they do not provide a substantive argument about justice in itself. Hence, it could be criticised to be discriminatory in favour of those who participate in the practice and against other individuals who prefer to participate in the conventional financial alternatives.

To elaborate, Meckled-Garcia suggests the inclusion of a justifiability constraint as an answer to this moral objection. The restriction of the scope of justice may be acceptable if it could be justified in reference to moral values to those who are affected. In other words, a practice theorist is required to justify the

limited scope of the theory to those affected by it by arguments referring to independent moral value (2013: p. 108). He sets out the thesis for this justifiability constraint as follows:

Any argument supporting a substantive moral standard for a given group of people must be justifiable by reference to at least one moral value or independently derived moral principle (2013: p. 108)

The justifiability constraint or demand may be rejected by practice theorists for several reasons. First, moral principles that are constructed from practice could be morally justifiable on an abstract level (Meckled-Garcia, 2013: p. 109). In other word, the principles that are interpreted and constructed from the practice may be principles that are justifiable irrespective of the practice, e.g. an egalitarian practice-dependent principle could be justified on an abstract level and apart from the practice. Second, the interpretation of the practice may allow for insights that otherwise will not be disclosed through *a priori* moral reasoning. Abstract theorizing may not allow us to see the underlying structures that allow for the pursuit of justice (Meckled-Garcia, 2013: pp. 110-111). By interpreting the practices and the affirmation of the participants we may see new insights that we could have otherwise missed. Third, PDA is an alternative approach that is non-substantive in nature. In other words, the practice acquires authority in this approach as it guides our thinking and understanding of the issue at hand (such as distributive justice in the case of this thesis) (Meckled-Garcia, 2013: pp. 111-112).

However, as Valentini explains, practice theorists answer the communitarian inclination objection by promoting the idea that this difference from cosmopolitanism is in reality not a deviation from the moral supremacy of the individual, but rather a methodological difference of moral justification. In

other words, as it is agreed that global and domestic practices differ, it becomes acceptable to reject the global application of specific principles of justice without compromising the “liberal commitment to the moral equality of persons” (2011: pp. 399-400).

To explain this in the context of my project, as I will illustrate in the next chapters, the rules, objectives and philosophical context of Islamic finance practice are substantively different from the alternative financial systems. The participants of Islamic finance practice choose to participate in these practices as they endorse a specific worldview and support the objectives of the Islamic financial practices and institutions. Accordingly, it is acceptable to apply the principles derived from these practices to communities and individuals who actually take part and endorse these practices, while rejecting the application of these principles globally. It might be wise to compare these principles to other principles and conceptions, yet it is not reasonable to claim that these principles provide a substantive argument about justice in itself. In this way, it is an explanatory process rather than a discriminatory process that favours fellow citizens or nationals.

2) Lack of critical potential

Relevant to the previous critique is the objection that PDA lacks critical potential. As this approach is based on “making the content of a conception of justice dependent upon the interpretation of an existing practice ipso facto limits the critical potential of this conception with respect to that practice” (El Kholi, 2013b: p. 13). Beitz, a proponent of PDA in human rights theories, explains this objection by highlighting that a theory is needed in the first place to address the existing disagreement regarding various aspects of the practice “including the

composition and reach of its normative requirements. Another is that some aspects of the practice...may seem, from some perspectives, objectionable on their face” (2009: p. 105). Accordingly, the way practice-dependent theories give authority to practices as they exist is creating an objection with regards to how critical they can be (2009: p. 105). Although this objection does not deny practice-dependence all critical potential, it is argued that practice theories do not have the capacity to criticise the actual point and purpose of the practice (El Kholi, 2013b: p. 13).

However, this specific objection is taking practice-dependence outside of its context. As Beitz explains, the role of PDA is not only to interpret and understand the existing practice, but also to evaluate the importance of these practices in light of the relevant interpretation (2009: pp. 105-106). Practice theories, as explained earlier and in previous chapters, do not intend to offer substantive arguments about justice, “but only to spell out the most appropriate principle in relation to a specific interpretation of the point and structure of a given practice” (El Kholi, 2013b: p. 13). Hence, it is outside of the objective of a practice-dependence approach to criticise the point and purpose of the practice. Rather, it seeks to put forward the most appropriate principles for a specific political and social context. I will illustrate this role in the last chapter when I use my Islamic distributive justice principles to evaluate and guide Islamic finance practices.

3) Indeterminacy

Another objection that faces PDA, and is commonly directed towards approaches that require interpretation, is regarding the vagueness of and disagreement on interpretation. As previously explained, the principles of justice in PDA are

construed from the accepted interpretation. However, this is proven to be problematic, since theorists may reach an agreement on how to describe the practice but find it difficult to agree on which interpretation best describes and analyses the practice. In other words, there may be one description of the practice, yet a number of different interpretations (El Kholi, 2013b: p. 12).

According to El Kholi, the answer to this indeterminacy objection is aiming for a “full-blown account of social and political objectivity.” Such an account is based on the relationship between the practice, the viewpoint of the participants and the interpretation that is the basis for attaining a conception of justice. Without such an account the possibility of a better alternative interpretation will always be present (El Kholi, 2013b: p. 13). Therefore, there is a need for practice theorists to actually reach a consensus with regards to the interpretation. To be able to attain an agreement on the interpretation, two issues need to be comprehensively addressed. First, it needs to be an interpretation to which participants can agree. In other words, participants need to identify themselves with the relevant interpretation. Second, there needs to be a clear relation between the convictions of the participants that led them to take part in the practice and the actual point and purpose of the practice. An interpretive account that can attain these two objectives can reach an agreement (El Kholi, 2013b: p. 13).

Now that I have given an account of the practice-dependence approach, its types and objections, I will give details on interpretation and constructivism as two important elements of PDA.

3.2. Interpretation and Constructing Principles in PDA

As explained in the previous section, interpretation is a fundamental tool for political theorizing. It is used in cultural theories, such as Walzer's social interpretation, as well as in constructivist theories, such as Rawls's theory of justice. The role of interpretation is to connect the theory to the context from which it is emerging. Differences, however, exist in the extent to which the context plays a role in theorizing, and how and when interpretation is used to establish the desired connection with context.

Within the context of PDA, the theorist constructs principles of justice from the interpretation of the existing practices. Thus, it is crucial to explain the role of interpretation in political theorizing. For the purpose of this thesis I will limit my discussion to Dworkin's constructive interpretations, as it is the approach generally accepted among proponents of PDA. It is also the approach I will use in constructing principles of distributive justice from the practices of Islamic finance.

3.2.1. Dworkin's Constructive Interpretation:

As noted, Dworkin's approach to the interpretation of practices (1986, 2011) has been widely adopted by PDA theorists. As Valentini observes, PDA's "classic and most articulated statement may be found in Ronald Dworkin's account of 'constructive interpretation'" (Valentini, 2011: p. 403).

Dworkin's constructive interpretation proceeds from the importance of an agreed on understanding of the point and purpose of the practice. Although

participants of a social practice may all agree on the fact that the practice is intended to serve a purpose and express a value, they may still disagree about the nature of this value and how to convey it, and they may even have a critical attitude towards the shared practice. To resolve such a disagreement and to better understand the meaning, purpose and value of the practice, the process of constructive interpretation is necessary. Interpretation, thus, focuses on understanding the purpose of a specific set of social practices. Dworkin explains;

interpreting a social practice, like your practice of courtesy, can only mean discerning the intentions of its members, one by one... interpretation tries to show the object of interpretation...*accurately* as it really is, not as you suggest through rose coloured glasses or in its best light. That means retrieving the actual historical intentions of its authors, not foisting the interpreter's values on what those authors created. (1986: p. 54)

Accordingly, constructive interpretation means to recognize the intentions of the participants of the practice and to see the practice accurately by assigning a purpose to it. It is about seeing the object that is being interpreted, social practice in this case, as a product of purpose-oriented decision. In other words, the interpreter proposes a set of goals or purposes that the practices are intending to serve (Dworkin, 1986: pp. 59-62). Consequently, each type of social practice has its pertinent purpose, and interpretation works on attributing to each practice its purpose. Therefore, the identification and interpretation of the point and purpose of the practice is a requirement for the justification of any practice-dependent conception of justice (Sangiovanni, 2008: pp. 142-149). The purpose in this context is the aim or telos of the practice that gives it a normative authority. People adopt special practices that are expected to achieve specific ends. Consequently, behaviour is organized so that participants can adhere to rules of

conduct that are expected to serve a specific purpose. That social purpose is assumed to be meaningful and sensible either for its own sake or as serving other reasons (James, 2013b: p. 44).

Within this understanding of the meaning of interpretation of social practices, constructive interpretation is seen to take place again in three stages. In Dworkin's words:

we interpret social practices, first when we individuate those practices: when we take ourselves to be engaged in legal rather than literary interpretation. We interpret, second, when we attribute some package of purposes to the genre or subgenre we identify as pertinent, and, third, when we try to identify the best realization of that package of purposes on some particular occasion (2011: p. 131).

I will adopt slightly different terminology here, more focused on the role of each stage in interpretation. In detail, the stages would be as follows:

The pre-interpretive stage (corresponding to the individuation stage), is the step of identifying a form of social cooperation as a proposed object of interpretation and assessment. In this stage we identify the rules and standards constituting and governing the practices, which are not always already identified (Dworkin, 1986: p. 66). As Valentini explains, it is “the identification of the raw data for interpretation” (2011: p. 404). The task of identifying an object of interpretation provides a shared platform for further discussions about the practices and the conception. This task needs to remain uncontroversial in the sense that it ensures that the participants share the purpose of the practices and institutions that are being interpreted (Sangiovanni, 2008: p. 149). Therefore, this task relies on a high degree of consensus between participants about the practices and their rules (Dworkin, 1986: p. 66).

The Interpretive stage (or characterization stage), is the step in which the interpreter settles on a general understanding of the elements of the practice and determines the point and purpose of the practice or institution. This is usually achieved by identifying two elements of the practice; the point and purpose of the practice and the viewpoint of the participants. First, the objective of this stage is to identify why the practice is worth performing and adhering to, and what it is intended to serve. It is considered as a task of interrogation by the interpreter about the meaning of the practice in light of her convictions. The interpretation needs to 'fit' with data identified in the first pre-interpretive stage (Valentini, 2011: p. 404), or as Dworkin explains, it needs to 'fit' enough with the identified aspects of the practice (Dworkin, 1986: pp. 66-71).

Second, the interpreter is also concerned with developing an understanding of the reasons the participants have for adopting and adhering to the practice. She reconstructs their reasons for affirming the rules, procedures and standards, and addresses why and how the participants arrange their affairs in a distinct way to achieve the aims and goals intended by the practices and institutions (Sangiovanni, 2008: p. 149).

Sangiovanni clarifies that by identifying the point and purpose of the practice, together with assuming the viewpoint of the participants, we seek to understand the sum of its unique parts. The practice in this sense entails parts that contribute to the achievement of the purpose by working together. Hence, the role of interpretation in this crucial step is to connect and arrange the identified parts into a coherent whole entity of the social practice. The overall aim, within this context, is to explicate the parameters that need to be taken into consideration when putting forward a conception of justice (2008: p. 149).

The Post Interpretive stage (or substantive argument stage), is the critical step of constructing first principles by adjusting our senses about what the practices require to better serve the justification reached in the preceding stage (Dworkin, 1986: p. 70). It is in this stage that we use our interpretation to move to an understanding of the way institutions in reality shape the relations between participants. “Interpreters revise their understandings of what the practice really requires so as to best express its point and purpose” (Valentini, 2011: p. 404). This shift from interpretation to understanding the relation between the practices, reality and the participants requires answers to questions such as

How are the relations in which people stand altered by the institutions they share? What kinds of interaction become possible within those institutions? To what degree do the institutions make their participants interdependent, and how are we to understand the nature of this interdependence? And, perhaps most importantly, what role is justice meant to play among participants? How does the demand for justice emerge within the contingent historical and political contexts constituted by the institutions? (Sangiovanni, 2008: p. 14).

It is from the answers and understanding of these issues that we derive first principles.

Now that I have presented details on constructive interpretation, I will offer an elaboration of the role of political constructivism within PDA. Constructivism was presented in the previous chapter as one approach to moral justification. Here it will be shown to be an integral step for PDA projects that aim to construct principles from the interpretation of existing practices.

3.2.2. Constructivism in PDA:

Trends in moral justification usually fit in the ‘realism / relativism’ dichotomy. Moral realists and positivists hold objectivity as the priority for truths about principles and justifications, while relativists and anti-realists place higher priority on the embeddedness of morality into cultures, beliefs and convictions of societies and individuals, and thus are sceptical about the possible ‘objectivity’ of moral judgements. Alternatively, constructivists attempt to find a mid way between these two trends. They try to achieve a balance by abandoning the metaphysics of realism whilst staying committed to objectivity and truth in a non-sceptical fashion, and without accepting subjectivism that denies the importance and authority of ordinary moral and practical values and judgments (James, 2007: p. 3).

It is of no surprise that practice theorists “clearly have an affinity towards *constructivist* accounts of the nature of justice” (Erman and Moeller, 2015: p. 15), as they aim at *constructing* moral values that are rooted and embedded in the practices of societies, yet simultaneously objective enough to allow for ordinary matters of moral judgments to be part of it. It, thus, demonstrates how principles can be constructed through reasonable steps “from rudimentary and highly plausible ideas arising from within a society’s own essentially social kind of practical reason” (James, 2013a: p. 252). Therefore, to maintain objectivity of the moral claims that are constructed from practices and embedded in shared understanding of the society, a constructivist approach requires these claims to be the result of an appropriate reasoning process. Moral claims are true when they become the “output of a certain (hypothetical or actual) procedure of deliberation”

(Sangiovanni, 2013: p. 30). Thus, a claim is true “if and only if it would either be endorsed by an appropriately motivated actual or hypothetical deliberator (or group of deliberators) or entailed by norms that would be selected for mutual governance by appropriately motivated actual or hypothetical deliberators” (Sangiovanni, 2013: p. 31).

Sangiovanni explains that a constructivist needs to satisfy four conditions to prove the truthfulness of a moral claim, such as slavery is evil or promises need to be kept...etc. First, an appropriate reasoning procedure, the output of which informative enough to help solve the practical problems they are intended to solve, needs to be specified. Second, it must be clear that the procedure does *not* allow for subjective deliberations and conditions, which is a crucial prerequisite to claim objectivity. Third, you need to explain why principles of such a procedure are to generate a normative force to which we need to abide. Finally, you need to specify the constraints on the procedure of deliberation that the theorist can defend. Thus, according to Sangiovanni, a constructivist approach needs to satisfy these four tasks to prove a claim is true (2013: pp. 32-33).

Following from there, James puts forward a more detailed understanding of the elements that shape a constructivist approach. He explains that a political constructivist account needs to address the 1) the social role of the principles, 2) the sources used as background data for interpretation, 3) a constructive interpretation account, 4) representation of all moral strands and 5) a conclusion regarding the constructed principles. James uses his suggested elements further to provide an understanding of Rawls’s constructivist work and to highlight how his principles of justice are constructed from existing social practices, thereby offering a practice-dependent reading of Rawls’s work. Thus, I will follow James’s path by

presenting his elements of political constructivism through Rawls's constructivist approach in the rest of this section.

3.2.3. Rawls's Constructivism and PDA:

A clear example of political constructivism is the approach by which Rawls justifies his principles of justice. As James explains, “[p]olitical constructivism is associated with John Rawls more than any other contemporary philosopher” (2013: p. 251). His constructivist approach is at its clearest when the relationship connecting practices, principles and objectivity is understood. Rawls takes moral intuition very seriously and constructs principles that appeal to “intuitional and political pluralism” (Roberts, 2007: p. 9).

However, more importantly with regards to Rawls's constructivist approach is how practice theorists put forward their understanding of his work as constructing principles from existing practices. This became a strong argument in PDA, particularly with the publication of James's article *Constructing Justice for Existing Practice: Rawls and the Status Quo* that presents a practice-dependent reading of Rawls's conception of justice” (Ibsen, 2013: p. 83). James argues that Rawls's work, even before *A Theory of Justice*, always argued for starting moral reasoning about justice from existing social practices (2005: p. 286). He argues that the original position is not a freestanding moral reasoning tool and that “it must be grounded in independent judgments about what social practices exist and what kinds of agents participate in them” (2005: p. 282). Consequently, the original position entails a reflection of what the participants understand and believe the basic structure is. It is, therefore, a device or tool that creates a “shared

moral understanding of the basic structure” and constructs thereof the principles of justice that are to govern it (Ibsen, 2013: p. 84).

In his contribution in Blackwell’s *Companion to Rawls* (2013), James presents his practice-dependent understanding of Rawls’s work and presents how he addresses the five constitutive elements of political constructivism. I will now present these elements of political constructivism as illustrated in Rawls’s account:

1. Social Role:

In political constructivism principles are to play a “distinctive social role as a public standard of mutual justification within an independently identified social practice” (James, 2013a: p. 253).

For Rawls, principles are to apply within a specific practice but not elsewhere (James, 2013aa: p. 253). Once a social practice is identified, “Rawls assumes that principles of social justice function not as normatively neutral standard of evaluation but in a guiding, “public” role” (James, 2013aa: p. 254). This is particularly relevant to the idea of cooperation in social practice, because cooperation implies that participants accept the already publicly recognized rules. Accordingly, Rawls explains that the “social role of a conception of justice” is to help members of the society to accept each other’s institutions and arrangements “by citing what are publicly recognized as sufficient reason” (James, 2013a: p. 254). As James notes,

the “social role” of principles in the sense that it picks out not simply a welcome ideal but the very task of justification. As Rawls explains, “whenever a sufficient basis for agreement is not presently known, or recognized,” the task becomes that of providing one (KC, 305) (James, 2013a: p. 254).

Thus, to summarize, for Rawls the social role of principles is to provide people with a basis according to which they can justify their common practice. They are a publicly agreed basis for evaluating common practice.

2. Sources:

This element is resembled in the idea that moral reasoning in political constructivism proceeds from “generally (if implicitly) affirmed fundamental ideas, and especially shared understandings of the nature of the practice at issue” (James, 2013a: p. 255).

Rawls explains that his principles are best suited for democratic societies, traditions and culture. He attempts to articulate a conception of social justice that is embedded in “settled convictions and deep self-understanding of constitutional democracy” (1993: p. 24). Thus, in Rawls’s understanding, a theory of justice begins from an understanding of the solid convictions within the society, and it uses them as a framework that any conception of justice needs to account to. As Rawls himself explains:

We collect such settled convictions...and try to organize the basic ideas and principles implicit in these convictions into a coherent conception of justice. We can regard these convictions as provisional fixed points which any conception of justice must account for if it is to be reasonable for us. We look, then, to our public political culture itself, including its main institutions and the historical traditions of their interpretation, as the shared fund of implicitly recognized basic ideas and principles (Rawls and Freeman, 1999: p. 393)

3. *Interpretive basis:*

Interpretation aims to offer a generally accepted version of the practice. This is achieved through a constructive interpretation of the fundamental ideas (James, 2013a: p. 257). For Rawls, we get involved in constructive interpretation by looking at ideas embedded in our political culture.

The *pre-interpretive phase*, is represented in Rawls's identification of the basic structure. Yet, to satisfy the condition of this phase, his characterization of the basic structure, its nature and purpose, all need to be accepted by a good number of the participants. Thus, he offers his sociological description of the basic structure in a way that is generally accepted (James, 2005a: pp. 301-302).

In the *interpretive phase*, Rawls sees "himself as describing our existing basic structure in moral vocabulary" (James, 2005a: 304), and he describes the basic structure "as cooperative schemes for the sake of the relevant, specified goods" (James, 2005a: p. 301). James argues that Rawls shifted throughout his work from a 'protestant' interpretive methodology that does not give authority to the participants' interpretation, to a more 'catholic' stance that allows for such authority. James explains that Rawls in *A Theory of Justice* (1971) proposes his own understanding of "domestic societal practice" yet gives little attention to those participating in the practice. This, however, changed in *Political Liberalism* (1993) where he gave greater attention to existing disagreements. Differences within a democratic culture can extend to understandings of the meanings embedded within the shared culture. "He thus offers not simply a constructive interpretation of what is available to its..participants. Their own presumed understanding of their shared practice is...an important source of argumentative

pressure against potentially resistant elements of their broader moral or philosophical outlook” (James, 2013a: p. 258).

Finally in the *post interpretive phase* the “original position reasoning comes into play” (James, 2005a: p. 301). Accordingly, the original position reasoning comes after the identification of existing practices, determining the purpose and identifying the participants.

4. Representation:

The fourth element of political constructivism is in the need to represent all “morally relevant criteria” in the best way possible through a procedure or device of judgment (James, 2013a: p. 259). Accordingly, the original position’s primary aim is to adequately interpret our internal shared meanings and come up with a reasonable account of the political culture. Thus, Rawls introduces the device so that we can “emphasise some of our intuitions, relate them to one another in a particular way, and paint one picture of who we are” (Warnke, 1993: p. 45). Thus, it is for Rawls a valuable thought experiment that helps us reflect and work out what we think (James, 2013a: p. 259).

Through the original position, Rawls claims objectivity, or the idea that reasons for principles are unbiased and impartial, and can therefore be considered acceptable and applicable to all parties. He lays out the features of the original position and characteristics of the parties as “an objective standpoint from which it is appropriate to identify principles of justice. His contention is that the principles chosen from this standpoint would be objectively justified as they would not have been chosen on obviously partial or subjective grounds” (Roberts, 2007: p. 14). Tied to the original position, the veil of ignorance and other

constraints is the concept of reflective equilibrium. Rawls describes the concept in these terms:

In searching for the most favored description of this situation we work from both ends. We begin by describing it so that it represents generally shared and preferably weak conditions. We then see if these conditions are strong enough to yield a significant set of principles. If not, we look for further premises equally reasonable. But if so, and these principles match our considered convictions of justice, then so far well and good. But presumably there will be discrepancies. In this case we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth ...eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium (1999, p. 18).

Rawls's constructivist approach depends on selecting principles through an appropriate reasoning process in the original position and behind the veil of ignorance, meaning they are principles that are acceptable to self interested parties that are oblivious to their position in the society. This form of impartiality of the parties and the process gives the principles their objectivity and accordingly their authoritative power. "The aim is to "further [the] recognition" that we should accept certain principles, beyond considering the various underlying grounds of support directly and by themselves" (James, 2013a: p. 259). Accordingly, it is Rawls's device to achieve a comprehensive representation.

5. Conclusion of the construction:

A political constructivist account needs to conclude whether we are justified to endorse the constructed principles or not (James, 2013a: p. 261). Given the presumption that all steps of the moral reasoning process are correctly executed,

we should have sufficient reasons to accept the constructed principles as justified requirements for guiding the practice and to serve their ascribed social role as presented in the first element of political constructivism (James, 2013a: p. 261). James explains that “the resulting principles can count as correct requirements of social justice simply because social justice is nothing more, and nothing less, than the outcome of some such constructive reasoning, carried out in appropriate circumstances” (2013: p. 261).

Accordingly, for Rawls, principles of justice constructed in the original position are regarded as procedural justice as it is attained through a just procedure. In other words, we do not only endorse and accept principles because they are independently justifiable, but even more importantly “because of our sense of how we have arrived at them, through our free exercise of public reason” (James, 2013a: p. 262).

3.3. Islamic Finance as a Social Practice:

In his argument for considering international trade as a social practice, James (2012) puts forward four conditions according to which a social practice can be identified. A social practice needs 1) to be coordinated over time, 2) its coordination to be based on “generally if not universally understood behavioural expectations” (2012: p. 39), 3) expectations to be governed, and 4) expectations to be organized according to a shared purpose. In the rest of this section I will illustrate each of these conditions in the context of Islamic finance practice.

First, according to James, a social practice needs to be organized among several participants over time. This condition distinguishes between a social practice and other practices that happen intermittently in different points in time such as brushing teeth (James, 2012: pp. 38-39). Within this context, the evolution and development of Islamic finance represent a good example of how a social practice is coordinated over time. As will be elaborated in the next chapter, Islamic finance developed over 1400 years, with institutions being formed to regulate long term financial commitments, including long term investments, project finance, etc., and where participants organize their long term financial practices, including entrepreneurial projects, project management, etc. It is also coordinated as an established alternative to the conventional financial system. Thus, Islamic finance practice is not established to meet a short term objective but it is an ongoing practice that is established and maintained over a long period.

The second condition, as put by James, is for the practice to be based on generally understood behaviour expectations (James, 2012: pp. 38-39). Within the same context, practices and institutions of Islamic finance are in most cases well defined and accepted. There is a general understanding that the practice is governed by Islamic teachings, and as will be clearer in the next chapter, impermissible financial practices are unambiguously identified in Islam. This is not to say that practices do not include variations between regions and countries, or variations of interpretations between scholars. However, variations and differences are all integrated within the overall understanding and acceptance of the Islamic law that governs the practice. For example, charging interest is clearly accepted as a prohibited practice due to the numerous and unambiguous ways it is declared to be so. There are variations in specifying which practices are to be

considered interest bearing, and how to design contracts that can avoid interest based transactions. Overall, however, there is a clear and well defined practice that is easily distinguishable from other financial practices.

Islamic finance institutions are designed to provide Islamic-based services and individuals are expected to affirm these rules and maintain them. Participants of Islamic finance practice share the same basic understanding of the purpose of the practice. Participants are aware that they adhere to Islamic finance practices that serve specific economic, moral and religious purposes. These purposes will be explained in detail in the next chapter, but what is important to note here, is that participants clearly understand what they are participating in. Due to the clearly identified rules of Islamic finance practice, participants are aware of what it entails and what it is trying to avoid.

The third condition of a relevant social practice is for expectations to be governed by sets of rules (James, 2012: pp. 38-39). In other words, the expectation that Islamic finance practice is to be governed by Islamic teaching needs rules to govern and maintain it. Indeed, Islamic finance entails regulatory practices such as the integration of Shariah boards and Shariah units into the institutions. As will be explained in more detail in chapter IV, these regulatory boards and units include Islamic scholars who assess the adherence of the practice with the Islamic teachings. In other words, there is an ongoing assessment of the practice to guarantee its consistency with behavioural expectations. Moreover, the behaviour expectations of the individual participants are clearly organized by specific rules that govern them.

Finally, a social practice also needs to organize behavioural expectations based on a shared purpose (James, 2012: pp. 38-39). The fundamental purpose of

Islamic finance practice is the provision of financial services that are Islamic in substance. In other words, it is offering financial services that abide by Islamic teaching as codified in Shariah law. In the next chapter I will present the fixed points and the background information that will serve as important sources for the interpretation of the practice, as well as Islamic finance practice as my site of justice and as the practice of inquiry.

Based on the above, it should be clear that Islamic finance is a social practice that is appropriate for an application of the practice-dependence approach. It is a well established and well defined practice that came into being by deliberate actions by the participants. In the next chapter, I will work to show that that Islamic finance as a social practice is a salient site of distributive justice: it significantly affects the distribution of burdens and benefits among its participants, and it is guided and governed by discrete and distinctive principles of justice.

3.4. Conclusion:

The practice-dependence approach, although a relatively new approach in political theory, has gained popularity among new generations of political theorists. Practice theorists attempt to address criticism of practice independent approaches as being too abstract and detached from reality by giving more authority and relevance to the contexts in which principles are to operate. Accordingly, they construct principles of justice from the interpretation of actual practices that such principles govern. As was discussed, there are several variants within the approach. Cultural conventionalists put the most emphasis on the

cultural context in which principles operate, and accordingly require cultural understandings to play a decisive role in constructing principles of justice. Institutionalists place more emphasis on the relational network that is created based on the institutional structure of the practice. A functionalist PDA identifies a practice *independent* global scope of justice, yet identifies the relevant practice to which principles will apply.

It comes as no surprise that PDA faces a number of important objections and criticism from cosmopolitans and proponents of practice-independent theorizing. It is criticised for limiting the scope of justice to the scope of the practice. This, however, is considered an invalid criticism by PDA theorists, who argue that in the same way global and domestic practices differ, principles of justice also differ. PDA is also criticised for its limited critical potential, as practice principles are not capable of critically assessing the point and purpose of the practice. Yet again, this criticism is taking practice theories out of their intended context, as they only aim to construct principles that can justifiably govern, assess and guide the practice. Practice theories do not aim to critically assess the purpose of the practice. Finally, PDA is also criticised for the possible indeterminacy of interpretation. An objection that faces most theorizing approaches that use interpretation is that there could be a lack of agreement with regards the interpretation of the practice. However, it is argued by practice theorists that an interpretation that is accepted by the participants and that illustrates the connection between the reasons participants have to take part in the practice and the point and purpose of the practice is a comprehensive and generally acceptable interpretation.

Following the discussion of objections, I examined how interpretation is used in PDA through presenting Dworkin's constructive interpretation account, which remains the most prominent approach. Constructive interpretation in this respect relies on identifying the practice, its point and purpose and the viewpoint of the participants regarding the practice. The practice theorist then interprets the relationship between all elements in order to come up with the most apt principles to guide the practice and to make it more just.

I then discussed constructive interpretation, following James in presenting it as a five-step process focused the social purpose of the principles, the sources of the interpretive account, the interpretive basis or the constructive interpretation account, the representation of different moral views, and finally the reason for accepting the principles constructed. I presented James's practice-dependence reading of Rawls's work to highlight how Rawls presented a constructivist account that uses constructive interpretation.

Finally, I demonstrated how Islamic finance can be viewed as a practice which is appropriately analysed within the practice-dependence approach. Islamic finance is a practice that was developed over a long time and with long term commitments. It operates with the expectation that institutions are to abide by Islamic teachings and participants are to affirm Islamic rules and maintain them. Accordingly, behavioural expectations are governed by Shariah boards and units that aim to ensure that the practice remains committed to its reliance on Islamic teachings. And finally, all these conditions are tied up with a shared purpose that is maintained even when contradictory objectives exist.

Accordingly, Islamic finance practice should be regarded as a social practice that is salient for constructing principles of justice. The next chapter will

make the case for Islamic finance as a salient site for distributive justice first by detailing its philosophical and historical background, then by presenting the actual rules of Islamic finance practice as they have evolved. The chapter will provide fundamental data for my later interpretation of the practice, to be presented in chapter V, and according to which I will construct principles of justice for Islamic finance practice.

Chapter IV: Islamic Finance as Site of Distributive Justice

What is the robbing a bank compared to the founding of a new bank?

BERTOLT BRECHT, The Threepenny Opera (see Hinton, 1990: 28-29)

The conceptual analysis I presented in Chapter II spoke to the vast and wide ranging literature on the notion of distributive justice, what it entails, its principles and issues it needs to address. However, in spite of this powerful and extensive literature, little has been written on the role of Islamic finance practices in the distribution of benefits and burdens among persons. This absence of the Islamic tradition marks a significant and increasingly evident gap in the literature, given the suitability for the practice to be investigated as a site of distributive justice. Islamic finance practices are widely promoted as an ethical alternative to the conventional financial system. They are based on a highly systematic code of teachings that prohibit a number of acts of financial misconduct and promote alternative ethical financial products. Islamic finance, as discussed in the previous chapter, is a long-term social practice based on a generally understood expectation of behaviour. In other words, it is expected that the institutions providing Islamic financial services are to abide to the Islamic teachings which, as will be detailed in this chapter, are clearly stated in Islamic sources and participants are to affirm these rules and support them. Accordingly, these expectations are governed by rules such as the establishment of Shariah boards

and are organised according to the purpose of providing Shariah compliant services.

This chapter is concerned to show in full detail why Islamic finance should be seen as an appropriate site of distributive justice: It is a practice that is capable of being just or unjust and is regulated and governed by principles of justice. Overall, the practice has a profound impact on the lives of the participants, the relationships among them and the way wealth is distributed between them.

The analysis is presented in five sections. In the first section, I define the practice and explain what is meant when we say that Shariah law is governing it. I will follow this by providing two important sources and background information for interpreting the practice. In the second section, I examine the philosophical background governing Islamic finance and the tenets according to which the right course of action in the practice is identified. The third section gives a detailed account of the historical development of the practice over the past 1400 years. Both the philosophical axioms and the historical evolution of the practice are fundamental for my constructivist account, as they serve as fixed points and background material for the interpretation of the practice. In the fourth section I present the practices, the prohibitions and the tools used. Finally in the last section I tie the discussion together and reinforce why Islamic finance is appropriately seen as a site of distributive justice.

4.1. Defining Islamic Finance Practice

Defining Islamic finance and what it entails as a practice is not as easy a task as it may seem. Such a definition can vary between a very narrow characterization of

'interest-free banking' and much broader ones encompassing all financial operations conducted by Muslims (Warde, 2000: p. 5). Due to the nature and structure of Islamic finance, no definition will satisfactorily include all aspects. Its institutional structure is not limited to Islamic banks but includes a wide range of financial institutions such as Islamic insurance companies and even Islamic products that are introduced by conventional banks and financial institutions such as Citigroup and HSBC. It would be even insufficient to use self-identification as a criterion for labelling Islamic finance institutions, because some institutions rely in their operations and transactions on Islamic principles yet are reluctant to explicitly refer to the Islamic nature of their services. Examples of such institutions include the Special Finance houses in Turkey, which conduct interest free financial transactions yet due to tensions between Islamic finance and Turkey's secular identity do not represent themselves as Islamic financial institutions. Hence, almost any definition will find its exceptions (Warde, 2000: p. 5-6).

However, for the purpose of my project, I will rely on Gait and Worthington's description of Islamic finance as those financial services that are conducted in a way, and with the purpose of, complying with the tenets of Islamic law or Shariah (2007: p. 1). According to this definition, Islamic finance is essentially designed according to the rules and principles of the Shariah law, and "all the values, norms and rules structuring Islamic commercial and financial ethics are encapsulated into the Shariah" (Alchaar et al. 2009: p. 5).

Accordingly, a good starting point to understand what Islamic finance means, is to understand what Shariah law is. Shariah is understood to be the Islamic law and framework that regulates the Muslim's worship practices and

day-to-day relationships. It is deduced from four main sources. The first is the '*Qur'an*', the sacred book of Islam, which is accepted by devout Muslims as the true word of God, revealed to Prophet Muhammad in fragmented verses over 23 years. It is argued that the gradual revelation aimed at allowing those verses which are concerned with the change of habits and norms enough time to enter into practice (Wilson and El-Ashker, 2005: p. 34). A crucial example of such a gradual change is the prohibition of interest, which was imposed on Muslims over several years, on which more below.

The second source of the Shariah law is the '*Sunnah*', or the lessons learned from the life of the prophet through his sayings, acts and tacit approvals. These are carried forward in the forms of '*hadeeth*' or the accounts reporting them (Alchaar et al. 2009: p. 7). In order to avoid any confusion between God's words (*Qur'an*) and the prophet's sayings (*hadeeth*), the prophet demanded the reporting of his words to be done verbally and not in writing. However, in the 8th Century the first attempt to document the Sunnah (Wilson and El-Ashker, 2005: p. 36) resulted in six books that are named according to the compilers of the texts.

- Sahih Al Bukhari by Imam Al Bukhari (810-870)
- Sahih Muslim: Sunnah of the Sayings and Doings of Prophet Muhammad by Imam Muslim (875)
- Sunan Abi Dawood by Imam Abu Dawood (888)
- Al Jami': Sunan Al Tirmizi by Imam Al Tirmizi (892)
- Sunan Ibn Majah by Imam Ibn Majah (886)
- Sunan Al Nasa'i by Imam Al Nasa'i (915) (Wilson and El-Ashker, 2005: pp. 26-36)

The third source of the Shariah law is '*Ijtihad*', or the interpretation of the scholars. As societies developed, situations and issues that required religious rulings changed. "To respond to the changing needs of Muslim societies, Muslim jurists and scholars have relied on the well-established process of innovation, *ijtihad*. This process is based not only on the Qur'an and religious tradition (*sunna*), but also on reason, deduction, and prioritization" (United States Institute of Peace, 2004: p. 2). If insufficient indications are gathered from the Qur'an and Sunnah, scholars use analogy (*qiyas*) to deduce rulings (Alchaar et al. 2009: p. 7).

The tradition of *Ijtihad* started during the life of Prophet Muhammad when he approved the use of reasoning to come to a ruling on matters that have no clear ruling in the Qur'an and Sunnah. According to Wilson and El-Ashker "the general understanding of the Qur'anic verses and their purpose and the interpretation of the Ahadeeth (plural of hadeeth) and their intention, the spirit of the law as we may say, should be used to guide the jurists in arriving at the required rule" (2005: p. 35). Yet, a pivotal issue here is, who has the right to perform *ijtihad*? According to the special report *Ijtihad: Reinterpreting Islamic Principles for the Twenty-First Century*, published by the United States Institute of Peace, the right of *ijtihad*

belongs to an individual who is a recognized expert in jurisprudence and who is qualified to derive Islamic law from original sources. This requires wide expertise and many years of studying jurisprudence, the fundamentals of jurisprudence, hadiths, the biographies of hadith narrators, commentary on the Qur'an, Arabic grammar and eloquence, and logic. Additionally, in this era, knowledge of philosophy, economics, and sociology is increasingly necessary. A mujtahid should also display qualities such as piety and moral integrity (2004: p. 4).

Finally, Shariah law also relies on consensus (*Ijmaa*), or agreement between scholars. The influential role of consensus is more evident in secular issues since worship and ritual matters are explicitly stated in the Qur'an and Sunnah. Consensus played an important role during the caliphate period; the era following the death of the prophet during which the four righteous caliphs succeeded him in leading the Islamic state (632-660). During this era the rulings of the consensus served as reference for jurists. However, it became weaker with the end of the caliphate period and the beginning of the Umayyad dynasty (661-750), when common consensus between politically divided Muslims became difficult (Wilson and El-Ashker, 2005: p. 36).

Now that we understand Islamic finance as the financial practices that comply with and serve the purpose of the Shariah law, it is important to understand the objectives and philosophical arguments behind Islamic finance and the tenets and philosophical principles that are incorporated in the Shariah law and govern the Islamic finance system. This conceptualization of the Islamic tenets and philosophical axioms shall play a key role in the interpretation of Islamic finance practices that I will present in the next chapter. As I explained in the last chapter, interpretation is an important source of a practice-dependent constructivist approach. Thus, a clear illustration of this philosophical background and understanding is a prerequisite for our interpretation of Islamic finance practice.

4.2. Philosophical Background and Axioms

Principles governing any economic system are ideologically and philosophically based. Many economists such as Schumpeter and Heilbroner see modern economics as being preceded by what is called a vision or an ideology. Ideology in this context refers to “the systems of thought and belief by which [individuals and groups] explain...how their social system operates and what principles it exemplifies” (Heilbroner, 1985: p. 107; Gilpin and Gilpin, 1987: p. 25). Liberal economics and contemporary ‘conventional’ finance, for example, reflect the European civilization and are immersed in the Western worldview (Haneef and Furqani, 2009: p. 175). Liberal economies are, thus, committed to free markets, individual equality and liberty.

Islamic economics places Islam at the centre of its ethical values. It is an ideologically founded system that is rooted in Shariah law and is concerned with maintaining economic pursuit in line with Islamic ethics. Therefore, for the Islamic economic system to be clearly understood it needs to be contextualized within the framework of the Islamic order, which provides it with its objectives, axioms and principles, and with values according to which economic interactions within the society can be evaluated. Clearly then, “(t)he ethical norms of Islam are fully integrated within the Islamic economic system and its economic motives, as these are not voluntary actions but ontologically part of the revealed knowledge, and therefore its dogmatic nature makes it necessary for them to be followed” (Asutay, 2007: p. 4).

Syed Naqvi, former director of the Pakistan Institute of Development Economics, and one of the first scholars to contribute to the design of an Islamic

economic system, offers a persuasive argument that the Islamic philosophy revolves around the idea and concept of the 'right'. The first step in the Islamic philosophy, according to Naqvi, is always to identify what is 'right'. After we identify the 'right', the most appropriate, practical and profitable course of action is to be worked out. Within this context, Naqvi and a number of leading Islamic economists⁷ have identified the foundational or philosophical axioms that are derived from the Islamic worldview and constitute the moral paradigm that guides the behaviour of economic agents and institutions. These axioms are spelled out to guide the process of identification of the right (Naqvi, 1997: pp. 3-4).

Asutay has developed a useful list of these axioms, as follows (2007: pp. 5-6):

1. **Unity (*Tawheed*):** It is the cornerstone concept for any system to be Islamic in nature. Unity, or the belief in God (*Allah*), is based on the understanding and acceptance of Allah as the sole creator as well as owner of the entire universe. Hence a system based on this axiom (1) can only include economic and financial practices that abide to the creator's ethical code and (2) cannot, and should not, be based on ideas of other non-Islamic (non-unity based) systems (Naqvi, 1997: p. 4). Accordingly, practices like interest rates, gambling, traditional insurance, etc., cannot fit within a system based on unity.
2. **Equilibrium (*Al-Adl Wal Ihsan*):** Islam is not a religion that is limited only to human spirituality and man's relation with God. Islam should always be accepted as a comprehensive way of life. Therefore, any aspect of the economic system should not be considered in isolation from the political and

⁷ Ahmad (1980, 1994, 2003), Chapra (1992, 2000), El-Ghazali (1994), Siddiqui (1981) and Sirageldin (1995)

social systems. Naqvi refers to this as the 'Equilibrium' or promoting social harmony and maintaining just balance in the basic structure of the society on all levels (1997: p. 4).

3. **Accountability and Social Responsibility (*Fard*):** Individuals are not only responsible and accountable for what they do, but also for how they do it. Accordingly, control of economic activity does not rely entirely on the government intervention and enforcement. Conscience and individual responsibility also play a major role in the regulation of economic activities. Special attention is given to social responsibility and making the right choices especially towards the least privileged (Naqvi, 1997: p. 4).
4. **Trusteeship:** Individuals in Islam are God's trustees on earth and their main task is to fulfil the responsibility bestowed upon them by God. Within this context their lives are considered '*Amanah*', or something tangible that someone entrusts to another in good faith for safekeeping and to be returned as and when required in exactly the same condition (Hasan, 1988: pp. 41-42). This notion is very relevant to the idea of unity, and that God is the sole owner. Hence, it gives a new and different meaning to the economic concept of ownership and emphasises the idea of free will as it allows maximum space for economic and social activity within the framework of responsibility and accountability (Naqvi, 1997: p. 4). It is considered a very difficult responsibility because it is granted simultaneously with free will. Within this context, the obligations that are imposed on the individual due to this trusteeship are related to God, fellow humans and oneself (Hasan, 1988: p. 42).

5. **Free Will (*Ikhtiar*):** Individuals within the Islamic tradition and the understanding of the Islamic system possess free will. This free will is not restricted yet it is guided by the ethical norms and guidelines of the tradition (Asutay, 2007: p. 5; Naqvi, 1994: p. 31). This is relevant to the idea of trusteeship and how accountability is combined with the free-will of the individual.
6. **Divine arrangements (*Rububiyyah*):** This refers to God's arrangements that are divine in nature and perfection oriented (Ahmad 1979:p. 12; Asutay, 2007: p. 6).
7. **Growth toward perfection (*Tazkiyah*):** This refers to individual development and improvement towards perfection. This is to be achieved through purification (Ahmad, 1994: p. 20; Asutay, 2007: p. 6).
8. **Objectives of Shariah (*Maqasid Al Shariah*):** These are the five areas that guarantee the well being of all human beings. Shariah identifies and is based on five main and unalienable individual rights that should be granted to every human being. Accordingly Islamic economic principles are to be directed towards the achievement of these objectives. These are the foundation of the good life based on Islamic Shariah law, namely, protection of religion, life, reason, progeny, and property/wealth (Iqbal and Mirakhor, 2011: p. 96).

The importance of these axioms again lies in identifying the 'right' which is to guide deliberation on courses of action consistent with Shariah, and Islam more generally. Consequently, these axioms are of utmost importance for this thesis, as they provide us with fixed points about the background of the practice. If these axioms are to guide our reasoning for deciding the 'right', then they

should also guide our reasoning for constructing principles from the practices. The role these axioms play in the Islamic context are very similar to what Rawls refers to as considered moral convictions. Rawls explains that a reflective equilibrium is a process through which one can assess if the chosen principles would match the “considered convictions of justice” (1999: p. 17). Accordingly, we start with our convictions as provisional fixed points from which we aim to derive an interpretation and identify principles that can accommodate these convictions. If

these principles match our considered convictions of justice, then so far well and good. But presumably there will be discrepancies. In this case we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision (Rawls, 1999: p. 18).

It is important to note here that these axioms, although agreed on by most scholars, are not set in stone. If discrepancies are revealed from a reflective equilibrium process between the practice, the philosophical axioms and the principles, then we are to either revise the principles according to the axioms, or we are to revise our understanding of the philosophical axioms that guide our understanding of the right.

4.3. Historical Background and Evolution

The philosophical axioms explained in the previous section alongside the historical development of the practice are pivotal sources for our constructivist approach to theorizing Islamic finance practices. It is a well known fact that a

financial rule such as the prohibition of interest is not unique to the Islamic tradition. The charge of interest is condemned and prohibited in most religions. However, what is remarkable about Islamic finance practice is how it continued to develop, evolve and even proliferate for longer than fourteen hundred years after the revelation of Islam. Accordingly, I will illustrate the distinctiveness of the historical development of the practice in this section.

Although the philosophical tenets governing Islamic finance stem from the Islamic religion and worldview, such an influence of religion on financial practices is a phenomenon that is not limited to Islam. The prohibition of interest, for example, one of the fundamental principles of all religiously founded financial systems, was imposed in Judaism and Christianity before the emergence of Islam. According to Frierson, interest is an ancient practice that even preceded the appearance of money as it was imposed on crops and grains and was evident in many ancient civilizations and cultures, like the code of Hamurabi, the Sumerian documents and the Mesopotamian practices. The charge of interest, or 'neshek' in Hebrew, is condemned in the Old Testament and accordingly Jewish law abolished the charge of interest between Jews (although it remained permissible on credits to Gentiles) (Frierson, 1969: p. 114).

This ban on interest was also imposed in Christianity as biblical passages condemned it with no distinction between interest and usury, or unlawfully high interest rates (Chapra, 2005: 1). The church adopted a reproving position towards interest, and this position strengthened gradually until a canon of the prohibition was passed in 325 A.D. It is important to note here that the economic conditions of the Roman Empire at that time helped in the enforcement of the ban universally. As the economy was declining and the loans were shifting from

commercial to subsistence purposes (Frierson, 1969: pp. 115-119), the moral justification for banning interest became stronger and more evident.

However, the Christian position towards the ban of interest changed with the transformation of economic and political conditions. As the European economy started to prosper, commercial and economic growth created investment opportunities that required the charge of interest (Hassan and Lewis, 2007: p. 78). Hence, as the temptation grew, the prohibition of interest was reinterpreted by the Church especially through the writings and theories of St. Augustine. This new and more lenient stance towards the charge of interest was also linked to the dominant role played by the church in the economy. This domination of the church continued until the 16th century when resentment towards the 'inquisition' and the alliance between the church and the corrupt state resulted in a Protestant movement led by Martin Luther and later further developed by the work of Calvin. Consequently, the Church ban on interest became gradually less stringent (Frierson, 1969: p. 124). Interest was permitted at a rate that would not jeopardize the moral obligation towards the needy and poor (Hassan and Lewis, 2007: p. 78).

Two centuries later, this Protestant movement was followed by the Enlightenment, which attacked religion in general in favour of secularism. Calls for the separation of church and state became more prevalent, as did the acceptance of secularism as the source of answers to individual and social behaviours and needs. However, this shift from religion towards secularism that took place in Europe did not happen in the East. Accordingly, the financial systems in the West and the East evolved differently.

The prohibition of interest (*riba*) in Islam started with simple disapproval of the pre-Islamic practices that imposed interest. Then it was prohibited explicitly in several verses that were revealed to the prophet over several years. The first time the prohibition was explicitly stated in the Qur'an was in year 625 AD and the final time it was expressed was in the year 632 AD (Ayub: 2007, p. 44). The following are example verses that include a clear prohibition of interest (Qur'an Explorer:

Those who take *riba* (usury or interest) will not stand but as stands the one whom the demon has driven crazy by his touch. That is because they have said: "Sale is but like *riba*.", while Allah has permitted sale, and prohibited *riba*. So, whoever receives an advice from his Lord and desists (from indulging in *riba*), then what has passed is allowed for him, and his matter is up to Allah. As for the ones who revert back, those are the people of Fire. There they will remain forever. (275) Allah destroys *riba* and nourishes charities, and Allah does not like any sinful disbeliever. (276) Surely those who believe and do good deeds, and establish *Salah* (prayer) and pay *Zakah* will have their reward with their Lord, and there is no fear for them, nor shall they grieve. (277) O you who believe, fear Allah and give up what still remains of *riba*, if you are believers. (278) But if you do not (give it up), then listen to the declaration of war from Allah and His Messenger. However, If you repent, yours is your principal. Neither wrong, nor be wronged. (279) If there is one in misery, then (the creditor should allow) deferment till (his) ease, and that you forgo it as alms is much better for you, if you really know. (280) (Qur'an 2:275-280)

From the above verses it is clear that interest, in all its forms and rates, is unambiguously and explicitly prohibited in the first source of Shariah. Therefore, there is no dispute between Muslims who want to abide to the Islamic law, about the prohibition of the practice. Differences, however, are in the interpretation of the scholars about 'what constitutes *riba* and what not' (Ayub, 2007: p. 44).

However, Islamic finance practice is not limited to the prohibition of interest. An Islamic financial system started in the 7th and 8th centuries with the emergence of Islam. It started with a process to correct the pre-Islamic practices to comply with the Islamic rules. In other words, pre-Islamic practices, institutions and transactions were examined, and those features that corresponded with Islamic doctrine were accepted, while those that conflicted with the Islamic rules were condemned and changed. This was accompanied by the development of Islamic finance tools that were based on the actions of the prophet, who as a businessman and a merchant was the first to use Islamic finance tools such as Mudarabah, or partnership (Gait and Worthington, 2007: p. 5), on which more in the next section.

An important pre-Islamic financial practice that was discouraged by the prophet and became fundamental for the development of the Islamic financial system was the reliance on barter. Prophetic *hadeeths*, or the teachings of the prophet noted above, encouraged monetization over barter (Cizakca, 2013: pp. 8-9) in several incidents. For example, when a man brought the prophet dates as a gift from Khaybar city, the prophet asked if all dates in Khaybar were of this high quality. The man explained that there are different qualities and that people trade one sa' (a weight unit) for two or two sa's for three. The prophet replied: 'Do not do that. Sell the assorted ones for dirhams and then buy the good ones for dirhams' (Cizakca, 2013: pp. 8-9).

This movement from barter to money served as a fundamental step in the emergence of Islamic international trade, which was complemented with the establishment of law and financial instruments. It is historically evident that concepts such as partnership, bills of exchange, letters of credit, etc. that were

invented in the Muslim world were adopted by the West through international trade. Moreover, international trade resulted in the concentration of a vast amount of wealth in the hands of the Muslims (Cizakca, 2011: pp. 8-9).

However, the concentration of wealth in the Muslim world prompted attacks from both the Crusades of the West and the Mongols of the East, which led to new systems of centralisation and militarization of the Muslim world. Consequently, trade became increasingly monopolized by the government between the 11th and 16th Century in an attempt to prioritize territorial independence through state control over market oriented financial systems. This continued during the time of the Ottoman empire and resulted in a system that Çizakça referred to as a 'the proto-quasi-socialist system' (2011: pp. xxi-xxvi).

It is argued that Islamic finance practices remained unchanged until the mid of the 20th Century, when most of the Muslim countries fell under colonial occupation of the West. As subjects of colonization, Muslim countries were alienated from their "old traditions, values and cultural heritage" (Iqbal and Mirakhor, 2011). Consequently, the established Islamic financial system was replaced by the conventional capitalist system, which functioned in the Muslim world until the second half of the 20th century (Gait and Worthington, 2007: p. 6). It is worth noting, though, that a number of sporadic attempts to condemn interest bearing financial practices and to highlight areas of conventional financial practices that do not adhere to Shariah law took place in a few countries such as Egypt and India. However, it was only after independence and the end of colonization that peoples of the Muslim countries attempted to search for their identity and aimed to instil their Islamic values into their financial and economic lives once again (Iqbal and Mirakhor, 2011).

Accordingly, the development of Islamic economics and finance as we know it today started with a wave that was more of a response of the Muslim people to the challenges created by the domination of the West. Similar to Keynesian economics that was developed to correspond to the Great Depression, and the Marxian economics corresponding to problems arising from mass industrialization, Islamic economics were revived in response to the political and economic circumstances of the Muslim world after decades of colonization (Zaman, 2008: p. 19). Islamic thought in general was shaped in the 20th Century by the need for liberation from colonization, which challenged Muslim scholars to establish Islamic socio-political and economic systems that could offer Muslims a better alternative to the dominant Western systems. For example, founders of Islamic economics agreed that the purpose of an Islamic economic system is to promote justice and equality (Zaman, 2008: p. 24), something that seemed lacking in the conventional system.

Nevertheless, the detailed articulation of the financial system as we witness it today did not take place until the second wave, which started during the 1970s. The historical circumstances and events during this wave are divided by Ibrahim Warde into three phases of evolution. The *first phase (1971 – 1991)* or the early years is when the Muslim, Arab and Middle Eastern countries developed a distinctive position amidst the politics of the cold war. Egypt's Nasser founded the Pan-Arabism and non-alignment movements with other third world countries. However, the Saudi King Faisal, challenged these movements through his adoption of a Pan-Islamism stance, according to which he launched the Muslim World League. He used his control over Muslim pilgrimage to strengthen ties with Muslim leaders, and he reinforced his power on Muslim countries outside

the Middle East by extending large aid sums to non-Arab Islamic countries. Consequently, in 1970, the year Nasser died, the Organization of the Islamic Conference, which brought together 44 countries and paved the way for serious consideration of the idea of an Islamic finance model, was established (Warde, 2012: pp. 72-82).

This phase found the region in a paradoxical situation that Kahf succinctly summarized in the title of his book chapter the *New Alliance of Wealth and Shariah Scholarship* (2004). The 1973 oil crisis and the emergence of the OPEC left the region with vast amount of wealth and political power. After the oil embargo of 1973 the oil prices increased by 400%, which created a huge foreign reserves (Saeed, 1996: p. 11). This fast accumulation of oil profits and petro-dollars in the Middle East offered an incentive to create investment opportunities (Iqbal and Mirakhor, 2011). However, due to the underdeveloped economic system in the Muslim world and the advancement of its counterpart in the West a vast amount of Muslim money was invested in the capital markets of America and Europe, which did not correspond to the Shariah requirements. Moreover, the seizure of \$8 billion in Iranian assets in 1979 by the United States, and subsequent similar threats strengthened the demand for strong Shariah compliant financial system in the Muslim world. Within this context, the first International conference on Islamic economics took place in Mecca in 1976 (Zaman, 2008: pp. 27-28). The conference provided Muslim economists with the first opportunity in recent history to “address themselves to the problems of Islamising economics including an effort to elucidate the basic concepts of Islamic economics and deliberating upon ways and means of implementing them in the contemporary world” (Ahmad, 1980: p. xviii).

It is worth noting that some experiments in Islamic finance took place in the 1960s, including the establishment of Mit Ghamr Local Savings Bank in Egypt in 1963 by Dr. Ahmad Al Najjar, and the Pilgrims Savings Corporation in Malaysia during the same year. However, it is actually the establishment of Nasir Social Bank in Egypt in 1971 that is considered a milestone in the evolution of Islamic finance, as it was the first state-owned, interest-free bank. This was followed in 1975 by the establishment of the Dubai Islamic Bank in UAE (Iqbal and Mirakhor, 2011).

This period also witnessed important national steps for the establishment of Islamic financial systems. Pakistan (1979), Iran and Sudan (1983) all announced the *complete* Islamization of their financial sector and the abolition of the conventional financial system. In other words, they transformed their financial sector to adhere to Shariah law by abolishing interest-bearing conventional products and substituting them with non-interest-bearing financial practices and other Islamic financial products and practices (Henry and Wilson, 2004: p. 6).

However, the actual performance of the Islamic finance sector was generally disappointing until the *second phase (1991 – 2001)* (Warde, 2012: p. 81). As Warde explains, Islamic finance and banking witnessed a qualitative shift as the global economy started to enter the age of globalization. Islamic finance was affected by the global trend of deregulation of finance, and practitioners, in aiming to design more products and attract more people, started to replicate conventional finance. In the early years of the establishment of the sector, the paradigm, upon which the sector was based, mainly revolved around the idea of abolition of interest and its substitution with the concept of profit and loss

sharing.⁸ However, with the global shift in International finance towards deregulation and globalization, Islamic finance took a more pragmatic shape that in many ways replicated the conventional system in a way that looks Islamic in form although may not contribute to the goals of Islamic finance. In other words, Islamic finance became more concerned with the legal form of the products like the prohibition of interest, while giving relatively little attention to the objectives of the Shariah law and the socio-economic and moral reasons for the prohibition. “This new phase can be defined by its pragmatism, diversity, multi-polarity and convergence with conventional finance” (Warde, 2012: p. 81). It also included a new form of *ijtihad* (the source of Shariah that requires modern interpretations) to suit the new trend of decentralisation and diversion. This paved the way for conventional financial institutions to get involved in the Islamic financial sector, as represented in products introduced by HSBC and Citibank and later the creation of the Dow Jones Islamic Market Index in the late 1990s (Warde, 2012: pp. 80-83).

However, with the 2001 terrorist attack on New York’s World Trade Center and other sites in the United States, the development of Islamic finance entered what has been called the *post-911 phase (2001-present)*. The attack subjected Islamic finance to intense suspicion of terrorism funding. Surprisingly, though, this attack on Islam in general, and on Islamic finance in particular, created a counter-effect of greater religiosity that resulted in more demand for Islamic finance products. Moreover, the minds behind the sector worked harder on mainstreaming and rationalizing it, leading to stronger standardization and

⁸ In very basic terms, depositors and investors need to share both the profit and loss of the investment. Hence, no fixed interest rate can be guaranteed. The actual concept will be explained in more details in the coming section about the practices of the sector.

international coordination. As a matter of fact, the actual freezing of the assets belonging to Saudi and other Arab Muslims for fear of terrorism funding led to the movements of much of these assets outside of the US and Europe, mainly to Malaysia, which had developed a reputation for strong economic development. This asset movement accompanied a shift in the Arab Muslim tourism to Malaysia as a substitute to the US and Europe, and both created stronger cooperation between the Arab Middle East and Malaysia, a leading country in Islamic finance (Warde, 2012: pp. 85-88).

This cooperation between both regions is an important issue in the historical development of Islamic finance practice, due to the differences between the Arab and Malaysian model of Islamic finance. The Arab model, as in the countries of the Gulf Cooperation Countries GCC, is mainly based on the oil revenue and aims for the management of the related wealth. Due to the differences between the conditions of the Arab countries, the model is fragmented and decentralized. Thus, the way the system evolved clearly depended on the decisions and *ijtihad* of different Shariah Boards in different circumstances. The Malaysian model, on the other hand, is development oriented and aims at generating finance. This objective was mainly embedded in the political circumstances of Malaysia, presented in the policies of Mahatir Mohammed, prime minister from 1981-2003, aiming at promoting the Muslim Malay majority. Islamic finance thus adopted a modernising and pluralising version of Islam, which allowed for a wide range of innovation and industrialising and productive growth. Shariah boards were encouraged to test the boundaries of Shariah law, leading Malaysia to be central to Islamic finance innovation (Warde, 2012: p.86).

The immediate question that arises from the above historical account of Islamic finance is regarding the reasons that made fundamental issues like the prohibition of interest still an integral part of Islamic finance, while only very devout orthodox Christians avoid such practices in the conventional financial system. There are a few differences that led to this outcome and are worth bearing in mind for the interpretation of the practice. First, the injunctions in the Qur'an are outspoken and clear, unlike the more subtle references in both the Old and New Testaments (Hassan and Lewis, 2007: p. 66). Second, the Qur'an is a fixed point of reference particularly with regards to clear and outspoken commands (Hassan and Lewis, 2007: p. 66). Third, Islam in general promotes and favours trade, and this is clearly stated in the Qur'an and in most cases directly linked to interest. Hence, the alternative in the Qur'an is stated, while in the Christian tradition, trade, although not prohibited, is not promoted as an alternative economic activity (Hassan and Lewis, 2007: p. 66). Fourth, the prohibition of interest in the Qur'an was imposed gradually and, thus, was repeated during different economic circumstances. As we shall see in the coming section, it was not only prohibited to prevent exploitation of the poor but also to create a more just financial and economic system where risk is shared. Hence, the moral obligation related to the charge of interest is not limited to specific circumstances. Finally, within the Islamic order, are the tools for adaptation. Development and rulings within Islam rely on three main principles: local custom (*urf*), public interest (*maslaha*) and necessity (*daroura*). According to these principles, and more, the Shariah can adapt to cultural and societal progression and evolution without the jeopardizing of the Shariah law (Warde, 2012: p. 30).

Accordingly, these differences clearly highlight how Islamic finance as a site of distributive justice is different, not only from the conventional system, but also from other religiously based financial systems. Islamic finance clearly entails rules that aim at just distributions. However, what is more distinguishable about Islamic finance, is that its practices continue to adhere to these principles due to the actual nature of the entire Islamic order, economic system and worldview.

4.4. The Practice

Now that I have highlighted the philosophical and historical fixed points that are crucial sources for interpreting Islamic finance practice, I will focus in this section on the actual practices that need to be examined. My primary objective is to identify the practices that are relevant to the distribution of wealth, and thus demonstrate why these practices should be viewed as a suitable site for the development of a theory of distributive justice.

It is worth noting here that Islamic finance offers financial services and products in the same way conventional financial institutions do, yet with different rules to guide the transactions, distribution and relationships. Accordingly, Islamic finance practices include retail banking services (e.g., current accounts, credit cards, deposit and investment accounts, mortgage products, personal loans, insurance) and business and corporate financing (e.g., trade finance, project finance). However, all products and services need to be designed in accordance with the rules of Shariah law. In other words, and referring again to the definition of Islamic finance, they need to be conducted in a way, and with the purpose of, complying with the tenets of Islamic law or Shariah.

4.4.1. Islamic Finance as a 'Prohibition-Driven Finance' System:

Islamic financial institutions, as explained by El-Gamal, perform all transactions, contracts and operations that are part of conventional finance and banking, but according to Shariah. Such prohibitions are imposed in Shariah for ethical reasons and to promote socio-economic objectives. In these cases, alternative Shariah-compliant practices are designed to conform to Islamic jurisprudence. Thus, El-Gamal envisions a picture of both modern conventional finance and Islamic jurisprudence as the parents of Islamic finance. (2006: p. 8). Islamic jurisprudence here, it could be argued, is infusing ethical and moral practices into the modern financial system to achieve the socio-economic objectives articulated in and deduced from Shariah law. Consequently, El Gamal considers it a 'prohibition-driven' financial practice (2006: p. 8). Although the prohibition of interest is the main characteristic with which Islamic finance practice is associated, it is worth noting that the Shariah law also prohibits gambling, unnecessary uncertainty and hoarding. These impermissible practices will be explained now in detail.

1. Prohibition of Interest

Riba is usually translated as interest, yet the actual literal meaning of the Arabic word is "excess". Hence, any excess over the original capital is banned by Shariah, even if the parties are in agreement about it. The only excess amount permitted in Islam is that linked to the performance of real asset and the risk associated with it (profit). This rule of prohibition is 'absolute and unqualified' in Shariah law (Alchaar et al. 2009: pp. 27-30).

There seems to be confusion about the rationale behind the prohibition of interest. It is frequently linked to the idea of exploitation of the poor who borrow money to meet their needs. This is generally the moral justification used to prohibit interest, as was explained earlier, in religiously driven financial practices. However, as explained by Chapra (2006), historically, interest was prohibited gradually, and the prohibition was emphasised most strongly during the later phase of the prophet's life. During this time, the treasury (*baitul mal*) was responsible for fulfilling the basic needs of the poor, and accordingly, the poor were not typically forced to borrow with interest for their subsistence. Contrary to some common beliefs, it was the rich and large-scale merchants and traders who engaged in interest-based loans at that time. Since the trading conditions during these early times allowed them to conduct only few business trips every year, they collected large sums of finance for each trip to maximize their trade and profit. Consequently, they borrowed loans with high rates of interest. The moral conflict that resulted from this practice is that in case of trade loss, merchants were to be responsible for all the related consequences. No losses were borne by the financiers, as they demanded their money and the large premium regardless of the outcome of the business. This dynamic was the sources of the prohibition, and of the development of the practice of sharing risk, loss and profit between the financiers and borrowers (Chapra, 2006: p. 3).

Types of Riba

Although the prohibition of interest is clearly mentioned in the Qur'an (the primary source of Shariah) four times, the actual meaning of the term is not clarified in the verses. Therefore, scholars have identified two kinds of riba:

- ***Riba Al Naseyah***

This form of riba is the equivalent to the interest paid on loans in the form of excess to the principal. Naseyah in this context means to postpone or defer. Thus, the form of borrowing that is prohibited here is to borrow at present and to repay the loan at a later time with an excess or premium. It is prohibited regardless of the amount of the loan, the amount of the premium or how the premium is calculated (percentage, fixed amount, etc) (Chapra, 2006: pp. 2-5).

- ***Riba Al Fadl***

Riba al Fadl, on the other hand, is the excess resulting from the exchange or sale of goods where the value of goods offered by one party is excess to the value of goods offered by the other party (Alchaar et al. 2009: pp. 27-30). The prophet indicated at least four examples of Riba Al Fadl. According to Chapra, although they should not be considered as comprehensive, they provide us with a good understanding of the nature of this prohibited practice.

- Exploitation through unfair means, even if the trade transaction is allowed or valid (e.g., cheating a new entrant into the market to maximize profit). Extra money earned through exploitation is a form of riba.
- Rewards for making a recommendation in favour of a person. Money-motivated recommendation is a form of riba, because it might give benefit to someone who is unworthy and deprive someone who is more deserving.
- Barter exchanges can result in riba, for example exchanging the same commodity with different quantities based on quality.

Therefore, barter is discouraged in Islam, and monetized transactions are encouraged instead. It is worth noting that barter *riba* may not seem to be very relevant to contemporary societies, but it leads us to the next form, which is a crucial and relevant practice.

- Exchanges in the same commodity should be of same quantity, weight and quality, and should be effective and on the spot. This is very relevant to contemporary foreign exchange markets, where money is exchanged for money (Chapra, 2006: pp. 6-7).

Overall, it is clear that Islamic finance and related economic exchange practices are guided by firm and detailed prohibitions on action. The principles of equity, equality and efficiency which underlie these operational principles are discussed in detail in the next chapter. Here, I will look next at some prohibitions which are broadly related to finance and exchange, and rest on some of the same underlying principles.

2. Prohibition of Maysir (Gambling) and Gharar (Unnecessary uncertainty)

The prohibition of Gambling is explicitly stated in the Qur'an in a number of verses such as:

O you who believe! Wine, gambling, altars and divining arrows are filth, made up by Satan. Therefore, refrain from it, so that you may be successful. (90) Satan wishes only to plant enmity and malice between you through wine and gambling, and to prevent you from the remembrance of Allah and from Salah. Would you, then, abstain? (91) (Qur'an 5:90-91)

Uncertainty, on the other hand, was not explicitly mentioned in the Qur'an. The prohibition is only explicit in the Sunnah (the prophet's account of deeds and sayings). There, the prophet condemned unnecessary uncertainty according to the following hadeeth: "The Messenger of God forbade the sale of the pebble [believed to be the sale of an object chosen or determined by the throwing of a pebble] and the sale of gharar' or uncertainty (Muslim)" (Vogel, 2010: p.43).

In financial terms, gambling and uncertainty exist in cases when the liability of one party of a transaction is uncertain or contingent on uncertain event; e.g., if the price is unknown, or if the outcome of a transaction is uncertain to one of the parties. The ban on uncertainty in this respect is similar to the protection of consumers in modern securities laws. The objective of the prohibition is to avoid a zero-sum exchange from taking place, which usually happens in the case of uncertain outcome (Venardos and Abdul Rashid, 2010: pp. 150-151).

In Islamic finance, uncertainty refers to concluding contracts that entail absolute risk or uncertainty about the outcome of the contract, the quality and specification of the subject matter, or the rights and obligations of the different parties of the contract. Other forms of uncertainty are created in the case of insufficient relevant information or inaccuracy of the available relevant information. Examples of such practices that include uncertainty and gambling and are prevented in Islamic finance are speculative trade, short-selling, and trading in unidentified items. Further, transactions that involve asymmetric information between investors and promoters of the investment are impermissible in Islamic finance (Ayub, 2007: p. 75).

Experts, however, distinguish between productive speculation and excessive and unnecessary risk (Venardos and Abdul Rashid, 2010: p. 118). Impermissible risk in this sense is that which leads to practices relying and conditioned on uncertain events and circumstances. This clarification is crucial especially for the permissibility of stock market practices and transactions. It is agreed that risk and unnecessary uncertainty are not present in the stock market speculation because 'each party is clear to the quantity, specification, price, time and place of delivery of the object' (Timm, 2004: p. 20).

To better clarify the difference between accepted and impermissible uncertainties and risk, permissible practices need to fulfil a few conditions:

- Goods or services are in existence
 - Specifications of the goods and services are known
 - Parties have control to ensure that transactions will take place
 - In case of future transaction agreements, the date must be certain
- (Venardos and Abdul Rashid, 2010: p. 150)

3. Prohibition of Hoarding

The promotion of spending and the condemnation of misery are fundamental factors for the Islamic approach to money and wealth. The word 'spend' appears 53 times in the Qur'an (Alserhan, 2015: p. 31), and the condemnation of misery is explicit in several verses, for example:

Those who withhold in miserliness what Allah has given them out of His grace should not take it as good for them. Instead, it is bad for them. They shall be forced, on the Doomsday, to put on what they withheld, as iron-collars round their necks. To Allah belongs the inheritance of the heavens and the earth. Allah is All-Aware of what you do. (Qu'ran 3:180)

Consequently, the impermissibility of hoarding is clearly connected to the prohibition of interest and the obligation of Zakah, or tax on income and wealth, discussed below. Money in this context will not generate profit and will decrease in value and amount if remained idle. Thus, it will only create profit when used for productive investment. Such a system leads to continuous redistribution of wealth. It is the practical implementation of the Qur'an verse: "Let it [money] not just make a circuit of the wealthy among you (59:7)" (Housby, 2011: 19).

The above mentioned prohibitions --interest, gambling, unnecessary uncertainty and hoarding-- are of paramount importance in Islamic finance practice. First, they are fundamental for any practice to be Shariah compliant. Second, these prohibitions combined alter our understanding of the concept of money in Islamic finance. Money, within this context, is no more than a medium of exchange. It should not, and cannot, raise excess money by being lent out or put idle in a bank. Moreover, it represents purchasing power, and Muslims are encouraged to use it to purchase goods and services. They are discouraged from keeping money idle (Ahmad and Hassan, 2006: pp. 72-74). Third, this understanding of the concept of money has a direct impact on wealth distribution. Within the Islamic context, there will not be a desire to hoard money, as it does not represent any value in itself. Hence, profit will only be created when money is used for productive investment (Housby, 2011: p. 19). Thus, the creation of wealth is directly linked to real economic activity, primarily investment and commerce. A continuous circulation of wealth through investments that leads to the well being of the community as a whole is the aim of the practice (Iqbal and Mirakhor, 2011: p. 42).

4.4.2. Financing Practices

Islamic finance is distinguished by profit and loss sharing practices according to which banks offer their financial services based on risk sharing agreements (Saeed, 1996: p. 51). I will present these practices in particular detail, as they play a major role in changing the relationship among participants of the practice. They create special forms of interactions among participants and create interdependence among them.

1. Mudarabah (Silent Partnership)

Mudarabah is a financing contract between the bank or any investor (*Rab Al Mal*) and a client/entrepreneur (*Mudarib*) where the former finances the latter to conduct a specific transaction or trade. Thus, the financier provides capital, while the borrower or client invests time and labour in managing the specific transaction (Saeed, 1996: pp. 51-55).

To clarify, the objective of the Mudarabah is to establish a partnership between capital and labour by requiring that the outcome of the venture, either profit or loss, is shared between them. If the business or the venture results in profit, it will be shared between the investor and the client according to a pre-agreed proportion. The profit may be shared according to specific percentages or ratios, but not according to fixed amounts. The agreement about how to share the profit usually depends on issues such as the anticipated profitability, the expertise of the client, etc. The rationale behind sharing profit is that it represents a reward for risking the capital on the part of the investor, and a reward for the time and work (management) of the client (Saeed, 1996: pp. 51-55).

On the other hand, in the case of loss, the practice requires the investor to bear it alone. On the surface it may seem that the parties are not actually sharing the loss. However, the rationale in this context is that each party needs to bear the loss according to what each contributed to the venture. The investor who provides the capital loses money, while the client who manages the venture will bear the loss of not being rewarded for labour (Saeed: pp. 51-55).

In practice, Mudarabah is used by Islamic banks mainly for short-term commercial purposes and, since it is a risk sharing technique, it is not permissible for the investor to require money guarantees. However, banks tend to require extra guarantees regarding the performance of the client. Such guarantees can be provided either by the client or by a third party. Accordingly, if it could be proven that the client did not abide by the terms or misused the goods or funds, the client rather than the investor would be responsible for the loss (Saeed, 1996: p. 56).

It is worth noting here that Islamic banks in some cases use Mudarabah contracts for collecting funds from depositors. Then, the bank uses the funds to finance different Mudarabah contracts with clients. Such a process is called two-tier Mudarabah. In this structure the bank acts as the Mudarib when it collects the funds from depositors, and acts as investor when funding the client/entrepreneurs (Alchaar et al. 2009).

2. Musharakah (Full Partnership)

Musharakah is considered a practice that can bring capital and labour together mainly for socially beneficial production of goods and services. In Musharakah the parties enter into a contract as equal partners who agree on the terms and conditions without any of them dictating the terms independently. Partners

contribute to the capital, yet not necessarily with equal amounts, and the management of the venture is shared by all partners, though one partner can be delegated to carry out the primary management responsibilities. Moreover, the partnership can be terminated by any party at any time by notifying the other partners (Saeed, 1996: p. 62).

Since Musharakah is another form of profit and loss sharing, there are regulative rules for sharing the outcome of the venture. Profit is shared according to a pre-agreed percentage or proportion (again it is impermissible to share according to a fixed amount) yet the shares do not have to match the ratio of the contribution in the capital. On the other hand, in the case of loss, the partners need to share it in a way that reflects their capital contribution ratios. It is impermissible to bear a ratio of the loss that is more or less than the capital ratio. The client may, however, be liable for the loss in case of proven misuse or mismanagement (Saeed, 1996: p. 62).

Although Mudarabah and Msharakah are considered the twin pillars of Islamic finance practice, they constitute a small percentage of Islamic finance practice, and other tools are more frequently used by Islamic banks. According to Ariff, if Islamic finance practice was limited to both tools (Mudarabah and Musharakah) it would resemble a form of a contemporary merchants or venture capital firm (1988: pp. 51-52).

3. Murabaha (Cost-plus sale)

Murabaha is a third profit and loss sharing practice that takes the form of a sales contract. In Murabaha, the buyer knows the actual price for which the seller originally bought the item, and agrees to pay the price plus a premium at a

deferred date. This premium can be identified either as an amount or as a percentage. So, in practice, the entrepreneur asks the capital owner to buy a specific item for an agreed price, and in turn the capital owner sells it back to the entrepreneur for that price plus premium. The payment is typically deferred in this practice (El-Gamal, 2006: p. 14).

Thus, Murabaha is regarded as a “synthesised loan” or debt, but four main differences from conventional loans make this practice permissible in Islamic finance practice (Alchaar et al. 2009):

- Ownership of the item is transferred from the original owner to the bank or seller
- The deferred payment date can be extended without any increase in amount or penalties.
- If payment is late, a third party or collection agency can recover the cost.
- It is not permissible to state discounts or early payments, but it is acceptable for the bank to volunteer to give discounts during the term of the contract.

4. Ijara (Rent):

Ijara is a contract of sale, not of the actual object but of its usufruct, or right of usage (El-Gamal, 2006: p. 37). It is a bilateral contract in which the usufruct is sold for a period of time for a consideration, typically money. The main difference that distinguishes ijara from the conventional leasing contracts is the idea of reciprocal risk. In ijara, as explained by Karim, “both parties [lessor and

lessee] need to be exposed to reciprocal risk...it [the contract] must permit the possibility for reciprocal loss” (2010: pp. 61-62). While the lessee is responsible to keep the item in good and leasable shape, the lessor is responsible for maintenance and accidental damage (Karim, 2010: p. 62).

5. Salam and Istisnaa:

These two practices, although not widely used (El-Gamal, 2006: pp. 81-82) are very important for the objective of this research due to their high level of practicality and for provision of financial inclusion opportunities to those who are less fortunate in their working conditions. They are two exceptions of the rule of impermissibility of a sale of a non existing object.

Through contemporary *ijtihad*, analogy (*qiyas*), and preference (*istihsan*), these two practices have been allowed based on the prophet’s approval of a sale transaction where the price was paid in full and the objects were well defined yet delivered at a later date (El-Gamal, 2006: p. 82).

Within this context, Salam is a sale transaction where the price is paid in full but the object delivered at a later date. This practice, however, is subject to a number of preconditions, including the free availability of similar items in the market, the specification of the exact quality and quantity without ambiguity, as well as the date and place of delivery. It was a practice used especially in agriculture in the prophet’s era, and it has been expanded to commerce, pre-export and working capital finance (Alchaar et al. 2009).

Istisnaa, on the other hand, is a sales contract that requires the manufacturing of the object. To avoid unnecessary uncertainty, the object needs to be a fungible asset and defined in detail. Thus, this practice allows for a good

deal of negotiation between both parties. Payments can be in a lump sum in advance, or in instalments according to the progression and development of the project. This practice is common for project financing and pre-export finance (Alchaar et al. 2009).

In sum, the above profit and loss sharing tools illustrate how Islamic finance aims to establish a Shariah-compliant practice that avoids interest, gambling and uncertainties. In most instances it attempts to create partnership between capital and labour and to increase the available financing opportunities for entrepreneurs and for those who usually face obstacles in financing their projects due to the nature of their work. Consequently, mandates to engage in profit and loss sharing in particular have a direct and deep impact on the structure of the system, how it operates, the relationships between the different participants, and the opportunities and prospects of participants who come from different backgrounds. The next section examines the role of Shariah boards in Islamic finance practice.

4.4.3. Regulatory Practices (Shariah Boards and Shariah Units):

To ensure that tools and transactions operating within Islamic financial institutions remain Shariah compliant, Shariah boards must be established in every institution and usually consist of at least three Islamic jurists or scholars that are appointed by the Institution. They are considered independent bodies that are internal to the institution and are part of the governance structure of the Islamic financial institution. Members of the Shariah boards submit regular reports to the institution that include their assessment of the adherence of the

products and practices to the Shariah law. According to Grais and Pellegrini, their assessment entails five main tasks:

- Certification of permissible financial instruments through the issuance of fatwa (Islamic opinion)
- Verification of the compliance of transactions with the board's fatwa
- Calculation of Zakah
- Purification or disposition of non-Shariah compliant earnings
- Advice on the institution's income and expenses distribution (2006: p. 17)

Zakah and compliant earnings are discussed below.

In addition to the Shariah boards, Shariah internal governance also includes Shariah review units. These are either independent from other departments of the institutions or are integral of the Internal Audit Control Department. Reviewers in this unit work on ensuring the compliance of transactions with the decisions of the Shariah Boards (Grais and Pellegrini, 2006: pp. 18-19).

We can note also that, among a number of issues related to the function and role of the Shariah boards has been the concern that differences in Boards relating to various institutions/banks makes consensus on products and practices quite difficult and leaves the sector fragmented. This concern has given rise to what Warde calls 'group ijihad', or the creation of ijihad and Shariah international bodies, and the emergence of international conferences taking up Shariah matters in Islamic finance and banking (Warde, 2012: p. 236).

The next section offers detail on sharia-compliant insurance and related economic and social development practices.

4.4.4. Economic and Social Development Practices:

1. **Takaful (Islamic Insurance)**

Conventional insurance is an impermissible practice by consensus of the scholars as it entails the three primary prohibitions of Islamic finance: interest, gambling and uncertainty. Insurance contracts are in essence based on the idea of risk transfer and the exchange of uncertainty for certainty. They are based on lack of transparency as to how the premiums will be distributed between management expenses, claims payments and returns. Moreover, the practice also includes a clear form of gambling in the form of speculative risk, as insurers are speculating to profit from the risk imposed by uncontrollable conditions and events. Moreover, conventional insurance is an interest-based practice (Kassim, 2013: pp. 24-25). Consequently, Takaful was constructed and introduced as an alternative practice that is Shariah compliant.

Takaful operates as an agreement between a number of people to guarantee each other in the face of future risks, disasters and misfortunate events. Thus, it is based on the idea of mutual cooperation, conditioned by two factors. First, it is a voluntary commitment (*tabarru*). Accordingly, each policyholder is volunteering to pay a contribution to the fund to use for assistance to any of the participants. Second, it is based on risk sharing and mutual protection (Iqbal, 2005). Therefore, it avoids impermissible practices by operating two separate sets of assets and accounts, one for shareholders and the other for policyholders. Each

set of assets retains its own investment risks. The policyholders fund is managed by the Takaful provider under the name Takaful Operator. The fund fed by the policyholders through their contributions covers the claims. In case of profit, meaning a situation where funds cover all claims and an excess remains, the profit can be shared by the policyholders or used to lower contributions in the future (Asutay, 2012). However, in the case of loss, the shareholders will support the fund with interest-free loans until losses are covered and loans are repaid to shareholders (Alchaar et al. 2009).

2. Zakah

Weber argues that the concept of charity or giving from the rich to the poor is one of the many examples of social virtues that were incorporated into religious ethics. In early agricultural economies the noble status was measured based on charity and generosity as well as the amount of wealth. It is from this idea that the concept of taxation was incorporated into religions, -- in Islam as the concept of Zakah (Weber, 1963: p. 212).

It is worth noting, however, that the concept of Zakah in Islamic economics is not identical to charity. Charity, illustrated in the wealthy giving to the poor out of generosity, is presented in '*sadaqah*', which is not regulated with respect to its amount or time. Therefore, it is different from Zakah, which corresponds to the idea of taxes that are payable annually and are fixed according to amount of wealth and income. The amount of Zakah is explicitly specified in the Qur'an and Sunnah, and the entire practice is regulated in Islamic finance. Al Qaradawi, Chairman of the International Union of Muslim Scholars, explains in his two volume comprehensive book on Zakah that it refers to "the determined

share of wealth prescribed by God to be distributed among deserving categories” (Al Qaradawi and Monzir, 2000: p. xxxix).

As one of the five pillars of Islam⁹, Zakah is one of the fundamental practices of Islamic finance. Although, it is mainly considered a matter of personal conduct, especially if the government does not take on the responsibility of collecting and distributing Zakah funds, Islamic banks need to create Zakah funds and are involved in the collection and distribution of Zakah, as discussed below. It is also an integral practice for the achievement of socio-economic objectives.

According to Al Qaradawi and Kahf, Zakah is obligatory on sane adults based on the following conditions:

- Ownership: The taxable items are under the ownership of the Zakah payer. Thus, public properties, endowments (*awqaf*) and non-accessible items (such as obligatory retirement funds) are not subject to Zakah (Al Qaradawi and Kahf, 2000: pp. 55-56).
- Growth: Taxable items need to be either growing or to be subject to growing e.g., money and precious metals (growth through exchange), animals, agricultural products. Exceptions are items that are kept for personal and family use such as jewellery not kept for saving purposes (Al Qaradawi and Kahf, 2000: p. 59).
- Nisab: It is the minimum amount required for the item to be subject to Zakah. Below the nisab, no Zakah is required, and only when acquisition exceeds the nisab, is a Zakah due (Al Qaradawi and Kahf,

⁹ These five pillars are 1. Say shahada to declare Islam. 2. Pray five times a day. 3. Paying Zakah. 4. Fast the month of Ramadan. 5. Perform pilgrimage.

2000: p. 64).¹⁰ Nisab on wealth is the equivalent of 85g value of gold (Abdul Rahman, 2007: p. 92).

- Excess over basic needs: After exceeding the nisab, the Zakah should not be collected until the basic needs of the person and his/her extended family are met. These needs according to many scholars include biological, social and religious needs (Al Qaradawi and Kahf: 2000: p. 65).
- Subtraction of debt due: Zakah is calculated after the subtraction of any due debts (Al Qaradawi and Kahf, 2000: p. 68).
- Duration: Once Zakah has been paid for an item, no more Zakah needs to be paid until one year has elapsed (Al Qaradawi and Kahf, 2000: p.71).
- Amount: Zakah on money needs to be the equivalent of one fortieth or 2.5% of the amount. It can be paid in cash or in similarly fungible items (animals, crops, etc.) (Al Qaradawi, 2000 and Kahf: p. 125).

Zakah funds are to be paid to eight identified categories: the poor, the needy, workers on the administration of Zakah, those who have recently embraced Islam, to liberate slaves, helping people in debt, in the way of Allah (activities that please God) and and to the wayfarers. The first two categories (the poor and the needy) are the main two recipients of Zakah and they are entitled to be paid enough until they meet their basic needs and reach subsistence (Al Qaradawi and Kahf, 2000: p. 3-4). Significant for the overall argument of the thesis is that Zakah cannot be paid to a person who is capable of working and

¹⁰ Based on price of gold in the UK on 31.7.2016 Nisab is almost £2790 (<http://goldprice.org/gold-price-uk.html>)

earning money but decides not to work (Al Qaradaw and Kahfi, 2000: p. 9), or a person who is totally and entirely devoted to worship and does not work (Al Qaradawi and Kahf, 2000: p. 10). The socio-economic role of Zakah in the distribution of wealth, poverty alleviation and sufficiency will be illustrated in detail in the interpretation of Islamic finance practice in the next chapter.

3. Purification

It is acknowledged by Islamic financial institutions that adhering to Shariah law principles is imperative for the performance and development of the sector. Failure to do so will not only result in financial risk but may also lead to a complete breaking of trust and confidence of investors and depositors alike. An example of such a failure in conformity with Shariah took place by Dubai Islamic Bank in 1998 when an official of the bank failed “to conform to the ethical term of advancing financing” (Ali, Hussain and Dusuki. 2013: p. 108). This ethical failure resulted in a loss of \$50 million followed by a run on its deposits of \$138 million (7% of bank’s total deposits) in just one day (Ali, Hussain and Dusuki. 2013: p. 108).

To avoid such cases of mistrust and lack of confidence, scholars allowed partially non-halal earnings, meaning earnings coming from activities that are prohibited in Islam such as gambling, alcohol, interest-bearing transactions, etc. to be purified to make sure that the final net profit and earnings are totally Shariah compliant (Ali, Hussain and Dusuki. 2013: p. 108). According to the purification process, investments can still be made in stocks of companies that deal with tolerable (minimal) amount in impermissible transactions such as those involving interest, alcohol, etc, under the condition that these earnings will be purified. This purification process takes place by giving out to designated charities

the same percentage of the income as the percentage of non halal activity. For example, if an Islamic bank invests in stocks of a company that accepts 5% interest-related income, the bank needs to purify its income of this investment by giving out 5% of the dividends payments to designated charities. This process can be done either by the manager of the fund or by notifying the investors of the ratio necessary for purification (Ariff and Iqbal 2011).

4.5. Why a Site of Distributive Justice?

Thus far I have presented Islamic finance practice (or as defined earlier, financial services that are conducted in a way, and with the purpose of, complying with the tenets of Islamic law), the philosophical tenets guiding it and its evolution to the present day. Now I want to offer more systematically the reasons why this practice should be seen as an appropriate site of distributive justice, by explaining the role it plays in guiding the distribution of burden and benefits between participants.

I have explained in earlier chapters how Rawls identified the basic structure as a site of justice due to its profound impact on the lives of the participants. As a site of justice, the basic structure directly affects the lives of its participants, their goals, relationships and character. “The basic structure is the primary subject of justice because its effects are so profound and present from the start” (Rawls, 1999: p. 7). Islamic finance practice can be seen to have a similarly far-reaching impact on its participants’ lives.

As discussed, Islamic finance practice shapes relationships within a society in ways distinct from a conventional financial system and related practices.

Unequal access to finance, excessive risk, gambling and lack of transparency, to name but a few, are prominent features of the conventional system. Such practices typically result in more power accruing to wealth owners, and less negotiating power for small producers and novice entrepreneurs. Islamic finance practice aims to avoid such social and economic inequalities, and accordingly it is designed to create a different kind of network of relationships among its participants. Adhering to the rules and practices of Islamic finance creates unique relationships between capital owners and entrepreneurs. Practices of profit and loss sharing, and accordingly risk sharing, are designed to equalize the balance of power between participants, allowing for a more equal relationship where capital owners are not necessarily in a stronger position to impose their rules. The practice also is designed to encourage entrepreneurship, innovation and hard work. An entrepreneur who has the skills and talent yet lacks funding does not in principle enter the venture in a weaker position than the capital provider, as both participants are regarded as partners and are to share the profit, loss and risk of the venture.

The practice also offers financial opportunities to those who are affected by the conditions of their work, through *salam* and *istisnaa*. Farmers and small manufacturers who require finance before they can produce crops or manufactured products are to be accommodated within the economy and offered opportunities that otherwise would not have been present. This is fundamental for how less privileged individuals perceive their prospects for the future (Classenssen and Perotti, 2007: p. 755). According to recent evidence presented by Classenssen and Perotti, unequal access to finance can hinder entrepreneurial activities in the society, while more financial opportunities can improve economic

and social levels of equality in the form of better health, education and gender equality (2007: 755). Thus, providing more opportunities to less privileged participants creates a more egalitarian society where individuals can achieve without being hindered by their financial or occupational circumstances.

Moreover, Islamic finance practices and institutions play a significant role in shaping social and distributive circumstances. The practice is fundamentally informed by social and distributive objectives, and it vigorously incorporates them into Islamic financial institutions through the application of principles such as purification, Zakah, etc. Hence, the idea of wealth distribution is integrated in the system and the practice aims at achieving it in a fair and just way. The practice is also designed to prevent the concentration of wealth in the hands of the rich and aims at a better circulation of money in the society, and it achieves this through the prohibition of interest and hoarding. It thereby indirectly encourages investment and development.

Furthermore, the practice has a strong impact on the opportunity sets of the least advantaged. In a society that promotes social and distributive justice and regards it as a due share, a more equal relationship is achieved between the different participants. The practice specifies a due share for the poor and needy of the wealth of the rich in the principle of Zakah. Even the poorest and most needy are granted their due shares in the economy. Their financial rights are not to be jeopardized or considered as a charitable almsgiving but as rights. Accordingly, social justice is to be guaranteed through compulsory practices that in their turn are to guarantee the distribution of wealth.

Furthermore, Islamic finance practices have a direct impact or influence on the character of the participants. The practice arranges relations among

participants by offering more opportunities to less-established producers and farmers, empowering entrepreneurs and encouraging entrepreneurial skills, encouraging participants to work and avoid being idle. Accordingly, the practice appears to instil a work spirit in its participants. It is favouring work, innovation, initiative, etc. This in essence is a reflection of the Islamic conception of the individual, which I will address in the next chapter alongside a constructive interpretation of the practice.

Overall, Islamic finance is fundamentally structured to shape connections and relations in the society in which it operates. It affects the lives of its citizens, their structures of opportunity and relations of reciprocity, and ultimately the way they perceive their futures and set their own aims and aspirations. Hence, the distribution of benefits and burdens within the society is directly linked to the operation of Islamic finance practices, making it a clear site of distributive justice.

4.6. Conclusion

Islamic finance is a value-laden practice that relies in its rules of conduct on the teachings as could be found in Shariah law. It is structured according to Islamic philosophical axioms which reflect the essence of the Islamic traditions and include concepts such as free will, accountability and responsibility of the individual, and the individual's trusteeship over the earth. All these axioms show how embedded Islamic finance practices are in moral economy and how integral a just distributive system is in this context. Accordingly, they shape how the practice is designed and entail within them the meaning and purpose of the practice, something I will expand on in the next chapter.

In this chapter, I have identified the practices of Islamic finance which serve to shape distributions of burdens and benefits within society, thus making it appropriate to view Islamic finance as a site of distributive justice. After establishing the longstanding and evolutionary character of the practice, I discussed how principles and practices within it shape relationships between the participants as well as the distribution of wealth and financial opportunities in a society. Islamic finance is laden with social and distributional rules that have direct impact on the lives of the individuals and their opportunities to realize their own aspirations. Finally, the practice also clearly indicated the rules for distribution of burdens and responsibilities. It emphasised the importance of a just distribution of burdens between participants, in a way that does not give any participant undeserved advantage due to status or wealth. Thus, the practice is clearly guided by principles of justice and is a salient site for distributive justice. Accordingly, I will present my interpretation of the practice in the next chapter, where I will examine the point and purpose of the practice and the viewpoint of the participants, towards identifying the distributive principles that guide it.

Chapter V: Interpretation of Islamic Finance Practice

Theory-the seeing of patterns, showing the forest as well as the trees.

--*Adrienne Rich (2003: p. 449)*

Thus far, I have provided an overview of the practice-based constructivist approach to justice. As I have shown, a practice-based approach involves three steps or elements. First, a practice theorist needs to identify a social practice that was established for a certain common purpose and identify the set of rules that shape it. Second, the point and purpose of the practice needs to be identified and the reasons of the participants to affirm the rules and participate in the practice need to be understood and reconstructed. Finally, the practice theorist constructs the principles that govern the practice and cohere with the previously identified objectives of the practice and reasons of the participants. The constructed principles are the result of a general understanding and interpretation of the practice that takes into consideration the practice as a whole as well as all the parts that constitute it.

In the previous chapter, I took the first of these steps by establishing that Islamic finance serves as site of distributive justice because of its profound impact on the lives of the participants. It plays a direct and significant role in shaping network of relationships and dependence between its participants. In this chapter

I will take the second and third steps. First, I will offer an interpretation of Islamic finance practice for the purpose of identifying principles of justice that govern it. This is followed by a construction of the principles that appear to cohere with all the background data previously identified, i.e. the rules, structure and procedure of the practice, its point and purpose and the reasons of the participants for taking part in it. Doing this will demonstrate that Islamic finance practice is a social practice that is governed by principles of justice that clearly reflect the point and purpose of the practice and the reasons participants have for taking part in it.

The chapter is structured as follows. In the first section, I present both elements of a comprehensive interpretation of the practice: the point and purpose of the practices and the viewpoint of its participants. In the second section, I construct principles of distributive justice from the practices of Islamic finance. The aim is to offer an interpretation that considers Islamic finance as a whole entity that achieves the point and purpose of the practice and takes into account the constituent parts that work together towards accomplishing this goal.

5.1. Requirement of a Comprehensive Interpretation:

As explained in previous chapters, the practice-dependence approach is distinguished by the priority it gives to existing social practices as constitutive of principles of justice. Rather than developing unconstrained moral principles to govern practices, it identifies and focuses on the existing social practices and offers the conception of justice that governs them as understood from the interpretation of these practices. Thus, this approach starts with the identification of a practice, followed by an interpretation of its normative purposes as can be

understood from the point of view of the participants, and it ends with the identification of the principles that regulate “the pursuit of the purpose of the specific practice in question” (Banai, Ronzoni and Schemmel, 2011: p. 50).

In the previous chapters I went through the individuation stage of a practice-dependence approach, during which I identified the practices of Islamic finance and explained my reasons for considering them salient for interpretation. This section will be concerned with the second step: the interpretation. This stage involves “an interpretation of the normative purpose of that practice, from the point of view of those participating in it” (Banai, Ronzoni and Schemmel, 2011: p. 50). The importance of this stage is in proving that the rules governing the practice are as a matter of fact serving a purpose that the participants value. It exemplifies a relational view, in the sense that the participants who take part in the practice do so because they understand it as a rule-governed practice.

Accordingly, the interpretation presented in this section aims to clarify the relationship between the actual practice, the point and purpose of the practice and the subjective beliefs of the participants. According to El-Kholi, only an account that can take the relationship between these three factors seriously can claim to provide the best interpretation possible of the practice (2013: p. 13).

5.1.1. The point and purpose of Islamic finance

As mentioned, the goal of the interpretive stage is to determine the normative purpose of the chosen practice and how it relates to the viewpoint of the participants (Banai, Ronzoni and Schemmel, 2011: p. 50) and their subjective individual beliefs (El Kholi, 2013b: p. 13). Consequently, to set out an accurate

interpretive account of a practice, a practice theorist needs to determine the purpose of the practice and the goals it intends to achieve. This should be accompanied by a reconstruction of the affirmation of the participants to the basic rules governing the practice, which answers why participants agree to take part in the practice to achieve the determined goal (Sangiovanni, 2008: p. 12).

Such an interpretive approach to moral theorizing has recently seen heightened interest in political philosophy. This is particularly evident in the recurrent attempts to attach such an interpretive dimension to Rawls's account of justice as I illustrated in chapter III. James (2005, 2013) refers to Rawls's interpretation of social and political practice as a preliminary step to the original position, which again is the hypothetical contract account that Rawls introduces to allow rational actors to identify the best principles of justice. This interpretation is evident in Rawls's recognition of the purpose of liberal democratic societies and identification of their participants (El Kholi, 2013b: p. 21). As Sangiovanni explains, Rawls's justice as fairness is in essence constructed from the conception of the individual as free and equal and the conception of the society as a fair system of social cooperation, and both conceptions are particular to liberal-constitutional democracies (2008: p. 14).

Similarly, Islamic financial practices are appropriately interpreted within an overall understanding of the Islamic tradition. They are practices that are based on the teachings of Islam as can be found in both the Qur'an and Sunnah¹¹. The basic rules that govern Islamic financial system as a whole are mainly derived from what Muslims believe are the words of God and the deeds of their

¹¹ The Sunnah (explained in detail in chapter IV) is the teachings of the prophet either through sayings that are written in Ahadeeth or through his deeds that were reported through the companions.

prophet. Consequently, objectives of Islamic finance practices appear to be twofold. First, they are to provide individuals with Shariah compliant practices. Second, they are to achieve the social and distributive objectives of the Shariah law and the Islamic tradition whilst being financially profitable and worthwhile. In the rest of this section I will illustrate both objectives, in service of reinforcing the point and purpose of Islamic finance.

Islamic financial practices again are conducted with the purpose of complying with the tenets of Islamic law or Shariah (Gait and Worthington, 2007: p. 1). Participants of the practice acknowledge the prohibition of interest, gambling, hoarding, unnecessary risk and uncertainty in financial transactions as stated in Shariah law, and accordingly avoid taking part in conventional financial transactions that do not follow the Shariah law and are convinced they ought to participate in a different form of financial practices. Islamic financial institutions and practices are designed to provide financial products and services to individuals wishing to abide by their religious beliefs and to Shariah law (Farook, 2007: p. 34). They are to provide Muslims with a Shariah compliant alternative to a conventional financial system that involves prohibited practices. In essence, this is the first and foremost *purpose* of Islamic financial institutions.

However, the provision of an alternative financial system that is Shariah compliant should not be regarded as the only purpose for the establishment of Islamic financial institutions. They are also responsible for the fulfilment of social and distributive obligations in accordance with Islamic teachings. Social and distributive obligations become 'fard kifayah' or a collective rather than an individual responsibility (Farook, 2007: p. 34) once the concerned institutions are established and capable of fulfilling them (Jaffer, 2004: p. 14). In other words, the

obligation of social and distributive justice for the community at large shifts from the individual to the relevant and responsible institutions, in this case the relevant Islamic financial institutions and practice. Accordingly, Islamic financial institutions, through the different financial transactions and practices, have a role to play in the allocation of resources and distribution of wealth and are expected to promote and facilitate the observance of social and distributive obligations. As Farook says:

IFI (*Islamic Financial Institutions*) and any other representative Islamic institution that is performing a *fard kifayah*, for that matter, have a special duty of social responsibility. This social responsibility is an extension of the social responsibility of every Muslim, but it is a responsibility that Muslims do not have the capacity to perform individually (2007: p. 35).

These distributive obligations are highlighted in most Islamic finance literature as the paramount goal of the practices (Legrenzi and Momani, 2011: p. 81). Islamic banks are expected to take the social consequences of their practices very seriously when determining their activities, as they are required to balance between their social and ethical objectives on one hand and their economic and material targets on the other. Accordingly, all their activities, decisions and practices are to serve the community as a whole and to play a role in social mutual guarantees in their communities at large (Dusuki and Dar, 2007: p. 396). In order to realize these objectives, these institutions need to combine efforts to achieve justice and fairness within the community with their efforts to maximize financial and economic output. Their ultimate goal is, thus, a balance between profit maximization and social considerations.

It is considered unjust for Islamic banks if they are unable to provide sufficient returns to the depositors as well as the

shareholders who entrusted their money to Islamic banks. Likewise, Islamic banks are prohibited from making excessive profits at the expense of their customers or the local community at large (Dusuki and Dar, 2007: p. 256).

It is the role of the practice to achieve these paramount social and distributive roles alongside economic profits that are channelled to the participants. Thus, justice in an Islamic context lies in achieving the balance between financial profits and social obligations. Financial profits are in fact encouraged for distributive reasons. Islamic finance practices aim to provide more financial opportunities to participants and sharing the profit allows for a better distribution of wealth. This will be explained in depth in the next section on the interpretation of the practice.

What is worth noting here is that the socio-economic objectives that these institutions are expected to fulfil on behalf of the Muslim community at large are to be achieved through two channels. The first is through channelling resources from wealth holders to deficit-producing and consuming units within the society. In other words, Islamic financial institutions are to design their practices in a way that redistributes money from the wealth holders to the more disadvantaged and poorer segments of the society. To this end, practices such as Islamic taxation of wealth or 'Zakah', and profit and loss sharing contracts are performed. Further, these institutions are not only concerned with redistribution but also with production and generation of wealth. Practices such as Istisnaa and Salam that create partnerships between borrowers and financiers and facilitate access to finance to farmers and manufacturers, are designed to achieve these objectives (Amin et al., 2011: pp. 23-25). The actual role of these practices in creating a just distributive scheme will be discussed in more details in the next section.

The fulfilment of social duties requires that financial issues that can have adverse social impact, such as debt, are dealt with differently in an Islamic finance system. To serve the overall purposes of the practice, adverse conditions have to be addressed in a way that does not risk violating Islamic norms or edicts such as the prohibition of interest, yet which also promote the social and distributive role assumed by the institution and the practice. For example, in the case of inability to pay back debt, in the conventional financial system, the borrower will often get into more debt in an attempt to meet the repayment requirements. The lender is not expected to support the borrower and has the right to claim repayment of the debt when it is due regardless of the financial situation of the borrower. However, in an Islamic financial system, the relation between both parties is expected to operate differently, and the resolutions used to overcome the hardship experienced by the borrower are different. The lender will be expected to either clear the debt and convert it into charity or to extend the term of the debt to give the debtor leeway for paying it off (Amin et al., 2011: p. 24). This is clearly stated in the Qur'an chapter II verse 280: *"if the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity. That is best for you If ye only knew"* (Amin et al., 2011: p. 24).

Crucial for this chapter's discussion is the fact that socio-economic purposes of Islamic financial institutions and practices are naturally embedded. They are integrated through Shariah in the entire system, its institutions, tools and mechanisms. Islamic finance as a social practice is value laden and as could be seen is neither intended for financial benefits only, nor is it solely for the provision of products and services that are Shariah compliant. The entire institution is intended to serve values and objectives that are beneficial for the

community at large, while providing both the individual and the society with financial returns and increase in productivity.

For an interpretation to be comprehensive and acceptable as the correct interpretation of the practice, it needs to combine between the point and purpose of the practice and how the participants actually view the practice. Accordingly, I will present the participants viewpoint of Islamic finance next.

5.1.2. Viewpoint of the participants:

The practice-dependence approach relies on the “accounts of specific social practices that are governed by rules and which serve a purpose that their participants value” (Banai, Ronzoni, and Schemmel, 2011: p. 51). Accordingly, a comprehensive interpretation of the practice needs to explain why participants actually choose to take part in the practice and why they arrange their daily lives in the way they do in order to participate in it. To this end, “the interpreter assumes the point of view of the participants in order to reconstruct what reasons they might have for affirming its basic rules, procedures and standards” (Sangiovanni, 2008: p. 12).

James argues that affirmation of the participants to the point and purpose of the practice is of profound importance for the stability of the practice. He explains that “actual endorsement by the participants will presumably help stabilize the practice against shocks and crises” (2013: p. 44). Moreover, the view point of the participants and their affirmation of the point and purpose of the practice are crucial for evaluating how just or unjust a practice is. “[T]he fact that some agents are made worse off by some aspects of the practice is not *per se* an

injustice, as long as the practice has a purpose that people can value and this purpose is endorsed and upheld by its participants” (Banai, Ronzoni, and Schemmel, 2011: p. 51). Thus, it is clear that the viewpoint of the participants and their reasons for endorsing the practice are crucial for the interpretation of the practice.

Accordingly, I will provide an account of the participants’ reasons for taking part in Islamic finance practice in the rest of this section. Following Rawls’s constructivist account, which is based on a conception of the individual as free, equal, reasonable and rational, I will start with an explanation of what an Islamic conception of the person entails, as this conception influences the participants’ viewpoint of the practice.

a) An Islamic Conception of the Individual

I explained earlier that the philosophical and foundational axioms that govern the Islamic tradition constitute the moral paradigm of the Islamic system. Accordingly, I will present an Islamic conception of the individual as can be understood from the moral axioms, particularly free will, accountability, trusteeship and growth towards perfection (tazkiyah).

Free will

From an Islamic perspective, the individual is God’s best creation and is to be accorded “status as a moral agent invested with free will and able to make choices between good and evil, right and wrong” (Brumberg and Shahata, 2009: p. 145). Thus, people have a complete freedom of choice, and it is their responsibility to choose between alternatives to pursue the kind of life they wish for themselves (Bouhdiba and Dawalibi, 1998: p. 48). Their freedom of choice reaches the

highest level in choosing between belief and non-belief. It is their fundamental right to choose, and no individual is to be compelled into adopting a faith she is not willing to adopt. This is clearly stated in the chapter II of the Qur'an, verse 256 'Let there be no compulsion in religion: Truth stands out clear from Error' (Bouhdiba and Dawālibī, 1998: p. 68). If individuals "do not accept God's message, it is their choice, their responsibility" (Brumberg and Shehata, 2009: p. 144).

According to such an understanding of human freedom, an individual's free will is not, and should not be, restricted, yet it is to be guided by Shariah and the moral, ethical and religious considerations of Islam. Since the concept of free will in Islam is combined with a guidance of the Shariah teachings, socio-economic activities performed by the individual are not merely random acts that mainly rely on personal altruistic choices. They are also the result of socio-economic purposes of Shariah by which the individual chooses to abide (Haneef and Furqani, 2009: p. 56).

Consequently, if persons are envisioned as possessing free will, then regulating financial and economic activities according to Islamic teachings should aim to support the individual's free choice to abide by Shariah. Individuals in the Islamic tradition are free to choose whether to abide by the Islamic rules and orders or not. Individuals are, therefore, expected to decide freely to abide by the Shariah considerations and accordingly to participate in Islamic finance practices instead of conventional financial practices that contradict Islamic teachings.

Accountability and Trusteeship

Alongside the free will of the individual comes responsibility. Individuals are responsible for their actions as well as for consequences that result from actions they inspire in others (Bouhdiba and Dawalibi, 1998: pp. 76-77). Accordingly, “it is a cardinal principle of Islam that everyone is accountable for his acts and the accountability is individual, both in rituals and in socio-economic contracts” (Ayub, 2007: p. 22). This accountability requires the individual to justify actions, and to accept responsibility for decisions as well as their results (Iqbal and Mirakhor, 2011).

Free will and accountability are closely related to, and flow from, the idea of trusteeship, that everything is owned by God and the individual is benefitting from God’s creation only as a trustee and not as the original owner. With such a concept embedded in the Islamic tradition, the individual abides by Shariah guidelines as they are imposed by the owner. The relation between God and the individual in this sense resembles a contract, and the trustee is to abide by the rules stated in the contract. Hence, an individual participates in Islamic finance activities in order to follow the rules that were set by the original owner.

Growth towards perfection

As God’s trustees on earth, individuals are expected to aspire to reach perfection. They are expected to work hard to improve themselves and enhance their status, both materially and spiritually. As explained by Asutay, this axiom “directs the individual towards self-development, which leads to economic and social development...In other words, this principle refers to growing in harmony in every aspect of life” (2007: p. 8). Accordingly, growth towards perfection is not

limited to the individual's relation with God. Ahmad, for example who is a prominent academic in Islamic economics, emphasises the connection between growth towards perfection, or tazkiyah, and self purification: "the result of tazkiyah is...prosperity in this world and hereafter" (Ahmad,1994: 20, UI Hasan, 2010: p. 224). Hence, the individual has a continuous need to grow and prosper.

This axiom highlights the importance of work in the Islamic tradition. Islam puts a particularly strong emphasis on the value of work and willingness of individuals to work to support themselves. Work is the accepted path towards the acquisition of wealth. The concept of 'earning' is mentioned numerous times in the Qur'an, indicating the importance of effort and work. It "is the sign of humanization of wealth" (Bouhdiba and Dawalībī, 1998: p. 263). Accordingly, individuals who reach the age of adulthood are obliged to earn a living, and "the example of great scholars having pursued two parallel careers, one for gain in the form of manual work and the other scientific, without thought of profit, is not rare" (Bouhdiba and Dawalībī, 1998: p. 220).

Moreover, work and earning in the Islamic tradition are highly regarded, so that they are considered to increase the status of the individual in the eyes of God. Bouhdiba and Dawalībī have compiled a number of hadeeths that reflect this value;

'Work and toil, the sweat of one's brow, strenuousness, initiative and enterprise are positive values.'

'He who acquires his pittance and does not beg it, God will not make him suffer on the day of the Last Judgement'

'Nothing is as pleasing to God as a man who feeds himself by the labour of his hands.'

‘God hates the man who acts neither for this world nor for the next.’

Or again: ‘For a man to load faggots of wood on his back is much better for him than to beg from those who give or those who refuse.’ (1998: p. 263)

Consequently, to construe an Islamic conception of the individual from the aforementioned axioms, the Islamic individual is viewed as a free and responsible trustee who strives towards perfection. To be God’s trustee on earth, an individual needs to be free to choose how to live, and accountable for her choices. Simultaneously, she needs to be hard working in her attempt to pursue perfection and achieve growth. Accordingly, Islamic finance practices are designed to serve and cater for this conception of the individual: one who is free, accountable, and working hard to achieve tazkiyah, or perfection. The practices operate to encourage and promote these qualities.

b) A Reconstruction of Participants’ Viewpoint

Before setting out the Islamic conception of the individual I explained that understanding the participants’ point of view is an integral part of the individuation stage, in which the theorist identifies a practice as a form of social cooperation. The articulation of the participants’ viewpoint is fundamental to understand their reasons for adopting the practice and participating in it. This facilitates the construction of principles that can guide the collective conduct as identified (James, 2013b: p. 45). Hence, it is important to illustrate why participants take part in Islamic finance practice that aims, as explained earlier, to 1) provide Shariah compliant financial services to Muslim individuals who seek to abide by their religious obligations, and 2) carry out the collective social and

distributive obligations as specified in Islamic teachings alongside financial profitability.

Humayon Dar, a leading Islamic finance advisor, practitioner and academic, explains that once Islamic finance grows to reach a certain proportion of the market (according to Dar around 10%) Muslims tend to choose Islamic banking even if it is slightly more expensive than conventional financial products. Once participants are aware and confident of the authenticity of the Shariah in the available products, they do not give much attention to the profitability of the activity (2013). In support of this argument, many studies examining the attitude of Muslims towards Islamic financial practices reveal religiosity as an important factor for selecting Islamic banks. The role of religiosity in choosing to participate in Islamic finance practices was evident in countries such as Kuwait and Bahrain in Metwally's (1996) study, in Singapore, where 22.6% of customers chose Islamic banking only for religious reasons (Gerrard and Cunningam, 1997), and in Klang Valley in Malaysia, where religiosity affected the intentions of the participants to undertake Islamic home finance (Loo, 2010). Hence, most studies showed a clear positive relation between religiosity and religious obligations and the actual level of participation in Islamic finance practices.

The 'religiosity' of Muslim participants in Islamic finance practices can be interpreted as an understanding of their free will. Muslims understand that they are free to choose between the conventional and Islamic financial systems. This is evident in the fact that they only transfer to Islamic financial practices once they are confident in their authenticity. According to their perception of trusteeship, responsibility and accountability as bestowed on them, they choose to abide to the rules of God as the sole owner and participate in a practice that is Shariah

compliant and that performs the social and distributive obligations on their behalf. They are generally aware of the objectives of the practice and affirm them.

However, it is important to note that Islamic finance is in fact also popular among non-Muslims from all faiths. It has been reported that non-Muslim customers of HSBC Amanah (HSBC's Islamic finance window) in Malaysia has reached 63%, while non-Muslim customers make up half of the OCBC Al-Amin Bank in Malaysia (Venardos, 2012: p. xxii); 66% of Dubai International Financial Centre sukuk investments and 92% of Kazanah (Government of Malaysia's strategic investment fund) sukuk come from Europe (Al- Amine, 2012: pp. 9-11).

It should come as no surprise that non-Muslims do not participate in the practice for its Shariah compliance; i.e. they are not choosing to participate in Islamic finance for Islamic religious reasons, for they have no reason to accept or believe the authority of Islamic teachings and sources. In spite of that, they understand and accept that Islamic finance practices derive their rules from the Islamic teachings, and are to remain compliant to its objectives.

Accordingly, reasons for non-Muslims to participate in Islamic financial practices vary, and their attitude towards it is shaped by different factors such as patronage, economic profitability and ethical reasons. Unfortunately, however, the literature about their perception of Islamic finance is still limited. Vicary Abdullah and Chee argue that Islamic finance provides non-Muslims with viable alternatives that entail economically rewarding principles (2010). Non Muslims show interest in Islamic home financing schemes as opposed to conventional interest bearing mortgages (Thomas, Cox and Kraty, 2005: p. 224), and even non-Muslim corporations enter the Islamic finance world as they manage to identify

the benefits they will gain from the equity-based financial products of Islamic banks and institutions (Askari, Iqbal and Mirakhor, 2009).

This should be understood in the same sense as we understand Rawls's overlapping consensus of reasonable doctrines. In societies with political pluralism, Rawls explain, justice as fairness becomes reasonable when it wins support "by addressing each citizen's reason...within its own framework" (1993: p. 143). This idea of appealing to and addressing different comprehensive doctrines of justice results in an overlapping consensus consisting "of all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime" (Rawls, 1993: p. 15). Thus, in the context of Islamic finance, participants take part and support the practice for reasons relevant to their own comprehensive doctrine. As will be explained in the interpretation of the practice in the rest of this chapter, Islamic finance is guided by a sufficiency constrained luck egalitarian conception of justice. The support the practice receives by the participation of non-Muslims is an implicit affirmation of their support of this conception of justice the practice aims to achieve¹².

It is clear from the few available studies about non-Muslims' participation in Islamic financial practices, that the socio-economic objectives of the practices are appealing to them. Islamic financial practices and institutions present a more socially responsible and ethical alternative to the conventional financial and banking system, which comes simultaneously with a change in the non-Muslim's

¹² It is important to note here that Islamic finance practices are voluntary and participants take part freely. Accordingly, since it is not a compulsory practice "participants who disagree with the prevailing view about the point of this practice and its governing rules can easily opt out of it" (Valentini, 2011: 406).

attitude towards ethical banking. As Alserhan notes in an analysis of British media accounts, Islamic financial practices increasingly are appealing to non-Muslims as an ethically driven alternative to conventional finance and economic practices (2015: p. xii).

It can be argued, then, that the way Islamic finance practice is structured and its socio-economic objectives addresses non-Muslims' various reasonable comprehensive doctrines. The practice's social and distributive objectives that come alongside financial profitability appear to be addressing their moral doctrines and their own ideas of justice. Thus, it is assumed that the practice's point and purpose that addresses both social and economic objectives are quite appealing to the participants from other faiths.

Although Islamic finance participants may have different comprehensive doctrines, Muslims and non-Muslims, their participation in the practice affirms that they reach the same conclusions on the moral suitability of Islamic finance. They do reach these conclusions through ethical decisions that relate and correspond to their own reasonable religious, philosophical and moral doctrines. Both Muslims and non-Muslim participants seem to affirm the objectives of Islamic finance practice for moral and ethical reasons.

Muslim participants take part in it not only as an Islamic Shariah based alternative to the conventional financial system, but also as it achieves the Shariah social and distributive objectives that shift from the responsibility of the individual to the responsibility of the institution (set of Islamic financial institutions). Thus, it is clear that their viewpoint affirms the actual point and purpose of the practice. Participants expect to fulfil their religious obligations,

meet their profitability aspirations and contribute towards socio-economic development.

On the other hand, non-Muslim participants affirm the objectives of the practice and regard the practice as a financially viable and socially oriented alternative to conventional finance. Clearly, these expectations meet the point and purpose of the practice as an alternative to the conventional financial system that fulfils the collective socio-economic duties within the society. They choose to take part in Islamic practices that abide by Islamic teachings to benefit from financial profits, whilst acting in a socially responsible way. Thus, although they may not share the same Islamic worldview or participate for Islamic religious reasons, they still accept the objectives of the practice, whether it be the provision of Shariah compliant services, or profitability and social responsibility as understood consistent with Islam. Thus, they are attracted by the moral and ethical component of Islamic finance, albeit from their own non-Islamic perspective, worldview and moral prism.

We can move now to the construction of principles of distributive justice from Islamic finance practices. This will involve extrapolating from the understanding of Islamic finance practices presented thus far specific principles that dictate how burdens and benefits ought to be distributed. The principles of justice that will be derived ultimately depend on the structure, form and purpose of the Islamic finance practices.

5.2. Principles of Islamic finance distributive justice:

First, to reinforce, Islamic finance practices aim to achieve two purposes. The first is to provide participants with a Shariah compliant alternative to conventional banking. The second is to provide a profitable and ethical alternative, where the latter is understood as fulfilling the society's collective social and distributive obligations. Profitability is understood to be pursued in such a way that balances profit and social objectives. These objectives are harmonious with the participants' viewpoint, which prompts them to participate in the practice to fulfil their religious as well as social duties on the part of the Muslims, and to engage in a profitable yet ethical alternative on the part of non-Muslim participants.

The practice is designed to govern financial activities in societies in which individuals are viewed as equal, free, responsible and hard working. They are designed to complement a comprehensive system where individuals can practice and appreciate these qualities as well as achieve their distributive and social obligations as explained in the previous section. Moreover, Islamic finance places the fulfillment of basic needs at the core of the distributive and social obligations it intends to achieve. There is a clear duty to provide basic needs for the poor, needy, sick, disabled, old, unemployed, etc. Chaudhury, an eminent Islamic finance academic reports one important hadeeth of the prophet saying "The government is the guardian of anyone who has no other guardian;" and "If anyone spent a night in a town and he remained hungry till morning, the promise of God's protection for that town came to an end" (Choudhury, 1999).

Accordingly, I will argue that Islamic distributive justice is relying on two bedrock principles. These are Luck Egalitarianism and Sufficientarianism. That is,

Islamic distributive justice represents a sufficiency-constrained luck egalitarian conception of justice (Casal, 2007: p. 322). In the rest of this chapter, I will elaborate on how a sufficiency-constrained Luck Egalitarian principle can be understood, and how it is manifest in Islamic finance practice.

5.2.1. Luck Egalitarianism

Luck egalitarianism has played a major role in debates on equality and distributive justice for the past several decades. According to a luck egalitarian account, the moral equality of individuals requires each person to be responsible for her choices, without being worse off due to any form of poor luck (Tan, 2012: p. 88).

According to the luck egalitarian core intuition, it is unfair if some people are worse off or better off than others due to factors that lie outside their control, like their social background, their natural endowments, or other kinds of individual good or bad fortune. It then follows from this intuition that a principle of distributive justice demands that such factors be equalised (Schemmel, 2008: p. 54)

Two main notions require our special attention; luck and responsibility. For luck egalitarians, moral equality requires that no person is to be advantaged or disadvantaged due to 'bad brute luck', i.e. bad luck befalling through no fault of her own, as when someone is injured by being struck randomly by lightning. Similarly, a person born with disability in a luck egalitarian system is said to have fundamental right not to be disadvantaged due to this disability. However, consider the case of someone who develops lung cancer during the course of their lifetime. This may simply be considered brute luck if it was a result of genetic

factors. Yet “if he smoked cigarettes heavily then we may prefer to say that he took an unsuccessful gamble” (Dworkin, 2000: pp. 74-75). Accordingly, this person should be responsible for the consequences of this gamble.

A second fundamental aspect of luck egalitarianism is that individuals be held responsible for the choices they make. So, for a distributive scheme to be just it needs to be luck-insensitive as explained, yet it also needs to be sensitive to people’s choices (Tan, 2012: p. 89). According to Vallentyne, “responsibility for choice is...the one in which the relevant outcome is simply the occurrence of the choice itself” (Vallentyne, 2008: p. 58). Consequently, for luck egalitarianism, brute luck is to be defined “as the absence of such responsibility” (Vallentyne, 2008: p. 58).

On the other hand, luck egalitarianism is particularly sensitive in situations where bad luck can be associated with choice and responsibility. Consider the case of a person who chooses to use all her money in making bets. The choices she makes turn out to be bad, and she loses all her money. For luck egalitarians, it is a case of option luck that Dworkin defines as “how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined” (2000: p. 73). The key concept at this point is the person’s responsibility for taking the *risk* to gamble. So, “option luck contrasts with "brute luck," and together these types of luck exhaust the logical space of how risks fall out” (Lippert-Rasmussen, 2001: p. 551).

Risk is regularly associated with insurance, which is the classic form of risk management in debates on welfare and wealth production (Armstrong, 2005: p. 452). For example, individuals buy insurance policies to protect properties

against brute luck such as fire or theft. The premium we pay is the amount we are willing to bear as a risk against possible brute luck (Guest, 2013: 192). Through buying insurance we use our choice and responsibility to transform brute luck into option luck. Dworkin famously implements the same concept in his equality of resources theory by suggesting a hypothetical insurance market that “provides us with a workable baseline from which to work out a premium” (Guest, 2013: p. 192). This market allows individuals to take insurance from behind a veil of ignorance where they don’t have information about the talents they may possess or disabilities which may challenge them in life (Fleurbaey, 2008: p. 172). Crucial about the hypothetical insurance market is that

it restores the link between choice (or, as Dworkin puts it, ‘option luck’) and the ‘brute luck’...it at least partly brings these brute facts under the domain of human agency, by linking how we will be compensated for such brute luck with the option luck of our purchases of insurance cover” (Armstrong, 2005: p. 458).

However, the distinction between brute luck and option luck is not quite so simple. In many situations, brute luck affects our free choices, and what might appear as option luck could be the result of brute luck. Consider the case of two individuals who face the risk of bankruptcy due to the volatility of the financial system and are offered opportunities to ensure against bankruptcy. The first person decides not to buy any insurance, while the second decides to take a policy. If the former faces bankruptcy due to a financial crisis that is of no fault of her own, would her being worse off considered brute or option luck?

In the first instance it would seem like it is the case of option luck, as the person chose freely not to buy insurance. The answer to this question, however, is

more complex than it appears. What if the person decided not to buy insurance because she could not afford to pay for it? In this case we start to realize a connection between brute luck and option luck. “Because it is unequal brute luck that narrows the range of options available to her, it would be inconsistent with the luck egalitarian approach to regard her “choice” not to insure as a matter of option luck and to deny assistance if she faces disastrous outcomes as a result of being uninsured” (Voigt, 2007: p. 396).

Moreover, insurance in itself is an individual choice that entails risk. Individuals’ perception of risk complicates the relation between risk, option luck and responsibility further. In many instances this perception is flawed due to insufficient information, thinking incompetency with regards to probabilities calculation, etc. (Fleurbaey, 2008: p. 157). Many of these reasons for flawed misconceptions of risk are due to brute luck, and accordingly make the distinction between luck and choice difficult. Even so, the choice/luck distinction remains central to luck egalitarianism. To avoid brute luck from disadvantaging persons, luck egalitarians aim to either “counter the effects of luck on persons’ opportunity for well-being (Arneson and, in a qualified way, Cohen)” or “mitigate the effects of luck on the social distribution of goods and resources among persons (Dworkin)” (Tan, 2008: p. 665).

Luck Egalitarianism in Islamic Finance

The distinction between luck and choice is in fact quite evident in the understanding of the Islamic conception of the individual, as well as in the established Islamic finance practice. Again, being held accountable for one’s

action is a fundamental aspect of the Islamic moral context.. A person is free to choose and accordingly is accountable for the consequences of his or her choices. An individual is free and accountable even when it comes to choosing which faith to adopt or whether or not to abide to the rules of Shariah. The individual is to be guided by the rules and boundaries set in Sharia, such as the prohibition of interest, gambling and uncertainty, yet each person is free to choose which economic actions to take, and is accordingly responsible for the consequences and accountable in front of God (and law) for these actions. Thus, Islamic axioms indicate the individual's right to choose, responsibility of choice consequences, and accountability for choices and action. "Personal responsibility is the cornerstone of such accountability" (Ariff and Iqbal, 2011: p. 39).

A luck egalitarian element is also evident in the importance the Islamic tradition imposes on work and growth towards perfection. Islam considers individuals to be self-motivated and genuinely interested in realizing their full potential. In other words, an individual deciding to participate in Islamic finance practices is willing to become an active member of the system and can neither be idle nor passive. Thus, participants are not to keep their money idle or become themselves physically idle by not working. This idea is crucial for the interpretation of some practices of Islamic finance and how they fit together within a sufficiency-constrained luck egalitarian conception.

Accordingly, I argue that Islamic finance practice is luck egalitarian in character, especially as concern its practices of 1) mitigation and financial inclusion, 2) risk management, and 3) partnership contracts.

1. Mitigation and Financial Inclusion

Mitigation in Islamic finance practice is concerned with the right of individuals to be compensated for social and natural circumstances that may have adverse impact on their lives. It works to check the impact of brute luck and adverse social and natural circumstances that disadvantage individuals. This is attained through financial inclusion and access to finance, i.e. the provision of financial services to the disadvantaged at affordable costs without discrimination based on their disadvantaged financial position. It aims to provide equal financial opportunities to the disadvantaged. The primary goal of this form of access to finance is reducing the levels of poverty and inequality.

Access to finance as a way of mitigating bad brute luck is achieved through two measures: avoidance of collateral finance, and imposition of exceptional practices. First, to achieve mitigation through financial inclusion, Islamic finance practices do not rely on collateral finance, which is normally used by conventional financial institutions. Collateral finance is an asset-based form of financing small and medium enterprises. Collateral in this context is a requirement to secure the debt, and in most cases entrepreneurs need to use their personal assets as collateral to secure finance. As Mohieldin¹³ et al. explain, financial inclusion is particularly problematic in the conventional financial sector, where the disadvantaged and poor are typically considered 'non-bankable' as they do not possess adequate collateral to guarantee access to financing opportunities (2012: pp. 179-180). The dilemma with this practice lies in the fact

¹³ Mahmoud Mohieldin is the World Bank President's Special Envoy on Millennium Development Goals (MDGs) and Financial Development, and served from 2010-12 as one of the Managing Directors of the World Bank Group.

that debt finance is crucial mostly for small and medium enterprises, rather than bigger enterprises that are financially better off. “The pervasive requirement for collateral to secure debt finance indicates its fundamental importance in financing SMEs, as firms with tangible assets are less likely to be financially constrained” (Mac an Bhaird, 2010: p. 39).

By contrast, Islamic finance attempts to implement practices that guarantee a higher degree of financial inclusion.

There is a growing realization that... the emphasis should be to expand the accessibility to finance and the financial services that can play a more positive role in eradicating poverty... Enhancing the access to and the equality of basic financial services such as availability of credit, mobilization of savings, insurance, and risk management can facilitate sustainable growth and productivity especially for small and medium enterprises (Mohieldin et al., 2012: pp. 179-180).

Accordingly, Islamic finance practices aim to offer opportunities to finance without introducing measures that are biased against the less privileged. As Volker Nienhaus explains, when it comes to lending and financing projects, Islamic finance relies on the business plan and the potential of the entrepreneur. Instead of using collateral finance techniques, Islamic finance utilizes objective criteria which do not result in further burdens on the entrepreneur. Hence, the practice mitigates the effect of bad brute luck through altering the criteria of inclusion from collateral to business plan, or the potential profitability of the project (*LSE-Harvard public lecture on Islamic Finance*).

Salam and Istisnaa are two other Islamic finance practices that are tailored to mitigate the effect of brute luck. As explained in the previous chapter, they are financial products and practices that promote the inclusion of the non-

entrepreneurial poor, as they are mainly present in agriculture, small manufacturing and pre-export finance. Both practices are considered as permissible exceptions to the prohibition on the sale of non existing items. Recall that in Islamic finance, a major rule of trade is the impermissibility of sale of objects that are non-existent. Such a form of sale is classified as a practice of uncertainty, because the liability of one party to the transaction is uncertain and contingent on uncertain events. Hence, in Salam (a sale transaction where the price is paid in full but the object delivered at a later date) and Istisnaa (a sales contract that requires the manufacturing of the object) gharar is present in the form of risk and uncertainty about the outcome of the contract and the quality and specifications of the subject matter.

Under normal circumstances, the presence of such forms of uncertainty or risk is impermissible in Islamic finance practice, but due to the unfavourable conditions of some professions, such forms of uncertainty are allowed in order to mitigate the brute luck workers in these professions need to endure. In most case, individuals working in small agricultural projects or participating in small manufacturing contracts do not have excess budget to finance their small projects, whether they are farming of small pieces of land or manufacturing of specific items. Hence, their brute luck of being poor and belonging to these professions means they will need financial assistance before they can deliver their products.

2. Risk Management Measures

Brute bad luck may also exist in the form of financial and economic risk. Individuals can face two kinds of risk that can economically disadvantage them. First are risks resulting from external and economic circumstances of the society, which expose the economy to uncertainty and result in economic shocks. This

can be particularly harmful to poorer individuals, who have fewer resources to withstand such shocks. The second kind of risk facing individuals arises from personal circumstances such as severe illness, bankruptcy, etc. Such events typically have dramatic downward effects on income and consumption (Iqbal and Mirakhor, 2013: pp. 186-187).

To mitigate the effects of bad luck that occur due to exposure to risk, Islamic finance entails two levels of risk management. First, Islamic finance entails preventive measures through the prohibition of unnecessary risk and uncertainty. Second, the practice includes insurance measures based on a fair distribution (sharing) of risk between participants.

Preventive measures in Islamic finance practices aim to minimize the level of unnecessary risk, uncertainty and gambling in the financial market as a whole. Uncertainty in this context includes any form of hazard that arises due to lack of clarity or insufficient information regarding the subject matter of the contract or the price of the items.

Gharar means hazard, chance, stake or risk (khatar). Khatar/gharar is found if the liability of any of the parties to a contract is uncertain or contingent; delivery of one of the exchange items is not in the control of any party or the payment from one side is uncertain (Ayub, 2007: p. 58).

Prohibition of excessive risk and uncertainty does not only decrease the chances of brute bad luck from affecting individuals, but it also minimises the risk-associated cognitive pressure that can affect our decision making. There is evidence that the prohibition of risk and uncertainty “reduces the burden on human cognitive capacity, particularly in the process of decision making under uncertainty” (Iqbal and Mirakhor, 2011: p. 186). As explained by Mani et al.,

albeit within the context of poverty, “the human cognitive system has limited capacity. Preoccupations with pressing...concerns leave fewer cognitive resources available to guide choice and actions” (2013: p. 980). Accordingly, lifting uncertainties regarding the consequences of choices, further develops the idea of option luck and a person’s responsibility for the choices made. To be precise, Islamic finance practice attempts to put people in a clear mindset before it holds them responsible for the choices they make. This would be important in addressing the issues noted above with clearly distinguishing between choice and luck in certain contexts, as when individuals make choices under duress.

It is worth noting here, though, that only unnecessary forms of uncertainty is prohibited, because it is impossible to fully avoid uncertainty in the financial market. Accordingly, Islamic finance offers risk management measures for the remaining acceptable level of risk in the form of risk sharing tools and insurance. In the conventional financial system, financial institutions transfer the risk to the borrower and “internalize the gains of the operations as has happened in the global financial crisis 2007-2009” (Iqbal and Mirakhor, 2013: p. 188). The debt needs to be repaid with a fixed interest regardless of the outcome of the business.

By contrast, Islamic finance operates in a way that ensures that the remaining level of risk and uncertainty is shared between participants. Sharing of profit and loss through partnership contracts decreases the amount of risk to which each individual is exposed. Consider the case of a small entrepreneur who (due to financial inclusion and accessibility of financial services) is financed by an Islamic bank. In the case of profit, the practice mandates that both partners share it according to specific percentages or ratios but not fixed amounts. It represents a reward for risking the capital on the part of the investor, and as a reward for the

time and work (management) of the client (Saeed, 1996: pp. 51-55). In the case of loss, however, unlike in conventional finance where the entrepreneur will have to bear all the loss¹⁴, the financier will need to bear part of the risk. The investor loses part or all of their money, while the client will bear the loss of not being rewarded for their labour.

Thus, the rationale is that both partners freely decided to enter into the business, and thereby they transform the loss of the business into option luck that results from their choices over which they are responsible. It is fundamental to note here that if the loss of the business is proven to be due to misconduct or mismanagement of the entrepreneur, the financier will not be liable to any loss (Saeed, 1996: p. 56). This also is a luck egalitarian idea of responsibility over one's actions and choices. Individual choices not only transform brute luck into option luck, but also transform the liability associated with option luck.

A subsequent step to the prevention of excessive risk by prohibition of uncertainty is managing the effects of the remaining permissible risk of the financial market. This is attained in Islamic finance by providing Islamic insurance services in the form of Takaful, as explained in the previous chapter. Takaful is a form of insurance that operates as a mutual cooperation tool that brings participants together to guarantee each other against risk and natural misfortunes. It is another clear example of how a luck egalitarian principle appears to be guiding Islamic finance practice. As in conventional insurance, participants have the opportunity to insure against brute luck and to transform it

¹⁴ Bearing in mind that small entrepreneurs find it very difficult to have access to finance opportunities in the first place.

into option luck. However, Takaful operates differently than mainstream insurance, particularly because of the profit and loss sharing contract.

Takaful is based on profit and loss sharing according to which the risk associated with insurance is shared between the stakeholders as well as the banks, thereby transforming brute luck into option luck to all participants. In this way, the insurance system is not based on profiting from the bad luck of the buyer, but rather on cooperation among a number of people who volunteer to share the consequences of bad luck that could befall any of them. This results in two distinctive outcomes. First, the insurance provider does not profit from the decision of the buyer to insure, but rather all parties share the loss or profit of the investment of the takaful fund. Second, insurance buyers share the risk, profit and loss among them as a reflection of their responsibility for choosing to insure.

3. Choice and Responsibility

A third tool that demonstrates how Islamic finance practice is governed by a luck egalitarian principle is how responsibility over one's choices is a fundamental feature thereof. As illustrated in the example of insurance, Islamic finance places special emphasis on the idea of choice and responsibility, by distinguishing between option and brute luck. This is further evident in the profit and loss sharing practice where the borrower bears the burden of the loss and the financier is rewarded with a percentage interest regardless of the outcome of the business. Such a practice does not directly reflect the choices taken by each party and rather rewards the financier, for owning money, and puts the burden on the borrower alone. Moreover, this practice evidently does not let the disadvantage experienced by the borrower be reflected in the outcome of the transaction. In other words, it does not let the borrower be disadvantaged because of the initial state of poverty.

Lack of money in Islamic finance practice is mitigated through putting a part of the burden of loss on the financier. It is also safe to say that the financier in this respect bears part of the loss as a form of mitigation for the brute good luck of money acquisition. In other words, the practice aims to prevent the financier from benefitting from option luck.

Another third example of the centrality of choice and responsibility to Islamic finance practice is found in Zakah, or the annual compulsory tax imposed on wealth that exceeds the minimum level of subsistence. Zakah's main recipients are described in the Qur'an, and the two main categories are the poor and the needy. It is, thus, mainly imposed as a tool for redistribution of wealth and to mitigate poverty. However, an exception to the rules of Zakah is the poor person who chooses not to work in spite of being capable of doing so. Such a person who falls below the subsistence level or becomes incapable of fulfilling her basic needs due to her choice will not qualify to receive Zakah money. Thus, it is clear that being disadvantaged due to bad choices should not be treated as luck but rather as choice. This example clearly highlights the distinction in Islamic finance practices between bad brute luck, as in the case of the poor and needy due to unfortunate circumstances; and choice, as in the case of those who are poor due to a bad choice such as unwillingness to work.

5.2.2. Sufficiency and Social Floor

Islamic finance practice, however, is not a classic luck egalitarian system. A conception of sufficiency also plays an important role. As Fleubaey explains, theories of equal opportunities are challenged for being too harsh by not

specifying a threshold for the inequalities accepted on the basis of responsibility, and “one could argue in favour of guaranteeing everyone a minimum threshold of subsistence independently of past responsible decisions that may have caused the situation” (2008: p. 153). In the final section of this chapter I will illustrate in details how Islamic finance practice is operated by a sufficiency principle alongside a luck egalitarian one, but first I will briefly explain sufficientarianism followed by an Islamic understanding of the sufficiency principle.

Sufficiency principles reflect an approach to distributive justice where ‘having enough’ and not falling beyond a certain threshold are seen as the most important factors in deciding on distributive schemes (Casal, 2007: p. 297). According to Phillips, instead of asking ‘equality of what’, the sufficiency principle questions what is needed for a person to lead a decent life. For the sufficiency argument “[A]ll human beings, by virtue simply of their humanity, would be regarded as entitled to what is necessary to a decent quality of life, and the needs of the poorest would then take priority in the distribution of social resources” (1999: p. 60). For Frankfurt, one of the pioneers of the approach:

Economic equality is not, as such, of particular moral importance. With respect to the distribution of economic assets, what is important from the point of view of morality is not that everyone should have the same but that each should have enough. If everyone had enough, it would be of no moral consequence whether some had more than others (1987: p. 21)

Accordingly, sufficientarianism consists of a positive and a negative thesis. The positive thesis emphasises the importance of helping people to live above a specific threshold and free from deprivation. Thus, a just distributive scheme needs to target individuals below the threshold to achieve the maximum level of

sufficiency within the society. The negative thesis refuses to associate any importance or relevance to other distributive requirements once sufficiency is secured (Casal, 297-298). In many instances it completely neglects the importance of other principles of distributive principles such as egalitarian or prioritarian conceptions. Hence, once 'enough' is secured to all, no priority should be given to any distributive principle, and all distributive schemes will be equally good regardless of the advantage they produce. An example of this version of sufficientarianism is Frankfurt's threshold set at the level of contentment. Frankfurt explains that having enough is relevant to "meeting a standard rather than to reaching a limit. To say that a person has enough money means that he is content, or that it is reasonable for him to be content, with having no more money than he has" (1987: p. 37). Thus, in such an understanding of sufficiency, what matters is that all individuals reach the level of contentment regardless of how the burdens and benefits are distributed within the society after contentment is attained (Shields, 2012: p. 104).

Sufficiency in Islamic Finance

I will note that the principle found in Islam is in fact not a strictly sufficientarian principle. The Islamic understanding of sufficiency relies on the positive thesis about the importance of having enough, yet it does not reject the importance of equality once sufficiency is achieved. In other words, the Islamic principle suggested is rather a hybrid of sufficiency and equality, as discussed below.

To understand the philosophical ground for the sufficiency principle in Islamic finance, it is useful to place poverty within the overall framework of

Islamic distributive justice. Poverty in Islam is not to be seen as a test from God, who created sufficient provision to fulfill all creatures' basic needs. This idea can be deduced from many verses of the Qur'an. For example:

“There is no moving creature on earth but its sustenance dependeth on Allah. He knoweth the time and place of its definite abode and its temporary deposit: All is in a clear Record.” (11:6)

To clarify, according to the trusteeship axiom, God as the sole owner of everything has created enough provision for everyone and everything, yet the behavior and decisions of people as the trustees of God on earth can create poverty. Poverty is not the result of scarcity of resources but the result of people's bad management and misconduct.

In line with this understanding, Islamic finance practice operates to ensure that each person below a certain threshold is entitled to sufficiency and is supported to reach the agreed upon level – as long as they are willing to work as possible to contribute to their own support. It aims to attain sufficiency through redeeming the rights of the less able in the wealth and income of the more advantageous of the society. It does not treat the benefits assigned to the poor as a form of charity, but rather as rights and due share that are paid by the wealthy as a form of obligation.

It is important to note here that the concepts of sufficiency and needs fulfillment are flexible in the Islamic context. This flexibility is evident in how diverse the concept of basic needs can be in Islamic terms, as it is mostly dependent on the standards prevailing in the society. “Its scope and standard in a particular society would have to be spelled out from time to time in accordance

with the level of economic development reached” (Hasan, 1988: p. 40).

According to the Qur’an, as well as hadeeth, human basic needs are food, water, shelter, health and clothing. The prophet, as mentioned in hadeeth, said

Whoever ends his day with security at home, splendid health and enough food is a person who obtained all that he needs in life.

However, other needs can be added to this basic list according to the availability of financial resources and the social conditions of the society.¹⁵ This according to a fatwa (qualified scholar’s religious opinion) that states that the poor are to be given what they need to fulfill their basic needs for a whole year since the Zakah is paid annually. To fulfill basic needs the poor are to be paid sufficient funds for their food, clothes and shelter and any other necessity according to the poor’s condition without extravagance or misery. The poor include those who don’t have money or income and no guardian including orphans, widows and divorcees, the elderly, the ill and disabled, low income people, students, unemployed, families of prisoners, families of lost and hostages (Weiss, 2002: p. 21).

Within this context, every person is entitled to basic needs and if they cannot afford any of their basic needs it becomes the duty of the community to provide them. According to Ahmad (2010: p. 43), the fulfillment of basic needs can be actually considered the most important principle of Islamic distributive justice.

¹⁵ This is available in a fatwa delivered by the First Symposium of Zakah Contemporary Issues, Cairo 25 October 1988(<http://zakat.al-islam.com/Loader.aspx?pageid=422>).

When interpreted in the light of Islamic finance practice, sufficiency appears to be achieved through the role of Zakah. As explained in the previous chapter, Zakah, i.e. a mandatory obligation on all Muslim adults to give out portions of their holdings (2.5% annually in the case of money) to the needy and the poor, is considered the main instrument of “redemption of rights and repayment of obligation” (Iqbal and Mirakhor, 2013: p. 188). Four aspects of the Zakah practice reflect the importance of sufficiency and needs fulfilment:

1. ***Zakah as a pillar of Islam:*** Zakah is one of the five pillars of Islam or one of the cornerstones of Islam, without which Islam will be incomplete.¹⁶ This illustrates how important it is, and how it constitutes a priority in the Islamic tradition. A Muslim’s faith is incomplete if any of the pillars are not met. Accordingly, the payment of Zakah is that important so as without which the faith is incomplete.
2. ***Obligation:*** Zakah is imposed on the wealth of Muslim adults that exceeds the sufficiency minimum. Muslims who cannot fulfil their needs or those of their families are not obligated to pay Zakah. Thus, sufficiency of basic needs of oneself and one’s extended family precedes the payment of Zakah.
3. ***Recipients:*** The poor and needy are the main recipients of Zakah to fulfil their basic needs. So, the main objective of Zakah is redistribution of wealth towards needs fulfilment and sufficiency.

¹⁶ These five pillars are 1. Say shahada to declare Islam. 2. Pray five times a day (without prayer a Muslim is considered an infidel). 3. Paying Zakah. 4. Fast the month of Ramadan. 5. Perform pilgrimage.

4. ***Applicability:*** Islamic banks are to pay Zakah on behalf of their investors. They, thus, become the collector and distributors of Zakah funds. This indicates the importance of Zakah, and how Islamic financial institutions play a major role in the distribution of Zakah funds for the investment money they are in hold of.

Accordingly, Islamic finance practice aims in the first instance at achieving sufficiency for all participants, again within the work-willingness constraints specified above. It is primarily concerned with helping those individuals within the society that fall below the sufficiency threshold to have enough and achieve sufficiency. Overall, two characteristics distinguish how sufficiency is to operate in Islamic finance: capability and priority.

As we have seen, central to the sufficiency conception in Islamic finance practice is that it differentiates between the capable poor and the non-capable poor with regards to the instruments and tools used to provide for them. The non-capable poor is a category that includes those disadvantaged individuals who are faced with natural circumstances and hardships affecting their abilities to achieve subsistence and sufficiency. This category includes those with disabilities, the elderly, etc. From an Islamic distributive justice perspective, such disadvantaged individuals are entitled to assistance to suffice for their average life expectancy, and in case of exceeding this age they are entitled to assistance on an annual basis. This can be achieved by providing capital investment whose return will suffice for them. The administrator of Zakah buys the investment (property, land, assets, etc.) in the recipient's name and prevents them from disposing of it (Al Qaradawi and Kahf, 2000: pp. 7-9).

The capable poor include those individuals who are disadvantaged by social and financial hardship but not by natural circumstances which would prevent them from being able to maintain their own subsistence. Within this understanding of this category, individuals are to be helped to achieve sufficiency and to overcome their hardship according to the requirement of their profession, talent, skills or abilities. In other words, there is no lower or upper limit to the amount or type of assistance they are entitled to. These individuals are rather helped to achieve a sufficient subsistence from their own effort or work. Fishermen, for example are to be assisted with tools and training to enhance the output of their work. A jeweller will be assisted in a similar way, though the assistance necessary could mean a larger financial contribution. The essential point is that sufficiency is not an amount that individuals are entitled to, but rather financial and professional assistance that brings individuals to the level of sufficiency through their own work and according to their own professions, skills or talents (El Qaradwi and Kahf, 2011: pp. 10-11). Relevant to this category is again the conception of the individual discussed earlier: the individual is expected to be keen to work, and earning through one's work is considered to increase an individual's value.

Individuals who chose voluntarily not to work are seen as not motivated to achieve their full potential (growth towards perfection or tazkiyah), and to prefer to be inactive or passive members in the system and not eligible for assistance.. Hence, they are not considered as actual participants in the society and the practice. Also we can note again that capable individuals who decide to be full-time worshippers are not eligible recipients of Zakah (El Qaradawi and Kahf, 2011: p. 10). This is in line with the conception of the individual as

explained in earlier section in this chapter which regards work as a very important issue. Even the prophet himself, who was the role model for Muslims when it comes to worshipping and rituals, was at the same time a very successful merchant and businessman. Moreover, Muslim scholars throughout Islamic history used to pursue dual careers; they had a job to earn for their subsistence as they pursued religious knowledge (Bouhdiba and Dawālibī, 1998: p. 220).

The second characteristic of the Islamic conception of sufficiency is its priority over other conceptions of justice. It is crucial to clarify that sufficiency is to function as a choice insensitive principle. In other words, individuals are entitled to assistance to achieve sufficiency regardless of the initial reasons for their hardship or their fall below the sufficiency threshold. Accordingly, an individual who makes bad work-related choices, although within the rules of Shariah, and consequently falls below the sufficiency threshold is entitled to assistance to achieve sufficiency. Also, students and 'knowledge seekers' are considered eligible recipients of Zakah funds (Qaradawi 2011: p. 11). Students who are not capable of maintaining subsistence while studying are entitled to receive Zakah funds until they finish their education, which is to place them in a better position for their competition in the market.

5.2.3. Islamic understanding of a Sufficiency-constrained Luck Egalitarian Principle

There is no doubt that the importance attached to the idea of sufficiency is not far from the idea of equality of individuals. This idea was previously highlighted by Phillips, who argues that the importance of sufficiency and needs fulfillment is not so distinct from equality, since needs fulfillment in an egalitarian society

requires much less than needs fulfillment in a non-egalitarian society (1999: p. 63). Accordingly, Islamic distributive justice calls on sufficiency and needs fulfillment simultaneously, as it holds choice and responsibility as imperative factors in achieving equality. Individuals are entitled to sufficiency while being simultaneously responsible for their choices. Therefore, Islamic distributive justice relies on a sufficiency principle in addition to luck egalitarianism. Sufficiency in the Islamic context is not a standalone principle, but it supports luck egalitarianism and operates to prevent it from resulting in severe disadvantages due to choice sensitivity.

In her significant article *Why Sufficiency Is Not Enough*, Paula Casal suggests the reconsideration of the negative thesis of the sufficiency principle “so that it merely denies that equality and priority should stand unaccompanied by sufficiency” (2007: p. 318). She provides a persuasive account of how sufficiency is to supplement equality and priority rather than to be considered as a standalone principle to replace them. One of her aims is to ‘temper’ luck egalitarianism, in part to respond to objections about the possible harshness of an approach which simply holds individuals to account for their own bad choices, however far that may cause them to fall (see Voigt, 2007).

Although proponents defend luck egalitarianism against the harshness objection, what is most relevant to this thesis is that Casal questions whether there should be a threshold below which inequalities due to individual choices should not be acceptable. In other words, in a society where individuals enjoy equal opportunities, individual choices for which they are to be responsible may leave some individuals far worse off than others and below the level of having enough. She, thus, questions if there should be a limit on the level of

disadvantage that individuals are to bear due to their responsibility for their choices (2007: p. 322). She suggests that,

Instead of proposing its wholesale rejection, however, it may be preferable merely to supplement luck egalitarianism with a sufficiency principle that tempers its concern for choice and responsibility. We might then favour a form of *sufficiency-constrained luck egalitarianism*, which allows that some inequalities in outcome may arise justly but denies that individuals' having less than enough is ever justifiable by appeal to voluntary choice (2007: p. 322).

Islamic distributive justice again offers a variant of such an approach. To illustrate, let us consider an individual who chooses to finance the business plan of an entrepreneur within the Islamic finance practice. According to the luck egalitarian principle and the importance associated with responsibility and accountability, this financier is free to choose her financial actions, and accordingly will either share the profit or will bear part of the loss of the business as explained in the partnership practice. However, if the loss takes her below the sufficiency level, she is entitled to support that brings her back above the threshold, even though it was her free willed financial choices that resulted in her falling below the threshold in the first place. Hence, it is clear that choice and responsibility are imperative until an individual falls below a certain threshold after which sufficiency is the imperative factor for justice.

What is also worth reinforcing is how the practice is differentiating between various examples of the capable poor. The way the practice is distinguishing between them makes clear how sufficiency is functioning alongside luck egalitarianism. As explained earlier, a poor individual is entitled to sufficiency from the resources provided by Zakah. However, the practice is clearly taking the choices of each poor individual very seriously. An incapable impoverished person, who is deprived of a free choice to overcome poverty, is

unconditionally entitled to Zakah assistance to maintain sufficiency. On the other hand, a capable poor person who is in control of her own decision is rewarded according to the decision she makes. If she decides to work to help herself to come out of insufficiency and poverty, she is entitled to Zakah, and if she is above the threshold she is entitled to exceptional practices that can mitigate the effect of her hardship. Unlike in a straight forward luck egalitarianism, she is not held fully responsible for the consequences of her bad choices, as long as she demonstrates a willingness to work to overcome those consequences. On the other hand, a capable poor person who decides not to work and to remain poor is not entitled to Zakah fund even when she is below the sufficiency level. This person is obviously not a full participant of the practice of Islamic finance. While the individual is envisioned as aiming for perfection, and the practice is designed to govern a society of individuals that enjoy this quality, a person who decides not to work and not to provide for herself does not typically fit in the Islamic conception of the individual. Hence, such a case is an exception to the sufficiency principle.

It is of remarkable importance to find the characteristics of the Islamic conception of distributive justice presented and explained in the western debate on distributive justice. This seconds my argument that the interpretation of Islamic distributive justice is of salient importance not only to CPT proponents, but also to political theorists who are concerned with the notion of distributive justice in general. It is clear that in this exercise the debate on distributive justice can find insights not only about which principles of justice are to guide Islamic finance practice, but also how principles that were debated in the Western context

were simultaneously operating in non-western traditions. It may be even safe to claim that they were operating in Islamic finance practices decades before.

5.3. Conclusion:

In this chapter, I have worked to reinforce ways in which Islamic finance practice can be seen as a site of justice that operates according to principles of justice. It is value laden, due to its reliance on Shariah law, which aims to infuse moral and ethical considerations and objectives into the practice. Moreover, it is designed and established according to the participants' aims to engage in a profitable and ethical Shariah compliant practice. Muslim participants, in this context, are envisioned as free and accountable trustees, who work hard to grow towards perfection.

The point and purpose of the practice revolves around two main objectives. First, the practice is presented as a Shariah compliant alternative to the conventional financial system. In other words, it is providing financial services and transactions that abide to the Shariah rules. Accordingly, Muslim participants, once confident in the authenticity of the practice, take part as they affirm this objective and aim to participate in financial practices that reflect their beliefs. The second objective is for the practice to be both profitable and ethical. Islamic finance is not only established to provide Shariah compliant products and services to practicing Muslims, but it also has socio-economic and distributive objectives to fulfil. It is evident that the reliance on the foundational and philosophical axioms, as explained in the previous chapter, makes the socio-economic objectives embedded in the practices. Islamic finance practices serve

socio-economic goals by merely abiding to the guiding rules and procedures. Prohibitions in this context are actually imposed with just distribution as a paramount goal. Accordingly, the point and purpose of the practice regards distributive justice with high importance.

Accordingly, the chapter has offered an interpretation that has taken into account 1) the point and purpose of the practice, 2) the reasons for the participants to endorse the practice, 3) the conception of the individual, and 4) the philosophical axioms that shape Islamic understanding of the right course of action. The conclusion to be drawn is that the practice is guided by a sufficiency-constrained luck egalitarian principle of distributive justice. The practice entails an egalitarian stance towards the moral equality of people, and takes issues of choice and responsibility seriously. Yet, simultaneously, it takes the importance of sufficiency also seriously and utilizes it to temper the responsibility-sensitive inequality that is accepted by luck egalitarianism and can leave individuals below sufficiency levels. Thus, Islamic distributive justice gives emphasis to sufficiency for all participants. It also seeks to mitigate the effect of brute luck on disadvantaged individuals. This requires the establishment of a financial market that promotes equal opportunity and financial inclusion. This is achieved by guaranteeing access to financial services to the less advantaged.

This concludes the interpretation of Islamic finance as a practice and the development of an Islamic distributive justice approach. In the next chapter, I will consider ways in which actual Islamic finance practice often falls short of the principles of distributive justice which guide it, and ways in which a systematic rendering of those principles can serve to highlight injustices and guide reforms.

Chapter VI: Implications

All theories are legitimate, no matter.

What matters is what you do with them.

--Jorge Luis Borges

This chapter discusses the practical implications of my theory and the evaluative and action guiding roles of the principles. In the first section I explicate why practice-dependence principles should act as evaluative and action guiding principles and should not be limited to descriptive roles. In the second section I illustrate the evaluative and action guiding implications of the sufficiency-constrained luck egalitarian principle on actual Islamic finance practice. I start by highlighting how the current status quo in areas where Islamic finance prevails does not fully reflect the sharia-guided aims or desired outcome of the practice. I follow this by an assessment of the practice for fulfilment of sufficiency obligations, luck insensitivity and mitigation, and I use the principles to inform possible reforms of practice.

6.1. The Role of Practice-dependence Principles

The practical aim of moral theories is to provide us with a ‘decision procedure’ to direct our moral reasoning and to help us evaluate what is right or wrong (Timmons, 2002: p. 3). They do that by formulating sets of principles that when applied ‘conscientiously and intelligently’ can help us arrive to our moral judgements (Rawls, 1999: p. 41). These principles are important for us “because we need guidance” and because they provide us with a ‘critical perspective’

according to which we can make decisions regarding problems (Sangiovanni, 2013: pp. 4-5). They are, therefore, not to be envisioned as mere normative and indirect conception of what justice is or how it ought to be, but they are also to serve two practical roles: evaluation and action guidance (North, 2016: p. 15). Principles of justice set out the conditions according to which institutions and practices can be evaluated as either just or unjust, and they guide our decisions with regards to designing and restructuring our institutions and practices.

The evaluative and action-guiding utility of practice-dependence principles, however, is questioned by some, due to their emphasis on existing arrangements in their formulation. Some theorists argue that practice-dependence principles of justice give too much weight to the status quo and therefore can play only a descriptive role. Meckled-Garcia, for example, although a proponent of the distinctiveness of the practice-dependence methodology, argues that practice-dependence principles cannot be justified to participants with reference to any moral value, and that

practice-dependence accounts constrain the content of normative principles for regulating certain practices by reference to observable facts about those practices... it is a sociological interpretive description... whilst moral concepts may be used to describe the organising function of the practice, the choice of description is not itself evaluative in the sense of employing moral principles of the kind that are to be applied to regulating the practice (2013: p. 99).

Similar to Meckled-Garcia, most ideal-theory theorists, who believe moral principles should be indifferent to existing practice, label practice-dependence principles as merely descriptive of the existing arrangements. They believe that “constraining the content of justice by whatever social and political arrangements

we happen to share gives undue normative weight to what is, at best, merely the product of arbitrary historical contingency or, at worst, the result of past injustice itself” (cf. Sangiovanni, 2008: 1) and conclude that practice-dependence principles should remain descriptive of the existing arrangements, practices and institutions and are not to serve any other practical roles.

Normative Roles of Practice-dependence Principles

Practice-dependence theorists answer such criticisms in part by reference to the construction of Rawls’s national and international theories of justice from ‘characterised social practices’ (James, 2013b: p. 45). They argue that practice-dependent principles are capable of both evaluative and action guidance roles. Gledhill, for example, explains that “an adequate conception of justice ought to provide a framework that can orientate how we think about, act within and reform our social practice”, and accordingly, practice-dependent theories “can reinforce, undermine or reform the constitutive features of the practice” (2013: pp. 66-69). Similarly, Valentini argues that in spite of the heavy reliance on the interpretation of existing arrangements, practice-dependence principles are capable of criticising, reforming and even abolishing the practice they interpret. “In short, this methodology has the virtue of acknowledging the plurality of values and practices contained within our moral universe without a-critically endorsing the status quo” (2011: p. 405).

Practice evaluation can take different forms. First and foremost, a theorist will want to assess whether the practice functions in accordance with its objectives or not. And if it does whether it is achieving its point and purpose in

the best way possible or could be more efficient or more just. The evaluation of a practice may also extend to asking whether the practice as it stands is justifiable. Such an extended evaluation will examine whether or not the practice is contributing to a specified good, or set of goods and ask whether it could be justified to non-adherents. Such an understanding of the evaluative role of the principles emphasises the importance of practice-dependence principles. As Sangiovanni explains,

social interpretation of practices—in which we try to understand the point and purpose of a practice by seeking to characterise its underlying or motivating value or goodness (should it have any) —are central aspects of any political theory that aims to evaluate the existing practices from the point of view of higher-level values and principles (2015: p. 18).

Consequently, practice-dependent principles embody the best standard against which a practice can be understood and evaluated. In so doing, a principle, or set of principles, as well as explaining a practice ‘also performs the first of its practical roles because it can function as a moral standard that can be used to evaluate political institutions’ (North, 2016: p. 16). Accordingly, practice-dependent principles should not be seen as limited to a purely descriptive role, in which they describe arrangements and identify the just way to distribute benefits and burdens in the society, but they also serve as moral standards that help us assess and evaluate existing practices.

Further to the evaluative role of the principles, and in spite of the negative response of some idealists who argue that a theory of justice is more suited for idealized societies and are therefore not capable of guiding actions in a non-ideal realm, justice principles are also to play an action guiding role (North, 2016: p.

10). If a principle can assess and evaluate whether a practice and/or institution is just or unjust, then it is capable of assisting us to “decide what to do in matters relating to the design of those institutions because those verdicts identify which of the actions available to citizens are permissible and impermissible” (North, 2016: p. 15).

Again, since practice-dependent theorizing is the most sensitive to the context in which the principles are to operate, it derives principles that are capable of informing the practice when they are not in full coherence with their objectives. James explains that while practice-dependence theories are indeed highly sensitive to the arrangements and the context in which the practice are taking place, they “would at least ideally provide some general guidance about how to proceed” (2013, p. 45). In other words, as the principles reflect the actual point and purpose of the practice, they entail the capacity to provide a prescription to correct any unjust aspects of the practice as it is actually operationalized within institutions, etc.. They are the best tool to be used to guide the practice towards becoming more just and in line with its point and purpose. The principles derived from a practice-dependence approach are expected to guide the practice when injustices occur and to act “as constraints on those practices in which we are already engaged” (Ibsen, 2013: p. 81).

Accordingly, if the practical roles of principles of justice are to evaluate the practice and to guide our decisions in designing and reforming existing arrangements, then it is necessary to examine these roles of a sufficiency constrained luck egalitarian principle on Islamic finance practice. In the next section I will offer an illustration of an ideal sufficiency constrained luck egalitarian practice, followed by a reality check of the current situation in Islamic

regions where Islamic finance practices operate. This will be followed by a pragmatic evaluation with regard to sufficiency obligations, luck insensitivity and financial inclusion. As practices can include injustices that distance them from their original objectives, an assessment of these practices in relation to the moral principles is important to pursue. Such an assessment can shed light on those parts of the practice that have become unjust and what is required to guide them to conformity with their objectives.

6.2. Implication of a Sufficiency-constrained luck egalitarian Principle

In the previous chapter I argued that Islamic finance is regulated by two principles: a sufficiency principle and a luck egalitarian principle, with the former constraining the latter. If principles of justice are evaluative and action-guiding, as well as descriptive, this means that existing Islamic finance practices can be assessed according to the standards set by those principles and, where they fall short, should be reformed in line with the recommendations of those principles. Ultimately, Islamic finance, whatever else it does, must ensure that the distribution of wealth is such that a) all have sufficiency within willingness-to-work constraints, and b) inequalities are the result of choices that individuals make, not the brute luck they may suffer.

Of paramount importance for a scheme of distributive justice operating according to a sufficiency-constrained luck egalitarian principle again is to achieve sufficiency and needs fulfilment for all. Individuals are entitled to support to maintain subsistence above a poverty threshold, and no individual, with the exception of those who refuse to work for their own support, is to be left below

the established or agreed on sufficiency/poverty threshold,. It is a fundamental obligation to abolish insufficiency that may result not only from brute luck but also from free choices of individuals or option luck.

After the sufficiency obligation is met, a luck egalitarian principle operates to ensure that persons are held accountable for their option luck without being disadvantaged due to brute luck. To mitigate the impact of brute luck, disadvantaged individuals who suffer from brute *financial* luck need to be offered access to financial opportunities. These financial opportunities need to be accessible to individuals who suffer brute luck in a way that allows them to participate financially alongside other individuals who are not affected by brute luck, without being burdened with financial disadvantages.

Further, individuals are to be held responsible for their financial choices, and this should be enforced throughout the different stages of the financial practice. Financially advantaged individuals, such as capital owners and big investors, are to be held accountable for their financial choices *as much as* disadvantaged individuals who are being offered financial opportunities to mitigate the effect of brute luck. In other words, financial inclusion and financial opportunities for the financially disadvantaged need to go hand in hand with equal sharing of responsibility that holds every financial party responsible.

A Reality Check:

While there is some ambiguity associated with sufficiency and its variation according to the standards of living in different societies, a failure to achieve sufficiency in countries where Islamic finance practices operate is widely evident.

A reality check of the conditions of justice in the Muslim world shows that the execution of Islamic finance practice often does not reflect the intended point and purpose of the practice or its guiding principles. Although the sufficiency-constrained luck egalitarian principle is expected to achieve financial justice in the form of extreme poverty alleviation and equality in financial participation between persons irrespective of their luck, in reality there is widespread and severe poverty in Muslim countries. World Bank reports indicate that 70 million of the world's poor, who live on less than the equivalent of US \$2 a day, and 20 million of the world's extremely poor, who live on less than \$1.25 a day, reside in the Middle East and North Africa (MENA) region (Mohseni-Cheraghloou, 2013), which ironically includes the Gulf countries who are pioneers and leaders of Islamic finance. While governments of the Gulf area seem to be very secretive about their data, press releases and private estimates in Saudi Arabia for example suggest that between 2 and 4 million Saudis live below the national poverty line, which is \$17 a day (Sullivan, 2013).

What makes this reality even more startling is that inequality among countries of the Organization of Islamic Cooperation (OIC) has witnessed two major surges in 1975 and 2000 that left some countries extremely poor in comparison to others (Organisation of Islamic Cooperation, 2012: 2). In fact, both years are important in the historical development of Islamic financial practices as was explained in chapter IV. The early stages of Islamic finance took place beginning in 1971, with the awakening of the Islamic movement and the establishment of the Organization of the Islamic Conference. At that time the idea of an Islamic finance model was inaugurated (Warde, 2012: pp. 72-82). This was followed by 1973 oil crisis that made oil prices rocket and allowed for an

unprecedented flow of petrodollars into the Muslim world (Saeed, 1996: p. 11; Iqbal and Mirakhor, 2011). With such an inflow of money into the Muslim world, where Islamic finance was gaining momentum, better conditions and alleviation of poverty could have been expected. As for the turn of the millennium, there was a strong Islamic awakening accompanied by a high demand of Islamic financial products and a flow of Muslims' money from American and European banks into the Muslim banks (Warde, 2012: p. 81). Hence, it seems that widening in disparity between Muslim countries worsened as more money flew into the Islamic financial sector, contrary to what is expected from the sector and the practice.

It is appropriate to assess Islamic finance within these countries according to principles of sufficiency-constrained luck egalitarianism. If Islamic teaching takes poverty very seriously, and if Islamic finance practices are expected to take sufficiency as a first priority, then these objectives should be reflected in the financial status quo. We can ask, are the principles effectively and efficiently applied, and if not where can injustices be located and how can the salient principles of distributive justice guide actions to reform the practice?

The answer to the above questions can be found in the evaluative and action guiding role of the principles. Through putting the sufficiency constrained luck egalitarian principles in action, we can understand why the practice is not in line with its point and purpose and how it can be reformed to better achieve it. I will examine in the rest of this section the evaluative and action guiding roles of the principles with regards to 1) sufficiency obligations, 2) choice sensitivity and luck insensitivity, and 3) mitigation and financial inclusion.

6.2.1. Sufficiency Obligations

The sufficiency principle, which again is the priority principle of Islamic distributive justice, is concerned with the idea that every individual should have 'enough'. In an Islamic context sufficiency means persons are entitled to basic needs. These needs are to be fulfilled to those who fall below the sufficiency threshold, except persons who choose not to work to support themselves. In other words, below the sufficiency threshold the main concern of justice shifts from accountability and responsibility to sufficiency. Thus, Islamic finance practice can never be evaluated without giving full attention to sufficiency and whether it is maintained. Distributive justice principles are to point out if the practice does not achieve sufficiency and explain why not.

Sufficiency is evidently a primary concern of Islamic finance practice as could be seen in the importance of Zakah in the Islamic philosophy. It is a practice that is prescribed to avoid the concentration of wealth by the rich and to combat poverty by redistribution of wealth from the rich to the poor. Ahmad notes that if in many countries, the worst-off 10% of the population have access to only 2% of the national income, and through the Zakah funds 2-3% of the national income can be redistributed to the poor, then the redistributive effect could double their share (2010: p. 43). Moreover, Zakah contributes to the redistribution of wealth by encouraging investment to avoid diminishing capital, promoting productivity, economic growth, development and employment by exempting means of production from Zakah (Ahmad, 2010: pp. 51-52).

Thus, with the importance of Zakah in the Islamic philosophy there is no wonder that it is an integral part within the Islamic finance practice. As a matter

of fact, the practice is connected to Zakah funds and charities in several ways such as:

1. Islamic banks allow for a small margin of profits resulting from investments made in stocks of companies that deal with tolerable, yet minimal, amount in impermissible transactions like interest, alcohol, etc, under the condition that these earnings will be purified by giving them out to charities.
2. Penalties imposed on defaulting customers, as in the case of Mudarabah, are charged to avoid moral hazard, yet they are paid to charities and are not added to the bank's budget.
3. Islamic banks pay Zakah on behalf of clients who invest their money with them.
4. There is a recent debate in Islamic finance literature on the possibility of Zakah payment by Islamic banks as business entities (Ismail, Tahirin and Ahmad, 2013).

1. Evaluation of Zakah in Attaining Sufficiency

In spite of the importance of Zakah and its expected role in achieving sufficiency, a serious drawback in practice is how Islamic financial institutions neglect the important role they can play in its collection and distribution. The minimal role played by Islamic banks and financial institutions is not due to lack of understanding of the philosophical axioms and social requirements of the practice. According to a research conducted by Sairally, Islamic finance practitioners have theoretical understanding of the sector that is in consistency with social responsibility as put forward in the literature of Islamic economics. They

associate Islamic finance practices with the elimination of interest and financial efficiency as well as social and humanitarian objectives. As a matter of fact, they identified the socio-economic role attributed to Islamic finance institutions and considered it to be as important as the profit related objectives, albeit sometimes conflicting (2007: p. 298).

However, the role they take to promote and achieve sufficiency is not up to what is expected. In most cases, where Zakah is integrated within the practice, Islamic financial institutions prefer to detach themselves from the actual distribution of the fund. They give out purification money, charity and Zakah to promote the image of Shariah compliance, yet they do not play any role in the distribution of this money or in supporting sufficiency in the society. For example, Lehner highlights the study of Haron and Hisham (2005) that assessed the socioeconomic performance of Malaysian Banks and revealed that the banks lacked a significant role in Zakah contribution (Lehner, 2016: p. 199).

The minimal role of Islamic banks with regards to Zakah can be seen in light of the traditional understanding of Zakah administration in Islam. "It is the duty of the government to ensure the efficient administration of Zakah in an Islamic state. However, in places where the government is not Islamic, the Muslim community bears the burden of establishing functional organizations that will be responsible for its administration" (Adamu, Owoyemi and Cusairi, 2016: p. 116). Accordingly, the primary distributor of Zakah is the state (Chapra, 19), which "is required to guarantee a minimum level of living for those whose own earnings fall short of fulfilling their basic needs" (Kahf, 1991: p. 9). Governmental Zakah funds are, therefore, established in a few countries and Islamic banks are expected to pay Zakah to them. For example in Pakistan Islamic financial

institutions pay their Zakah to the government that is responsible for the collection and distribution thereof (Kuran, 2004: p. 1).

However, this understanding of the role of the state in the collection and distribution of Zakah should not undermine the role Islamic financial institutions need to play. Islamic banks and financial institutions, as explained earlier, due to their basic nature as a fundamental source for financial inclusion and financial opportunity provision, are expected to work with customers who are borderline Zakah fund eligible. Islamic practices are designed to mitigate brute luck, and Islamic banks are, therefore, continuously offering products, such as salam, istosnaa, etc. to disadvantaged individuals. Hence, limiting their role to paying Zakah money to the state is resulting in cases of injustices, particularly with regards to individual cases that are undetected as entitled to Zakah funds.

On the other hand, in the absence of Islamic government Zakah funds, non-governmental charity agencies such as Islamic aid, Islamic relief, national zakat foundations, etc., are established to collect and distribute Zakah (also donation and charity). Some cases of collaboration between Islamic banks and these institutions are reported. For example, the collaboration between Al Rayan Bank (formerly known as Islamic Bank of Britain - IBB) and the National Zakat Foundation (NZF). According to Iqbal Nasim, Chief Executive of NZF, partnership between both institutions resulted in

IBB customers have been offered Zakat seminars in branches, been given access to Zakat [Zakah] calculation guides and offered one-on-one Zakat consultancy services, all supplied by NZF. The bank has also facilitated the transfer of Zakat payments for customers who want to discharge their obligation from their IBB accounts (National Zakat Fund, 2016).

In spite of the importance of such collaborations between Islamic financial institutions and Zakah institutions, the role played is not vigorous enough to reflect the importance of Zakah as a pillar of Islam as well as an important principles of justice guiding the practice. The next section offers specific recommendations.

2. Recommendations

If Islamic finance practice is to come across to participants as genuinely and authentically Islamic, and is to correct the current separation from the Islamic substance, Islamic financial institutions need to take sufficiency obligations very seriously and need to be active players in the community's combat against insufficiency. Therefore, for the role of Islamic financial institutions to be more coherent with the sufficiency principle, I suggest three important changes in the practice.

First, institutions should conduct a detailed examination of all financing cases that entail an assessment of the financial situation of the client and whether they are illegible to Zakah fund due to insufficiency. Each case would go through a classification process to identify whether they are illegible to Zakah or are to be considered for Islamic financial services.

It may be argued that Islamic financial institutions should be excused from such a requirement due to its complexity or administrative burden. However, this argument is challenged by Nasim, who explains that "including Zakat as an integral part of the industry's framework requires more of a mental than a practical shift" (National Zakat Fund, 2016). Moreover, this specific role in the objectives and the obligations of Islamic financial inclusion is fundamental as it

represents one of the primary requirements of Islamic distributive justice. Accordingly, it is recommended that Islamic financial institutions establish internal Zakah units to address this important obligation. These new units or departments could be a step towards better integration of sufficiency obligations within the practice.

Second, Islamic financial institutions can strengthen their role in combating insufficiency through wider and more extensive liaising with Zakah institutions. This collaboration can address cases of individuals they identify as Zakah eligible, and can include other initiatives towards achieving sufficiency and managing Zakah. This argument is supported by Nasim, who explains that “engaging in positive partnerships with relevant Zakat institutions is the surest and easiest way of snowballing the revival in the adherence to Zakat” (National Zakat Fund, 2016).

Third, Islamic banks can play their role more vigorously by paying business Zakah. As Abdul Rahman explains, the obligatory rules of Zakah on individuals should also be applied to Islamic banks as functioning businesses (2007: p. 92). There is a growing debate about the practicality of this requirement. The complexity of the financial activities makes it “difficult to relate the sources of funds to the applications of funds and to determine the relationship between them” (2007: p. 93). However, the importance of the sufficiency principle in guiding the practice places this issue as an important research priority for the development of Islamic finance practice.

6.2.2. Luck Insensitivity and Choice Sensitivity

As discussed, in a luck egalitarian context, the moral equality of individuals requires all to be responsible for their choices irrespective of the consequences, without being worse off due to any form of involuntary poor luck (Tan, 2012: p. 88). Thus, there should always be a clear distinction between luck and choice. Bad luck befalling a person through no fault of her own is considered 'brute bad luck', and should, therefore, have no impact on their lives, opportunities, choices, etc. On the other hand, they are to be responsible for the consequences of their own choices. So, for a distributive system to be just, in a luck egalitarian context, it needs to be "choice-sensitive but luck-insensitive" (Tan, 2012: p. 89).

This distinction is apparent in the most important aspect of Islamic finance practice, namely the prohibition of interest. As explained in chapter IV, interest was prohibited in Islam both for equity in the case of the poor as well as for efficiency in the case of richer merchants who could lose their trade on long journeys and fall into debt as a result. However, when considering these conditions of prohibiting interest it becomes clear that it has a luck insensitivity objective to it. In the case of the poor it ensures luck insensitivity as it saves them from being victims of their own brute luck. They are not left as targets for greedy lenders who profit from the poor's brute luck by imposing large interest on the loans they offer them. Meanwhile, in the case of the rich merchants who borrow money to finance their business trips, the prohibition of interest is also a means to ensure luck insensitivity and choice sensitivity. In cases of trade loss, merchants were to bear all the loss while the lenders were guaranteed their money as well as

the premium/interest. Hence, there was no partnership and the risk was not fairly shared between both partners.

In addition to the prohibition of interest, the prohibition of gambling and uncertainty also indicates the importance of luck insensitivity and choice sensitivity. As explained earlier, the impermissibility of uncertainty is similar to protection of consumers in modern securities laws. The objective of its prohibition is to avoid a zero-sum exchange from taking place, which usually happen in the case of uncertain outcome (Venardo and Abdul Rashid, 2010). This highlights that decisions and choices require prior knowledge and information in order for the individual to be accountable and responsible for the consequences.

Moreover, the Islamic account of free will, responsibility and accountability is to be achieved in the Islamic finance practice through partnership agreements. As explained in previous chapters, such practices were originally designed to create a form of partnership between the borrower and the financier. According to this partnership, the risk of the business or the transaction is shared between both partners. In other words, both partners share the consequences of the transaction which reflect the consequence of their choices. The borrower is responsible for the choice to take part in the transaction/trade/business, and the financier is responsible for the choice to finance the project. This way the practice is designed to avoid any disadvantage caused by the initial state of poverty from affecting the borrower. Lack of money in Islamic finance practice is mitigated through putting a part of the burden of loss on the financier.

The next section assesses some actual practices relating to these luck insensitive and choice sensitive dictates of Islamic distributive justice.

1. Evaluation of Mudarabah in the light of Choice-Luck Distinction

An important contract that was designed to attain a high level of choice sensitivity and brute luck insensitivity is Mudarabah. Again, Mudarabah is one form of the profit and loss sharing contracts that are used in Islamic finance. In a Mudarabah partnership one partner is solely the capital provider and is not allowed to interfere in the management of the investment. On the other hand, the other partner is solely responsible for the management and does not provide capital (there are also the 'Mudarabah musharakah' partnership in which the manager can be a partner in the capital). In the case of profit the partners will share it according to a previously agreed proportions or ratios. However, if loss is incurred, the capital provider will bear all of it.

In Islamic finance literature this form of partnership, alongside musharakah in which all partners share in the invested capital, although not the most widely used tools, is considered one of the most just practices that the development and progression of Islamic finance should strive to expand. According to Khan and Mirakhor, Mudarabah "effectively places human capital on par with financial capital" (1994, p. 7). This is in fact a common perception of Mudarabah in Islamic finance literature and it is, therefore, regarded as a fairer financing technique. "*Mudarabah* and *Misharakah* are the two profit-sharing arrangements preferred under Islamic law" (Bellalah and Masood, 2013: p. 114).

The practice is supposedly designed to be luck insensitive and choice sensitive. It is introduced and promoted as a tool that allows ultimate partnership between capital and entrepreneurial skills. This partnership alters the nature of the relationship between borrowers and lenders by requiring both parties to share the risk and be responsible for their choices to enter into the venture. Moreover, it

should provide entrepreneurs who lack financial means with financial opportunities, thereby mitigating the effect of suffering brute luck.

Although the practice is the best initiative to design a financing tool that is luck insensitive and choice sensitive, the practice faces a number of criticisms. Researchers point to a couple of important faults in Mudarabah, which result in its limited use in practice. First, the condition for bearing the loss solely by the investor has resulted in a reluctant investment environment. Investors became less enthusiastic about investing their capital using this particular financing tool, because it shifts all the risk to the investor (Febianto, 2012: p. 74; Greuning and Iqbal, 2008: p. 148). While the investor will bear all the loss, the manager, who was practically solely managing the business will not bear any loss. Second, Mudarabah results in a risk-return framework that stimulates an investment environment that associated high levels of return with higher levels of risk (Bacha, 1997: p. 14). Thus, as risk levels increases, the potential profit increases. Consider partner A and B who want to enter into a Mudarabah partnership. A provides the capital while B is responsible for the management of the investment. Since both partners need to decide on the ratio of profit sharing, and as partner A is the only partner to bear the financial loss, partner A will demand a higher ratio as the level of risk increases. This is demanded as a compensation for the higher risk partner A needs to bear alone. Meanwhile, the managing partner will prefer high risk investments as they can increase their profit without having to bear any loss.

The aforementioned criticism can be better understood when considered according to the Islamic distributive justice principles. The actual implementation resulted in brute luck having grave effects on the lives of the disadvantaged. First, reluctance from the side of the investors reduced financial opportunities and

financial inclusion. Second, it created a risk-return environment according to which investors demand higher ratios of profit with higher levels of risk. Thus, the practice allowed for brute luck to disadvantage borrowers, who will have to accept higher levels of risk and less percentage of profits. The aspiration to luck insensitivity is not realized, as higher levels of risk resulted in higher ratios of profit to be channelled away from the disadvantaged and towards the finance provider.

Hence, it may be safe to argue that the practice as it stands may be indeed Shariah compliant in form, yet in substance requires significant reform to achieve its objectives and to be in line with the principles. The practice as it stands requires more attention to be more luck insensitive.

2. Recommendations for Mudarabah

Mudarabah as a financing tool has resulted in two main limitations to the sufficiency-constrained luck egalitarian principle. First, the condition for the investor to solely bear any loss of the business resulted in fewer financial opportunities available to mitigate for brute luck. Consequently, more individuals continue to suffer due to their bad brute financial luck. Second, the investment environment saw conflicting preferences from lenders and borrowers, thereby allowing for an unfair distribution of risk and for brute luck to affect the entrepreneur's decisions. Thus, the practice, which in essence is one of the most preferred financial tools in Islamic finance does not contribute to the ultimate investment environment as desired. It produces higher levels of profits that are channelled towards the investors, instead of the borrower who might be suffering forms of bad brute financial luck. Thus, instead of being luck insensitive, it can make individuals who are subject to brute luck to accept harsher conditions.

It is clear that a very thin line separates Shariah compliance in form and Shariah compliance which is fully sensitive to underlying Islamic distributive justice principles. To be able to recommend changes for the practice to be more in coherence with the sufficiency-constrained luck egalitarian principle, we need to first point out what Mudarabah is intending to achieve and accordingly how to better achieve it. In light of a luck egalitarian principle, Mudarabah needs to achieve three main objectives, and to achieve them, it needs to address them in a different order, as follows:

First, Mudarabah as a profit and loss sharing tool aims to establish an equal relationship between participants that can reflect a high level of sensitivity to choice without jeopardizing financial inclusion as a means to mitigate brute luck. To accomplish such a challenging task, Mudarabah needs to initially operate according to its current conditions. As it currently stands, Mudarabah is offering individuals suffering brute luck financial opportunities to allow for their financial inclusion. In other words, the practice is mitigating brute luck by allowing the borrower to be initially only a manager (not contributing to the fund), thus taking into consideration the brute luck of the borrower. However, Mudarabah should not continue to operate according to the same conditions over a long time, as this results in less availability of financial opportunities due to the unequal relationship between participants, which contradicts with its second objective.

Second, Mudarabah needs to ensure a more equal relationship among participants to ensure choice sensitivity. To become more choice-sensitive Mudarabah needs to change its requirements gradually after the initial brute luck is mitigated. In other words, once brute luck is mitigated through financial

inclusion and financial opportunities, the relationship needs to be equalized to allow for higher levels of choice sensitivity. This can be achieved through suggestions made by Islamic finance experts, such as Shaikh (2011), who suggested the inclusion of the borrower into a more active partnership by contributing to the capital. This way, both borrowers and financiers will be responsible for their decisions to take part in the business. Both parties will share the outcome of the business, whether it is profit or loss, and will accordingly share the risk associated with the business. This transformation of the relationship between participants will result in the achievement of the final objective of Mudarabah.

Third, by equalizing the relationship between participants, Mudarabah ensures a consistent provision of financial opportunities. Financial opportunities are the main tool of Islamic finance practice to achieve mitigation and financial inclusion. Thus, Mudarabah needs to ensure that the rules guiding it do not deter investors thereby decreasing financial opportunities. This is achieved by the transformation of the relationship between the participants once initial brute luck is mitigated as explained in the previous paragraph. By requiring entrepreneurs to become partners in the practice and to share risk, capital providers are reassured about the consequences of their business and consequently more financial opportunities for financial mitigation are available. This way, borrowers are still encouraged to seek finance, as they will not be disadvantaged due to brute luck. The relationship between participants will be gradually equalized, and the practice will remain choice sensitive, as the borrower becomes a partner and shares the risk with the capital provider, and financial opportunities will not lessen as lenders will eventually share the risk with the borrower.

6.2.3. Mitigation through Financial Inclusion

Mitigation in a luck egalitarian society is concerned with the right of individuals to be compensated for social and natural circumstances that may have adverse impact on their lives. It works on reversing the impact of brute luck and adverse social and natural circumstances that disadvantage individuals within the society (Tan, 2008). In Islamic finance, mitigation is to be attained through financial inclusion and access to finance, i.e. the provision of financial services to the disadvantaged at affordable costs without discrimination based on their disadvantaged financial position. Accordingly, it aims at creating a financial system that provides equal financial opportunities to the disadvantaged. The primary goal of this form of access to finance is reducing the levels of poverty and inequality through mitigating the effects of the adverse circumstances facing the poor and disadvantaged and which prevent them from access to finance.

As explained in chapters IV and V, practices like Salam and Istisnaa are two exceptions in the Islamic finance practice to the impermissibility of a sale of a non existing object. The reason for these exceptions is in essence to ensure that individuals are not suffering due to brute luck. Farmers and small manufacturers and other professions that require longer periods of time to deliver their products enjoy exceptions to the conditions of sale in order to mitigate for their brute luck. Thus, those disadvantaged individuals are offered finance in spite of their brute luck that could have otherwise prevented them from accessing these opportunities.

As discussed, another central practice that aims at achieving mitigation and protection from brute luck is Islamic insurance or Takaful. Takaful functions as an agreement between a number of people to guarantee each other in the face of future risks, disasters and misfortunate events. It is a voluntary commitment and it is based on the risk sharing technique and mutual protection (Iqbal, 2005). Again, this practice highlights how mitigation of brute luck is an integral part of the Islamic finance practice. Yet mitigation should not be achieved on the expense of choice sensitivity. Thus, takaful relies on risk sharing techniques and mutual protection where in case of profit, that is the funds cover all claims and an excess remains, the profit can be shared by the policyholders or used to lower contributions in the future (Asutay, 2012). On the other hand, in the case of loss, the shareholders will fuel the fund by interest-free loans until losses are covered and loans are repaid to shareholders (Alchaar and Archer et al. 2009).

1. Evaluation of Murabaha's Role in Mitigating Brute Luck

The main practice through which mitigation is to be attained is Murabaha, a debt finance transaction. As explained in Chapter IV, it is a sales contract according to which the lender buys an agreed product and the buyer, in this case the borrower, agrees to buy the item for the original price plus a premium on a deferred date. Thus, it is a form of a debt-based finance tool that is commonly used in Islamic finance. It is also one of the first tools that was designed in Islamic finance (El Gamal, 2006: 14). This cost plus profit sale contract needs to meet the following conditions in order to be Shariah compliant:

- The item bought needs to be in the possession of the lender

- Permissibility of an extension of the payment date without extra costs
- In case of default a third party can recover the cost
- In case of early payments discounts are not permissible (Alchaar et al, 2009)

The Murabaha sales contract is quite a popular contract in Islamic finance as it presents the practice as a valid alternative to the conventional system. It is, therefore, particularly used in personal finances of vehicle and home purchase, yet it is also popular for business transactions in import and export. The actual scope of Murabaha business contracts as put forward by Bank Albilad, a Saudi joint stock company, is to finance the purchase of commodities and goods from the local markets, import and export transactions, fix assets such as machines and equipment, working capital such as the purchase of feedstock used for production, construction and installations materials, real estate and settlement of bank share interests (Bankalbilad.com, 2016).

Although Murabaha is primarily designed to mitigate brute luck through financial inclusion, it falls short in achieving this goal in three ways. The first injustice that can be pointed out about the Murabaha contract is the charging of a premium, particularly in the case of business contracts. It is worth noting that in the case of personal contracts, it is the borrower's decision to pay a premium on the price of a commodity, either a vehicle or a home. The borrower does not buy these commodities for sufficiency, or else she should seek Zakah funding. Thus, beyond the sufficiency threshold the person is taking a decision to buy a commodity. In this case the practice would be contributing to the financial inclusion of the poorer segments of the society. As a matter of fact Murabaha

seems to effectively contribute to financial inclusion as it provides a group of individuals in the society with the opportunity to own expensive commodities through instalments and in return for an 'affordable' premium. In this case the payment of a premium is a decision that each person is taking and is responsible for the outcome thereof. However, in case of business Murabaha contract, if the entrepreneur is in a state of sufficiency, yet due to brute luck does not have enough funds to start a business or to develop an established one, the practice may not be sufficiently contributing to financial mitigation. The borrower may be in need to accept the contract with a large premium in order to gain access to finance. In such a case, the Murabaha contract is putting the borrower in a bad financial position that is mainly resulting from brute luck.

The second injustice with regard to Murabaha's contribution to brute luck mitigation is evident in imposing charges on defaulting clients. When evaluated against the sufficiency-constrained luck egalitarian principle this can be seen to be contradictory with the Islamic conception of distributive justice, as it imposes a further burden on the borrower who defaults through no fault of her own. In other words, imposing such charges allows in many cases for brute luck to affect the borrower and for her to suffer accordingly. It is understood that the cause for imposing premiums is to avoid moral hazard, yet it may also entail injustice towards the disadvantaged who defaults due to brute luck.

The third form of injustice in Murabaha is present in the lack of profit and loss sharing. In the case of Murabaha the risk of profit and loss generated by the purchase of the commodity is not shared by both parties. In other words, the bank will receive the payments regardless of how the business is operating, and even if

the client defaults a third party will recover the cost. Thus, the client is indeed disadvantaged due to brute luck, which is considered unjust.

From this brief evaluation of Murabaha in the light of the Islamic distributive justice principles, I conclude that the practice is not entirely just, as it is highly sensitive to brute luck and in some cases allows for borrowers to suffer from bad brute luck. Although the practice seems Shariah compliant in the sense that it does not impose interest, it allows in some cases for brute luck to have direct consequences on the financial situation of individuals by imposing penalties on defaulting borrowers. Instead of preventing extreme inequality, its application may contribute to more forms of injustices. Accordingly, the practice is technically Shariah compliant, applying the sufficiency constrained luck egalitarian principle sheds light on the injustices that arise from it and how it may not be entirely compatible with the objectives of Islamic finance, as well as with the overall philosophical axioms that guide it. It may be fair to note, however, that the Murabaha business contract is contributing to some extent to financial inclusion and financial opportunities by offering those who attempt to improve their businesses, and subsequently enhance their financial position, with opportunities for finance that they are not capable of on their own. However, it is essential to ensure that this financing opportunity does not push borrowers into more debt due to an overpriced premium or a penalty to defaulting customers.

2. Recommendations for Murabaha

Now we can have a closer look at the practice in the light of the sufficiency constrained luck egalitarian principle in an attempt to guide it towards more

mitigation and financial inclusion. First, although Murabaha may appear to open channels for financial inclusion and operate as a choice-sensitive tool, the amount of the premium needs to be regulated so as not to discourage either borrowers from seeking this channel or lenders from entering into the contract. Such an adverse impact on the willingness of either parties to participate will result in fewer financial opportunities and financial inclusion, and accordingly high sensitivity to brute luck.

Second, in the case of default, there needs to be examination of individual cases. There is indeed a moral hazard in not imposing any penalty on defaulting borrowers, as it becomes an easy option not to attend to the instalments (Ismail, 107). However, there is also an evident injustice in imposing penalties on borrowers who default through no fault of their own, such as a borrower who becomes redundant due to financial crisis, or a borrower who becomes ill and not able to meet financial obligations. In such cases the practice is sensitive to brute luck and holds participants accountable for harsh consequences that are of no fault of their own.

Thus, there seems to be a need to assess each case of default individually in order not to allow individuals to be disadvantaged due to brute luck. Murabaha needs to clearly differentiate between borrowers who default due to choice and option luck and those who default due to brute luck. Pre-emptive measures need to be taken in the former case, yet for the latter there needs to be a preferential treatment in place in order to mitigate the effects of brute luck that led them into default.

Similar reformation to Murabaha is also suggested by Ismail, albeit in a different context. Ismail assesses the case of a cheating entrepreneur who pretends

to be defaulting in the case of a commodity price going above the original price plus mark up. In such a case the entrepreneur will cheat the bank to terminate the contract and benefit from the price difference before price goes down (Ismail, 2015: 102). Ismail explains that such cases also create moral hazard and “it is important to prevent entrepreneur to do such a moral hazard by finding what condition that can trigger it to happen, how big the probability is and how Islamic bank can discourage it” (Ismail, 2015: 103). Thus, Ismail suggests the investigation of the individual cases immediately once an entrepreneur declared default to identify the truth behind the claim and if it is a case of moral hazard (Ismail, 2015: 103).

Such consideration of individual cases will guide the practice towards becoming more choice sensitive and more attentive to mitigation of brute luck. Individualised evaluation of defaulting cases will help identify borrowers who default due to choice and not luck and have them bear the consequences of their decisions. This is a clear example of luck egalitarian conception of justice, and one that is harmonious with the accountability and responsibility axioms of the Islamic philosophy.

6.3. Conclusion

In this chapter I presented the practical implications of my proposed Islamic distributive justice theory. I used the sufficiency-constrained luck egalitarian principles to assess and to guide three of the most important aspects of Islamic finance practice, namely sufficiency obligations, luck insensitivity and choice sensitivity and mitigation through financial inclusion.

In the first section, I discuss the importance of practice-dependence principles in practice evaluation and guidance. Practice-dependence principles are criticised by some theorists for their emphasis on existing arrangements. Opponents of practice-dependence argue that these principles should be limited to the descriptive role they provide. However, I argued that practice-dependence principles are capable of offering evaluative and action guidance. This is particularly so as they are derived from the explanation and interpretation of the practice, its objectives and the viewpoint of its participants, and by realising this function they are in the best position to serve evaluative and guiding roles. They are capable of serving as moral standards that help us assess and evaluate existing practices.

In the second section I discussed the practical implications of the sufficiency constrained luck egalitarian principle. I started with a brief account of what the principle entails, followed by a quick reality check of the current situation in the countries where Islamic finance practice prevail. It became clear that the status quo does not reflect the desired and expected outcome of the practice, as millions still live in poverty even in very affluent countries such as the Kingdom of Saudi Arabia. This dichotomy between the objectives of the practice and the practical outcome emphasises the importance of an assessment and action guidance of the practice. Thus, I utilised the principle to assess and guide the practice with regards to three integral aspects of sufficiency constrained luck egalitarianism: sufficiency obligation, luck insensitivity and mitigation.

I discussed how obligations to ensure sufficiency are a primary concern of Islamic distributive justice, and are primarily expected to be achieved through Zakah, which is clearly integrated within Islamic finance practice and Islamic

financial institutions. However, a problem with regards to Zakah is the fact that Islamic financial institutions tend to detach themselves from the functions of Zakah. Although they give out Zakah on behalf of clients and give out purification funds to charity, etc. Islamic banks tend to neglect their role in the collection and distribution of Zakah. The principle thus recommends three essential changes that Islamic financial institutions need to consider to perform a stronger and more rigorous role in needs fulfilment. First, Islamic financial institutions are expected to integrate internal Zakah units that can assess individual cases that are eligible for Zakah funds. Second, a stronger collaboration is needed between Islamic financial institutions and existing non-governmental initiatives such as Islamic aid and Islamic relief to distribute Zakah. Third, Islamic banks and Islamic financial institutions need to be considered as profitable business that are required to pay business Zakah.

This was followed with an assessment of Islamic finance practice with regard to luck insensitivity and choice sensitivity, a main aspect of luck egalitarianism. Luck insensitivity is evident in the prohibition of *riba* and uncertainty, and it is designed to be achieved in Islamic finance practice through partnership agreements. However, when a partnership agreement such as *Mudarabah* is assessed against the principle, it becomes evident that it allows brute luck to have adverse effects on disadvantaged individuals. The practice creates reluctance among investors and encourages a risk-return environment that allows borrowers to suffer due to bad brute luck. Accordingly the practice requires changes to allow it to be more luck insensitive. This is recommended by prioritizing its objectives to start the practice with conditions that promote mitigation and inclusion. Yet in order to avoid reluctance from the lenders and

thereby a decrease in financial opportunities, the practice needs to alter the relationship once brute luck is mitigated to encourage risk sharing among parties.

Finally with regards to the mitigation aspect of the principle, it is clear that Islamic finance principle attempts to achieve mitigation through a number of practices such as salam, istisnaa, takaful and Murabaha. However, when assessing Murabaha, which is a debt finance tool in more depth, the assessment reveals that the practice is defeating the mitigation objective through imposing premiums, charges on defaulting customers and lack of partnership and sharing. Thus it requires alterations to allow for higher levels of mitigation, which can be achieved through regulating premiums and individualised assessment of defaulting participants.

Conclusion

Very simple was my explanation, and plausible enough – as most wrong theories are!

--H.G. WELLS (2006, 39)

1. Islamic Finance and Distributive Justice

The Islamic economic system is based on a moral paradigm that holds socio-economic justice at its core. It takes notions such as wealth distribution and poverty eradication very seriously and guides Islamic practices accordingly. Given the centrality of debates about wealth distribution and (in)equality in contemporary political theory we might expect to find some discussion of Islamic distributive justice. However, there is a clear absence of the Islamic tradition and the focus of attention within this debate is primarily on Western ideas and western practices. This limitation overlooks and alienates many important economic practices that exist outside the Western sphere and it ignores the contributions that those practices can offer to debate about economic justice

There is also a parallel absence in the literature on Islam and finance. The literature which addresses the Islamic economic system can be divided into two categories and both appear to be inadequate in addressing the idea of an Islamic distributive justice. Firstly, Islamic economics literature is mainly concerned with explaining the features of an Islamic economic system and how it differs from

other economic systems. Some few Islamic economists have attempted to address the issue of distribution in an Islamic context, yet the literature lacks on a systemically identified Islamic conception of distributive justice. Islamic economists in their understanding of different Islamic conceptions such as distributive justice appear to emphasised different dimensions and responded to different aspects of the Islamic economic system. They thereby produced diverse and sometimes contradictory perspectives on these notions, and no significant work was conducted to compare their standpoints and provide a comprehensive understanding thereof (Haneef, 2005: 3-4).

Secondly, there is a literature concerned with Islamic finance practice, how to development it, and how its rules and procedures differ from the conventional financial system. Most of this work focuses on the banking sector and how they operate differently from conventional banks. Some empirical work is also conducted to examine Islamic finance performance in a certain country, customers' perception of the service, Islamic banks financial profitability, etc. However, little attention is given to normative and moral ideas in this set of literature as the focus is limited to the practicality of Islamic finance and banking.

This thesis has sought to address this significant gap in both the political theory and Islamic economics literatures. It attempted to reveal the moral rules that regulate Islamic finance practice in order to establish an Islamic conception of distributive justice. The thesis was questioning the principles guiding Islamic finance practices and how they regulate the distribution of burdens and benefits between participants. To this end, the thesis exposed the correlation between Islamic finance practice, its cultural context and its directing Islamic axioms to construct a systemic conception of what Islamic distributive justice entails. The

constructed theory offered in this thesis was interpreted from the existing and well established Islamic finance practice and it provided specific principles that guide the practice towards establishing justice in the financial system and in the distribution of burden and benefits among the participants of the practice.

In seeking to answer this research question and by providing this theory, this thesis addresses the fundamental gap in literature by presenting an important comparative political theory project in line with call of political theory critics (Dallmayr, 1997, 2004, 2009, 2011; Euben, 2002, 2004; March, 2009) to integrate absent non-Western traditions in a wider project that seeks to understanding across political discontinuities, explores unfamiliar grounds and introduces non-Western approaches of addressing common problems of inquiry. Also, by offering this Islamic conception of distributive justice the thesis is addressing the fundamental gap in Islamic literature, by offering a systemic foundational understanding of an important Islamic conception that reflects its religious and moral paradigm.

2. Justice in Islamic Finance

To offer a systemic conception of Islamic distributive justice in absence of a clear agreement between Islamic economists on what it entails, this thesis addressed the well established Islamic finance practices that regulate Islamic banks, lending, insurance etc. The successful and rapid growth of the practice over the past decades alongside its superior performance during the financial crisis, in comparison to its conventional counterpart, increased the interest in Islamic financial practices, which in turn has drawn attention to the moral paradigm in

which it sits. The thesis identified Islamic finance practice as a salient site of distributive justice on the grounds that it has a profound impact on the lives of the participants and the distribution of burdens and benefits between them. It claimed that Islamic finance is a social practice that is established to achieve specific objectives and that participants take part in it to achieve these goals. As a social practice it shapes and alters the kind of relationships between the participants of the practice and the interdependence between them, which should be explored in depth against the objectives of the practice and the reasons of the participants to take part in it.

As I had identified a clear and distinct practice and my aim was to better understand the principles that underpin that practice, it made sense to use a practice-dependent approach (PDA), in contrast to the mainstream practice *independent* approach to moral theorizing. PDA is a relatively new approach, which has only recently gained attention from some theorists to address distributive justice issues, particularly global justice. This approach places a special emphasis on the existing practices and institutions in the construction of principles. The principles constructed from Islamic finance practice in this thesis win their objectivity from the comprehensive interpretation of the practice it offered. By interpreting the existing Islamic financial institution as a whole entity as well as its constituting parts in the light of the cultural context including the objectives of the practice and the reasons of participants to take part in it, the principles claim objectivity.

The constructive interpretation of the Islamic finance practice, offered in this thesis, reveals that an Islamic conception of justice is guided by a combination of a sufficiency principle and a luck egalitarian principle. As

interpreted, in the light of its point and purpose and the view point of its participant, the practice places high priority on sufficiency and the needs fulfilment of all persons, alongside equality between people through mitigation of brute luck and sensitivity to individual choice and responsibility. The practice uses the sufficiency principle to temper and constrain extreme inequalities that can arise from a strict luck egalitarian principle, thereby revealing a sufficiency-constrained luck egalitarian conception of justice.

To examine the implications of the theory, the thesis used those principles to evaluate and guide the practice. In contrast to the objections addressed to PDA and the idea that practice principles only play descriptive a roles the thesis demonstrated that the principles were clearly able to assess the practice and locate existing injustices associated with it. These injustices were mainly preventing the practice from achieving its objective and were in direct conflict with a sufficiency-constrained luck egalitarian conception of justice. The thesis also used the assessment to offer recommendations for the practice to be more consistent with its objectives and the sufficiency-constrained luck egalitarian conception of justice it is trying to achieve. The principles appeared clearly capable of guiding the course of action for the transformation of the practice to become more just.

3. Contribution

This thesis claims to have contributed to the enrichment of political and Islamic literature in different and various directions. First, it does not only offer an important CPT project that introduces an absent non-Western tradition into mainstream political theorizing, but it also highlights how similarities between

Western and non-Western ideas do not necessarily mean a hegemonic dominance of the Western tradition. Second, it extends the use of the constructivist approach to different scopes of justice. Third, it demystifies the Islamic understanding of distributive justice and theorizes it, providing thereby foundational work to enrich the Islamic economic literature. Fourth, it contributes to the development of Islamic finance literature and practice. Fifth, it develops practice-dependence literature by offering a practical employment of constructed principles to evaluate and guide existing practice. I will go through each of these contributions in more details in the rest of this section.

This thesis is a significant comparative political theory project that addresses Islam, a tradition almost absent in normative political theory. The Islamic tradition is laden with moral and ethical values that are derived from moral authoritative sources that are unfamiliar to the Western tradition. However, Islam is still very briefly present and only considered for more theorizing with regards to religious extremism and radicalisation. By demystifying what the Islamic conception of distributive justice entails, this thesis is presenting a new perspective on the Islamic tradition and its financial practice, offering thereby a non-Western perspective to an issue that is of global common interest.

A consequence of engaging in comparative political theory is that it also reveals important connections between two very different traditions. By considering Islamic finance as a social practice and identifying the distributive justice principles that regulate it, this thesis has demonstrated how western concepts and ideas can be usefully employed in a non-western context. By revealing that Islamic finance practice is guided by a sufficiency-constrained luck

egalitarian conception of justice, this thesis not only made use of a western principle in a non-western context but it revealed that Islamic financial practices embody western ideals in a way that both predates western thinking about economic justice and is, in many ways, more just than existing financial practices in the west. This novel approach succeeds in demonstrating how similarities in ideas between cultures do not necessarily indicate a hegemonic approach by the Western tradition, but rather reveals how parallel ideas can exist in different cultural contexts and, by implication, shows how cultures can learn from one another.

This similarity between the Western literature and Islamic finance does not only prove possible hybridity between Western and non-Western ideas without hegemonic dominance. It can also highlight how a non-Western practice can be of greater relevance to the Western moral debate than its Western equivalent. This thesis illustrated several crucial differences between Islamic finance practice and the conventional financial system. It demonstrated how financial transactions in the Islamic tradition need to be based on a risk sharing mentality. Participants in the financial system need to share potential risk in a way that corresponds with their share in the practice and their responsibility for any made. Although the moral paradigm governing Islamic finance is derived from sources that lack authority in the Western context, the resulting practice revealed more similarities and worked in accordance with debates in moral and political theory. Such a close relationship between Western ideas and non-Western practices is a significant contribution of this thesis. Understanding and appreciating the ethical importance of Islamic finance could open the way to a better understanding of economic justice and, especially, a better understanding

of how financial institutions could be reformed in order to realise the moral socio-economic objectives of western theories of distributive justice.

Another important contribution is relevant to the constructivist approach as presented here. The thesis employed the constructivist approach to construct principles from an unconventional social practice. Constructivism has traditionally been applied to the scopes of either the state or global systems. Little work, however, has been dedicated to employ the constructivist methodology outside of both scopes. Introducing the practice of Islamic finance to the constructivist approach presents an original idea that can open new dimensions to the utilization of constructivism in political theory on scopes and subject matters that were not considered before.

Although the thesis has indicated ways in which political theory can benefit from a better understanding of Islamic justice, and expanded the scope of the constructivist approach, the primary achievement of the thesis was the account it gave of Islamic financial distributive justice. This thesis thereby provided Islamic economic literature with a fully elaborated Islamic conception of distributive justice as interpreted from Islamic finance practice, which is established according to the Shariah. Such a clearly defined conception is currently lacking in Islamic finance literature and the introduction of the Islamic conception constructed through this thesis should enrich the literature and lead to engagement of more scholars into the understanding of Islamic distributive justice. As well as to more structured examination of other Islamic conceptions of common topic of inquiry such as human rights, war practices, etc. The thesis does not only enrich Islamic finance literature with a more systemic understanding of

Islamic distributive justice, but also with a new approach to addressing the Islamic economic philosophy and practices.

The Islamic conception offered in this thesis contributes also to Islamic finance practice. The thesis argued that Islamic finance practice is regulated and guided by a sufficiency-constrained luck egalitarian principle, pointed out the injustices in the system and clarified how to prevent and, later on, avoid them in designing new tools and techniques. This is fundamental for Islamic finance practice, because the identified principle does not only elucidate where the practice is standing in relation to its objectives, but also provides the tool for its development and improvement. Islamic finance practitioners are offered a valuable tool by which they can evaluate their practice and ensure higher levels of credibility and Shariah compliance.

This contribution is also fundamental for Islamic finance literature, which can benefit from the constructed principles of justice in conducting more empirical research to pinpoint the details of any injustices and provide detailed empirical recommendations for the development of the practice to be more just and in line with the Islamic moral paradigm. By offering this conception, Islamic finance can base empirical assessment of existing performance or future developments of the practice on the sufficiency constrained luck egalitarian principle. Their analysis of credibility, performance, and development can be assessed in relation to the principle.

The thesis did not stop at constructing principles of a new form of social practice, but it also extended the contribution to present the evaluative and action guiding implications of the constructed principles on the practice. The thesis could clearly demonstrate how constructed practice-dependence principles can,

and actually should, be more than descriptive principles, by highlighting how the reliance on existing practices does not rid the principle of its critical potential. The thesis practically demonstrated how principles constructed from existing practices are more sensitive to the context in which they operate, thereby being more capable of highlighting the existing injustices and guide our decisions in designing the practice to stop existing injustices and prevent future ones.

4. Limitation and Future Research

As much as this thesis is regarded as a foundational contribution to several fields of inquiry, it also opens up new possibilities for future research within them. This thesis extends opportunities of future research within Islamic economics and finance, comparative political theory, and constructivism and practice-dependence.

The primary question of this thesis was concerned with the principles of distributive justice that govern Islamic finance practice and dictate the just distribution of burdens and benefits among its participants. Due to the nature of the question, the research work of this thesis was primarily theoretical as it was concerned with the ethical dimension of the practice. Not much attention was given to the empirical aspects, particularly with regards to the suggestions for the practice and how to correct and prevent injustices. Consequently, the primary limitation of this thesis is its theoretical orientation and this limitation should initiate more research in Islamic finance.

The thesis explained which principles apply to Islamic finance and showed that these perform an action-guiding role. Yet, in order to make policy

recommendations for the reform of Islamic financial institutions, we would need to undertake considerably more empirical research in order to understand how best to apply those principles and bring the practice of Islamic institutions to a point where it better meets its objectives and move closer towards a more sufficiency-constrained luck egalitarian justice. More empirical research can draw on the principles constructed in this theory and the recommendations provided for reformation and build more detailed policies and frameworks for action guidance.

For CPT, this project did not only offer a non-western perspective on a common problem, but it also highlighted how similarities can indicate more about each culture. For example in this thesis, the similarity between the practice and the sufficiency-constrained luck egalitarian conception of justice showed how CPT projects should not shy away from exploring new avenues and unconventional traditions and practices. By investigating new traditions and approaching them differently many more unexpected similarities and differences will appear. This thesis is pushing CPT project further.

On the other hand, the debate of luck egalitarians and sufficientarians can be invaluable to the debates in Islamic economics and Islamic finance. Arguments of luck egalitarians and sufficientarians can enrich Islamic economic literature and attract more Islamic economists to engage with their arguments and apply them to Islamic finance practice. Islamic economists need to delve more into distributive justice literature, particularly luck egalitarianism, and examine how the conception is theorized and how it can contribute to existing debates in Islamic economics and finance.

I would also like to think of this thesis as an attempt to open new possibilities and horizons to the constructivist approach to explore different and unconventional scopes. It offers a good demonstration of how the constructivist approach could extend beyond its traditional uses. Instead of conventional constructivist scopes on state and global systems, other existing practices and institutional establishments can be interpreted for the construction of principles. Expanding the limits on the constructivist approach can open ways to better understanding of the world as it exists and provide normative answers to make existing establishments more just.

5. Conclusion

This thesis offered a new and different perspective on a tradition commonly either neglected or associated with terrorism and radicalisation. I have argued that the moral framework of the Islamic economic tradition requires more analysis and I have sought to begin that analysis by providing what I believe to be a persuasive account of the principles of justice that underpin Islamic finance. In so doing, I have presented a systemic account of the Islamic conception of distributive justice, which contributes both to the political theory on distributive justice and the existing literature on Islamic economics and finance. This thesis enriches the overall CPT project by expanding its contribution to political theorizing, how we understand it, and how it contributes to both Western and non-Western ideas. On the other hand, this conception of Islamic distributive justice, I have argued, will engage more Islamic economists into debates about Islamic distributive justice and support Islamic finance scholars and practitioners in developing Islamic finance practice towards achieving its socio-economic objectives. I would like to

Conclusion

think of this thesis as only a beginning to new understandings of different cultures, practices and moral paradigms.

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