Epistemological Crisis in Ethical Governance and Constructing a New Islamic Episteme as an Ethical Theory: A Case of Institution of Hisbah

KHALEEL, FAWAD

Epistemological Crisis in Ethical Governance and Constructing a New Islamic Episteme as an Ethical Theory: A Case of Institution of *Hisbah*

Fawad Khaleel

School of Governance, Politics and International Affairs,
University of Durham

2016

Epistemological Crisis in Ethical Governance and Constructing a New Islamic Episteme as an Ethical Theory: A Case of Institution of *Hisbah*

by

Fawad Khaleel

Abstract:

The research presented in this thesis explores the governance within Islamic thought in the case of the institution of *hisbah* as well as exploring the episteme that is the cause of the recognised and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws associated to the institution of *hisbah*. The analysis is based on conducting an epistemological examination in moral philosophical dialect in relation to the historical regulative institution of *hisbah*. Institution of *hisbah* constitutes the focus of this research, because this institution was politically structured, theologically positioned and theoretically entrusted to maintain public law and order, with the objective of supervising the behaviour in society and market from an Islamic perspective by using Islamic legal theories within its own theoretical framework with the aim of subscribing good and forbidding evil.

The analysis presented found that the institution of *hisbah* was subject to continuous institutional failures throughout its history. In advancing the analysis, the research deconstructs the theoretical framework upon which the institution of *hisbah* located its operations for the moral governance of the market and the society. The deconstruction of theoretical frameworks point to the use of Islamic legal theory and juristic subjectivity for judging the moral conduct of activities as the root cause of the problem. The study further deconstructed the Islamic legal theory along side exploring for the alternative episteme within the broader view of Islamic thought, given the diversity of philosophical standpoints on good and evil within Islamic discourse. However, the result of this exploration suggests that epistemological crisis embodies the whole of Islamic tradition, which pave the way to a rise in crisis in morality and crisis in legitimacy within the tradition, which resulted in institutional failures, such as the ones witnessed in the operations of institution of *hisbah*.

The study further discovers that consequent to the crisis in the Islamic tradition, the key questions on good and evil, within the realm of governance can no longer be settled by using the historically established tradition's epistemological sources, because within the current settings of tradition, there is insufficient or no method of enquiry, form of argumentation and episteme that can address the crises, or through which a solution for the crises can be derived.

By using MacIntyre's work as a conceptual structure, this research attempts to construct a new epistemological source that may address the crises by specifying a model justified through model-dependent realism with the objective of creating a new point of orientation through which reality and dichotomy of good and evil can be objectively understood, whilst safeguarding the life form of the fabric of belief that is central to the traditional Islamic thought. Such episteme can then be used as an ethical theory by the institution of *hisbah* for judging the moral conduct of activities in the market and society.

The new episteme is constructed, while preserving the tradition's consequential essence. The consequential essence is inferred down to morality based on objectiveness and universality, and away from public choice, along with the notion of survival as episteme for philosophical perspective and theological stance. The

consequential essence of tradition is maintained by using objectivist ethics and environmental sustainability within the outlines of classic theories on sovereignty of internal and external realm, as a foundational framework to construct the proposed model of 'objective subjectivism' as a theory of normative ethics. This proposed episteme as an Islamic ethical theory asserts that standard of value is life and measure of value and purpose of life is sustainability, and through this notion good and evil can be objectively distinguished for each realm, and therefore institutionally subscribed or prohibited for that realm, thus providing a workable framework for the operations of *hisbah.*

As a research methodology and model construction process, the research presented in this research utilises discursive reasoning to conduct an epistemological enquiry based on critical discourse analysis, which is ontologically justified by model-dependent realism and epistemologically framed under consequentialism.

TABLE OF CONTENTS

Chapter 1

INTRODUCTION AND METHODOLOGY

Chapter 2

THE HISTORICAL INSTITUTION OF *HISBAH* AS A REGULATORY BODY

Chapter 3

TAXONOMICAL CLASSIFICATION OF DISCOURSE ON *HISBAH*

CHAPTER 4

GENEALOGY OF CRISIS

CHAPTER 5

BEYOND CERTITUDES: AXIOLOGY OF OBJECTIVIST SUBJECTIVISM FOR DEVELOPING AT ETHICAL REALM FOR OPERATIONALISING HISBAH INSTITUION

CHAPTER 6

CONCLUSION AND DISCUSSION

Figures

Tables

Acknowledgement

My story isn't sweet, by any means. Writing this thesis has been a tormenting experience that caused excessive suffering. There are many whose uninterrupted discouragement provided the sub-text for endurance, there are few who ached as a result of this endeavour, and then there are those who provided an endless motivation that lengthened my agony till this day.

However, here I am today on the doorstep of destiny, with this mammoth slayed until the dusk of my eternity. To see the light of this day would not have been possible without the boundless wisdom of Søren Kierkegaard, company of Steppenwolf, care and love of Sylvia Plath, vision of my father and patience of my son, Furqan.

The Charles Dickens of my tale of two hypotheses, is actually Prof. Mehmet Asutay, who has always been a light for me in all the dark places, when all other lights went out, he gave me hope that has never left my shores, and he provided me with a context within which I can define my life.

CHAPTER 1
INTRODUCTION AND METHODOLOGY

1.1 BACKGROUND

Most of the Muslim World, house some sort of institutions or government sponsored regulatory bodies that are attempting to apply the religious and customary principles to regulate the contemporary practices in the market and the society. Much of the research on financial crisis of 2008, such as Colander, et al. (2009), Fassin and Gosselin (2011), and many others have shifted the focus back to the role of ethics in the governance. This shift has made the study and examination of ethical governance of market and society in the Muslim world, relevant to the contemporary enquiry.

The Muslim world provides a unique opportunity to study the effects, hurdles, success and failures of regulating the market and society, purely from the ethical standpoint. Currently these institutions or government sponsored regulatory bodies that are operating in diverse political climate and sometimes with limited capacity. For instance: the return of democratic rule in 1999 within Nigeria brought back the volunteer based *hisbah* authorities, while the Saudi Arabia has the state backed *hisbah* police (Bello, 2013). However the continuity of these attempts to institutionalise the system of morality for governance can be traced back to the early Islamic societies. The examination of this persistent endeavour which spans over more than ten centuries can allows us to understand the hurdles, problems and issues of institutionalising morality for the purpose governance of society and market.

Islamic tradition, which includes Islam as a religious belief, Islamic culture, Islamic spirituality, Islamic law (*Shari'ah*) and Islamic worldview as point of orientation with divergent sects, has from the start of Islamic history played a part, sometimes as a rhetoric and sometime as a rationale, for structuring, reforming and then governance of society, polity and market. Whilst, the understanding on the 'purpose' of structuring, reforming and governing the society, polity, and market in historically observable manner differs, depending on the field of study from which one approaches this issue (such as anthropology, sociology, politics, theology or history),

however, the major role Islamic tradition played and plays as a rhetoric or as an antecedent, in such forms of enquiries is widely acknowledged and recognised. From late nineteenth century onwards the most efforts, that accessed Islamic tradition to use it as rhetoric or as antecedents, which aimed to organise, rearrange or govern the society, polity or market, produced unrecognisable incoherence either in practice or within constructed regulations.

Much discourse from East and West of the world, such as Rudolph and Piscatori (1997), Donohue and Esposito (1982), Banuazizi and Weiner (1988), Khalid (2003), Iqbal (2003), Umar (2006) and Lapidus (1967, 1988, 1996), has highlighted the early crisis and search of identity within the Muslim world especially after the World War I, and the interaction of Islamic tradition with the modern States and new social challenges, which resulted in Muslim thinkers producing discourse that either aims to construct such an Islamic perspective, by building practical consideration in theory, which rationalises, justifies and explains the new realities, as examined in the work of Mallat (2004) and Tibi (1990); or attempts at providing new interpretations for social realities, by theoretical innovations, that maybe more coherent and consistent with the Islamic thoughts, as examined by Euben (1999) and highlighted by Sayyid (2003); and then there are secularist who outright deny any ontological existence to Islamic tradition; and fundamentalists who deny the ontological authority of epistemology developed or used by modernism.

Overall the entire range of schemas, that are the result of the subtle questions posed by the dynamism of modernism to the Islamic thoughts, maybe categorically summed in four approaches: the traditionalists approach of conserving the society in a frozen state, so that what exists and resembles, in form or in substance, to the notion of ideal Islamic society can be preserved, such as the one used in Saudi Arabia and other Gulf monarchies; the Modernist approach which attempts to drastically reform the historic positions of Islamic law, so the Islamic law can catch up with the social realities, such as Family Law of Tunisia and Morocco; the secularist approach that attempts to imply the secularisation thesis with close proximity to French model, symbolised by Turkish approach (Yavuz and Esposito, 2003); and the reaction to the failure of these three approaches, is the fundamentalist approach, which attempts to drastically reverse the evolution of social, economic and political development to the point that it may

resembles to the radical understanding of ideal society, such as the one used by Afghani Taliban and Pakistani Taliban (Ahmad,1991).

When these schemas, individually failed to create any viable and acceptable solution for political and economic reformation, and after over half century of efforts to bring Islamic thoughts up to speed with the current challenges and issues of governance, then these schemas innovated a joint approach, where for instances traditionalists and modernist came together to form a theory of governance, such as in case of Malaysia, Iran, Bangladesh and pre-millennium Pakistan, there are also example of fundamentalist and traditionalists coming together for constructing a method of governance such as in Yemen (Euben, 1999; Mawňsililĺi, 1999).

So far these schemas, individually and collectively, have been unsuccessful in producing a system of value that may harmoniously work with the value judgements of modernity. This failure is not just in the arena of political reformation and governance, where many factors may influence the outcomes. The failure can also be noticed in the legal system of Muslim countries, such asL Egypt, Morocco, Saudi Arabia, Sudan, Turkey, Afghanistan, Iran, Indonesia, Malaysia, Mali, and Nigeria. Otto (2010:628) surveyed legal system of twelve Muslim countries, to measure the extent in which the constitution of a country establishes Islamic law as a norm, and their findings show that constitution of five countries give provisions for establishment of a full Islamic State, while the six countries have constitutional articles that declare Islamic law to be a source of law through which the new laws and legislations need to be tested; moreover, six out of twelve countries had *hadd* punishment in the law, however only one carried amputation, with no countries with any recent use of stoning as a punishment. The rationale for such behaviour, according to Otto's (2010:651) study, is that the independent legal system of these countries harmonise the fundamental conflicts between Islamic law, and constitutionalism, along with accommodating for value judgements of modernism and hence creating a limitation on implementation of religious law.

However, in spite of efforts of independent legal institutions, and introduction of different schemas of reformations from different social, political and religion groups, there still exists a fundamental problem in harmonising the Islamic values and value judgement of modernism; the prominent frontiers where such conflict can be observed

is the notion of human rights, freedom of speech and so on. This research attempts to uncover the root cause of this incoherence, and how it may be resolved, so that the two systems may simultaneously coexist in harmony.

Roder (2009:257) examined the Islamic legal system and observed that in its current state it is "'a patchwork' of various norms" that are grounded in secular provisions in: the constitution, codified or un-codified religious law, and customary traditions of the society, while Otto (2010:646) suggests that the ratio of these norms within the 'patchwork' shift continuously to accommodate the conflicting demands of "conservative *ulama*, the puritans, the modernists, the religious minorities, the feminists, and so on".

The effects of incoherence between Islamic values and value judgement of modernism are not limited to the legal system, as Kuran (1996, 2003, 2004, 2012) identifies that Islamic "society's commercial capabilities depend on its legal infrastructure" (Kuran, 2003:415), therefore the weakness created by incoherence of two value systems in the legal infrastructure is linked to the weakness in commercial capability.

In 2012 the analysis of two decades of economic data on Arab region concluded that the governance and law are the root cause of the economic condition, and that the public institutions in are in dire need for reformation and redesigning, therefore the Arab States need to rethink the laws through which they approach the issue of governance (International Labour Organisation, 2012:102). Most, if not all, of these Arab nations use Islamic tradition or its sources in some capacity, either ideologically or as a source of law, and Islamic legal theories plays an important apart in the manner they approach governance.

At the turn of century it was the dynamism of modernity through global institutions that gave prominence to the absence of any progressive plan for reformation within the governance by Islam tradition within the Islamic world, however, the Arab Spring was one of the most recent indicators that showed that the earlier warnings, and previous political economic reformation, especially the nineteen ninety's reformation in Arab countries, failed to focus on the main issues of governance of society and market through 'a patchwork of fundamentally conflicting norms and values'. Amin

et al. (2012:2) analyses, reaches similar conclusions, on the contributing factors for the Arab Spring, and suggests that while socioeconomic deficits and governance deficits are important matters in this context, but "In sum, Arab Spring was sparked by homegrown movements over dignity, fairness, and exclusion". The issue of dignity, fairness, and exclusion takes the debate outside the realm of economic performance and into the realms of ideological standpoints used as core principles for nation building, which in this case are grounded in the incoherent value system, as it is the value system that provides a point of orientation for understanding the concept of dignity, morality, justice, and fairness.

The social reality of Muslim world is such that the Islamic tradition, will remain a major reference point for legal, political, economic, and social guidance (Na'īm, 2008; Vikør, 2005) and there also will remain a strong desire to reconcile the Islamic tradition and its values with modernity and its value judgements (Hallaq 2009: 500-542). Under such circumstances, any policies that are grounded in values that have no ontology authority or epistemological source within the tradition are more likely to be unsuccessful; as observed by United Nation's Development Program, whilst investigating the reasons behind the failure of "liberal economic policies adopted by many Arab states since the 1990s", in creating sustainable political institutions (Al-Nashif and Bahous, 2012:10). Amin *et al.* (2012:15) also expand on this issue, by focusing on failure of 46 countries out of 103 countries that went through political transformation and economic transition since 1960s, and they conclude that to be successful, a schema of transformation should be inclusive of all social realities, and address the society's expectations of growth, fairness, and justice, with a clear "guiding vision as to the end point". Tripp (2006:110) suggests that these conditions of successful transformation, such as inclusiveness, in context of Islamic tradition mean that: "a change in the focus of clerical and lay Muslims alike, as well as innovative thinking that drew on possibly neglected aspects of the broader Islamic tradition".

This research attempts to investigate the root-cause or causes, in the Islamic tradition, that are the foundation of fundamental conflict in the value judgements, in the realm of governance of society and market, between the Islamic tradition and modernity,

and whether there are any broader aspects of Islamic tradition that may be used to solve such a conflict.

Figure 1: Major Factors or Agents Influencing the Islamic Tradition

This research conducts this investigation by focusing on the agents or factors that influence the positions and stances taken by the traditions, these factors or agents, as shown in the Figure 1, are: 'epistemological sources of the tradition', 'the method of enquiry used to approach these sources', 'the theologians that apply the method', and 'the social reality that necessitates a response and hence put the prior three in motion', or influences the outcomes or the requirement for it.

In order to understand the dynamics and mechanism of their interaction with each other as they influence the position of the tradition, this research attempts to examine the regulations and laws within Islamic thoughts, in the context of the epistemological sources that influenced the construction of these laws and regulations, the method of enquiry used, and the motivation for theologian, and jurist to reach that particular position. For the purpose of this examination, this study focuses on theories and operations of institution of *hisbah*, namely institution and concept of market regulation. As the episteme of Islamic thoughts, at least theoretically, remains unchanged, therefore by focusing on the theories, operations and regulatory manuals of this institution would allow this research to investigate the interaction between all the episteme and identify the cause of recognised and unrecognised incoherencies and inconsistences.

The institution of *hisbah* captures the essence of values within governance in Islamic thoughts, because of it theologically assigned duty of actively 'subscribing good' and 'forbidding evil' in the market and the society, for which it uses Islamic legal theories to distinguish between the good and evil, and then attempts on subscribing or forbidding it within variety of political settings. Much of Islamic scholarship such as Ibn-Taymiya (1992), Al-Ghazzali (1982a; 1982b; 1990; 2004), Al-Mawardi (1996), Ibn-Khaldun (1950; 1967a; 1967b) and many more, have also either voiced their opinion on this institution or constructed a framework for its operations, while contemporary historians such as Grunebaum (1967), Buckley (1999), Glick (1972), Holland (1992), Khan (1992), Imamuddin (1963) and others have assessed and critiqued different aspects of the institution. There is also evidence of borrowing of notion of *hisbah*, in its form and substance, by other cultures, and, therefore, the evolution of some of the modern institutions maybe traced back to institution of *hisbah*. Overall, the institution of *hisbah* provides a rare opportunity for observing the theory and practice coming together to govern the society and market by subscribing good and forbidding evil, whereas, otherwise the development of theory, and governance of society and market, historically evolved in independent realms and within separate social classes, such as theological circles and political class.

1.2. AIMS, OBJECTIVES AND RESEARCH QUESTIONS

The aim of this research is to critically examine the operations of institution of *hisbah*, and its institutionalised system of morality, as well as investigating the episteme that is causing the recognised and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws associated with the institution of *hisbah*. Upon such a deconstruction-oriented investigation, this research also aims discursively to construct and develop a response.

This investigation is limited to the values that is theoretically or practically deployed, implemented, utilised or suggested for the governance of society and market within Islamic thoughts, and that are largely recognised as inconsistent with the modern global values.

The ‘modern global values’, which are sometimes referred as ‘value judgements of modernity’, are defined as the degree of importance ascribed to something based on the globally agreed concepts of dignity, morality, justice, and fairness. These concepts sometimes are reflected in the globally accepted legal statues, political, economic, and social guidance of current epoch; such as: the European Union’s declaration of human rights. This research is not using these globally accepted legal statues, political, economic, and social guidance of current epoch as axioms; instead they are used as a point of orientation for conducting an analysis. The Islamic values are understood as the collection of values constructed by Islamic scholarship or deduced from theological sources of Islam (See Appendix III for details).

As the statement of the ‘aim’ suggests the focus of this investigation is on epistemology rather than ontology, as any discourse, purposing or constructing any kind of value, no matter how incoherent or contradictory with the rest of the body of Islamic thoughts, can be referred to or used as guidance within the method of enquiry used in the Islamic thoughts, and therefore availability of such discourse assigns it a legitimate ontological existence within the Islamic thoughts. Consequently, this study focuses on the episteme of things, and assumes the ontology from their availability.

The objectives designed to achieve the stated aim of the research are:

(i) to examine the theory and practice of historical institution of *hisbah*, for identifying the episteme and form of argument that is the cause of the incoherence and the inconsistences; conduct a survey of available epistemic sources (*see* Chapter 3) and method of enquiries,

(ii) accordingly, to suggest a model, in which the chosen episteme may be approached by using the selected method of enquiry, that sufficiently addresses the inadequacies, incoherence and inconsistences created by current sources and by present form of enquiry of the tradition.

The research questions this research intent to answer are:

(i) What are the causes, within the method of enquiry and episteme of Islamic tradition that produces values, which were historically used for governance by the institution of *hisbah*, that are contradictory to the value judgement of modernity?;

(ii) What is the nature of schema that is required for the reformation within the Islamic tradition?

The premises for the hypothesis proposed for this research is that the Islamic tradition has reached a state of crisis, where the current methods of enquiry and forms of rational arguments, which are unique to the Islamic tradition. And by means of which the Islamic tradition has progressed so far, are now creating inconsistencies in the tradition. These inconsistencies cannot be resolved using the recognised epistemological sources of the tradition, which is resulting in an epistemological crisis.

While there can be many possible outcomes of this research, however the ones deemed more plausible at this stage are:

(i) the causes, of the contradictory values of the tradition, are unrecognisable and therefore no resolution may be constructed or suggested; and
(ii) the causes are recognisable, but there is no solution that can provide the continuity in the evolution of the tradition; and
(iii) the causes are recognisable and solution, in form of a schema, that provides the continuity in the evolution of the tradition is constructible.

1.3. RATIONALE AND MOTIVATION

This research is, hence, an attempt to conduct an enquiry, focused on epistemology, that is neither biased towards the Islamic traditions' current framework, nor is prejudiced by the value judgement established by modernism. Therefore, this research is not aimed to fit in with a current framework of either traditionalist, fundamentalist, nor modernist or secularist, rather this research is motivated by the issues and problems of governance within Islamic thoughts, and attempts to address these problems, by studying the episteme of these problem whereby it represents an emergent research.

The observation on continuous clash of values of Islamic tradition and modernity in political, social, and legal arena, whilst the reasonable harmony between them in the financial world, became a rationale for conducting an enquiry on identifying the core problem of this conflict, and exploring the solutions for creating harmony between the

value system of the two social realities, without discounting an ontological existence of any of them.

I initially made these observations, while studying Islamic law. Thereafter, when I examined the application of legal theory in Islamic finance during my Masters qualification, I witnessed incoherence in the application of Islamic legal theory. Moreover, I lived in countries, such as Pakistan, that grant legal authority to the Islamic scriptures, which produces continuous clash of values with modernity, therefore I was always intrigued to explore the source of these problem, as I was personally subjected and impacted by this clash of values within my civil and social life.

1.4. SIGNIFICANT CONTRIBUTION OF THE RESEARCH

The significant research contribution of this research can be spanned into five sets, as follows:

The first set of contribution is the development of an understanding on workings of *hisbah*, through critical survey of literature directly or indirectly addressing dynamics of institution of *hisbah*.

The second set reflects the Al-Ghazzali, Ibn-Taymiya and Al-Mawardi's individually proposed framework for institution of *hisbah*, which is modelled by extracting their suggestions and ideas that were initially scattered within different discourse authored by them.

The third set represents the theoretical contribution on structuring a model for evaluation of legal guidelines, regulations and laws by tracing the source of goodness in them, followed by categorising it into intrinsic, final, unconditional good, to measure the legitimacy and authenticity of the legal guidelines, regulations and laws based on the level of goodness they aim to establish; this structured model is then used to empirically test an eleventh century *hisbah* manual.

The fourth set of contribution, covered in the third research, demonstrates the tendencies of most, if not all, of the epistemological sources of Islamic tradition, as they contribute or create the epistemological crisis in the tradition and how the current

method of enquiry of the tradition escalates and spreads the epistemological crisis into crisis in morality and crisis in legitimacy.

The fifth set contains an interdisciplinary approach, that utilises theories from the discipline of normative ethics, environmental studies, law, ecology, politics, futuristic studies, and evolutionary biology, to create a theory of normative ethics, under the name of 'objective subjectivism', which not only is aimed at addressing the crises within the tradition, but it may also be used for justifying or rationalising the environmental policies outside the framework of public choice and utilitarianism (see Chapter 4 and Chapter 5).

1.5. RESEARCH METHODOLOGY

This research is based on a discursive study conducted by applying the analytical tools from critical discourse analysis. The research method used for this study is, hence, textual discourse analysis, as this study analyses the knowledge created in the field to extract contents for discussion.

The textual discourse analysis is used under the paradigmatic assumption that discourse is "an irreducible part of social life, dialectically interconnected with other elements" (Fairclough, 2003:2) of political, economic, and social life. Assumption paradigm is approached from Kuhn's (1970) perspective on paradigms, which is less restrictive as compared to one suggested by Burrell and Morgan (Mingers, 2001:243). While Burrell and Morgan's work proposes that paradigms coexist, which would classify this research as a subjective view of the researchers, however Kuhn's (1970) assumption paradigm presupposes that one paradigm proceeds another, due to paradigm shift; this understanding of paradigm shift justifies the attempt made by this research to observe and examine same information but in a way that is entirely different to the one in which this information or discourse was viewed and understood previously. Therefore, Kuhn's (1970) paradigm provide a broader ontological and epistemological grounds for verifying the validity of the knowledge and its existence along with wider ethical angle for understanding what is to be considered right and valuable.

The strategy of reducing the political, economic and social life to discourse, does not suggest that everything is a discourse; this research strategy is merely an effective and

productive way of focusing on the ideas that are "substantive content of discourse", as discussed by Schmidt (2008:303), and they exist at three levels that is: regulations, theories and philosophises. These 'ideas', from a perspective of social constructivism, are social constructs and therefore for analysing them, this research uses information outside the discourse to analyse the discourse in question; this approach is widely used in social sciences (Antaki *et al*., 2003).

This research uses 'critical discourse analysis' and applies the postmodern and post-structural Foucauldian thinking, based on the work of Fairclough (1992; 2005), Hodge and Kress (1993), Foucault (1972), Kogan and Gale (1997), and Wetherell (1998), This approach allows this study to use the information outside of the discourse, such as the socio-political-historical contexts of regulations, theories and philosophises, to analyse the discourse and its complexities for negotiating its meanings by treating the discourse as a consequence of many elements interacting with each other. This rationale for using postmodern and post-structural Foucauldian thinking is further elaborated in Gale's work (2010:177).

The inclusive nature of this enquiry that examines the discourse, whilst also observing the relation of a discourse with other elements allows it to develop a comprehensive understanding on the complexity of meaning and continuation or alteration of the meaning of one discourse within another discourse. By using the above stated research methods, and by conducting an enquiry similar to Habermas (1984), which looks for "real, purposeful, pragmatic interaction between social subjects" (Mingers, 2001:243) in the discourse, instead of only analysing syntax or semantics, as is the norm in Islamic studies; we can observe many layers of complexity in the meaning, as Edwards (1991:523) asserts that discourse is "not just a way of seeing, but a way of constructing seeing". In our methods, we approach the problem form a discursive perspective and by using critical discourse analysis, as it allows us to look at each discourse as an idea that has "a straightforward linguistic expression" (Winch, 2008:128).

Potter's (1996:206) work demonstrates that the usefulness of discursive approach is that it "consider construction and deconstruction as a central and researchable feature". In support of this, Gale (2010:185) elaborates that discursive approach gives us a method for examining the interaction of multilayer relations in construction or

deconstruction, which allows us to see the "value in attending to how these constructs are relationally achieved, maintained or changed". Furthermore, Fairclough's (1992) work explores the reasons why textual analysis is not sufficient for discourse analysis, and Jorgensen and Phillips (2002:66) elaborate on these reasons by asserting that textual analysis:

> … does not shed light on the links between texts and societal and cultural processes and structures. An interdisciplinary perspective is needed in which one combines textual and social analysis. The benefit derived from drawing on the macro- sociological tradition is that it takes into account that social practices are shaped by social structures and power relations and that people are often not aware of these processes. The contribution of the interpretative tradition is to provide an understanding of how people actively create a rule-bound world in everyday practices.

This assertion is especially relevant in the context of this research, as this research runs an enquiry on a particular discourse within Islamic thought which focuses on dichotomies of good and evil, and which attempts to create a divinely ascribed rule-bound world. Therefore, the method suggested above is a productive research method, as this method is neither restrictive to textual information, nor observes a narrow focus on the sociological traditions. Without the restrictiveness in enquiry and narrowness in approach, this study can rigorously address the challenges of examining the institution of *hisbah*, its regulations, theories, and philosophies.

In a similar line, Schmidt (2008:313) investigates the challenges of such form of enquiry and suggests that: "The challenge is both ontological (about what institutions are and how they are created, maintained, and changed) and epistemological (about what we can know about institutions and what makes them continue or change with regard to interests and norms)". The epistemological challenge is addressed by observing the evolution of institution of *hisbah*, whilst also examining the politico socio conditions that shaped the institution of *hisbah* over the centuries, and the ontological challenge is addressed by focusing on the function of subscribing good and forbidding evil, which is the defining factor of institution of *hisbah*.

1.5.1. Research Frame: Philosophical Assumptions

The above-mentioned research methods are applied under few philosophical assumptions that are discussed below.

For this research, instead of categorising epistemology and ontology in a manner of upper and lower, we categorically approach epistemology and ontology, and view them in layers, hence discussing them separately for deconstruction and construction. The justification for slightly separate, although philosophically coherent, epistemology and ontology is epistemically cited in the work of MacIntyre (1977; 1988), as his work suggests a switch in ontology and creation of new episteme can only address an existing epistemological crisis.

During deconstruction, the 'ontological' is understood from the premise that the human knowledge is not objective, while through our knowledge, we perceive reality in categories. However, our knowledge or our perception cannot be considered as the absolutely correct reflection of the reality, and instead it should be taken as a by-product of the discourse (Jorgensen and Phillips, 2002:6). Gale (2010:185) explores this philosophical orientation of considering discourse as an ontological source of reality and asserts that this premise "does not deny the ontological existence of a reality independent of language but questions if we can ever 'know' that reality".

The assertion by Gale makes it possible for this enquiry to carry forward the belief system of the tradition without subjecting it to the processes of construction and deconstruction, whilst including the theological philosophies and proclamations that may influence the social entities within the analysis. The epistemology used within the process of deconstruction is based on Burr's (1995:3) 'historical and cultural specificity', and it is essentially anti-foundationalist and anti-essentialist, as it takes the position that the structure of the social world is not pre-given. Therefore, the social structure is constructed discursively and socially, and that there is no solid meta-theoretical base on which the human knowledge may be solely and exclusively grounded. Moreover, our worldview is "historically and culturally specific and contingent" (Jorgensen and Phillips, 2002:5), and our knowledge is dependent on and relative to our individual culture and history (Gergen 1985: 267). Jorgensen and Phillips (2002:4-15) demonstrate that these premises are connected and coherent with Fairclough's (1992) approach to 'critical discourse analysis', as Fairclough's approach is less poststructuralist as compared to the theory of discourse discussed by Laclau and Mouffe (1987; 2001), as it suggests that along with discourse, other social

practices also play a part in construction of social world (Jorgensen and Phillips, 2002:4-15).

The methods applied by this research are not only relevant for the nature of enquiry, but they are also suitable to the nature of discourse under investigations. Islamic scholarship uses historical and cultural specificity to construct a worldview relevant to their philosophical stance within the tradition, and the Islamic legal theories, legal system and body of laws, appeal to social elements and discourse of texts that are outside of primary sources of Islamic law. In relation to this, Fairclough's approach to 'critical discourse analysis' especially focuses on investigating this interactions and or any changes that occurs in it over time through Fairclough's (1992) "concept of intertextuality", as shown by Jorgensen and Phillips (2002:7).

Fairclough (1993:130-138) views discourse as constitutive and constituted, and as he maintains the dialectic relationship among different dimensions of social practice, while differentiates between the discursive and non-discursive dimensions; he refers discourse to the language as a social practice, to the language particular to the field of study in question, and "to a way of speaking which gives meaning to experiences from a particular perspective" (Jorgensen and Phillips, 2002:66-67). These three different manners of discourse, then, contribute to the construction of identity, social relations, and ideational functions (Jorgensen and Phillips, 2002:67-69).

These philosophical premises, methods and theories of analysis provide methods of enquiry for conducting this research. As, this study, similar to Fairclough's (1995) approach of order of discourse (Jorgensen and Phillips, 2002:67-69), first examines different types of discourse within the institution of *hisbah*, such as its philosophies, theories and regulations in socio-political-historical context, and then observes, via deconstruction, the dynamics of how these three contributed to the formation of distinctive identity of good and evil, its relations with the regulations and laws, and ideational functions it performs.

The results of deconstruction conducted in this research are in line with the perspective of MacIntyre's (1977; 1988) theories on epistemological crisis. Therefore, the process of construction is conducted upon deconstruction using discursive

reasoning, while the epistemology and ontology of construction is grounded in the model-dependent realism and concepts of instrumentalism.

The discursive reasoning is used, because the sources used for construction are multidisciplinary, as required by MacIntyre's (1977; 1988) guidelines for solution. The sources used for construction broadly pertain to ecology, evolutionary biology, moral philosophy and normative ethics, and the application of discursive allowed the thesis to construct and formalise 'the solution', "by means of the sum of opinions supplied" (Akama *et al*., 2010:200) by all the sources. This rationale for the use of discursive and its application is consistent with the studies on discursive reasoning, as shown by Akama *et al*. (2010), and used by Edwards and Potter (1992) in psychology, by Bucar (2008) in ethics and theology, and by Weinberger (1999) in law.

The construction is designed using the Hawking and Mlodinow's (2010:30-60) 'model dependent realism', which is a method of scientific enquiry that suggests that the 'actual reality' cannot be known or understood in totality and we can only know 'actual reality' approximation through a model that acts as an intermediately. The criterion for construction or selection of 'the model', in 'model dependent realism', is that it "accounts for the largest body of observations and does so with the maximum possible simplicity" (Koonin, 2011:427). The rationale for using 'model dependent realism' is that it is coherent with all the other philosophical premises used within this study, and it also provides a criteria and framework through which we can productively apply discursive logic to construct an epistemic source that satisfies MacIntyre's requirements, whilst also leaving a metaethical room for existence for humanly unknown theologically motivated realities.

In overall, hence, the process of deconstruction and construction are tasks within the analytical process, which is consistent with other discursive studies within qualitative research, as Taylor and Littleton (2006:28-29) assert that: "These are not 'stages' because, as in any qualitative analysis, the process is not straightforwardly sequential but inevitably iterative, although it is systematic in that it involves rigorous".

The process applied in this research is systematic, while it uses the historically available and accessible resources. However, the number of resources used for this

enquiry are not extensive, but this does not affect the rigour, as King *et al.* (1994:4) elaborate:

> Such work has tended to focus on one or a small number of cases, to use intensive… analysis of historical materials, to be discursive in method, and to be concerned with a rounded or comprehensive account of some event or unit. Even though they have a small number of cases, qualitative researchers generally un-earth enormous amounts of information from their studies. Sometimes this kind of work in the social sciences is linked with area or case studies where the focus is on a particular event, decision, institution, location, issue, or piece of legislation. As is also the case with quantitative research, the instance is often important in its own right: a major change in a nation, an election, a major decision, or a world crisis.

As King *et al.* (1994) indicate and Taylor and Littleton (2006) suggest, this research attempts to systematically construct a comprehensive account and the rigour of the research is in its approach and in the comprehensiveness of its account, as it attempts to explore the issue at hand, as detailed in the following chapters.

1.6. THE SCOPE AND OVERVIEW OF THE RESEARCH

This research explores and develops an understanding of the underlying issues of governance within the Islamic thoughts; and therefore, the central claim made in this research is the presence of epistemological crisis within the Islamic thoughts, when it comes to regulation and governance. It focuses on historical institution of *hisbah*, by critically analysing and mapping the existing narratives in the theoretical discourse on *hisbah* by the political philosophers, regulatory manuals of theologians for *hisbah* and the operational practice of *muhtasib*, to identify the episteme of good and evil, or lack of it, in them.

The institution of *hisbah* is the point of focus, within this research, because this institution was politically structured, theologically positioned; morally substantiated, and theoretically entrusted to maintain public law and order with the objective of supervising the behaviour in society and market, from an Islamic perspective, by using Islamic legal theories within its own theoretical framework.

The examination, in a philosophical dialect, of institution of *hisbah* is due to its moral orientation, political status, theological authority, legal scope on society, which allowed this research to investigate the issues of governance within the Islamic thoughts from politico-social, philosophical and theological stand points.

In responding to the aim and objectives identified above, the examination in the form of explorations in Chapter 2 and 3 aims to uncover the historical narrative on the institution, and then explore the theories on *hisbah* together with the analysis of its regulatory manuals and grading of its operations. In doing so, this study first constructs the individual framework proposed in the work of Ibn-Taymiya, Al-Ghazzali and Al-Mawardi, and then identifies whether the ontological existence of practical problems faced by *hisbah*, as highlighted by historians such as Grunebaum, Buckley, Glick and others, are also present within the theoretical framework or ontological construct proposed for *hisbah*. Based on the result of such explorations investigation, this research infers that the theories on *hisbah* that define its scope, authority and function are by product of constructivist epistemology rather than theological demands. The second part of examination in Chapter 3 uses Korsgaard's (1997) and Tannenbaum's (2010) categorisation of good to deconstruct the episteme of different category of goodness within the regulations of a eleventh century AD *hisbah* manual, which was authored by al Shayzari (1310), using Islamic jurisprudence (*fiqh*). Based on the deficiency of epistemologically traceable good or evil that is ontologically established by regulations in manual and lack of a method of enquiry or form of argumentation, within the theories of *hisbah*, that can be used to characterise good and evil for the purpose of subscribing or forbidding it, this research infers that there exists an epistemological crisis with the discourse, which develops into a crisis in morality and crisis in legitimacy.

In Chapter 4, this research critically surveys other possible epistemological sources within Islamic thoughts, given the diversity of philosophical standpoints on good and evil, and suggests that the key questions on good and evil, within the realm of governance, can no longer be settled by using the historically established Islamic epistemology, therefore the Islamic tradition is in a state of epistemological crisis. After establishing this, and in line with MacIntyre's (1977; 1988) work on methods of addressing and solving epistemological crisis, this research attempts on constructing new episteme that is and was alien to Islamic tradition throughout the life of the crisis, whilst safeguarding the life of the tradition.

The essential aspects of Islamic tradition that may be classified as its life form are identified at the end of Chapter 5, and are inferred down to consequential essence of

life-form in Chapter 5, along side the justification on presence of this consequential essence in the newly constructed episteme. The consequential essence is inferred down to morality based on objectiveness and universality, and away from public choice, along with notion of survival as episteme for philosophical perspective and theological stance. In addition, the presence of this is justified by constructing the new episteme using objectivist ethics, classic theories on sovereignty that do not use public choice, and concept of sustainability in ecology.

The body of Chapter 5, thus, consists of an attempt on construction of the new episteme using these foundational concepts so that the epistemological crisis maybe addressed. In doing so, ontology of authority and legitimacy of newly constructed episteme as a solution for the epistemological crisis is justified using MacIntyre's (1977; 1988) work. The newly constructed episteme uses life as 'standard of value', which is inferred from objectivist ethics, and sustainability as a measure of value, that also provides a point of orientation for interpreting reality and for distinguishing between good and evil. All this is constructed within the framework that separates the individuals (internal realms) and the perpetuity of temporary existence (external realm) by using the classic theories on sovereignty. From Islamic traditions' perspective, this research suggests that this episteme should be used for constructing laws and regulations for governance of market and society, and by doing so the tradition will not only be able to address the current crises, but also work towards creating a future that can sustain life, whilst safeguarding the life form of the traditions and simultaneously preserving all the goodness life offers.

Chapter 2

THE HISTORICAL INSTITUTION OF *HISBAH* AS A REGULATORY BODY

2.1 INTRODUCTION

The aim in this chapter is to examine the implementation and working of market regulations within the Muslim world with the objective of investigating the political economy of institution of *hisbah,* and examining the process of construction of regulations, and developing an understanding on the process of implementation of these regulations.

This chapter, hence, fulfils the first part of the research aim, as it examines and explores the operational side of governance within Islamic thoughts in the form of the institution of *hisbah*. The investigation within this chapter focuses on the socio-politico-economics behind the operations of *hisbah* and the episteme, the method of enquiry, the theologians that applied it as well as the social reality that necessitated an intervention from the institution. This helps to explore and articulate the creativity in the application of method of enquiry and inclusion of juristic subjectivity to regulate the continually changing social realities of the market, whilst justifying the epistemic connection with unalterable sources of law.

Islamic tradition has sufficient discourse within the tradition that supports a laissez faire system as a market exchange system, as substantiated by Ibn Taymiyah's (1992) and then re-emphasised by the Siddiqi (1996) and Khan (1995) and other modern Muslim economic theorists. Therefore, if we take this as an assumption, then the state intervention through institution of *hisbah* becomes a second best solution. Therefore, it is vital to understand the historical operations of this institution to examine whether there was a good case for the institutional interventionism.

The institution of *hisbah* is also of particular importance to the enquiry of this study, because this institution carries the theological responsibility for 'subscribing good and

forbidding wrong', within the society and the market. It uses the Islamic legal theories (*usul*) to distinguish between good and bad, and hence captures the essence of values within the governance in Islamic thought. The investigation of institution of *hisbah* will allow us to observe the implementation and working of market regulations within the Muslim world, which is the foundational objective of this research, as it is the necessary step in understanding the episteme of recognised and unrecognised incoherencies and inconsistencies in the Islamic law's governance of market and society.

As for the etymology, the term *hisbah* is not mentioned in the Qur'an, which is derived from the root an Arabic word h.s.b, which means an arithmetic problem (Holland, 1992:135). The verb *hisbah* is *ihtasab* and it is generally translated as "to take into consideration" (Holand, 1992:135). There is no historical reference that provides unequivocal reasons for use of this term or the connection of root words, with the function of *hisbah* (Cahen et al., December 18th, 2010). Generally, *hisbah* connotes three degrees of meanings, that is (Vikør, 2005:197):

(i) *hisbah* within the court of law, refers to the right of a party, who is not directly effected, to initiate a case on behalf of the absent or affected parties;

(ii) in general terms it signifies the religious duty of every Muslim to subscribe good and forbid evil; or specifically;

(iii) it refers to an institution and a public office, responsible for monitoring the religious perceptions within the market and endorsing of public morality by performing the duty of commanding good and forbidding evil.

This study is focused on the last mentioned meaning, while it takes into account the meaning mentioned second as well, as it examines the construction and implementations of market regulations, along with their efficiency and appropriateness.

It should be noted that the legal source of economic and financial matter in Islamic tradition is *Shari'ah* (Islamic law), however it is also the formulated framework of Islamic principles, which denote a just rule in Islam (Vikør, 2005:201). In this framework the theologians, juriconsults and jurists argue that there are independent

processes for deriving laws, distinct methodologies of interpreting and exclusive techniques of implementing them, which works under the umbrella of a legal, moral and spiritual systems to develop a society, that could be considered just and fair, from the perspective of Islam. Similar to any other institutions, *hisbah* is one of the cogs within this machinery.

2.2 HISTORICAL ACCOUNT ON INSTITUTION OF HISBAH

The early Muslim societies and the pre Islamic Arab society not only were loosely aware of foreign Weltanschauung, but there were also traces of foreign influences such as the Pagan, Christian and Jewish traditions (Donaldson, 1953:3). However, there is no clear evidence of cultural borrowing on the concept of '*hisbah',* therefore the notion of *hisbah,* should be considered as an idea that is original to the Islamic world. The pre-Islamic Arab society based its morality loosely on the notions of generosity (*al-karam*), tranquillity (*al-hilm*), vendetta (*th'ar*) and clique mentality (*asabiyyah*) (Heck, 2002). Where the generosity formed the primary virtue that emphasised the moral superiority in exhibiting hospitality. This, along with cultural norms provided the general guidance on the moral obligations within the social contracts. While, the 'vendetta' was considered as a virtue, which underpinned the notion of social justice (Heck, 2002). The notion of institutionalised morality for the purpose of regulating and governing the market and society only appears after the creation of the Islamic societies.

Historical roots for institution of *hisbah* can be traced back to the time of Prophet Muhammad. The formation of an Islamic establishment in Medina after the *hijra* in 623 CE marks the revelation of Qur'anic versus with legislative orientation. While, Islam started its message with axiomatic approach of "no God, but the God", which signifies the implicit and inherent nature of its methodology of superseding the existing belief system, with a system that is divinely inspired and transcendental (Cook, 2000). However, when it comes to socio-economic practices and in some extent moral practices, a totally different approach was applied. The legislative orientation of Islam required a complete replacement of the pre-Islamic pagan narratives that provided ontological authority to the ethical practices, with the transcendental metaphysical narrative of Islam. While, for the ethical practices at the front end of pre-Islamic pagan narratives were not entirely superseded, instead a

divinely prescribed filter mechanism of *al*-amr-bi'l maroof, wa nahi al-an munkar (commanding good and forbidding evil), was used to filter and stop the socio economic practices, which were in unsupportive of Islamic narrative. The pre-Islamic tradition that was in conformance with the Islamic narrative was given a new ontological authority based on new episteme within the Islamic tradition and the front-end practice was allowed to continue.

2.2.1 Legitimacy of Hisbah

Theoretically *hisbah* is the institution that methodically applies this mechanism of filtering the good and bad practices in the market and the society. Prophetic methodology for reformation heavily relied on this mechanism, for which few Muslim historians have classified him as the first *muhtasib* (official of institution of *hisbah*). However, there is an isolated report from the work[1] of Ibn-Hazm, an eleventh century Andalusian scholar, which gives reference to an official, with role similar to *muhtasib*, in pre Islamic Arabian Peninsula (Buckley, 1999:3). The first official appointment of a market inspector was by the Prophet Muhammad, who not only appointed men and women for this post, but also had separate inspectors for Medina and Mecca (Buckley, 1999:3). However, as the Muslim empire grew, the institution of *hisbah* expanded with it. Abbasid Caliph Jafar al-Mansur in 774 C.E developed the initial operational structure of this institution and interjected position of two qualified staff with title of Arifs and Amins, under a full time *muhtasib* (Khan, 1992:136). The expansion of Islamic empire gave further prominence to the institution of *hisbah*, as it became a key institution for implementation of Islamic ethical framework on the new markets. It also played an active role under the rule of Fatimid's, Ayyubid's and Ottomans and for much of Islamic history, as it remained an important part of state infrastructure (Khan, 1992:136); due to which, as the government weakened around the time of Mamluks, the institution of *hisbah* was also distorted through the appointment of corrupt officials (Ibn-Tulun, 1998: 216; Al-Jaziri, n.d.:1000-1144).

The earliest reference to the designation of official of *hisbah*, appear in Ibn-Sallam's work *'Kitab al-Amwal*', which dates to the period of Caliph Umar bin Khattab, where 'Sa'ib B. Yazid' is referred with a title of amil 'ala Suq (market inspector) (Buckley,

[1] *Jamharat Ansab al-Arab*

1999:4). There are further reports of appointment of market inspectors by Caliph Uthman b. Al-Affan, however, the discourse lacks any details such as job description and duties (Buckley, 1999:4). Reference to an official with designation of amil ‘ala Suq, with occasional mention of the name of the official along with the area of their jurisdiction, continues through out the literature on the Umayyad period (661-750), but there is no detailed account on scope of duties (Buckley, 1999:4). The lack of details could be due to the fact that the official of *hisbah* at this point was not seen with its full potential and the philosophical depth of ‘subscribing good and forbidding evil’ was not realised. The realisation of the philosophical extend of *hisbah’s* work, which provides the legal and theological legitimacy to official for distinguishing between good and evil, came as the institution evolved.

2.2.2 The Evolution of *Muhtasib*

After the Prophet, the function of *hisbah* was also carried out by the four Caliphs and sometimes by governors along with the individuals who were appointed as Amil ‘ala Suq (Khan, 1992:136). It could be assumed that the duty of ‘commanding good and forbidding evil’ within the market was specifically assigned to *hisbah*, while the first four Caliphs simultaneously performed this duty on a more generalised social and economic scale. Buckley (1999:6) takes the position that, because the post of amil ‘ala Suq existed before the start of Byzantine conquest; this signifies that it was created as a result of internal requirements and not the foreign influence. Furthermore, Buckley (1999:6) adduce that the post of Amil ‘ala Suq was profane and had no religious connotation, as the historical account suggests that the duty of *hisbah* was regularly performed by the rulers especially the first four Caliphs, whereas the replacement of amil ‘ala Suq by *muhtasib* signifies the Islamisation of the post, in its function and also in its spirit, resulting in the establishment of institution of *Hisbah*. This view, in theory signifies the delegation of power from the ruler to the officials institution of *hisbah*, specifically the power and responsibility of subscribing good and prohibiting wrongs. In other words, the official of *hisbah* performs the duty on behalf of *Khalif*. The theological argument on, how *hisbah* draws its powers along with jurist’s work on theory and scope of *hisbah* somewhat support this position. However, practically the history accounts a very different power structure in different times within the

Muslim empires, which could be due to the lack of consensus on a well-defined political system.

For Amil ‘ala Suq, the extent of the information from beginning of Islam to the succession of Abbasids (750–1258), is very limited, however, the social and economic activities of *hisbah* becomes much clearer and detailed in the historical accounts dated after the Abbasids assumed power in 749 CE (Buckley, 1999:4). It was also in the early years of Abbasids regime that the designation of Amil ‘ala Suq was replaced with *muhtasib*, a name that previously referred to vigilantes who practised the spirit of *hisbah*, that is: commanding good and forbidding evil. Buckley (1999:7) argues that this was in the time of Caliph Abu Jafar al-Mansur (754-775) that official designation was replaced and the first person to be appointed with this new designation was Asim al-Ahwal, who previously served as a faqih (jurisprudent) of Baghdad and as a judge in Al-Madain. Some attribute this transformation to Abbasids Caliph Al-Mamun (813-833) and connects it with the Islamisation of institutions in the time of Mutazilites (Cahen *et al*., December 18th, 2010). The scale of such a transformation specifically in scope and role of *hisbah* cannot be measured as historical sources lack such details.

After the Abbasids assumed power in 749 CE, the Umayyad’s established a dynasty in Al-Andalus region, where they interpolated the position similar to that of Amil ‘ala Suq (market inspector) with a new title of Sahib al-Suq (market officer) (Buckley, 1999:5). Buckley’s analysis concludes that the post of sahib al-suq had no religious association and its duties mainly concentrated on regulating and administrating the market, with no attention to public morality (Buckley, 1999:5). Glick (1972:65) however takes the position that although Sahib Al-Suq by it’s very nature was an administrative and regulative post, with sole focus on the market, but it also performed some ‘astynomic’ functions like enforcement of regulations on ditches in residential area.

In Andalusia, the transformation of sahib Al-suq into *muhtasib* was delayed during the Umayyad’s period and the term *muhtasib* become common in the eleventh century, while some of *hisbah*’s officials in treatise from Andalusia are also referred to as wali al-hisba bil suq (guardian of *hisbah* in market) (Glick, 1972:65-67). Although even after eleventh century the historical evidence suggest the coexistence

of Umayyad's and Abbasids title for official of *hisbah* (Glick, 1972:66), it can be speculated that the definition of this title, that is 'guardian of commanding food and forbidding wrongs', represents the meaning of job description of *hisbah* officials at the time.

2.2.3 Complications and Difficulties in Defining the Remits and Functions of Institution of *Hisbah*

An eleventh century *hisbah* official is also mentioned by Ibn-Abbar with a title of wali khuttat al-suq, namely governor of administration of market, and in twelve century Ibn-Bashkuwal, while discussing the tenth century, refers to function of *hisbah* as wilayat al-suq or custodian of market; Glick's (1972:66) further investigation into the diversity of titles, adjudges that: "To Andalusi Muslims, at least through the twelfth century, hisba and wilayat or kuttat al-suq were synonymous, indicating that hisba was understood in its practical, administrative connotation, rather than a philosophical one".

Although scholars like Ibn-Khaldun have scribed a broader function of *hisbah*, many historical documents like Al-Khatib's letter to a *muhtasib*, portray an institution confined within the boundaries of the market, not just by its powers but also by its function (Glick, 1972:68). Emile Tyan further elaborates on this issue and explicates that the philosophical foundations and theoretical definition of *hisbah* which extends to all human activities never practically translated into institution of *hisbah*, and institution of *hisbah* was mainly limited as an "institution of administration and police" (Glick, 1972:65).

The institution of *hisbah* played a central and vital role in market and even sometimes in governance; however despite the centrality, institution of *hisbah* to no extent utilised in its full potential, which is entrusted to it under the philosophy of 'ascribing good and forbidding evil', despite many attempts made by different *muhtasib* over the history to extend its jurisdictions. Still *muhtasib*, along with other *hisbah* officials (assistants) did perform diverse range of functions within the market and society, such as: upholding of justice and fairness, executing the mal-practitioners by inspection and implementation of correct measures within the market. Many Andalusian historians have documented the functions performed by *muhtasib* in Andalusia. The

most widely accepted description was cited by Al-Maqqari, from the work of a thirteenth century historian Ibn-Said, in which, the author accounts that the *muhtasib* continuously checked the weights and balances, and implemented different procedures for public safety along with counterchecking the prices (Glick, 1972:68).

The historical sources evidence that *muhtasib* also monitored the market, using a technique similar to mystery guest, as he checked for fairness by sending slaves and young girls to buy from the market and after the transactions, he checked the price offered to them and the balance used (Glick, 1972:69). Different monitoring techniques were adopted for overseeing and counselling the diverse range of activities within the market. The *hisbah* manuals are the documents that specialise in guidance, for monitoring different trades and businesses. These manuals listed the possible malpractice used within each trade along with the ways of identifying and in some cases correcting them. Ibn-Said elaborates on the matters where malpractice or mal-practitioners were identified, that (taken from Glick, 1972:69) "if he [muhtasib] finds an error, he gauges in this his comportment with people ... in such a case, for if he [offender] does it often and does not repent after being flogged and receiving public reprobation in the markets, he [offender] is expelled from the city"...

It should be noted that outside the scope of market, *muhtasib* supervised the cleanliness of street, the construction of new buildings and compliance to building codes, along with other municipal duties. The requirement of the time and nature of duties performed by *hisbah*, required personal involvement of muhtasib in every process. This along with lack of structural distribution of power meant that post of *muhtasib* required a person to be well versed not only in Islamic law or *fiqh* but also in market mechanisms, a trait that is similar to the requirement for *Shari'ah* scholars in Islamic finance industry in contemporary times.

The references of historians and the *hisbah* manuals are the main sources, from which the duties and role of *muhtasib* may be contextualised; however reconciling the two sources to build an exact picture of *muhtasib* is difficult. The *hisbah* manuals provides the list of aversions from Islamic values in the market, while the historian's description present *muhtasib* as a distinct personality within the society and concentrates more on its social status, rather then the policies (Glick, 1972:67). Buckley (1999:8) provides the rationale for this by suggesting that the transformation

from amil ‘ala Suq to *muhtasib* meant that the official of *hisbah* had become a prominent official figure from an average state employee. This aggrandisement resulted in greater attention in historical accounts.

By the time of Fatimids (909-1160) in Egypt, *muhtasib* became one of the top posts in the establishment, which further amplified the ostentatious nature of *muhtasib’s* ceremony of investiture, his dress code and possessions (Buckley, 1999:9). The continuous ennoblement of *muhtasib* resulted in further political limelight, as the post was ranked just below the Head of Public Treasury and at top fifth position in the judicial system, under the rule of Mamluks (1250-1517) (Buckley, 1999:10). The aggrandisement of *muhtasib* could also be a necessity rather than luxury. Rosenthal (2009:55) elaborates on this issue by arguing that: “The integrity of the official is essential for the preservation of public order and morale, and since the [*muhtasib*]... is obliged to “command the good and forbid the evil” the political organization of the Muslim community is superior to that of any other state”.

This further suggests that the efficiency and effectiveness of institution of *hisbah* depends mostly on the understanding and morality of *muhtasib*. From sixteenth century Ibn-Tulun, (1998: 216), al-Jaziri (n.d.:1000-1144), Ibn-Iyas (1960:378) and others have documented cases, where the post of *muhtasib* may have been obtained through bribery, followed by malfeasance through corruption and exploitation. Cahen *et al*. (December 18th, 2010) suggest that this decline in effectiveness and reverences of *muhtasib* was at the end of late Middle Ages, and it was due to the socio economic crises of the time.

The socio economic unrest at the end of middle ages may have been the general cause of many institutional failures including institution of *hisbah* at the time; however, Dabbi (as cited by Imamuddin, 1963:27) cites a *muhtasib* long before the time of Mamluks, who was appointed by Muhammad I (852- 886)[2], and he became famous for his injustice and brutality, while there are also references in historical sources of different *muhtasib*, some from same and others from different epoch, who by contrast were considered successful, just and able. The operational mechanism of institution of *hisbah* was constructed in such a manner that it heavily relied upon the level of acute

[2] Umayyad emir of Cordoba.

knowledge, standard of adherence to morals and scale of fidelity to religious values by the *muhtasib*. The reliance on *muhtasib's* perspicacious judgment also reflects in every *hisbah* manual. The first instruction to *muhtasib* in al-Shayzari's (1310:29) manual is that: "the first thing muhtasib must do is to act according to what he knows"

The strong reliance on *muhtasib's* perspicacious judgment resulted in the appointment of muftis (scholars or religious authority), with expertise in Islamic market law, in the Andalusian institution of *hisbah*. The historical account suggests that these muftis were considered an authority in market regulations, which they exercised by issuing instant legal opinions (fatwas) to formulate new regulations or to resolve conflicts in interpretation of market laws, along with training the staff working for institution of *hisbah*, on affairs of the market (Imamuddin, 1963:29).

The whole operation was conducted under the framework of Islamic fiqh (jurisprudence). An attempt to regulate the ever-changing markets meant consistent use of *qiyas* or analogical reasoning, independent interpretation or ijtihad, discretion or *istihsan* and other lower layers of principles of Islamic jurisprudence, namely *usul al-fiqh*, along with an abstract sense of ethics.

Usul al-fiqh is a tool, which inherently depends on the competency of person applying them. Although there are detailed principles of applying different layers of *usul al-fiqh*, which act as regulations and there is additional legal safeguard as the *muhtasib's* decision can be challenged in the court of law. However, due to lack of any internal model, which was independent of legal framework, there was a deficiency in the mechanism of operating institution of *hisbah*. This deficiency meant that there was no process for internally analysing and evaluating the relevance and effectiveness of formed regulations. Specially, considering the fact that one of the main functions of *hisbah* is to intervene, as to, prevent the damage or evil before it actually takes place. However, it should be noted that historically there were no internal precautionary measures structured within the institution to prevent it from regulating the socio economic activities in a way that is harmful for the market and the society. In absence of these checks with lack of any internal structure or procedures to critically judge the regulations in context of their relevance to the problem and without any system which can forecast the long term and short term effects of constructed regulation on the

market and on the society; the *hisbah* itself had potential of harming the market by unintentionally preventing good and allowing evil.

Another hindrance in the effective implementation of *hisbah* was the geographical area covered by *muhtasib*. The extreme cases can be cited in the Egypt, at the time of Fatimid's that also correspond to the condition in the period of Mamluks, where three major cities with large markets were supervised by one *muhtasib* (Buckley, 1999:10). Buckley (1999:10) argues on the issue of multiple appointments and suggests that "this would positively prohibit him from having any but the most minor role in the responsibilities theoretically attached to the office."

There are also several reports, which identify one individual being incumbent to many offices simultaneously. In the cases, where there were multiple appointments, the same individual took charge of one or more offices like the judicial office, tax office, office dealing with inheritance, police, prison office, office of royal correspondent, administration of ports, alongside institution of *hisbah*. In hindsight, this kind of appointment raises the question of moral hazard, accountability and effective regulation of market by institution of *hisbah*, during such times. The multiple appointments were made due to many reasons; some of them were political while other practical. The practical reason was the overlap of institutional powers and responsibilities, and the specific skill set, knowledge base and expertise required to chair these offices. The overlap of responsibilities between different institutions and offices were more to do with the intrinsic nature of *hisbah* and partially due to the absence of formally constituted legal boundaries for the practice of institutional powers.

The intrinsic nature of 'forbidding wrong and subscribing to good' allows *hisbah* the potential to interfere in all walks of life. A clear example of this overlap can be cited in historical records on *muhtasib* from South Asia. The institution of *hisbah* was reinitiated in South Asia at the time of Mughal emperor Aurangzeb. However, from the start, this office gained a substantial position, which could be due to Aurangzeb's attempt to Islamise the empire (Siddiqi, 1963:113). Prior to *muhtasib's* introduction, the duties were evenly distributed between kotwal (chief police officer) and qazi (judge); However, the introduction of institution of *hisbah* caused "confusion and bureaucratic conflict" (Siddiqi, 1963:119). The jurisdictions of *muhtasib* over lapped

in powers as well as in function, with kotwal (chief police officer) and qazi (judge) (Siddiqi, 1963:119). Originally, *muhtasib* was entrusted with supervision of market, policing of public morals and in theory was to act as a subordinate to judiciary (Qazi) and local ruler (faujdar), with very limited judicial powers; however there are cases cited in historical sources which show that *muhtasib* not only crossed the judicial limits but also ignored the guidance of judiciary (qazi) and local ruler (faujdar) and in some cases incongruous with chief police officer (or kotwal) (Siddiqi, 1963:119). Although there are many reasons for such behaviour, from moral hazards to adverse selection of scholars interested in the post and from lack of clear guidelines to administrative structure of empire, however one of the key issues was the lack of transparent internal system for check and balance.

The position of *muhtasib* was originally created to act as an early warning system for the deviations in market practises from the expectations and articulations of Islamic morals and values. There were also clear guidelines for *muhtasib* to use persuasive methods and to report the matter to judiciary qazi in case of persistence in violations (Siddiqi, 1963:119). Siddiqi (1963) categorises the duties of *muhtasib* into 'religious duty' and 'secular duty', where the religious duty includes the superintendence of mosques and dispensation of morals, while the secular duties include the supervision of market, administration of transactions, and advocating of fairness, justice and honesty. Among the other multifarious functions, *muhtasib* was also assigned the municipal powers. Overall it is difficult to examine the impact of *muhtasib* on the socio economic functions. The historical sources on one side cite the details of corruption by *muhtasib*, while on the other side sources like Maasir-i-Alamgiri give a laudatory account of *muhtasib* (Siddiqi, 1963:119). The effectiveness of *hisbah* might also be different in different regions of the empire. The intrinsic nature of operational mechanisms of institution of *hisbah*, brings the 'effectiveness' of *hisbah* in direct relation to the 'virtuousness' of *muhtasib*, which could be the reason for diverse and contradictory account on its performance.

A significant thirteenth century *hisbah* manual Nihayat Al-Rutba fi Talab Al-Hisbah (*the Utmost Degree in the Pursuit of Hisbah*), authored by Al-Shayzari, gives a detailed and extensive guidelines for regulating the market, however even the *muhtasibs*, which were following this manual, operated a very different institution in

practice compared to guidelines of this manual, which was also due to the above listed problems (Buckley, 1999:11). This difference in normative expectations and positive practices is indicated in Gotein's (taken from Buckley, 1999:11) conclusion on *hisbah* in the Fatimid period, that: "The Muhtasib, the official who, according to the text books, should be expected more than anyone else to represent the government to the populace, is all but absent from the Geniza papers".

The moral, juridical and religious connotations of *hisbah* did not completely translate into the practical guidelines given by the *hisbah* manuals and the guidelines of *hisbah* manual does not entirely correlate to the operations of *hisbah* in practice. These gaps, where due to lack of any independent model which could counter check, assess, identify and measure the good within the commands of 'prescribing good; and the wrong' within the forbidding of wrongs. The gap between the normative and positive was not consistent throughout the history, as the institution of *hisbah* changed it shape and form in every era. Therefore the practice of *hisbah* is different across different time and space, as every governing entity moulded and reshaped institution of *hisbah*, in different ways and forms to fulfil their political motives or to fit the requirements of socio economic fabric of society. For instance, the term *hisbah* and *muhtasib* are absent from the historical documents of Ottoman Empire and instead term ihtisab and ihtisab aghas (market police) are used, while the function of the institution remains tantamount (Cahen *et al*., December 18th, 2010).

It could also be further suggested that theologians and jurists, as compared to political philosophers, state officials and political class, perceived *hisbah* institution from a different reference point. The theologians saw *hisbah* as an instrument for commanding right and forbidding wrong, and institution of *hisbah* as a systemic use of this instrument, so that the religious duty of commanding right and forbidding wrong is fulfilled at all times. As for political philosophers, State officials and political class, they perceived *hisbah* as a mean to intervene in every section of private life and institution of *hisbah* as a part of State infrastructure, confined to the political position of rulers.

The evolution of amil al-suq to *muhtasib*, hence, signifies the transmogrification in operations and scope of institution of *hisbah* and these event does not signify any alteration or shift in the theologian's position on duty of *hisbah* and general

theological comprehension of 'commanding good and forbidding evil' (Cahen *et al*., December 18th, 2010). The differences were mainly is the definition of jurisdiction and distribution of power and responsibilities of amil 'ala Suq or *muhtasib* within the state infrastructure. Most of the times, the function of *hisbah* was jointly conducted by the Caliph, local ruler, *muhtasib* or amil 'ala Suq. This could be due to the extensive nature of powers, which could be drawn from the notion of 'commanding of good and forbidding of evil'.

2.2.4 Historicity of Institution of *Hisbah*

The internal operational failures are not the only factor to effect the concernment of institution of *hisbah*. The continuously growing market, emergence of new cities and expansion into new territories as being the ever changing conditions, they presented a constant challenge for governments. Moreover, development of the region was very much dependent on the success of its markets, which was directly linked with the degree to which law and order prevailed within the market place.

The institution of *hisbah* presented a practically viable solution, which was also theoretically justified in the Islamic law. It also offered a mechanism of reparation, and a chance of rectification of immoral and sometimes illegal activities, without the evolvement of court of law in addition to providing a legal guidance to market players along with acting as a source of vital information on immoral trends in the market through continuous investigation and supervision. For religiously motivated governing entities, it also ensured in depth implementation of Islamic law and adherence to the Islamic morals. Because of which the Abbasid Caliphate (750–1258) revitalised it and Umayyad's transmigrated it to Andalusia, while the Mughal Empire simulated it in South Asia.

There is also historical evidence of cultural borrowing of institution of *hisbah*, in its concepts and in its function, by the medieval Christian states specially the ones which bordered *Dar al-Islam* (land of Islam) (Glick, 1972:70). The viability and versatility of *hisbah* attracted the governing entities interested in regulating the socio economic sphere of life. A study conducted by Glick, reveals no major difference in the functions or procedures within Christian and Islamic *muhtasib* and suggests this cultural borrowing at Latin kingdoms of Jerusalem, Frankish Cyprus and post

Moorish Iberian Peninsula (Glick, 1972:71). The tenth century witnessed a rapid growth in the economies of provinces like Leon in the Christian Spain, which probably triggered a need for moral guidance in socio economic matters, effective supervision, and comprehensive regulation of market (Glick, 1972:71). Therefore, in the eleventh century, "emerged a new and distinctive official- zabazoque or zavazaure- derived from an Islamic model" along with manual of regulations and legislations in the form of Fuero de Leon (Charter of Leon) (Glick, 1972:71). Glick (1972:71) suggests the diffusion of the titles and further claims that: "Zabazoque is derived from Arabic, sahib al-suq... In the twelfth century, the zabazoque was supplanted by the almotacen, derived from the Muhtasib".

The almolacen was an official from Castilian and Leon, and as its diffusion was from less developed eleventh century *sahib al-suq* (market official); therefore, it had limited powers and there is scare details of its role in historical text, as compared to the *mustasaf* from Valencia whose powers and role were more sophisticatedly structured and it's authority widely accepted, as it was a cloned off a much advanced version of institution of *hisbah* in the thirteenth century (Glick, 1972:72). The *hisbah* manual was diffused into 'book of *mustasaf*' that contains ordinance dated from 1293 (Glick, 1972:73). *Mustasaf* accordant with the role of *muhtasib*, was in charge of the market, administrator of municipal matters and custodian of Christian religious and moral functions; it also imposed punishments and fines on matters such as religious deviation and had power to initiate a judicial process. Moreover, the framework of proceedings was also identical to *muhtasib*, and hearings were conducted in an oral argument, as according to the requirement of the time (Glick, 1972:76). Furthermore, to epitomise the spirit of *hisbah*; the execution of legal penalties were designed to discourage the malpractice. First the inadequate object or product is confiscated and destroyed, and if the violation is repeated three times, then along with the confiscation of commodity, the merchant or trader incurs a fine or is placed on a pillory in the night dress, encase he or she is unable to pay the fine (Glick, 1972:76). Glick (1972:77) cites similar intricacies in the operations of *mustasaf*, as were faced by the *muhtasib*, especially the jurisdictional disputes with other authorities, and elaborates that in Christian experience, similar to the Muslim experience, the:

> nature of the office and its involvement in casesratione materiae meant that the mustasaf would in fact come into frequent jurisdictional disputes with other judicial and executive authorities. No matter how specific the regulations, the inevitable et

> aliorum consimilium of the privileges allowed him to broaden his jurisdiction by analogy.

The unclear jurisdiction or boarding of jurisdiction is an important issue within operations of institution of *hisbah*, because the philosophical rationale for this institution, can allow it to extend its boundaries endlessly. The use of legal framework for ethical purposes also supports the expansion of jurisdiction. In modern times, it is the notion of human rights and understanding of economic freedom that keeps the modern regulatory institution in check by providing balance of powers.

From the very beginning, the concept of *hisbah* and then Institution of *hisbah*, were perceived, by authorities of the time, as a pragmatic and prudent. It was seen as fit for purpose, because of their ability to Islamise the newly conquered markets and to maintain a good level of ethical-practices in the existing markets. The development of institution of *hisbah*, over time, was largely due to the institution's perceived ability to control the malpractice in the market and to establish and improve on the ethical principles within the society. The institution of *hisbah* was developed and structured with this purpose. However, in the process of development of the institution, certain structural and operational factor created inefficiency. It could be suggested that these factors and such inefficiencies are indigenous to any institutionalisation of a theological construct that is as broad as 'commanding good and forbidding wrong'. It is also important to examine these factors thoroughly, for understanding whether they're indigenous to religiously aspired regulation or regulatory bodies or an operational bottleneck in governing mechanisms from bygone age.

This study also endeavours to view these factors in context of government intervention and human rights, as these factors are mainly associated with the realm of power and responsibility of an individual and the realm of power and responsibility of the State. The discourse on human rights is relevant to this study as it guarantees the realm of power and responsibility for the individual, and keeps its existence beyond the scope of State.

2.3 FACTORS CONTRIBUTING TO INEFFICIENCY OF THE INSTITUTION

The lack of a clear jurisdictions and limits in exercise of power, is a fundamental issue, which is not only apparent in the historical accounts on *muhtasib* but also in operations of *mustasaf,* who directly descended from the model of *hisbah*. This issue roots from the institutional approach 'to command good and forbid evil', as it can be applied to any part of state, market or civil society, so therefore it can be used at will to extend the jurisdictions. In a society the institutional power to command good and forbid evil are counter balanced by the rights of individual. Although, Shari'ah has a moral code embedded within it and primary sources of Islam does implicitly mention certain human rights; however, historically the operations of *hisbah* were somewhat driven by legalistic thinking, ideological bias or political manoeuvring, and the moral boundaries of power and the rights of individuals were often ignored. The term 'rights of individuals' only signifies the rights acknowledged in the primary sources of Islam, which were later developed during the late nineteen eighties to form the 'Cairo Declaration on Human Rights in Islam' (CDHR). There are many questions raised on the legitimacy and authenticity of CDHR; for orthodox Muslims that follow traditional Islamic jurisprudence object to the epistemological origin of CDHR, as it attempts to conceptually imitate and endeavour to international law; for liberal circles in Islam, the CDHR is not relevant because the principles of *Shari'ah* are compatible with Universal Declaration of Human Rights (UDHR), as long as *Shari'ah* is "differentiated from… body of law developed by the schools of interpretation during the classical period." (Center for Inquiry, 2008:15). Mayer (2007:102), in her analysis, highlights that CDHR only signifies equality in dignity and obligation and that the document is worded in a way that it does not discuss, draw on or establish any equality in rights. The sensitivity in Islamic law over equity of rights arises from the classical position of Islamic law and its traces can be observed on the later developed notions on the rights of non-Muslims and women.

The preposterous effects of the underdevelopment of these rights can be witnessed throughout the Islamic history, however the prominent incident occurred at the time of first Caliph Abu Bakr, when he ordered a freebooter named Fujaa to be burned alive; after the execution, Caliph Abu Bakr questioned his own decision in respect to

the manner of execution and publicly regretted it (Muir, 1883:29). Muir's (1883:29) analysis suggest that there were legitimate grounds for the application of death sentence in accordance with the law of the time; however, the manner of execution is questionable, as burning alive is discouraged within the primary sources Islam. This incident is important to our inquiry, in two aspects. Firstly, Abu Bakr is considered by historians to be the most mild and generous in his judgements (Muir, 1883:29), and he is also considered as one of the most pious companions of Prophet Muhammad; a status which was acknowledged theologically and in oral traditions, as he was placed foremost in the list of *Ashrah al-Mubashirina bil Jannah* (ten companions who were guaranteed paradise in their life time). Secondly, Abu Bakr within his lifetime recognised the flaw in the decree he issued and throughout his remaining life repeatedly regretted it. The question is not on the use of death penalty but rather in the manner *fujaa* was executed that is by burning alive. On the grounds of these two points, it could be argued that if Abu Bakr, who belonged to the best of generations according to Islamic theology and who is considered to be one of the most proficient in the matters of Islamic law, can overstep with authority, then the probability of similar violation is not only quite high, but such violations are the major problem in the use of Islamic law as a methodology for governance. In hindsight it could be suggested that the only framework, which could have prevented Abu Bakr from issuing such a decree, would be a thorough framework of theologically accepted, and legally binding acknowledgement of human rights to prevent transgression of the right of the individuals by the authority. Such a framework could also be the only means of regulating and balancing the authority, which 'commands good and forbids wrong', and it could be further argued that there must be substantial grounds for theologically justified concept of human rights in primary sources of Islam, for Abu Bakr to conclude that the decree issued is morally incorrect. The ontology of notion of human rights is relevant, as it guarantees the realm of power and responsibility for the individual, and keeps its existence beyond the scope of state.

The examples of this conflict between the rights of individual and the power vested in 'commanding good and forbidding evil', becomes further prominent in the narrative of Umar Ibn-al-Khattab, the second Rightly Guided Caliph, in which Umar while performing the duty of 'commanding good and forbidding evil', suspects consumption of wine in a house and to catch the culprit in the act, Umar enters the

house by climbing the garden wall; however, the residing man retorts, that although he has committed one sin but Umar has committed three, that is: he spied, entered the house without permission and failed to enter through the door, contrary to unequivocal instruction of doing so, in the Qur'an (49:12[3]; 02:189[4]; 24:27[5]) (Al-Hindi, Vol 2-hadith No. 3696:167). Umar Ibn-al-Khattab accepted this argument and assured the party concerned that these principles shall not be violated under his rule. However, neither this incident, nor the previously discussed lead to further development in the concept of privacy and rights.

These are also not isolated incidents, as there are many examples of similar nature spread across the Islamic history. The issue of privacy and rights is of particular importance for efficient operations of *hisbah* and exercise of powers associated with 'commanding good and forbidding wrong'; as it defines and narrows the scope of the institution and provides it with the framework for the institution to work under. It also could potentially provide foundational basis for defining the extent to which institution of *hisbah* ought to intervene in the market and society.

Cook (2009:81) extends this discussion and cites three examples of similar kind from different eras and he concludes that the primary sources of Islam and early Muslim scholars' approach this issue from the position that the "potential enemy of privacy is not society but the state", or the institution which exercises 'commanding of right and forbidding of wrong'. The primary sources of Islam address this problem by contriving three foundational principles, which Cook (2000:80) calls 'respect for privacy'. The first principles is mentioned in Qur'an[6] (49:12) and prophetic traditions[7] which prohibits spying and prying; the second is the moral obligation of concealing

[3] O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead?
[4] And it is not righteousness to enter houses from the back, but righteousness is [in] one who fears Allah. And enter houses from their doors. And fear Allah that you may succeed.
[5] O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded.
[6] "O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is Accepting of repentance and Merciful".
[7] Narrated Abu Huraira: The Prophet said, "Beware of suspicion, for suspicion is the worst of false tales; and do not look for the others' faults and do not spy, and do not be jealous of one another, and do not desert (cut your relation with) one another, and do not hate one another; and O Allah's worshipers! Be brothers (as Allah has ordered you!)". (Sahih Bukari, 73:90-92)

that which could dishonour a Muslim, as stated in the Prophetic traditions[8]; and the third is the sanctity of home based on the Quranic versus (02:128; 24:27)[9] (Cook, 2000:80). Moreover, in Shari'ah any act cannot be legally examined unless it is apparent. There is even an authentic oral tradition of prophet, which state that reading someone's written material without their permission, will lead to hell fire (Abu-Dawud, hadith No.1142).

These simple but conjoint principles, where literally interpreted by most of Muslim jurists and theologian, consequently they did not develop into any legal conventions on privacy or rights, which could extend to socio economic sphere and diametrically oppose the judiciary powers by creating an equilibrium between the rights of individual and jurisdiction of the state or institution exercising the commanding of right and forbidding of wrong on market or on society. The lack of theological development on these issues such as private autonomy and private morality, induced the European Court of Human Rights to declare that: "the constant evolution of public freedoms have no place in ... Sharia ,.. [and] Sharia ... clearly diverges from Convention values, ... [in] the way it intervenes in all spheres of private and public life in accordance with religious precept" (European Court of Human Rights, December 27th, 2011).

It could be argued that the manner of intervention referred by European Court of Human Rights is not a particular approach innate to Islam. For example: the intervention into private and public life stems from the legal theory and it may be suggested that different traditionalist and rationalist doctrines, which existed before the development of al-Shafi's rudimentary principles of *usul al-fiqh* may have differently approached the issue of state or institutional intervention in public and private sphere. Furthermore, Hallaq's (1997:22-32) analysis into the historical discourse on different Islamic legal theories suggests that prior to the acceptance of al-Shafi's Risala:

[8] Narrated 'Abdullah bin Umar: Allah's Apostle said, "A Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor. Whoever fulfilled the needs of his brother, Allah will fulfill his needs; whoever brought his (Muslim) brother out of a discomfort, Allah will bring him out of the discomforts of the Day of Resurrection, and whoever screened a Muslim, Allah will screen him on the Day of Resurrection". (Sahih Bukari, 43: 622).

[9] "And it is not righteousness to enter houses from the back, but righteousness is [in] one who fears Allah. And enter houses from their doors. And fear Allah that you may succeed" (Qur'an, 2:189); "O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded" (Qur'an, 24:27).

> The Quran as a source of law hardly needed any justification, though the same cannot be said of the Sunna of Prophet [.] ... Shafii's predecessors resort to ra'y with little attention to Sunna. Shafii regulates ra'y in the form of qiyas... Ibn-Hanbal avoids qiyas, but not completely. Dawud completely rejects it in favor of a literal reading.

Moreover, as the extend of state or institutional intervention in private and public sphere is not explicitly defined in Qur'an, therefore it would be argued that with the diversity in nature of legal thinking, different methodologies of extracting law, and among the variety of groups: ranging from the rationalist who took Qur'an and rationalism to be sufficient for interpretation and regulation, to traditionalist like al-Shaybani who advocated the invalidity of legal rulings, if they are not "based upon a binding text" (Hallaq, 1997:19); it may not be possible to unify the position of Islam as a whole on the matter of intervention, but by using combination of these approaches, it might have been possible to balance the intervention of state or institution with the rights of individuals in market and in society, in a way that good is still allowed and evil is still prohibited. However, historically such a course of action was not taken, and Bonte (1981:54) suggests, that there are two primary causes, that is: "the transformation of linage 'endogamy'... into strata endogamy; the nonequivalence of the different categories of filiation".

The development towards a State infrastructure and departure from the tribal dynamics of Prophet's time, prompted a need for regulating the political powers. However, the causes listed by Bonte (1981:54) drove the development away from an egalitarian structure. Consequently, the solution was developed in the form of furstenspiegel (mirror for princes) literature, which consists of "inherited tradition of wisdom, preserved in books in the form of anecdote, aphorism and story" (Heck, 2000:226), while the large part of it deal with ethics, which are either in the form of maxims or developed into treatises, by using Greek philosophy, and the traditions of wisdom are inherited from "Arabo-Islamic... Indo-Persian and Greco-Hellenistic traditions"(Heck, 2000:228). Furstenspiegel literature was recognised in Islamic world as a necessary knowledge in the art of governance and Qudama suggests that this literature was primarily designed to act as a theory of state (Heck, 2000:227).

The use of *furstenspiegel* literature to regulate the political powers, introduced the ethics into governance, without allowing: the development of any legally binding understanding of universal equality, without any augmentation in the idea of private

space, which is outside the reach of political powers, and without any official recognition on inherent nature of fundamental rights of human. This meant that there was not a clearly defined structure in which the State or *hisbah* can 'command good and forbid wrong', without crossing the boundaries of justice. Even with the underdeveloped notion of rights, and obscure understanding of social justice, certain act of State, Caliph or *hisbah* official were understood as unjust, in the commentary written by the Muslim thinkers on the events of their epoch. Therefore, it was not just an issue of underdevelopment of right but the problem of imbalanced and unregulated nature of political powers.

The operational and structural deficiency of institution of *hisbah* goes more further from the rudimentary privacy laws and underdeveloped human rights. Glick (1972:80-81) considers the "office of Muhtasib was less than a full success", he further elaborates that: "there was no distinction made in Islamic law between municipal jurisdictions, it becomes clear how Islamic cities were unable to develop municipal institutions that had enough internal consistency to survive the tenure of a weak or corrupt incumbent".

Glick's (1972) conclusion is based on the comparison of fifteenth century '*mathessep* of Cyprus', which was another European version of *muhtasib*; with an eleventh century *muhtasib*, when the institution was mostly corrupt and State largely weak. Although the conclusion may still be valid but the qualification of the sample used in the Glick's argument does not seem adequate, as the institution of *hisbah* did evolve in its functions and responsibilities, and continued as an integral part of State infrastructure under the Ottoman empire (1299-1929). In Glick's defence, the term *hisbah* or *muhtasib* does not appear in the registers of Ottoman administration, and due to a lack of direct reference to *hisbah* or *muhtasib*, this may appear as an extremity in the existence of institution of *hisbah* (Cahen *et al*., 2010). However, in our analysis, the institution of *hisbah* survived in the Ottoman period and it was officially addressed as the institution of '*ihtisab*', this position is supported by majority of studies conducted on Ottoman Empire.

The only change of reference between the institution of *hisbah* and the institution of *ihtisab* is that Ottomans referred the evolved and developed form of *hisbah* as institution of ihtisab; and the philosophy of *hisbah* formed a part of the dominant

causal origin of the institute of ihtisab and the descriptive information associated with it. Cahen *et al.* (December 18th, 2010).in their research observed that "regulations concerning the duties of the muḥtasib were codified in the iḥtisāb ḳānūnnāmeleri ... [and] iḥtisāb finally came to denote the whole aggregate of functions that had devolved upon the muḥtasib or iḥtisāb āg̲h̲āsı̊". El-haj (2005:98) also suggests that during sixteenth century; market inspector (*muhtasib*), judge and *ahl al-suk* (people of market) collectively determined the affairs concerning *ihtisab*.

Under the early Ottomans the regulatory framework was of two layers that is internal and external. *Akhies* (brothers) used to operate in structure similar to guilds and they regulated the market internally, by setting quality standards, regulating prices, controlling policies and practices, and by managing legal and ethical issues, while market supervisor regulated the market as whole, while also externally managing *akhi*-guilds (Erdem, 2010:25-26). The *akhi* movement started as a result of social change and a need to compete with foreign traders, and existed between twelve and sixteenth century (Unluhisarcikli, 2007:115). *Akhies* had socio-religious, economic and political influence; as they aimed to concentrate on social equality and economic alliance by consolidating on social solidarity rather than competition (Unluhisarcikli, 2007:116). They also discouraged unfair advantages and prevented monopolies (Erdem, 2010:26).

At the time of the Ottoman Sultan Bayezid II (1481-1512), *akhies* in an attempt to standardise the legal and ethical regulations, complied *ihtisab kanunnameleri* (laws of municipality); which was a collection of "municipality laws, laws of customer rights, environmental and food regulations" (Erdem, 2010:26). Furthermore, Cahen *et al.* (December 18th, 2010) argue that *ihtisab* official (*ihtisab aghasi*) used the books of ihtisab kanunnameleri as a guideline for levying taxes, and for supervision, inspection and punishment. The evolution of *ihtisab aghasi* from *hisbah* meant that the market official was entrusted with duties to collect taxes, such as import duty, sales tax and others. The office was farmed out annually (*iltizam*), so that the uncertain stream of revenue from taxes can be transformed into fixed periodic payments; this was achieved through a process of regional nominations and government approvals, where upon the selected individual paid a fixed sum in exchange for the right to farm taxes. The new setup, exposed the *ihtisab aghasi*, to a whole new set of problems; due to

which the system was abolished in Istanbul in 1826, and the responsibilities and powers were reassigned to bureaucracy, which operated under the title of *ihtisab naziri* (Cahen *et al*., 18th, 2010).

The system of *iltizam* also has attracted various criticisms by different historians and scholars. For Mustafa Ali the problem is in the appointments, which are made on monetary qualifications, rather than merit; while El-haj (2005:96-97) suggests that the office was used as a stepping-stone for higher offices and therefore the nominations and appointments were subject to adverse selection. Moreover, the subjection of the appointment process to market forces also caused moral hazard, as it was in the interest of appointed individual to introduce new taxes. Cahen *et al.* (December 18th, 2010) report that there were some occasions when sultan had to interfere and cancel the taxes imposed by *muhtasib* as they were considered unjust and "prejudicial to the population".

The alternative to this system within the literature is the 'Islamic meritocracy', where *ulema* (*shari'a* scholars) are appointed for such positions, and admission into a degree of *alim* (scholar), mufti (cleric) *mufassir* (interpreter) and others, act as a merit. Majority of medieval, and most of contemporary Islamic theologians and Muslim scholars have shown supports for such a system, which we refer to as Islamic meritocracy. In 'Mustafa Ali's Council for Sultans of 1581', Ali acknowledges the abundance of examples in history, when corrupt and unjust officials were appointed because of an Islamic meritocratic system. However, in Ali's (1979:75) viewpoint, the problem is not intrinsic to the system and it can be overcome, by reducing the influence of politicians and government officials on *ulema* (*Shari'ah* as well as Islamic theologians) and by regulating the interaction of *ulema* (with other government and state officials.

Ali similar to other Muslim historians and scholars, basis his recommendations on the high frequency of historical evidence, in which politicians, government officials or Caliph influenced *ulema* and power they exercised or attempted to exercise on *ulema*. In contrast to the lack of any clear historical reference on attempts made by the governing class or Islamic State to intervene or arbitrate in the training or education of Jurists, jurisconsults or *ulema*. Therefore, there is a general assumption among Muslim historians and scholars, including Mustafa Ali, Al-Ghazzali, Al-Mawardi and

Ibn-Taymiyyah that without any external political or social influence, the majority of ulema will be competent for the post of *muhtasib*. This assumption is based upon the presuppositions that the system educating *Shari'ah* is proficient to produce sufficiently skilled scholars, who are competent enough to chair institutions like Institution of *hisbah*; Islamic legal theory have adequate framework and sufficient procedural steps to produce rulings and guidelines for removal of difficulties: by facilitating individual and societal needs, through reduction and humanisation of religious obligations, and realisation of the public welfare and the universal justice; and lastly that the institution of *ifta* can satisfactorily develop the legal doctrines in response to any pressing needs. The confidence in the system of education rises from the politically remote development of the system. For Muslim thinkers, the lack of any political influence on the education system, theological literature and the legal theories, means that the literature captures the true essence of Islam; however, the distance from political circles raises the questions of practicality and sustainability of political and legal theories, and effectiveness of education system.

2.3.1 The Jurisprudence of Jurisconsults

The mainstream system of educating Islam has evolved and developed since the time of Prophet, into a system, which by its very design concentrates on producing jurisconsults. Such a system subsequently enrooted "an absolutist and legalistic Islam" (Sajoo, 2002:116), where lawyers (in broader sense) make up the majority of intellectual class, a legalistic society which "does not necessarily uphold moral virtures" (Sardar, 2011:372), and a "state that adhered to a totalitarian mode of government" (Sajoo, 2002:97). Sardar (2011:372) suggests the reason for this is that: "The Qur'an seeks to build a moral society, not a legalistic one... [but] Muslim tradition sees the Qur'an as a book of law, rather than the source of principles for the making of laws".

The scholars expounding Islamic law according to Hegazy (2005:133) are, therefore, "neither equipped nor required to take into account public policy concerns" and in contrast to a public legislator they are unable to accommodate the "needs of different societal groups". Moreover, the theologians and scholars are only trained on the religious theory but not, for example, on the constraints of practical application of religious theory in current era, methodologies for improvement in operational

performance, and implementation strategies for different cultures and for societies with different socio economic conditions.

It should be noted that the nature of inquiry, Islamic scholars produced by this education system are trained to lead is on the legal and illegal attribute of things. Therefore, as these scholars were appointed as officials for institution of *hisbah*, the inquiry lead by institution of *hisbah* also became legalistic in nature. Consequently, the construction of regulation, methods of implementation them and delivery of punishments, were governed by the Islamic legal theory. This could either be the reason that independently designed framework for the institution of *hisbah* remained undeveloped; or this could be the consequence of lack in religious consensus, absence of political incentive and fear of repercussions for developing a framework for *hisbah*, which could operate parallel to Islamic legal theory.

The legalistic approach of *hisbah* officials and the governance of *hisbah* through Islamic legal theory meant that institution of *hisbah*, crossed into the jurisdiction of police and court of law, which caused jurisdictional disputes and this also made *hisbah* a part of State legal structure. Being a part of legal structure, *hisbah* not only was unable to attain its institutional independence but it also made *hisbah* subject to political manoeuvring.

The jurisdictional disputes of *hisbah* are prominent throughout the history of *hisbah*. Al-Mawardi in Al-Ahkamal Sultaniyya has specially tried to distinguish between the operational boundaries and subject-matter jurisdiction of institution of *hisbah*, police, court of law and tort laws. However, subject-matter jurisdiction is not the highest operational risk. The general cause of inadequate echelons or failed internal processes and systems was the lack of liberty in deciding on cases that came before *hisbah*. The duty of 'commanding of right and forbidding wrong' is not instructed in institutionalised format within the primary sources of Islam. The institutionalisation of this duty was for the assurance that such an institution will be able to protect the *Shari'ah* in socio-economic sphere and implement the values imbedded in the primary sources. Without institutional independence *hisbah* as an institution is weak and prone to external pressure; therefore, there are many historical incidents where it failed to justly and fairly adjudicate disputes, preserve the rule of law and the fundamental justice. Grunebaum (1971:166) also argues this and suggests that:

> Hisba, so admirably devised in the flexibility of its tasks to suit the contingencies of of an irresponsible government...[the absence of institutional independence meant that] the near-impossibility of preser-ving [preserving] a clean conscience when pressured by the caliph on the grounds of *raison d'etate*.

The absence of institutional independence is unique to *hisbah* and is not present in *mustasaf*, namely the European counterpart. *Mustasaf* continued to evolve within the medieval European cities and these cities including the ones in eastern Spain developed a system of municipal government, which over time had allowed the participation of popular view into the making of public policy (Glick, 1972:81; Mundy and Riesenberg, 1958:87). Thus, the popular view or electoral power balanced the national interest with public interest. The European cities achieved it through the "amplification of the idea of the universitas" (Mundy and Riesenberg, 1958:87), which advocates the equality of all male citizens (Mundy and Riesenberg, 1958:58). With increase in popularity and demand *universitas* eventually provided the constitutional basis for the patrician governments of Europe and transformed the medieval towns into republic (Mundy and Riesenberg, 1958:58).

Qur'an implies the idea of equality, which is then expressly stated in the oral traditions of the Prophet. However, the verse[10] that implies the concept of equality continues on further, to state that the 'righteousness (*taqwa*) is the standard for nobility in the sight of God". The emphasis on equality within the primary sources provided the necessary foundations for the development of a theory of legal egalitarianism; however, the standard of nobility was introduced in the State and government affairs. *Taqwa*, on the other hand, has been understood as a variable that transformed the flat structure of equal human beings into a hierarchal structure of unequal humans, where the individual's level of piety (*taqwa*.) is the qualifying instrument for the inequality. This distinction is similar to the argument presented by William Letwin (as cited in Sen, 1992:14-15) that: "people are unequal, it is rational to presume that they are to be treated unequally"-The only difference in Islamic position and Letwin's argument is that the measure of human's worth according to Islam is *taqwa*. This doctrine although exists in the primary source, but it was introduced into political economic sphere by the second Caliph Umar Ibn-al-Khattab. For example: Abu Bakr, the first Caliph who succeeded the prophet in the political

[10] "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted". (Quran, 49:13)

framework; he equally divided the spoils of war and took no distinction between "young or old, slaves or free, male or female" (Levy, 1962:57). However, Umar Ibn-al-Khattab, although repeatedly emphasised the equality at birth, but while distributing spoils of war, introduced the idea of distinguishing between the people and scaling the distribution of the spoils accordingly to the time of conversion and longest standing in Islam (Levy, 1962:57). Umar Ibn-al-Khattab used participation of individuals in key historical events of early Islam as a standard of nobility. The order of distinction started with earliest companions of the Prophet and then the group which migrated with the Prophet, followed by the Ansar, the group of people which received the Prophet in Medina, continued by who fought battle of Badr and who did not, and then the habitants of Mecca (Levy, 1962:57). Umar had used such a categorisation, as there is special emphasis on these groups in the primary sources of Islam. The inequality based on *taqwa* was also introduced to invalidate the social and genealogical inequalities that were common practice in pre-Islamic Arabia.

After few generations and under Umayyad Caliphate when this distinction was no longer possible, tribalism followed by Arab nationalism became qualification of nobility. This was contrary to the unequivocal declaration of Prophet, delivered in his last sermon that all men are equal and an Arab has no superiority over a foreigner. Interestingly this passage, stating the equality of all Muslims, is absent from the account of last sermon given by ibn-Hisham (died 833) and by al-Waqidi (748-822), and it only appears half a century later in the work of Tarikh al-Yaqubi (Levy, 1962:57).

Over the years, the Islamic empire expanded and the number of non-Arab Muslims also increased with it. This created a non-Arab political voice, and strengthened the Persian influence. In the middle of eighth century and after the regime change, non-Arab political influence gathered political grounds for the implementation of equality in society and politics. This era is especially renowned for the fabrication of Prophet's traditions, which were then used to supplement the case for equality. With half Persian and Abbasid Caliphate in power, the equality on the grounds of race, nationality and origin was acknowledged and established, however this did not stopped the evolution in the public sentiments on the classification of nobility, and the standard of nobility switched from race and nationality to social standing and

monetary worth. Al-Fadl b. Yahya, who was an Abbasid courtier is quoted by Ibn-al-Faqih (903 CE), to have said that human beings fall in four classification, in this order: the ruling class, people with knowledge and wisdom, people with wealth and people who have cultural importance; while all remaining are considered as the worst human beings incapable of any intellectual or social benefit (as cited in Levy, 1962:67).

2.3.2 The Evolution of Legal Theory

During all this, the evolution of *fiqh* was also simultaneously underway and many scholars working on different theological subjects were starting to emerge from different parts of Muslim empire. The Islamic scholarship always had religious devotees and a degree of public support, but after receiving more prominence under Abbasid Caliphate, their social status further increased. The Islamic scholarship extracted scriptural justification to support their right to precede the public, similarly the rulers also extracted scriptural justification for almost absolute obedience. Consequently, Islamic scholarship followed the ruling class in the ranking of social order. For commoners, it was not possible to join ruling class without a conquest; therefore only available opportunity to jump the class ladder was by joining the Islamic scholarship through education. Therefore, in Islamic societies knowledge became one of the many instruments to measure a human's 'worth' and scholarship became one of the important qualification for nobility.

The evolution in the qualification of nobility along with continuous social and political emphasis in inequality supported by authentic or fabricated religious justification; which also had influence on the development of *fiqh* and other religious sciences, as jurists attempted to reconcile the customs, traditions and civil practice with Islamic law. The influence is more prominent in the concept of *kufu* in Islamic family and marriage law, which promotes financial, occupational, religious and ancestral inequalities within the Muslims, to the extent that it distinguishes between Quraysh (tribe of Prophet) and non-Quraysh Arabs, Arabs and non-Arabs, and discourages the marriage between them. Hanafites followed by Shafiites are more inclined towards the unequal status of Arabs and non-Arabs in this matter, as compared to Malikites, as most of Malikites had African roots (Levy, 1962:67). In the matter of *kufu*, the jurists attempted to reconcile the original position of *Shari'ah* with

the customs of the time, and during the reconciliation the scale tilted towards the customs of the society. Therefore, it could be further suggested that development of other branches of Islamic law may also be effected in similar way by the customs of the time and most importantly by the theoretical and practical promotion of inequality within the society.

The doctrine of *ijma* (consensus of Muslim community) is the third most fundamental source of law in current legal theory of *Shari'ah*, was developed by interpreting the Prophetic traditions, in a manner that consensus of Islamic scholars was considered as the consensus of Muslim community. Al-Shafi used *ijma* in his legal theory as the opinion of community of scholars, while the pre-Shafi *ijma* was considerably a diverse concept, which mainly meant that, "that matters that are agreed upon in Medina (al-amr al-mjtama' 'alayhi bi'l-madina)" (Lowry, 2007:321). In pre-Shafi period, it also served variety of purposes from being a methodology for confirming the prophetic traditions, to a method for substantiating the universal nature of a doctrine, in addition of being an independent source of law, and it had various formations that is consensus among all, consensus among two locales, consensus of all locale and consensus of Muslim scholars (Lowry, 2007:321). Although it is argued that pre-Shafi understanding of *ijma* produced unclear distinctions between Sunnah (prophetic traditions), *ijma* (what people think) and *amal* (what they do); and al-Shafi's restriction of *ijma* to the opinion of scholars corresponds with al-Shafi's epistemology and his views on the universal systemisation of divine law (Lowry, 2007:320-322).

However, if we view the development in the understanding of *ijma* with the evolution in the standard of nobility, we see that both are consistent with each other. The pre-Shafi understanding of *ijma*, which mainly restricts the consensus to the opinion of few people through a geographical distinction, corresponds with the nationalistic, tribal and genealogical discrimination in the Arab society under the Umayyads (661-750 CE); and that the society was accustomed to drawing such distinctions in social, political and religious matters. Al-Shafi (767-820 CE) was born and educated under the rule of Abbasids (750-1517 CE), when the community of scholars had achieved a distinct social status, during the fall of Umayyads and the key role played by the scholars in bringing the political and social change was still in living memory. It

could be argued that these factors might have compelled al-Shafi to consider opinion of scholars as more prudent then opinion of public.

It could also be argued that restricting ijma to religious scholars was a requirement of the epoch or a necessity for circumscribing the Islamic law within Qur'an and Sunnah, or an essential agent for a stable legal theory, nonetheless the restricting ijma to religious scholars must have had some social effects and may have strengthened the notion of inequality in the society. The notion of inequality in the consensus (ijma), which acts as tools for extracting the law, may not be directly harmful to the society or to the operations of *hisbah*. It was when such ideas were exported from the legal theory, to the public sphere and used in the governance of institutions and public bodies, that they produced adverse effects. Moreover, it was not the legal theory that pioneered this idea, as it was Arab customs and culture, which had the notion of inequality imbedded in them.

Thereafter, with change in political and social events, the criteria of inequality further evolved from ancestral nobility to acquired knowledge. Interestingly, Islamic societies showed no resistance in accepting it and it was perceived as just and fair standard to measure inequality, and many philosophers, theologians and jurists supported this position and viewed knowledge to be directly proportional to piety.

The manner of conceptualising inequality and the overall acceptance of this idea, influenced the way in which the structure and formation of communities, and settings of society was understood. This understanding then had influence on the development of Islamic political theories, which theorised the tacit assumption of inequality and theoretically magnified the gap between social classes. The injudicious, imprudent and misinformed impression of public, established by restricting ijma to religious scholars, further developed within decades of al-Shafi into a political stance that general public has iconoclastic nature and nonconformist religiosity. In early tenth century, Qudama b. Ja'far authored a work on theory of state and formation of communities; the argument presented in this, followed the line of reasoning that the public has *ghayy* or misguided behaviour, *faragh* or rebellious nature and a tendency to deviate into religious and economic idleness, and this leads to chaos and disorder, which can only be prevented or stopped by *hayba* or dread of political community (Heck, 2002:222).

Hayba (root of Arabic word *h.y.b*) is an attribute of the powerful, both divine and worldly, which rests on fear (*makhafa*) and inspires awe in the hearts of the subjects, for obedience (Marmon, 1995:64). This idea received prominence in Hellenized's version of Aristotle, where it played a dual role that is 'use of charisma and fear, by the rulers, towards the subjects, for the purpose of better administration'; this theory was then adopted by Qudama and *hayba* was introduced in the political philosophy of Arabo-Perso-Islamic synthesis, as an Islamised version of realpolitik (political realism) (Heck, 2002:219-224), although Heck's (2002:218) analysis suggest that Qudama, who was also a senior state official under Abbasids rule, presented a theory of state and not a religious theory. Thereafter *hayba* became an effective agent in Islamic political theories, and later on al-Mawardi suggested it as an "effective agent in the formation of polity, even as an order in its own right and the very basis of political power" (Heck, 2002: 225). The above mentioned argument and the line of reasoning it follows, when used in *ilm al-siyasa* (knowledge of governance), means that the knowledge essential to the political community, for the formation of a stable state (*nizam al-mulk*) and welfare of polity, is not the understanding required to do ijtihad (interpret law), or to have a philosophically formulated faculty of reasoning, or a thorough understanding on needs of their subjects and requirements of polity; but it is the ability of political community to exercise *hayba*, by using charisma to inspire subjects out of idleness and by using dread to obliterate their rebellious nature and ameliorate their religious deviations (Heck, 2002: 222). The notion of *hayba* was also endorsed by many political scientists like al-Mawardi (Vogel, 2000:299), many jurists and theologians like al-Ghazzali (Cook, 2000:431) and many historians like ibn-Sa'id, also used it to explain the political success and failure of different Caliphates (Safran, 2000:71). The line of reasoning, idea of *hayba* and perception of untrustworthiness of public are not just part of literary discourse, but they were used in the policymaking.

Although institution of *hisbah* was an administrative organ of the state, it was not autonomous in its operations and methodologies, therefore it had to work within the framework conceptualised by such political theories, which restricted it from developing its own theories of administration based on the practical experiences of regulating the market or by directly interpreting the transcendental sources. The *hisbah* manuals and historical account on *hisbah*'s operation, along with the way in which *hisbah* intervened in public and private life, and the kind of punishments given,

coincides with the underlying assumptions used in the construction of political theories.

The time of early Abbasids, was also full of political turmoil, in which the legitimacy of Abbasid's rule was challenged, an alternative political theory of Imamate was proposed, along with armed uprising of different groups (Kennedy, 1981), which could be the historical rationale behind the political stance on untrustworthiness, iconoclastic nature and nonconformist religiosity of public. Moreover, the immediate challenge for Abbasid's was "the integration of peoples of diverse cultural and religious origins into a single Islamically defined framework" (Heck, 2002:15), and to develop and maintain an inter-mutual religious identity under a religiously justifiable administrative structure (Heck, 2002:15).

Qudama presented the solution in his political theory, which, according to Heck (2002:15), had the literary status of an encyclopaedia at the time. Qudama considers a charismatic ruler as a formative agent, able to create the political community and assimilate the subjects, along with Islamic law as a foundation for polity, which can "win the Islamic respectability" (Heck, 2002:179) and provide legitimacy for the rules of political powers, while also establishing the inter-mutual religious identity for integrating people with diverse back grounds and conflicting theological affiliations, to establish a communal identity which can unites all (Heck, 2002:15-220). Heck (2002:16-179) argues that the political theories suggesting foundational characteristic of Islamic law in polity, does not coincides or synchronise with the Islamic theological debates, theories and positions on the legitimacy of religious, legal and political rights to rule the Muslim community and that, these political theories express "Islamic law more universally, not... in terms of its content, but its form". Heck (2002:221) suggests that this is because the political literature did not spread out from jurisprudence or theology, and it did not originate from religious circles, and neither with a motive of development in the Islamic perspective of politics, instead it was largely authored by administrative circles, with principal interest in the "exercise of power" and "primary inspiration... [in] the construction of a theory to justify a state which happened to be Islamic"

In other words, the political theories of the time were administrative solutions, constructed in response to the political turmoil and social challenges. Moreover, the

relation between the law and ruler, went through its own evolution, starting from an ambiguous nature in the first century of Islam, to Umayyads contention on legitimacy of authority based on status of divinely chosen leadership (khalifat Allah), which is divinely entrusted for implementation of transcendental design (Heck, 2004:94-95). Abu Yusuf through Kitab al-Kharaj further developed this position, as he suggests that: "it is the judgement (*ra'y*) of the ruler that establishes the common good" (Heck, 2004:95). Ibn-al-Muqaffa in al-Risala fi'l-Sahaba further signified the role of ruler's judgement, by considering it as a source of law, and setting it along side the other two sources, that is Qur'an and Prophetic traditions (Heck, 2004:95-96). This special status is, however, not passed onto the officials appointed by the ruler, as Ibn-al-Muqaffa argues that this would make the officials equal in status to the ruler and ruler will have no unique characteristics (Heck, 2004:96). Qudama also takes similar position, as he suggests that singularity of authority is necessary for the unity (Heck, 2002:221), and that (Heck, 2002:221): "the ruler is the embodiment of the state...There is thus no room for arbitrary rule". The political literature generally supports this position and this stirred Islamic political theories on an opposite directions to the one which leads towards the distribution of power and institutional autonomy.

Heck (2002) also suggests that the political theories were not shaped by any theological directive, instead the political theories were structured to strictly address the political issues of the time, as the Abbasid's attempted to "reformulate...from a revolutionary and quasi-messianic movement...to an established state" (Heck, 2004:95). The establishment of notion on inequality and the evolution of inequality from the categorisation of filiation, to establishment of clear boundaries between social classes, and emergence of political class and scholarly class as two important classes, coincide with the line of reasoning in the development of political theories. Distribution of power, institutional autonomy and systematic induction of public opinion in the running of state, would have been in direct conflict with the classification of nobility, accepted social class structure, and self-interest of political elite.

The classification of nobility still stands within the Sunni Islam, while the Shia Islam still have an element of genealogy in their classification of nobility. The acceptance of

inequality was also the primary difference between the evolution of Islamic *hisbah* and its European version. Unlike the concept of *universitas* which helped in the evolution of autonomous municipal councils; the Islamic concept of everyone is equal at birth did not evolve to provide autonomy to public bodies, nor at any stage public opinion was legitimatised to even partially play a systematic role in the governance of public bodies like *hisbah*. This was despite the scriptural support for Muslim communities' opinion and the divine trust in the affairs of Muslim community as a whole, which is mentioned in Qur'an and in the traditions of the Prophet. The Islamic scholars, who were most of the time very sceptical of political powers, all together neglected the role of the government working under the extension of legal rulings, such as *ijma*. Kamali (2002:7) also analysis this and observes that: "The schools of jurisprudence continued to grow, and succeeded in generating a body of doctrine, which, however valuable, was by itself not enough to harness the widening gap between the theory and practice of law in government". This was due to reluctance in including the different sectors of society in the process of law derivation. In theory the Islamic scholars with appropriate level of knowledge, would be just and pious, and the legal doctrine they are trained in would allow them to efficiently, effectively and Islamic-ally forbid evil and subscribe good in society and in market; however, this can never be guaranteed in practice.

2.4 SUMMARY AND CONCLUSION

Islamic thought, argue for institution of *hisbah* to be the establishment with an institutionalised framework for creating an ethical practice within the society and the market. The uniqueness of the institution of *hisbah* lead to its wide spread existence, and the concept of *hisbah* was also borrowed by other cultures. The importance of this institution is vital to Islamic finance industry of current time, as its uses theological techniques similar to the ones that produced the *hisbah* manuals.

Islamic finance industry also uses theological interventionism based on philosophical logic similar to the institution of *hisbah*, while our discussion in this chapter suggests that in operations, there is a gap between the theory and practice of *hisbah*. This conclusion is similar to the concerns raised by modern academics, on the governance of Islamic finance industry, such as Asutay (2012:94), Badawi (1997: 20), Khan (2007:2860 and Siddiqi (2004).

The examination of historical operations of *hisbah* demonstrates that the gap in theory and practice, severely limited the effectiveness of *hisbah* to uphold public interest and Islamic interest. It is also essential at this point, to incorporate the modern view of Islamic economist, such as Siddiqi (1996) and Khan (1995), who in line with Ibn Taymiyah's (1992) position, theologically support a laissez-faire system. This is theologically justified by Ibn Taymiyah (1992:18) who argued that the price established in the market is the price of God, and the markets do not require state intervention. However, the state intervention in the form of *hisbah,* is applied with an underlying assumption that the state has an ability to foresee, distinguish and prevent evil, whilst subscribing good. Therefore, legitimacy for institutional intervention is directly dependent on the effectiveness of foreseeing, distinguishing and preventing evil within the market. Consequently, the ontological justification of institution of *hisbah* is directly dependent, and is ought to be tested against, its ability to subscribe good and forbid evil.

The investigation on operations of *hisbah*, suggests that there were number of factors that resulted in institutional failures, one of which is the inability of the institution to operate according to the theoretical framework that was set for it. The gap between theory and practice was as a result of undefined boundaries for *hisbah* to exercise its powers. As, the undefined boundaries, infinitely increased the scope of *hisbah,* and forced the limited regulatory religious discourse to be artificially stretched for regulating almost every aspect of society and market.

Another factor linked with this debate is the underdevelopment of individual's realm of power and responsibility, whilst the state's realm of power and responsibility was overstretched and overdeveloped. The inclusion of human rights to this debate is important because the notion of human rights provides the underlining foundation for the development of individual's realm of power and responsibility. The extent of state intervention in society and market is still a very relevant and important issue within Islamic thought. As within the contemporary Islamic thought, there is scholarship that justifies the total intervention and then there are others who suggest the theological justification for a free-market within Islamic economic thought. There are also some, who take the moderate approach and suggest that state ought to intervene is special circumstances, without clearly defining the meaning of the special circumstances.

Davis and Robinson (2006: 167), whilst reviewing eight countries from Muslim World suggest that within Islamic perspective, state's responsibility to care gives the state legitimacy to intervene in most social contract, while other Presley and Sessions (1994:584) have examined the Islamic thought that lean towards Adam Smith's invisible hand of market.

There was also other element that ought to be considered, which may have influenced the jurists' interest in the office of *hisbah*, such as adverse selection and moral hazard. Historically, the renowned jurists did not participate in the political process and were unwilling to take any public office; while most of the *muhtasib* were retired judges or ones who used this office as a stepping-stone to higher offices, such as office of governor. Even in cases where *muhtasib's* intention cannot be challenged, it could be argued that the legal doctrine they used to regulate the socio economic life was not practical enough.

There were no clear rules on the jurisdiction and the intrinsic capability of institution of *hisbah* to broaden its scope and expand its jurisdiction, caused complications and confusion with other public offices. Although the frequency of the reports on complications and confusion about jurisdictions in comparatively low considering the wide spread practice of *hisbah*, these reports are cited over time in almost all the territories (India, Arabia, North Africa and Andalusia) where *hisbah* operated. This shows that issue of jurisdiction was not cultural, social or political, but rather depended on the intuition of the person appointed for the post.

The issue of impracticality was not only in the implementation of regulations but also in the manner regulations were constituted for social and economic life. The construction of regulations was more focused on the legality of matter, and compliance to the legal theory, then on establishing socio economic justice. The *ulema* were not trained in the operations of public office and the legal theory used in the operations of *hisbah*, evolved away from public sphere and without any practical testing. The institution of *ifta* operated without any meritocratic system of evaluation such as a Bar Association, which can regulate the entry into the profession, check intelligence, administer credentials and qualifications of jurisconsults, which developed into a "problem of an institutionalized system coping with inadequately qualified persons" (Hallaq, 1997:208). With most of *hisbah* officials coming from

scholarly circles, and in some instances from ruling class or business families and claiming literal understanding of *Shari'ah*; this allowed the above mentioned problems to infiltrate institution of *hisbah* and weaken it.

This intrinsic weakness of institution of *hisbah* meant that it became incapable of upholding the public interest and 'Islam's interest' while simultaneously withstanding the pressure on the grounds of national interest. Therefore, it could be suggested that obstructions in development of *hisbah* into a sufficiently autonomous quasi-judicial body were the scepticism towards the public morality and distrust in the prudence of public opinions, along with the postulation that *ulema* are better equipped to comprehend the right and wrong in the market and society, in addition to the general confidence in perspicacity of *ulema* to stir the society and market towards a better socio economic order, and attempts by political elites to establish and maintain a unipolar political power station.

The institutional failures, along with incoherent and inconsistent practices throughout history suggest that the institution of *hisbah* in practice was unable to judge the moral conduct of activities. Hence, based on the debate from this chapter, next chapter continues its focus on the first part of the research aim, as it examines the theories of *hisbah* to develop an understanding about the underlying factors of failures in governance through institutionalisation of subscribing good and forbidding evil.

Chapter 3

TAXONOMICAL CLASSIFICATION OF DISCOURSE ON *HISBAH*

3.1. INTRODUCTION

The institution of *hisbah* provides a rare opportunity for observing the development of different kind of discourse aimed at governing the society and market by subscribing good and forbidding evil. As explained in the previous chapter, theoretically this discourse ought to be able to distinguish between good and evil in order to justify the institutional intervention within the market and the society.

In the previous chapter, we established that the ontological authority of *hisbah* is dependent on its ability to foresee, distinguish and the subscribe good and forbid evil practices within the society and the market. Upon examination of the operations of institution of *hisbah*, Chapter 1 established that in practice institution of *hisbah* was unable to judge moral conduct of activities and therefore unable to subscribe good and forbid evil in the market and the society.

The aim of this chapter, hence, is to develop an understanding about the nature of the theories of *hisbah* and the part they played in the institutional failures in the Islamic governance system, as discussed in previous chapter. The theories are tested on the same criterion of subscribing good and forbidding evil so that their inability in efficiently operating *hisbah* can be demonstrated. This chapter also focuses on the first part of the research aim, as we continue to explore underlying issues of the governance within Islamic thoughts by focusing on the theory on the institution of *hisbah*.

The discourse on *hisbah* consist of juriconsults, philosophers and theologians' work that details the guidelines for *muhtasib* in the form of *hisbah* manuals, whilst there are also some theorised models for morally operating *hisbah*. Others expressed their views on the institutions while documenting history or within discussions on other

politico-socio-economic topics. These diverse discourses on *hisbah* can be separated into two types when categorised taxonomically. The first rank is referred as Class A, which consists of discourse on theory of *hisbah* and literature examining the institutional powers, jurisdictional boundaries and scope of *hisbah* duties. The discourse discussed under the category of Class B literature, on the other hand, concentrates on the practical administrative and regulative guidelines, and mainly consists of *hisbah* manuals.

Class B literature also includes most recent discourse on institution of *hisbah* was mostly penned in last forty years, such as academic surveys on theory and practice of institution of *hisbah*, along with modern Islamic scholar's reflection on institution of *hisbah* as part of a solution for modern socio economic problems. Buckley's work titled as *the Book of Islamic Market Inspector* (1999) is central to Class B literature, as it includes a critical view of institution of *hisbah* along with translation of a twelfth century *hisbah* manual. Glick's work is important for developing an understanding on the impact of institution of *hisbah* on socio economic life, as Glick (1972:59-82) traces the cultural borrowing of *hisbah* from Muslim world to Christendom, followed by the success and development in the concept of institution of *hisbah* by the two sides. In expanding the literature, Islahi (2008:7-20) has also compiled a list of *hisbah* manuals significant to understanding the operations of *hisbah*. Moreover, Shatzmiller's (1994) work also holds significance, as she uses *hisbah* manuals to focus on the labour and crafts in the market at medieval time. There are also many other studies dedicated to examining and summarisation of original work of Class A authors.

A part of Class B literature follows the academic endeavour focused on history, while the other part belong to the literature produced by Islamic economists, political scientists and scholars in the wake of re-emergence of Islam in the later part of twentieth century. The difference becomes noticeably preeminent when we compare the specification and depiction of institution of *hisbah* in Brill's Enc*yclopaedia of Islam* and in *Encyclopaedia of Islamic Economics*. The article on institution of *hisbah* in Brill's *Encyclopaedia of Islam* is more focused on the examination of the events of the past, and investigation of historical patterns in the study is an end in itself; *Encyclopaedia of Islamic Economics*, on the other hand, is slightly more focused on

the analysing the usefulness of *hisbah* and, therefore, its narrative is more attentive to the relevance of the institution to the present time. Similarly, Khan's (1992:135-152) approach on *hisbah* also concentrates on the relevance of *hisbah* styled institution to modern times.

Kuran (1996:439) suggests that the driving force behind this type of discourses tend to be cultural identity and it lacks much relevance to economic issues of present time. The construction of this type of discourse stands on logic, persuasion and rhetoric, without much attention to the historicity. For instance: Lewis (2006:6) suggests that the "*shura, hisba* and *shari'a* [as] building blocks of a system of Islamic corporate governance", and then asserts that the framework of *hisbah* can "obligate correct ethical behaviour in the wider social context". In shifting and expanding the debate, Lewis (2006) refers to the aspect of vigilantism in *hisbah*, which is also argued by Al-Ghazzali (1982a; 1982b), although discourse does not focus much on the historical evidence on the pros and cons of this practice. However, Lewis (2006:7) highlights the vigilantism as a problematic aspect of *hisbah*, which puts it in conflict with the operational philosophy of modern state institutions. Later Abu-Tapanjeh (2009:564) then uses Lewis as a reference to suggest that *hisbah* (only vigilantism aspect) forms an essential part of good corporate governance for Islamic financial institutions, while Abu-Tapanjeh's discourse completely ignores Lewis's (2009:566) concerns and does not focus at all on patterns of cause and effects of *hisbah*'s operations in the past. Subsequently Bhatti and Bhatti (2009: 67-91) suggest a model for Islamic corporate governance based on *hisbah*, without any mention of *hisbah*'s historiography. The critical examination of class A and class B literature should help in developing a historiographical understanding on institution of *hisbah*.

3.2 DISCOURSE ORIENTED LITERATURE ON *HISBAH*: CLASS A LITERATURE

The Class A literature deals with the theological argument on rationale, authoritative power, scope of *hisbah* and its ethical dynamics, which are then used to create guidelines on performing religious and regulative duties of 'forbidding wrong and commanding right' in the society and in the market. It should be noted that Class A literature appears in the eleventh century, centuries after the establishment of the institution of *hisbah* (Cahen *et al.*, December 18th, 2010).

It was about two centuries after the development of *hisbah* manuals that they were put into practice; one of the reasons for this gap in publications could be that the *muhtasib* may be utilising their knowledge of Islamic law, and abstracts sense of ethics and morals present in the primary sources of Islam, as majority of them had previous experience as a *fiqeehi* (judge).

It is also interesting that this literature starts to appear at the consolidation stage of *fiqh*. Philips (1990:111) suggests that during the consolidation stage, namely between 950-1259 (CE), fiqh had been methodically organised and systematically approached, which helped the surviving *madh'habs* (Muslim Schools of Law) reach their individual legal ruling. Therefore, the class A literature could be the result of systematic approach to scriptures or it may be that the systematic approach to fiqh, accentuated the need for some sort of ethical theory, which could be placed between the fiqh and *hisbah* manuals, so that the utopian aspect of 'commanding good and forbidding wrong' can be harmonised with the socio economic realities, to produce positive consequences from *hisbah* regulations, which developed into the form of *hisbah* manuals two hundred years earlier. The discourse in Class A literature is therefore in same genre as furstenspiegel (Mirror for Princes), and as Muslim thinkers developed furstenspiegel literature for limiting and regulating political powers (Heck, 2000:226). Similarly, it could be suggested that Muslim thinkers used Class A literature, as a mean for regulating and limiting the *hisbah*'s power of 'subscribing to good and forbidding wrong'. This conclusion is more likely, because of its close resemblance to furstenspiegel, and the fact that it appeared after two centuries of practical experience began with the *hisbah* manuals, which mostly focuses on various ways for *hisbah* officials to exercise powers and different socio-economic dimensions where it can be exercised.

The principal works in this class are Al-Ahkamal Sultaniyya's chapter twenty by Al-Mawardi, while a few chapters in Book II of Ghazzali's Ihya Ulum al-din and Risala fi 'l-hisba by Ibn-Taymiyya. Al-Mawardi's work is of judicial nature, while Al-Ghazzali concentrates on the morals and Ibn-Taymiyya attempts to uncover the social dimensions of *hisbah* through the judicial and moral roots of Islam (Cahen *et al.*, December 18th, 2010). The Andulisan jurist Ibn-Hazm in Fasl fi 'l-milal has also contributed to the literature in this class along with al-Nuwayri (Nihaya, vi), Ibn-

Djamaa, al-Subki (Muid al-niam), al-Kalkashandi, al-Makrizi and others (Cahen *et al.*,, December 18th, 2010). Work titled *Niṣāb fi 'l-iḥtisāb* of al-Sinami, from a seventh century *muhtasib* from Central Asia and Ibn-Khuldun's *Muḳaddima* (1967a) (1967b), are also important contributions to this class.

3.2.1 Institutionalisation of 'Commanding Good And Forbidding Wrong'

Ibn-Khaldun (1967a: 462-463) consider institution of *hisbah* as purely a religious duty and suggests that the responsibility of 'commanding right and forbidding wrongs lies' with the rulers or state, which they then transfer it onto the officials of institution of *hisbah*. Al-Ghazzali (1982b: 230-245), however, speaks of 'commanding right and forbidding wrong' as a responsibility of every Muslim, which is performed by vigilantes in the society; he then goes further and states the requirements and prerequisites, which one needs to be fulfilled before pursuing any vigilantism. This stance by Al-Ghazzali comes from the understanding of 'commanding good and forbidding wrong' as a primary subject of religion, which when ignored can result in divine wrath, and when accomplished, can make a nation the best of all nations. Al-Ghazzali documents this understanding by citing the primary sources and claims that without commanding good and forbidding wrong, the "prophethood would have been meaning less, religion lost, ... ignorance spread... and mankind destroyed" (Al-Ghazzali, 1982b:231). Al-Ghazzali (1982b:238) then lists: being a wise and mature believer, having a sense of justice, along with carrying the ability to prevent transgression and strength to enforce right as the necessary qualifications for the one who takes on himself to fulfil this duty. However, it should be stated that these qualifications are very subjective in nature and would cause chaos in the civil society, therefore al-Ghazzali (1982b:243) further suggested that the first steps of commanding right and forbidding wrong should be possessing and not acquiring the knowledge of transgressor's condition, and having a theological understanding on the nature of transgression.

Al-Ghazzali's focus concerning commanding right and forbidding wrongs is on the etiquette and regulations at private individual level; however when *ihya Ulum-id-Din* (Revival of Religious Sciences) is observed in its totality, from a political economic perspective, it could be suggested, that al-Ghazzali (1982a: 30) envisioned a society, where everyone would acquire knowledge of what concerns them, according to their

needs and within their circumstances, in the same manner as the assumed perfect market conditions of classical economists. The individuals, who are proficient in specific fields or professions, would then be able to command good and forbid wrong within their specific fields. On the other hand, the ordinary people who may not pertain to any profession are considered except from this duty (al-Ghazzali, 1982b:238). It is obvious that this would theoretically create a society which self rectifies and continuously adjusts its course towards righteousness in a dynamic feedback or circular system. Therefore, there may not be any specific need for state intervention and without the institutionalising of *hisbah*, the commanding of good and forbidding of wrong can remain a religious duty performed as a virtuous deed. This very much resembles Adam Smith's 'invisible hand', as Smith considered that market will reach optimality between private interest and social good through the adjustment mechanism provided by an invisible hand, in which the invisible hand refers to morality in the individual and society level.

As for the role of state, al-Ghazzali (1982a: 30) explains that it is only a guard and administrator of civil society, and claims that the "government does not belong primarily to the religious science". Therefore, as long as a community agrees on what is right and what is wrong, they can command and forbid it, without any permission or intervention from the state, but when the community is split on any matter, then the state should intervene and individuals should stop acting independently (Cook, 2000:437). Hence, in the case of not achieving the first best solution, Ghazzalian world would suggest a regulative and corrective role in providing second-best solution as the neo-classical economics had done in the beginning of the 20th century.

Ibn-Taymiya also holds similar position and suggests that the obligation of commanding right and forbidding wrong is communal by nature; therefore, if the institution of *hisbah* fails in performing this duty, then "the sin lies with every able person in accordance with his capacity" (Ibn-Taymiya, 1992:77). Moreover, Ibn-Taymiya (1992:77) harmonises the obligations of the duty with the realities and explains that the duty of commanding of right and forbidding of wrong is not incumbent on every individual, and even for the individuals who merit the requirements, similar to the ones given by al-Ghazzali, as they should assess the situation patiently and in case, if, attaining compliance to the command of good

would not be possible, then they should refrain from executing this duty; because, the commanding of good and forbidding of wrong should not violate the basic principles of "adherence to the community and renunciation of armed struggle against the leaders, as well as renunciation of civil war" (Ibn-Taymiya, 1992:79).

Al-Ghazzali suggests that in principle there is no difference in commanding good and forbidding wrong as a responsibility to be conducted by the state, rulers or anyone in authority like from son to the parents. However, he recommends that the duty should be restricted to the first two steps, that is: to establish that the information is from unsolicited testimony of reliable witnesses; followed by informing the transgressor of his transgression (Cook, 2000:431). Al-Ghazzali, further, warns that any further steps like stopping the 'wrong or undoing the wrong', can result in harmful consequences for the individual 'commanding the good', therefore the one who is 'commanding good', should weigh the kind of wrong being committed and extend of it, with the possibility of harmful retaliation (Cook, 2000:431). The restriction of duty against the one in authority does not come from principles of *hisbah* but it roots from the obligation of safeguarding oneself, and acts as a precaution for ensuring personal safety. Interestingly, al-Ghazzali leaves it to the discretion of the one who is commanding good, to decide if they want to follow on from first two steps. However, when it comes to rulers al-Ghazzali forbids any further steps to be take, and strictly restrict the commanding of good to first two steps, as he argues that further steps would damage the ruler's hayba or majesty (Cook, 2000:431). On the other hand, he shows less restriction towards commanding of good from pupil to scholar, as he argues that: "scholar who does not practice his learning is owed no respect" (Cook, 2000:431).

It could be argued that the reason al-Ghazzali and to some extend Ibn-Taymiya take such positions is because in their views the obligation towards the ruler originates from their legitimacy to rule, while for scholars it emanates from their knowledge and the pious deeds, that is the piety of scholars creates the public acceptance of their views, which supersede the privilege of obedience and respect towards them, and render void the immunity from the remaining steps of commanding good. Accordingly, historically, the legitimacy of the scholars emerged from their embeddedness in society due to their knowledge and piety.

Interestingly, there were no official attempts made, for institutionalisation of this function of *hisbah*, where public was entrusted with commanding of right and forbidding of wrong to religious scholars and rulers. The institutionalisation of this function would have followed line of reasoning similar to a democratic system of governance. In contemporary times, the hybrid system of governance introduced by the post 1979 constitution of Iran has a similar system of governance, where public participates in commanding of good and forbidding of wrong through a democratically elected parliament, while an unelected Supreme leader chairs the highest political office, through the philosophical legitimacy of guardianship of jurist, namely wilayat al-faqih or the infallibility of *imam*s in Shia Islam; however, this is outside the context of *hisbah* and in the realm of the theory of State and therefore will not be discussed in detail in this study.

Among other scholars, whose work has implications for *hisbah*, Al-Mawardi takes a different position and suggests that there are nine categorical differences in commanding of right and forbidding of wrong by an institution as compared to a private individual. Contrary to al-Ghazzali's (1982b: 238-263) position, al-Mawardi (1996:260) argues that it is not compulsory on a volunteer to perform this duty when they witness a transgression, and the obligation to do so rests solely rests with the official of *hisbah*, whereby he limits the individual's power to intervene with the objective of providing a structured or institutional position on the matter. Moreover, a plaintiff can and should only appeal to *hisbah* official and in its response *hisbah* official can launch an investigation, use assistance from State departments, penalise the wrongdoer, while exercising an independent judgement (Al-Mawardi, 1996:260). As can be seen, in comparison to al-Ghazzali, Al-Mawardi's (1996) trend of thoughts demonstrate a slightly liberal approach, with a positive attitude towards mutual decision making, and more focus towards egalitarianism, while al-Ghazzali attempts to give a moderate outlook to his conservative philosophy that combines Islamic law and Sufism. Al-Mawardi envisions the institutionalisation of commanding good and forbidding wrong to overcome chaos and vigilantism, while al-Ghazzali converges on this issue from purely a theological point of view and approaches it as a religious duty, while methodologically corresponding it with his hierarchy of maqasid al-Shari'ah (objective of Islamic law). This difference in approach becomes more

apparent in al-Ghazzali's and al-Mawardi's positions on the scope of *hisbah*, which is discussed in detail.

3.2.2 Jurisdiction and Scope of *Hisbah*

The theologians, philosophers and juriconsults who have addressed the operations of institution of *hisbah*, have taken slightly different positions on the jurisdictions and scope of *hisbah*. Overall discourse apprehends the institution of *hisbah* as an institution, which monitors the society, and introduces measures for the practice of commonly known good, while where necessary it also stops commonly known evil. The Class A or discourse oriented theological and conceptual studies on the subject matter in the literature does not go into the details of what is 'good', and instead takes a position similar to Qur'an, by treating the good, as something which is already known and understood as right, and similarly the 'wrongs' are also considered clearly distinguishable. The jurisdiction and scope of *hisbah* deals with the boundaries or limits to which this institution should go in subscribing the right and forbidding the wrong.

3.2.2.1 Al-Mawardi's conceptualisation of *hisbah* institution

Al-Mawardi approaches the jurisdiction and scope of *hisbah* by concentrating on the blind spots in jurisdictions of other institutions. He argues that the focal point of this institution should be the grey areas, which does not fall under other government bodies, magistrates, court of law, tort law and other public offices (Al-Mawardi, 1996:260-263), as the jurisdiction of this institution is not only in the economic sphere but it also focuses in social morality and spirituality.

Al-Mawardi annotates on the scope of *hisbah* and differentiates between the tort law, court of law and function of *hisbah*. He argues that there are two aspects each, where scope of *hisbah* is: concurrent to court of law, exceeds the court of law and is below the court of law (Al-Mawardi, 1996:261). *Hisbah* has similarities with court of law, as it has an authority to serve the complains of plaintiff; however, this authority is limited to issues within the market, that is the deception through application of incorrect measures and weights; fraudulence relating transactions, contracts and prices; and deliberate delay in payments of due debt (Al-Mawardi, 1996:261). In Al-Mawardi, *hisbah* is also similar to court of law, as it can enforce the repayment to the

defended concerning issues, within the above-mentioned boundaries (Al-Mawardi, 1996:261). The restrains and limitations of *hisbah* compared to the court decisions is that it is restricted to entertain only those lawsuits, which fall within the range of its activities (Al-Mawardi, 1996:262). This range is determined on the historical account of actions performed by the institution of *hisbah.* This restriction also keeps the relevance of court of law within the market. *Hisbah is* confined within its framework of acknowledged claims and should "neither hear evidence in proof of rights, nor exact an oath in denial of claims beset with exchanged repudiation and denial... [as court of law is] more entitled to hear such evidence and make the... parties take oath" (Al-Mawardi, 1996:262).

There are also two methods, where *hisbah* surmounts the court of law. *Hisbah* inherits the religious duty of 'recommending good and forbidding evil', from Muslim community, which allows it legitimate grounds in Islamic law, to investigate, examine and act without a plaintiff (Al-Mawardi, 1996:262). In addition, Al-Mawardi's (1996:262) definition of *hisbah* also holds the coercive powers within the religious matters, specifically for excess in or violation of, religious duties. The scope of *hisbah*, hence, is parallel to function of tort law in respect that both deal with matters, in the interest of public welfare and attempt to purge injustice and aggression caused due to sovereign audacity or sternness of power (Al-Mawardi, 1996:262). While, the tort law deals with issues beyond the scope of court of law, the institution of *hisbah*, as Al-Mawardi (1996:262) identifies, deals with matter beneath the functional limitation of court of law..

According to the above positioning the institution of *hisbah* will be classified as *quango* (quasi-autonomous non-governmental organisation), within the modern state infrastructure. Al-Mawardi has also restricted and confined the institution, in its ability to extract unlimited and unrestricted powers from subscribing of right and forbidding of wrong, by ranking it lower in authority then court of law and tort laws, within the hierarchy of state infrastructure (Al-Mawardi, 1996:262). This is especially important, as without a statutory obligation to preserve 'fundamental human rights', and without any developed understanding of public and private domains, there are no competing forces, which can create a stable balance of powers. Al-Mawardi, attempts to create these competing forces by placing institution of *hisbah* tightly within the

state infrastructure and by focusing its powers on the market to stop injustice and on society to promote Islamic religiosity.

3.2.2.2 Al-Ghazzali's conceptualisation of *hisbah*

Al-Ghazzali (1982b: 238-263) does not speak of *hisbah* as an institution, and concentrates on the duty of subscribing good and forbidding wrong; and hence, he refers to the instrumentality of *hisbah*. In addition, Al-Ghazaali (1982b: 243) also includes the legally responsible and people with diminished or no legal capacity, within the scope of this duty. The legally responsible can be 'enjoined good or forbid evil', because they come under the roam of *Shari'ah,* while people with diminished or no legal capacity are included, in circumstances when others (others as in society, public or Islamic creed) are or can be affected by their actions. The only exception al-Ghazzali (1982b: 238-263) shows is with the rulers and that is based on the possibility of retaliation for the one who performs this duty, and this exception only comes as advise, rather then recommendation. The institutionalised form of al-Ghazzali's *hisbah* would therefore be able to interfere in all walks of life. Al-Ghazzali addresses this issue by including furstenspiegel style of discourse, constituting aphorism and stories of prophets or saints.

Al-Ghazzalian discourse focuses on 'merits of enjoining good' and 'necessary qualifications for one who forbids evil'. In 'merits', al-Ghazzali (1982b: 230-232) starts by establishing the compulsive nature of this duty, by sighting Qur'anic versus and Prophetic traditions, and thereafter he explains the repercussions a society may face in the form of divine wrath, if they neglect this duty. Al-Ghazzali (1982b:232) then sites an oral tradition of the Prophet, which speaks of a time, when the practice of prescribing good will create disagreements, as the person prescribing good will face retaliation from the one, on whom the good is been prescribed.

Al-Ghazzali's theory of *hisbah* also uses the prospect of retaliation as boundaries of jurisdiction for this duty, which implies that the good should be enjoined and wrong should be forbiden until it may result in harm from retaliation of wrongdoer. In circumstance when there is a possibility of harm caused due to retaliation, al-Ghazzali (1982b: 245) downgrades the duty from obligatory and compulsory act to a voluntary act. He further attempts to define the boundaries by using ethical measures, and calls

them the 'qualification of one preventing wrong'. He list's three ethical requirements, that's is "having certain knowledge that an act is wrong, having taqwa (God's fear) and possessing good conduct" (al-Ghazzali, 1982b:245). He then establishes these ethical notions as boundaries of jurisdiction for *hisbah*, by claiming that any action of prohibiting wrong, without these qualities, would "exceed many a time the limits of shariat" (al-Ghazzali, 1982b:246). In spite of establishing the ethical principles in this manner, they however remain very subjective, which can be interpreted in different ways. Interestingly, al-Ghazzali does not talk about the qualifications of enjoining good, as his focus remains on the necessity of theologically establishing the essential nature of enjoining good and qualification of forbidding wrong. It should be argued that al-Ghazzali's views right and wrong as the only two options and does not consider that certain actions or deeds might be a combination of both. He further advises the one, who wants to fulfil this duty of enjoining good and forbidding evil, to remain separated, autonomous and independent of society and people (al-Ghazzali, 1982b:246), which could lead to anti social behaviour in the society. However, in the hindsight on the problems faced by institution of *hisbah*, al-Ghazzali's guideline on autonomy and financial independence could have proved very useful, but contrary to al-Mawardi's approach, al-Ghazzali focused his theory purely on vigilantism.

3.2.2.3 Ibn-Khaldun on *hisbah* as an institution

Ibn-Khaldun (1967a: 462-463) discusses *hisbah* in its institutionalised form and categorises it as a religious office, which he conceptualises as non-autonomous, as it draws its powers from the Caliph. This is contrary to al-Mawardi's (1996) position, who argues that *hisbah* performs the duty of commanding good and forbidding wrong on behalf of Muslim community and therefore draws its powers from Muslim community.

Ibn-Khaldun's position of considering Caliph considering as the source of legitimacy coincides with the line of reasoning followed in his political theory of power state. Moreover, Ibn-Khaldun (1967a:463) allows *hisbah* to interfere in all socioeconomic matters except the legal issues, and sites the examples of Egypt under Fatimids and Umayyad's Andalusia, where institution of *hisbah* was under the subordination of judiciary, who would also appoint the officials. Ibn-Khaldun (1967a:463) also points out the shift in the position of *hisbah* within the state infrastructure, as rulers

converted it into a royal office from an institution under the supervision of judiciary. The infrastructural change in institutional hierarchy reduced any aspect of autonomy *hisbah* may have had, whilst working under judiciary. This also signifies the move away from *hisbah* as a *quango* (quasi-autonomous non-governmental organisation)

3.2.2.4 Ibn-Taymiya's account on hisbah

Ibn-Taymiya (1992:38) considered the duty of prescribing good and forbidding evil as as an axiom for governance, which ought to be jointly exercised by all state departments, while *muhtasib* (official of *hisbah*) only specialises in performing this duty by taming the market forces and by administrating the adherence to religious commandments on general public (Ibn-Taymiya, 1992:26). Ibn-Taymiya similar to other theologians, for example, places the mosque management, along with supervision of imams (leader of religious congregation in mosques) and other staff members working at mosques or at similar religious institutions under the scope of *hisbah* (Ibn-Taymiya, 1992:26).

Ibn-Taymiya argues for the use of Islamic legal theory as a methodology to perform all these duties he associates with *hisbah* institution, while also suggesting that the inflicting of transcendentally subscribed punishments, with an exception to capital punishment, should also be administered by *hisbah* (Ibn-Taymiya, 1992:26). Ibn-Taymiya draws the duty of subscribing the transcendentally subscribed punishments from the 'rights of divine' and institutional obligations towards these right, as he attempts to define the regulatory measures for supervision of society. He views the 'transcendentally subscribed punishments' as only those religious obligations and punishments, which are clearly stated and explicitly defined in the primary sources.

Furthermore, Ibn-Taymiya did not discuss the human rights as general or socio politico human rights, although he does focus on the economic rights within the market regulations, by discussing the conflict between public welfare and the rights of buyers and sellers in the market. He discusses this issue by using categorical moral reasoning, as he attempts to locate the morality in duties and rights, while his approach is socialist and his method remains legalistic, as he uses Islamic legal theory as a mean to provide solutions to economic problem. He concentrates on the

theological framework of divine rights and individual[11] rights to balance the conflicting nature of 'public economic rights' and 'private economic rights' in the market, which he then uses to illustrate the possible equilibriums between the conflict of public interest and private interest, and then finally capitalises all this to define the scope to which a market should and can be regulated.

The terminologies such as 'private economic rights' and 'public economic rights' are not used by Ibn-Taymiya, as he does not differentiate between personhood rights within society and rights to economic activities. In this study, the 'private economic rights' are taken as the rights Islamic law assigns to individual economic agent, and the 'public economic rights' are the rights, which Ibn-Taymiya (1992:54-56) argues for the whole body of economic agents, for example: obligation of selling a commodity, when another economic agent (general public or otherwise) is in dire need of it. The concept of need is used by Ibn-Taymiya to draw the idea of 'public economic rights' from the notion of public welfare, thereafter he categorises the priority of 'public economic rights' by using the framework of divine rights versus individual rights (Ibn-Taymiya, 1992:54-56). For the institution of *hisbah* that operates under Ibn-Taymiya's guidelines, this concept would mean that the institution of *hisbah* will be required to map the 'public need' and enforce the economic activity accordingly. This practice can be witnessed within the operations of local councils in the modern times.

A need, which creates a duty to act, is reoccurring theme within Islamic thoughts, which is philosophically different to the notion of 'rights'. To elaborate on this distinction, it is important at this point to consider the philosophical differences between universal declaration of human rights, and concept of rights developed, as Donnelly's (2003:73) research suggests that notion of rights in primary sources of Islam was interpreted and "treated… entirely in terms of duties" by theologians, political scientists and jurists, as they only developed it within the framework of "rights held because one has a certain legal or spiritual status", therefore they do not correlate to the 'rights', as treated in universal declaration of human rights. Moreover, the development of rights within the frame of duties, linked with the legal or spiritual

[11] The word 'individual rights' is used to differentiate (the concept of rights in Islam developed by Jurist, Theologians and Philosophers, by extracting it from the Quran and Sunna), from the concept of modern human rights.

status made the violation of this convention of rights morally and legally acceptable, as they were not developed on the lines that they are inalienable rights which every person is inherently entitled to as a human being. This does not imply that the notions of right, equality or democracy are not in harmony with the primary sources of Islam (Moussalli, 2003:2), as the enquiry here on the Islamic concept of rights focuses on "Not [on] how Muslim… holy texts might or ought to be read, today or in the past, but rather how those texts were in fact read and acted on by 'traditional; Muslim societies." (Donnelly, 2003:74). Within this frame of reference, Islam divides the rights into two major categories; the public rights and private rights. The public rights are understood as rights of Muslim community as a whole, while the private rights are the rights of individuals (Khadduri, 1946:77). The public rights are seen as divine rights or rights of Allah and are always considered superior in importance to private rights (Khadduri, 1946:77).

The individual rights subdivided into five categories: the right to personal safety, which is for very one living within the Islamic Empire, as the Muslims classify for this right through their faith and non-Muslims classify, because they pay for the protection, consideration of *hurma* (respect for personal reputation), equality in the context of tribalism, right to participate in Muslim community, and to be a part of Muslim brotherhood; and right to be justice (Justice in context of Islamic theology) (Khadduri, 1946:78).

The divine rights, on the other hand, are generally considered to be three, that is: right to religious devotion (*ibadats*), right to ask the state for transcendentally ascribed punishment for sins, and the right to receive divinely ascribed share in spoils of wars, or alms giving and any other theologically justifiable categories, which entitle one to financial compensation (Khadduri, 1946:78). The theologians, jurists and juriconsults argued for an extended understanding of *ibadah*, in which every action that leads to anything, which is allowed, subscribed, recommended in Islamic law, or is part of *sunnah* of the Prophet in any sense, is to be considered as a form of *ibadah.* Ibn-Taymiya (1992:80) also shows his support for such an understanding by claiming, "every act of obedience is a correct action and every correct action is an act of obedience". This extension of *ibadah,* in addition of individual rights especially the right to participate in Muslim community, and to be a part of Muslim brotherhood,

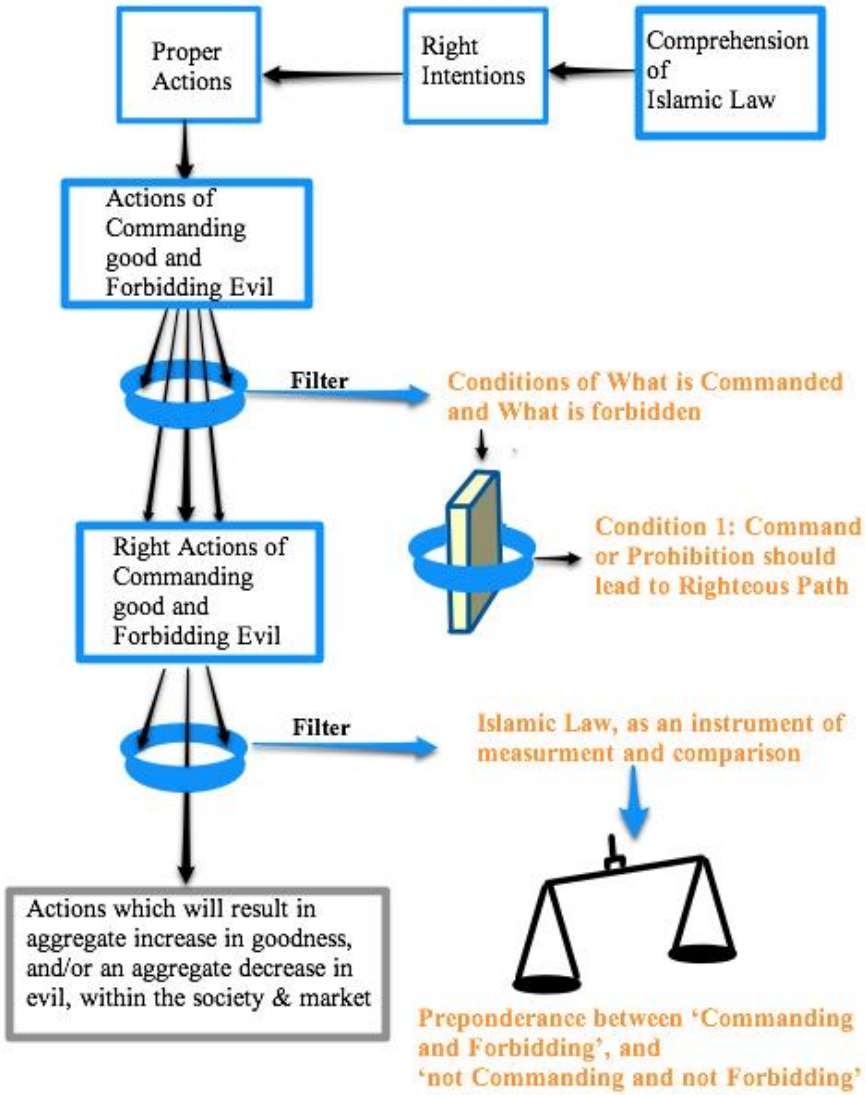
was interpreted within the political domain, as a consecrated responsibility of state to focus on maintaining and preserving the Muslim community by administering to communal needs. The manner of this interpretation was based on the understanding, that any universal public need would restrict the Muslim community in performing *ibadah;* therefore based on the concept of Muslim brotherhood, all Muslims should be expected to willingly or unwillingly surrender any of their individual rights, in favour of prevailing the public need, and, hence, preserving the public right or divine right. Ibn-Taymiya (1992:54) also concluded this, that "when there is a universal public need for something, the right in it belongs to God", which further elevated the status of this reasoning.

This line of reasoning allows Ibn-Taymiya (1992:29-45) to define and contextualise 'the righteous path' by prioritising the importance of divine right and universal needs of Muslim community along with providing a framework for legitimising the fixing of prices, setting of price ceilings, forcing of owners to sell a product and so on. The scope of *hisbah* in this case is, therefore, not restricted by any means, as it can violate most, if not all of individual rights, for the sake of greater public good or fulfilment of divine rights. Once Ibn-Taymiya (1992) establishes the unrestricted scope of *hisbah*, he then goes further to discuss the means and ways in which this unlimited potential in commanding good and forbidding evil, will or can operate. The framework provided by Ibn-Taymiya does not addresses the problem of undefined jurisdiction, which was highlighted earlier. In contrast, Ibn-Taymiya reaffirms the unlimited scope of *hisbah* to regulate the market and society. This could be because of the understanding of the governance prevailing at the time.

In regards to operations of *hisbah*, Ibn-Taymiya (1992:86) starts by claiming that the knowledge of Islamic law is a very essential requirement for an understanding of what is correct and what is not, and he further suggests that with this knowledge the right intentions are shaped, which then translate into proper actions. Ibn-Taymiya (1992:86) uses this line of reasoning in furstenspiegel style, to define the scope of *hisbah*, as he argues that the actions of commanding good and forbidding evil, should also originate from similar procedure, otherwise they will be improper actions. Ibn-Taymiya (1992:87), then, further develops this by introducing a filter, as he argues that actions based on intentions, which are shaped by comprehensive understanding of

Islamic law, can produce proper actions, but these proper actions needs to be filtered by the "conditions of what is commanded and what is forbidden", and the most significant condition is that the subscribing of good or forbidding of evil, should lead the subject of these commands towards the righteous path (sirat-e-mustaqeem). This is demonstrated in Figure 3.1, which explains Ibn-Taymiya's ideas on step-by-step implementation of 'commanding good and forbidding wrong'. The righteous path is the path, in which the divine rights are fulfilled, especially the ones that accomplish any universal public need.

Figure 3.1: Ibn-Taymiya's 'Commanding Good and Forbidding Wrong'



Ibn-Taymiya (1992:76-78) uses this mechanism to restrict and regulate the scope of *hisbah* in society and market, especially as he allows the vigilantism, along with institutionalisation of functions of *hisbah*. He further cites Prophetic traditions which discourage any rebellious act against the rulers and uses it to create immunity for rulers from being subjected to commanding of good and forbidding of evil (Ibn-Taymiya, 1992:79-80). Similar to al-Mawardi, Ibn-Taymiya (1992) also recognises the communal nature of this duty; however he focuses on utilising the existing powers and authorities within the society for fulfilment of this duty by arguing that the

collective responsibility of fulfilment of this duty lies with the able individuals, who are considered as the individual which possesses power and authority to perform such duty (Ibn-Taymiya, 1992:23). In following this line of reasoning, Ibn-Taymiya approves the legitimacy of all pre-existing authoritative and powerful individuals within the society, while also overlooking the possibility of creating a new legitimate civil power, which may educe the public opinion in the operations or administration of *hisbah* or other state institutions, especially, because, Ibn-Taymiya in his theory of *hisbah* puts great emphasis on the line of reasoning by which institution of *hisbah* extracts its legitimacy and exercises its powers from the divinely subscribed responsibility of 'commanding good and forbidding evil' to Muslim community.

Moreover, Ibn-Taymiya further expands his mechanism of regulating the scope of *hisbah*, to enforce the importance of analysing the 'commanding of good or forbidding of evil' with the consequences and outcomes of doing so, and if the results will increase or decrease the aggregate goodness or aggregate evil. In case, there is a decrease in overall goodness and/or increase in overall evil, then Ibn-Taymiya (1992:80) advises against the commanding of such good and/or forbidding of such evil, as he suggests that: "if the right is preponderant it should be commanded, even if it entails a lesser wrong. But a wrong should not be forbidden if to do so entails the loss of a greater right. Indeed, such prohibition comes into the category of obstructing the way of God."

In Ibn-Taymiya's theory, Islamic law is not the instrument for measuring and comparing the preponderance between 'commanding and forbidding', and 'not commanding and not forbidding', and it is instead a criterion of what is good and what is not. Considering the focus of Islamic law on 'public good', it may be argued that there is a utilitarian dimension within Ibn-Taymiya's theory. Ibn-Taymiya (1992:80) while placing Islamic law as a criterion puts strong emphasis on the importance of conducting an assessment by direct use of primary sources, instead of analogical deduction or personal judgements.

3.2.3 Good and Modes of Subscribing Good

When it comes to modes of subscribing good, Ibn-Taymiya follows the consequential moral reasoning, as he suggests that value of good in 'subscribing of good' and/or

'prohibiting of wrong', is based on the consequence of such subscriptions or prohibitions, and under certain circumstances subscribing of good and/or prohibiting of wrong can have negative value of goodness and therefore it ought not to classify as good and instead it should be considered as an evil or wrong act.

Al-Ghazzali provides an alternative to Ibn-Taymiya's consequential moral reasoning, as Al-Ghazzali uses his hierarchy of maqasid al-Shari'ah for this purpose; however, Ibn-Taymiya counteracts this by suggesting the need for an evaluation of the consequences of commanding good and/or forbidding wrong, while also acknowledging that there would be situations where right and wrong will be mutually inextricable (Ibn-Taymiya, 1992:80). In this, Ibn-Taymiya's (1992:83) line of reasoning inclines towards the moral doctrine of utilitarianism, as he suggests that the basic principle of his doctrine is "man's love of what is proper and hatred of what is improper … correspond to God's love, hatred … as expressed in the Scared Law".

It could be argued that the major difference in moral doctrine of utilitarianism and in Ibn-Taymiya's theory is that the good or the happiness is viewed from the perspective of Islamic law, while pain and pleasure are only considered as instruments for measuring and comparing the preponderance between 'commanding and forbidding', and 'not commanding and not forbidding'. In other words, Islamic law decides what is right and what is wrong, while the concept of pain and pleasure decides that if that good should be commanded or not, and if that wrong should be forbade. This implicitly states that pain and pleasure can out rule the good decreed by Islamic law. Ibn-Taymiya also argues for the consensus of the Muslim community as a criterion for deciding what is ultimately good despite the fact he located the legitimacy of *hisbah* in Islamic theology.

This is contrary to orthodox theological position of taking 'good' and 'evil' in the context of pain and pleasure, and the defining pain and pleasure in conjunction with pain and pleasure in this world summed with pain and pleasure of hereafter. The abstraction of divine concept of justice and the criteria based on duties for salvation in hereafter as specified in primary sources of Islam, is used to evaluate the value of pain and pleasure of hereafter. Importantly, the sum of pain and pleasure of this world and of hereafter can produce different results, as compared to only focusing on the pain and pleasure of this world.

Similar to Mill's greatest happiness principle and Bentham's pleasure principle, Ibn-Taymiya (1988:102) phrases it as the universal public need, as he makes it a criterion for good or right. Moreover as Bentham (1988:99-102) suggests pleasure to be the only good and pain to be the only evil, then concludes that: "there is no such thing as any sort of motive that is in itself a bad one". On the other hand, Ibn-Taymiya (1988:38) carries forward the understanding of earlier scholars that the happiness of humankind is in the adherence to Islamic creed, and public welfare is the very key ingredient in this adherence, which is the very responsibility of the state. It should be noted that in this argument that the Islamic discourse on happiness mostly stems from al-Farabi, who argued that: "The truth about divine things and about the highest principles of the world, be conducive to virtuous actions, and form part of the equipment necessary for the attainment of ultimate happiness." (Mahdi, 1987:207). However, the jurists understood Islamic law as a criterion, which could distinguish and define the virtuous actions, providing the necessary equipment for attaining happiness.

Ibn-Taymiya understands public welfare in context of fulfilling of universal public need and includes it in the list of divine rights. In substantiating, he argues that any action performed with a motive of 'commanding good or forbidding evil', may not necessarily increase good and/or decrease evil, and with this argument Ibn-Taymiya establishes the neutral nature of motive in 'commanding of good and forbidding of evil'. The important distinction here is as follow: the theological position supported by majority of Muslim jurists, is that the motive is in itself good and bad, and if the good motive causes 'good' the goodness is increased, while if a good motive causes 'wrong', the value of good in 'motive' does not become nil or negative; Ibn-Taymiya's theory, on the other hand, propagates that within the context of 'commanding good and forbidding evil', the motives might not have the inherited goodness in them and if the consequences are not good, the motive and/or action might not carry any good. Similarly, Bentham (1988:102) argues on the neutral nature of motives, as they can cause any sort of actions and consequences, by explaining that: "If they [motives] are good or bad, it is only on account of their effects: good on account of their tendency to produce pleasure, or avert pain: bad, on account of their tendency to produce pain, or avert pleasure."

It could also be argued that underline reasoning of Ibn-Taymiya's position is based on al-Farabi's argument, that: "Happiness cannot be achieved without… the achievement of perfection … The distinction between noble and base activities is thus guided by the distinction between what is useful for, and what obstructs, perfection and happiness." (Mahdi, 1987:209). The noble activities are the good activities, while base activities are the wrong or evil ones. The good activities thus are useful for acquitting perfection, which results in ultimate happiness. Bentham's line of reasoning is similar, but more detailed and comprehensive: the perfection leading to happiness is the ultimate pleasure and whatever constraints from achieving the ultimate pleasure constitute as pain. This line of reasoning does not leave much allowance for development of independent moral principles of equality or rights, which is similar to the case of Bentham's theory, as Conklin's (1979:68) analysis suggest that: "the greatest happiness of the greatest number left little room for either liberty or equality as independent moral considerations". It could be further suggested that this may be the reason for Ibn-Taymiya does not discuss, develop or strengthen the principle of equality, universal human rights or universal rights for Muslims, and even socio-politico rights, despite the scriptural support on the foundations of these principles.

For Bentham the moral justification for legislating any conduct a crime is the greatest happiness for the greatest number (Conklin, 1979:67). However, for Ibn-Taymiya (1992:54) the moral justification for commanding any action or forbidding any is the universal public need. The practical problem with classifying good in this manner is that unlike the Bentham's theory, where majority decides as what will constitute as the 'greatest happiness', in Ibn-Taymiya's theory, Islamic law is the criteria which decides on what would constitute as public need, which in practical terms would mean the jurists, juriconsults or theologians would decide on the public need and distinguishing between pain and pleasure, consequently giving a judgement on if a good is to be subscribed and a wrong should be prohibited, while simultaneously defining right and wrong through Islamic law. This dimension provides immense powers to the state departments, such as institution of *hisbah.*

Qudama's theory of state (taken from Heck, 2000:227), theorises the transformation of this power to political class or rulers, in which the political class, unelected rulers,

muhtasib, jurists, juriconsults or theologians are agents of their self interest, and in the absence of any moral consideration to liberties and rights in Islamic law or in Islamic philosophy, there is a deficiency of any counteractive power to neutralise the possibility and to act as a protective measure. The absence of any moral consideration to liberties and rights also means that challenging any decision of rulers, *muhtasib*, jurists, juriconsults or theologians in a court of law would be a labyrinth task. Even without the decree on liberties and rights or the issue of self-interest, the establishment of public needs through the Islamic law may not be very practical, as the focus of Islamic law is towards the scriptures rather then towards the condition of society (taken from Heck, 2000:227).

Moreover, Ibn-Taymiya places the public need in the set of divine rights, and where *ibada* is the only well developed element. From perspective of Islamic state or institution of *hisbah*, the greatest public need would, therefore, manifest as *ibadah*, and in an attempt to establish or maintain compliance and correspondence of public life in society and in market, the Islamic law uses sanctions on approved and disapproved social and economic activities. This allows the state or institution of *hisbah* to infiltrate the social or economic life through regulations and laws. The ideological approach of this dimension signifies a move from authoritarianism towards totalitarianism, and annihilation of freewill. The use of consequential moral reasoning in Ibn-Taymiya's theory, also can be used as a justification by rulers to violate any or all individual rights, in the name of public good or public need. Ibn-Taymiya (1992:29-45) himself uses it in his discourse to justify the pricing of goods and services, along with justifying the unconsented forceful selling of goods and monetarily compensated removal of private property from ownership of private individual on the grounds of greater public need. It could be suggested that Ibn-Taymiya introduced the assessment of consequences as a countermeasure to prevent a totalitarian approach, but as to the method of predicting a consequence of an action produces further problems.

The prediction is specially an issue from theological as well as practical point of view. While, there is a philosophical foundations in Qur'an[12] for building a case for

[12] "Those who respond to their Lord and keep up prayer, and their rule is to take counsel among themselves" (Qur'an. 42:38).

democratic form of government, however, there is no Qur'anic account (similar to Qur'anic warnings on polytheism and divine response to it) on any approach to governance and the divine response to it. Without such kind of scriptural support, it is not possible to construct a theologically acceptable model, which could then be used to predict the transcendental consequences of State laws or *hisbah*'s actions or regulations. Furthermore, the absence of discourse, which addresses questions like: 'what is good?', 'how to measure its benefits?' and 'how to access regulations and policies in relation to the kind of consequences they may result in?' does not help the case for Ibn-Taymiya's theory.

Al-Ghazzali, on the other hand, on these issues is somewhat close to Kant, as Johnson (2012) argues that Kant claims: "what makes a good person good is his possession of a will that is in a certain way 'determined' by, or makes its decisions on the basis of, the moral law". Hence, Al-Ghazzali's (1982b: 237) discourse on *hisbah* is built around similar assumption, that is: Kant's good will or as al-Ghazzali calls it the 'heart of a believer', acts as a criterion to distinguish between what is good and right, and what is evil and wrong. Al-Ghazzali similar to Kant, discusses the process of working of this criterion and the attributes required for it, which in al-Ghazzali's case are the God consciousness and wisdom of Islam. Al-Ghazzali (1982b:109-111) extracts the attributes, which could lead to good conduct from the description on people of heaven in the primary sources of Islam. He uses the theological methodology of reward and punishment in hereafter to stress on the importance of having these attributes, which would lead to good conduct (Al-Ghazzali, 1982b: 110). The discourse overall follows a micro perspective and addresses the individuals in the society rather then institution or state. Al-Ghazzali (1982b: 231), for example, uses the notion of inequality in arguing that humans are unequal in the eyes of divine, so the ones who are better should enjoining good and forbidding evil, to the ones who are worst. He, then, focuses on the reactionary wrath of God, when this duty is not fulfilled, for which he cites many examples from the scriptures to support the priority of this duty (Al-Ghazzali, 1982b: 231). Interestingly, al-Ghazzali only mentions the divine wrath with forbidding of evil and does not mention the enjoining of good in those sentences. Al-Ghazzali (1982b: 231) makes one important distinction, as he

hints on a very strong linkage between the concept of justice in Islam and the duty of subscribing good and forbidding wrong.

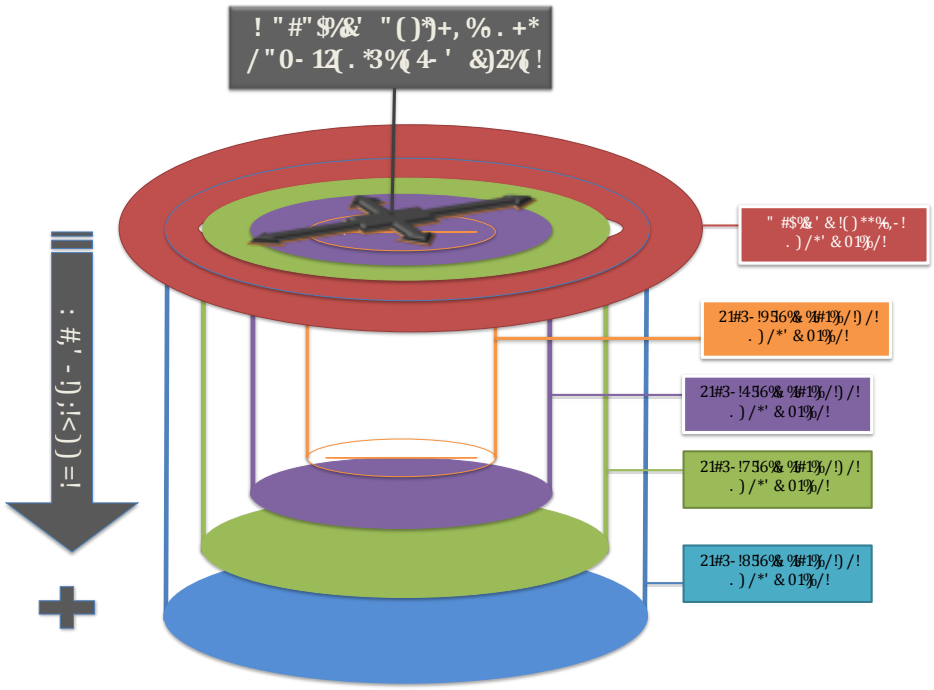
The majority of al-Ghazzali's work on this topic concentrates on defining, recognising, forbidding and handling of evil, which is consistent with the overall approach of discourse in the genre. In context of 'good', al-Ghazzali resorts to defining what can add to the value of goodness rather then defining what may constitute as 'good'.

Al-Ghazzali links the value of goodness with development, which in his views is restriction on consumption of goods and services. The more this asceticism is expanded; the more one develops, with which the value of 'good' also increases. Al-Ghazzali suggests that every prohibited thing is bad, while all the things allowed in *Shari'ah* has some value of goodness in them. It should be noted the value of goodness varies among the things allowed in Islamic law, which according to al-Ghazzali (1982b: 81) categorically fall in four classes as defined in Figure 3.2. He further argues that each class acts as a stage of development and by confining oneself from consumption of things in one class, one can progress onto the next class (al-Ghazzali, 1982b:81-82). This asceticism originates from goodwill (or heart of person), while simultaneously increasing the aggregate goodness in and for that person.

Figure 3.2, refers to the fours classes as stages as defined by al-Ghazalli. In al-Ghazzali's (1982b:81) views development starts from the first stage, which comes with the lowest form of piety and value of goodness. In this stage the individual restricts himself or herself from the consumption of goods and services that are unlawful in *Shari'ah.* The second stage is to restrict oneself from doubtful thing, which are classified by *fiqh* as lawful, while in the third stage, one has to restrict himself/herself from consumption of goods and services, which are free from doubt but their consumption can result in something, which is unlawful or doubtful. The fourth stage is the final stage of development and has mystical significance (Al-Ghazzali, 1982b:81). In this stage, an individual abstains from lawful things, as an act complete devotion to God and in a hope to attain the pleasure of God by going beyond the legal form into piety. Al-Ghazzali (1982b:81) refers to one, which attain this stage as *siddiq* (Person of great truth). Al-Ghazzali views the categorically abstaining from

consumption of good and services as mean to develop and with this development a person can increase the value of goodness. The value of goodness in the person allows him or her to distinguish between the right and wrong.

Figure 3.2: Al-Ghazzali's Four Classes



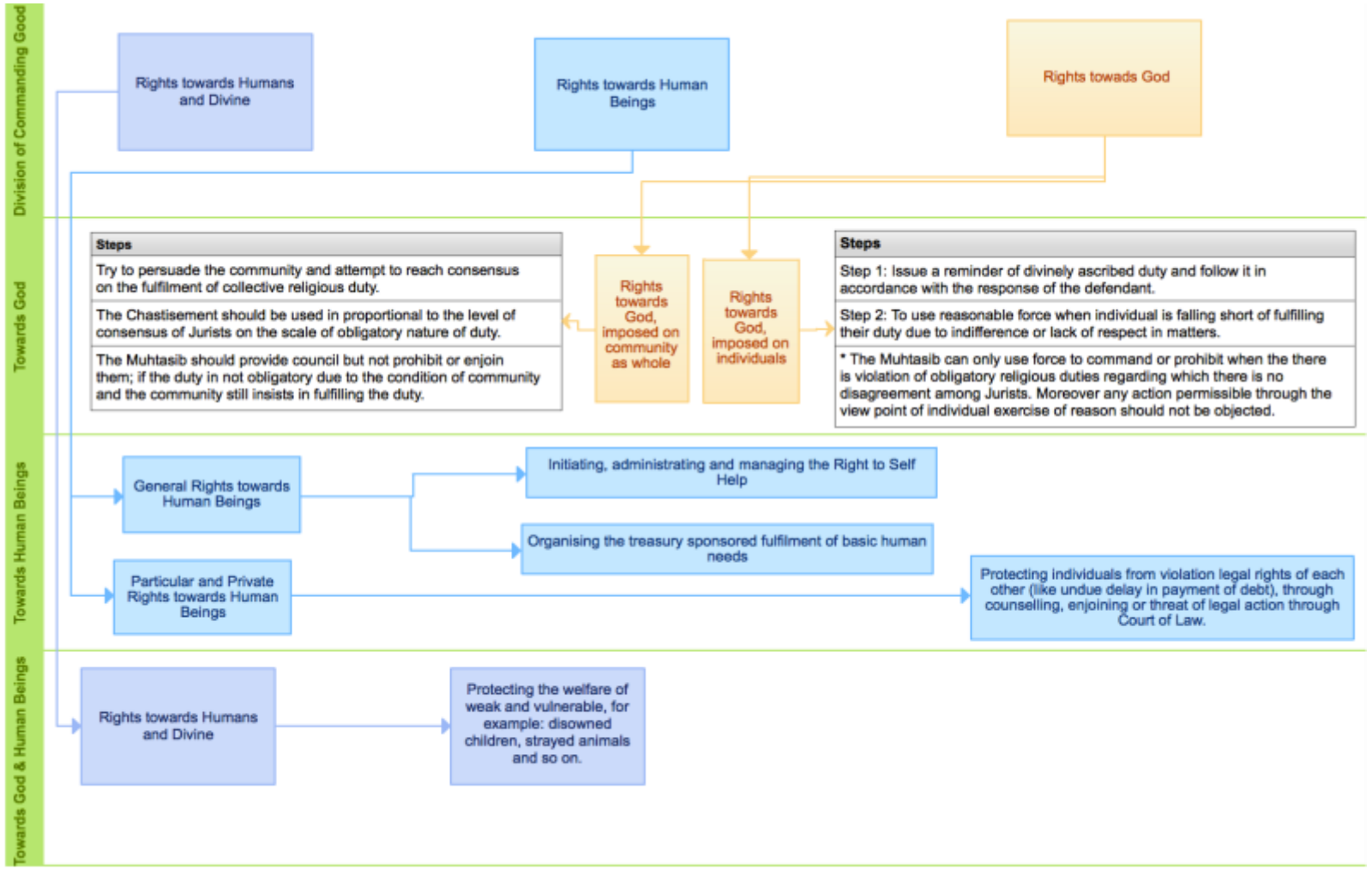
Al-Ghazzali suggests that ultimate happiness (*sa'ada*) is through complete devotion to God and to develop towards that devotion, one must reduce the consumption and with this asceticism, the value of goodness would increase as well. It could be suggested that al-Ghazzali views goodness and ultimate happiness (*sa'ada*) as a consequence of same action. Al-Ghazzali's line of reasoning could further suggest that the 'good', 'lawful' and 'undoubtedly lawful' are categorically different. Moreover, if the value of goodness increases by giving up something 'lawful' or something even 'undoubtedly lawful', that would suggest that 'lawful' and 'undoubtedly lawful' may have some intrinsic value of 'wrong' in them and by giving up their consumption, one is actually reducing the aggregate 'wrong' within themselves, which may add some form of 'good', and ultimately resulting in an overall increase in value of goodness. This would imply that the criteria for good is not determined by *fiqh* compliance, instead the criteria for good is the act of devotion towards God, and as the devotion

towards God is ‘ultimate happiness’, therefore conclusively ultimate happiness is the criterion to decide what is ‘good’, and what is not. In other words, in the Ghazzalian world, there is no such thing as intrinsic good, and every form of ‘good’ draws its value from the final and ultimate good of devotion towards Allah. Al-Ghazzali (2004:43), therefore, argues that the attainment of this ultimate good is the human perfection, and further suggests that “Human perfection resides in this: that the love of God should conquer a man's heart and possess it wholly, and even if it does not possess it wholly it should predominate in the heart over the love of all other things”. Therefore, it could be suggested that in al-Ghazzalian world, the value of goodness increases as we progress towards the human perfection, and manner of this progress is to move from *fiqhi* restrictions on unlawful to the restriction based on doubt through the use of goodwill defined by asceticism for attaining *falah* or salvation.

Al-Mawardi (1996:263-266) attempts to approach the issue of ‘what is good’, from the viewpoint of rights, duties and obligations. He categorises the rights, as shown in Figure 3.3, into following three categories: ‘good originating from rights of divine’, ‘good emanating from the rights human beings’, and ‘good related to common rights of divine and rights of fellow human beings’. He, then, suggests that good should be understood within the frame of commanding what accomplishes these rights (Al-Mawardi, 1996:263).

Al-Mawardi (1996) understood ‘rights’ similar to other Muslim thinkers, where it is considered as a duty towards others, rather then something inherent to human beings or divine. Al-Mawardi (1996) uses the rights to structure and regulate the execution of commanding of good, while also restricting it.

Figure 3.3: Al-Mawardi's Regulatory Process



As illustrated in Figure 3.3, Al-Mawardi (1996:263) argues that the first and foremost duty or right is to divine. He further classifies it into the 'duty of individual towards God' and 'duty of society towards God'. Al-Mawardi (1996:263) adheres to the philosophies of conservatism, as he describes the 'right of society towards God' as context of maintenance of acceptability and correctness of traditional sociological perspective and orthodox practice of Islam, as societal standpoints. In regards to implementation of this as a policy, al-Mawardi inclines towards a lenient approach. He uses individual reasoning as a counter balance to restrict a micro management of society in religious affairs through commanding of good.

Al-Mawardi (1996) also perceives institution of *hisbah*, as an institution, which preferably works with the community, by helping it reach a consensus, and attempts to fulfil all the rights and duties by means of consensual agreement. Similar to rights of God, in the 'rights towards human beings', al-Mawardi (1996:266) suggests that *hisbah* officials should attempt to persuade the public to exercise their right to self help, and maintain, rejuvenate or improve the public welfare provisions in their locality, especially when the treasury is unable to fund such projects. The combined rights towards God and human beings are on similar line to Article 22 and Article 24 of Universal Declaration of Human Rights as they focus on the economic, social and cultural right along with right to standard of living (Eide, 1998:122). However, unlike Universal Declaration of Human Rights, they are discussed on community basis rather then individual, that is, if something acts as a hindrance to economic, social or religious activity of general public, then it can be classified under the duty towards God and human being. This introduces an element of utilitarianism in the concept of rights. Furthermore, the rights as duties discussed by al-Mawardi do not propagate any freedom from 'want' of basic human necessities. This is because the Universal Declaration of Human Rights, and rights as duties in Islam, do not share similar philosophical foundations, and although in Al-Mawardi's framework of *hisbah*, there is encouragement to the extend of strong emphasis on the duties for public welfare, but treatment of rights as duties prevents them from attaining a status of statutes and becoming legal obligations, hence they can not lead to prosecution in the Court of Law. Although in theory they are used to restrict or regulate the operations of *hisbah*

but in practice they will not act as barriers or restrictions for commanding good and forbidding evil.

Al Mawardi (1996) suggests very narrow framework with limited restrictions on commanding of good to the individuals, under the title of 'duties of individuals toward God'. This is because the textual analysis of Muslim thinkers, jurists and theologians have resulted in the interpretation of the primary text in a manner that individuals are considered as impediment in the accomplishment of duties towards God, and duties towards God and society, while the Muslim community as a whole is considered to be the bearer, sustainer and endorser of 'good' required to accomplish all the duties and rights. In this, Al-Mawardi (1996:64) assigns three kinds of protection that is: every individual should be allowed to pray in the mosque, state should not declare holy war against any individual, and every individual should have their right in the spoils of war. He then places a condition, which would classify individuals to receive the privilege of these protections from the forces of commanding good and forbidding evil, and that condition is "as long as you stick with us" (Al-Mawardi, 1996:64), by keeping the religious believes within boundaries of the consensus and to avert from philosophical or theological innovations (Al-Mawardi, 1996:64). Since Al-Mawardi is a political scientist, his theories mostly have two intrinsic features: creating incentive for people to remain or join the mainstream views of the society, and to emphasis and justify the ruling class's right to govern. Thus, by stating "as long as you stick with us", Al-Mawardi attempts to incorporate both features (Al-Mawardi, 1996:64).

The distrust and scepticism towards the individuals, endorsement of 'good' on the Muslim community, and the condition introduced for entitlement of protection from forces of commanding good and forbidding evil can all be explained in context of the consequence of social events rather then as a consequence of theorising of original position in primary sources of Islam. Al-Mawardi served as *kadi* (judge) for major cities and was entrusted with diplomatic duties many times due to his exceptionally renowned negotiation skills (Al-Mawardi, 1996), He was then entrusted by Abbasid Caliph al-Ḳadir (991-1031) to undertake the task of "restoring Sunnism" (Al-Mawardi, 1996). The condition 'stick with us' on protections from the forces of

commanding good and forbidding evil would be a rational argument to propagate in the context of the intention of caliph and task of Al-Mawardi.

The Abbasids had the scholarly consensus and authority of declaring their version of Islam as orthodox, along with the connotation that it a religious obligation to follow the orthodoxy. Al-Mawardi also upheaved the status of Sunni Muslims, giving them entitlement to a form of religious protection, along with establishing moral grounds for political class to act against the followers of other Islamic doctrines. Any theological development on doctrine of inheriting human rights, any extension of duties towards individual, or even acknowledgment on equableness of 'duties towards individual' for every individual, without any discrimination on which version of Islam they follow, would have been an irrational choice for Al-Mawardi in the face of political and theological turmoil of the time and immediate objectives of Abbasid empire. Therefore, the unorthodoxy was not only indirectly discouraged through the condition of 'stick with us', but Al-Mawardi also separately argued for preventing any new unorthodox groups from emerging by advocating the use of force by the state to prevent unorthodox people to organise themselves in the form of a group and to have any geographical location employed as symbolism of their views (Al-Mawardi, 1996:64). The details on 'what to prevent?' and 'when to prevent?' may be a consequence of internal influence like the historical experience with Mutazilism, Shiaism, Rafidism and others unorthodox groups and sects.

The underline assumption in discriminately nature of 'duties towards individuals' and hostility towards unorthodoxy could be that Abbasids thought any unorthodoxy in religious views will immediately challenge the status quo of their sovereignty and legitimacy of their rule due to non-secular nature of political structure. It is also possible that political position on prevention of unorthodoxy may have originated as a result of external influence from Greek civilisations. The "assumption that the private religious rites … were inextricably connected to aristocratic power" (Kearns, 189) is largely associated with the Greek philosopher Cleisthenes who reformed the Athenian constitution. Aristotle while discussing the methods of establishing the 'extreme' form of democracy suggest that "private religious rites should be reduced to a few public ones; and every means should be used to mix everyone up with each other to

the greatest possible degree and to loosen the bonds of previous associations" (Kearns, 1985:189).

There is a possibility that Al-Mawardi could be applying Aristotle's methodology, especially considering that Abbasids viewed their main priority to be "the integration of peoples of diverse cultural and religious origins into a single Islamically defined framework" (Heck, 2002:15). Aristotle argues for establishment of democracy through this methodology, while Abbasids may be using it as a strategy to develop and maintain an inter-mutual religious identity under a religiously justifiable administrative structure. This position can further be supported with historical account of Al-Mawardi and Caliph Al-Qadir's use of four schools of thought in literature and in politics to restore Sunnism as one identity followed by prevention of Shiites from celebrating their religious rites in 1015 (Tholib, 2002: 257) and Caliph Al-Qadir's recommendation of public disavowal of Mutazilia as an official policy for restoration of Sunnism (Tholib, 2002:259). These steps coincide with Aristotle's suggestion of reducing and filtering the religious rites and establishing few publically accepted rites, which are also officially accepted by the legislature, in addition to abating the previous associations and replacing them with one communal identity, to which everyone can feel a sense of belonging. Therefore, it could be argued that if the forces of 'commanding good and forbidding evil' are to be balanced or restricted using the notion of rights then the rights of individuals can be further developed to form a concrete protection, as within this framework the rights play a vital role on deciding 'what is Good?' and 'what is not?' The underdevelopment of rights, therefore, can adversely influence the process of identifying 'what is Good?' to the extent that wrong can be classified as right or good.

The concept of 'rights' receives much attention in the subscribing good, because of the manner it is used by Islamic thinkers, that is the concept of rights gives a workable framework to differentiate between, 'what is legally allowed to be subscribed?', and 'what is consequentially correct?' to be subscribed. It could be suggested that the Muslim scholars may have implicitly acknowledged the constraints and dangers of using the legal theory as a directive for commanding of good and forbidding of wrong, as they attempted to construct a framework for regulating the one (institution or an individual) who performs the duty of commanding good and forbidding wrong.

However, the discourse on this topic is not rigorous enough to be used for developing a legally binding framework to regulate the forces of commanding good and forbidding evil, and this failure or weakness comes down to the use of inadequately developed human rights. From the standpoint of the notion that the "morality cannot be legislated but behaviour can be regulated" (King cited by King and Washington, 1986:124), the discourse not only fails to build a strong foundations for development of legislative boundaries, which could restrict the behaviour of the one who is 'commanding good and forbidding wrong', but it also falls short of a comprehensive argument and a workable solution on distinction between scenarios where it is legally allowed to 'commanding good and forbidding wrong' and scenarios where it might be legally allowed to 'commanding good and forbidding wrong', but is ethically incorrect to do so. In case of Ibn Taymiya's theory, which concentrates on utilitarian line of reasoning, as a mean for prudent use of 'commanding good and forbidding wrong', the discourse does not address the issue of unelected political class entrusted with utilitarian reasoning and decision making.

In the defence of the discourse, it does manage to indirectly highlight the absence of such concepts and importance of such concepts. Moreover, it could also be argued that it was neither in the interest of jurists, theologians and political scientists, nor a rational choice for them to fully develop such concepts on the face of social constructs faced by them in their era. These meant that institution of *hisbah* throughout its history was lacking a clear philosophical and conceptual framework that could create a balance of power, and provide the required framework for the institution to exercise its powers.

3.2.4 Wrongs And Modes of Preventing Wrong

While, Islamic discourse on governance lacks the conceptual framework on applied ethics, which would have been extremely beneficial for institution of *hisbah*. A framework grounded in applied ethics, would have allowed the institution of *hisbah* to run a philosophical enquiry to identify the morally correct course of action (Brandt, 1959), instead of relying on legal methods for this purpose. This is because the general approach of legal theories is to classify the wrongs vigorously, and postulate whatever is left unlegislated, unrestricted and unclassified as correct and right. The Class-A literature focusing on theological discussion relating to *hisbah* is not an

exemption, and, therefore, provides detailed discourse on wrongs and modes of preventing wrongs.

Al Ghazzali (1982b: 245) suggests that there should be three qualifications for the one who aims to prevent the wrong: 'knowledge of wrong act', 'god consciousness' and 'good conduct'. The 'god consciousness' and 'good conduct' has a furstenspiegel tone, while knowledge is used by al-Ghazzali (1982b: 245) to practically confine and restrict the forces of denouncing wrong, within the boundaries of *Shari'ah,* in regards to the matters of "place, limit and order for prevention of wrongful act". Al-Ghazzali (1982b) demonstrates a clear concern on the communal disuse social misuse or religious overuse of this duty and therefore attempts to regulate it by the Islamic law, especially considering his allowance for the vigilantism in social and religious matters. In modern times, Al-Ghazzali's argument can be considered reasonable as it follows closely with the legal justification on the legitimacy of citizen's arrest. However, Al-Ghazzali's attempt to regulate the forces for prevention of wrong through *Shari'ah,* can be problematic, given the unclear consensus on the legitimate level of infiltration in matters of religious significance and underdeveloped Islamic doctrines on privacy laws and human rights acts.

Al Ghazzali (1982b: 245-248) takes a very linear view of right and wrong, its understanding and the method of distinguishing it, as he argues that *Shari'ah* is the only method of knowing what is wrong, and wrongs are what *Shari'ah* classifies as *haram* (unlawful) *and makruh* (detestable) and the knowledge of wrongs cannot be understood without *shari'a.*

In al-Ghazzali's theory of right and wrong, the purpose of *fiqh* and to some extend the whole of *Shari'ah* is to articulate 'what is wrong?', while 'what is right or good?' has to be understood in the context of human happiness which is in the progression towards the human perfection. In this, the perfection of humans is to attain the complete devotion to God, and the method of attaining such perfection in through asceticism. In the progress towards this goal, one increases the value of goodness within 'self', which causes the goodwill to flourish. This implies that the higher a person is in the stages of development, the more advance version of goodwill they possess. Hence, the development of goodwill enhances the capacity of the person to distinguish between 'what is right' and 'what is not' in varied circumstances. With

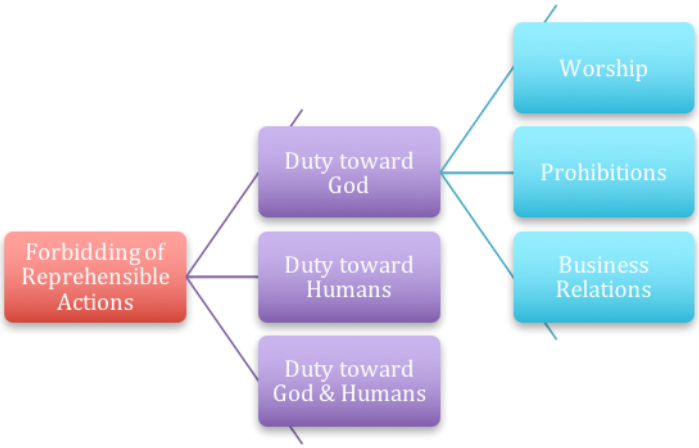
this line of reasoning al-Ghazzali suggests that it is the religious duty of the person with the advance form of goodwill ;to command what is right and forbid what is wrong;.

Ibn-Khaldun (1967a: 463) does not indulge into this discussion, as he suggests that the notion of 'wrongs' in context of institution of *hisbah* should be understood as to what may adversely affect general public welfare. The institution of *hisbah* in this framework would observe the market and the society, in order to identify and correct, whatever is having adverse affects on general public welfare. Ibn-Khaldun's (1967b: 103-107) general public welfare can be understood in the context of injustice, which Ibn-Khaldun (1967b: 107) argues causes destruction to civilisation. Ibn-Khaldun while citing the five *maqasid* (objective) of *Shari'ah* argues that the divine aim is to use the religious law to forbid the injustice that causes "destruction and ruin of civilization … [and may result in] eradication of the (human) species". Therefore wrongs, which institution of *hisbah* should be concerned about, would be the practices in the market and society that may, can or are causing destruction of society, community or civilisation. This line of reasoning could be further developed to suggest that the extend of *hisbah*'s intervention in the market or society should only be limited to the cases, which may, can or are causing destruction of society, community or civilisation.

Al-Mawardi (1996:268) approaches the concept of wrongs for the point of reprehensibility and blameworthiness, which he associates and explores within the framework of duties of individual; similar to the manner he approaches 'good'. Al-Mawardi considers three main categories under forbidding of reprehensible actions, as shown in the Figure 3.4. He suggests that there are three further branches in the first category of 'duties toward God', that is: "what is proper to rites of worship; what relates to prohibition; and… business transactions" (Al- Mawardi, 1996:268). Under rites of worship, al-Mawardi (1996:268-274) calls for the establishment of conventionalism in worship, and he regards the act of establishing this conventionalism as a form of 'forbidding of wrong', while in the second branch he argues for prohibiting "people from dubious situations or blameworthy actions", where al-Mawardi attempts to regulate the use of suspicion by institution of *hisbah*; and under 'business dealings' al-Mawardi argues for forbidding the social or

economic transactions which remain illegal under Islamic law, in spite of consensus of contracting parties.

Figure 3.4: Al-Mawardi's Three Categories under Forbidding of Reprehensible Actions



In the first category of 'duties toward God', al-Mawardi (1996:276) argues for a proactive approach by institution of *hisbah*, as compared to the second category of 'duties toward humans', where al-Mawardi suggests a reactive approach. The second category of 'duties toward humans', and the third category of 'duties toward humans and God', are very similar in al-Mawardi's work, as they mainly argue forbidding of ethically incorrect practices and unjust actions.

Al-Mawardi does not develop any extensive framework for protection from the forces of forbidding wrong and the only limit he purposes is the ones which are explicitly stated in the primary sources, that is the limitation on forbidding of wrong without any substantial grounds for suspicion and limitation on spying with in intention of forbidding wrong actions. The last two categories are also very similar to the *hisbah* manuals, as al-Mawardi discusses different kinds of wrongs, which are unique to different professions along with the discussion on the manner in which different professionals are to be regulated through 'commanding good and forbidding wrong'. In these discussions, al-Mawardi (1996: 277) highlights the three major kind of wrongs in the market, that is through 'negligence of market players', 'dishonesty of market player', and 'through poor quality of good produced by market player'; he then categories market players in context with the kind of wrong they are capable of committing.

On the contrary to al-Mawardi (1996), Ibn-Taymiya (1992) uses an approach similar to utilitarian logic, as he attempts to draw a framework for forbidding of wrong. Similar to other theologians, he views wrong with the sense of what Islamic law classifies as wrong. However, Ibn-Taymiya (1992) argues for the evaluation on the forbidding of wrong in context of pain and pleasure (in Islamic context) that may be caused by forbidding of wrong. Therefore, Ibn-Taymiya's theory argue for Islamic law as a measure of identifying right and wrong, while pain and pleasure as an instrument for measuring and comparing the preponderance between 'commanding and forbidding', and 'not commanding and not forbidding'. His work also implicitly extends this model to suggest that if Islamic law classifies something as wrong, while evaluation through pain and pleasure, suggests against forbidding of that wrong, then Islamic law may have to reconsider its position.

As the discussion so far indicates, Al-Mawardi, Ibn-Taymiya, Ibn-Khaldun and al-Ghazzali similar to most theologians, juriconsults and jurists establish Islamic law as a criterion for distinguishing between right and wrong. However, their method of using these criteria for 'commanding good and forbidding wrong' and framework designed for its application largely differs.

Al-Mawardi's work can also be taken as an attempt to tackle the key philosophical issues, which create operational and practical problems for institution of *hisbah*, as al-Mawardi may have acknowledged the shaky foundations of building an institution on virtuous nature of *hisbah* official. However, intricacy arises in al-Mawardi's work due to the understanding of rights as duties that individuals are obliged to fulfil, and not as fundamental rights, to which human processes inherent entitlement. Therefore, the only advantageous expedient in al-Mawadi's work is the attempt to formulise the function of institution of *hisbah* within the framework of rights. Because of this the framework purposed by al-Mawardi remains largely unpractical and fails to create any substantial boundaries or lay down a practical agenda for efficient use of 'commanding good and forbidding wrong' by institution of *hishab*.

It should be noted that Al-Mawardi's *hisbah* also seems more focused on establishing conventionalism of Islamic rituals and it would take a very reactive role in the market. Moreover, the major emphasis still boils down to the virtuous nature of *hisbah* official, when it comes to systematical use of suspicion in institutional settings.

Overall, al-Mawardi's work can even be classified as mere guidelines to a 'virtuous *hisbah* official', than a comprehensive model for institution of *hisbah*. Al-Ghazzali, one the other hand, does not attempt to reconcile the practical constraints of building an institution of *hisbah* on 'virtue', but attempts to embrace it, as he suggests that virtuous individuals develop within a society through asceticism, and because of this development they possess sophisticated goodwill, which allows them to differentiate between right and wrong, therefore it is the duty of these individuals to guide the society through the practice of 'commanding good and forbidding wrong'.

Al-Ghazzali and Ibn-Taymiya focused on institution of *hisbah* from entirely different angles. While, Al-Ghazzali's work on *hisbah* does not draw on practical issues and envisions a collective utopia, where asceticism will lead to justice and wellbeing by 'commanding of good and forbidding of wrong', however, Ibn-Taymiya concentrated on differentiation between the process of evaluating what is right and what is wrong, and the process of whether this good should be commanded or this wrong should be prohibited. He bases his discussion on dichotomy of pain and pleasure; however, his theory lacks an efficient mechanism on decision making of pain and pleasure, as within Ibn-Taymiya's theory the power of interpreting Islamic law and decision-making on pain and pleasure remains with jurists. This is important because Ibn-Taymiya attempts on creating a mechanism based on pain and pleasure which could act as a counter measure on interpretation of Islamic law, so what is subscribed is not consequentially wrong and what is forbidden is not consequentially good, and with all the power concentrated within the jurist circles and with no attention to public opinions, it is hard to foresee a efficient or effective implementation of 'commanding good and forbidding wrong'.

All together the discursively theological positioned Class-A literature attempts to develop a framework for optimal use of 'commanding good and forbidding wrong', by suggesting different outlines of regulations and restrictions to refrain 'commanding good and forbidding wrong' from causing any harm or injustice, while simultaneously the discourse attempts to divert these forces for achievement of various ends, based on each author's perception on as to 'what should be the ultimate purpose of 'commanding good and forbidding wrong'.

The entire framework suggested in this class heavily reply on the collective utopia 'virtuous *hisbah* official'. This reliance became necessary for the authors of this class, because Islamic thoughts purely reply on the accountability in hereafter and lack any discourse on the systematic induction of public accountability in governance. Roy (1994: 145) while discussing the issue of virtue concludes that:

> The idea of building …[an institution] that would function only through the virtue of the economic actors is an illusion, a sweet one to be sure in terms of collectivist utopias, but for this reason totally non-functional, as various attempts have shown, and, in economics as in politics, when virtue doesn't function, its opposite emerges: the abuse of power, speculation, and corruption, the banes of "Islamized" economic systems.

In concluding, Class A literature of discursive theological debate, as so far discussed, is mainly based on theories on *hisbah*, which are normative in nature. While, al-Mawardi's work on *hisbah* can still be classified in between Class-A, and Class-B literature. Mawardi's work provides practical administrative and regulative guidelines on *hisbah*, as he starts with a theory on *hisbah*, by establishing parameters for 'commanding good and forbidding wrong' and a framework, in which this force can be exercised. He then follows it by practical guidelines for 'commanding good and forbidding wrong', based on possible activities of market-players. The practical guidelines on official of *hisbah* mainly constitute in *hisbah* manuals, which according to categorization of this research fall under Class-B literature.

3.3 PRACTICAL ADMINISTRATIVE AND REGULATIVE GUIDELINES ON *HISBAH*: CLASS B LITERATURE

The work classified here as Class B literature has appeared in various forms, which consists of a mixture of manuals and treatise in *hisbah*. They cover range of issues, from guidelines for *muhtasib* to technical methodology for supervising different market players. Some are of the discourse has judicial characteristics, while other concentrates on administration issues.

The historical sources illustrate that the writing of *hisbah* manual started in late ninth century, which coincides with the time of writing of other professional manuals (Shatzmiller, 1994:83). The initial writings on *hisbah* did not simulate as a manual and rather appear as a collection of fatwas (legal opinions). Shatzmiller (1994:83) argues that the close link between *hisbah* manuals and judicial literature obviated the initial literary development; however, the development and innovation in trade

nourished its amelioration into a literary genre. This amelioration transformed the collections of fatwas on *hisbah* into a manual composed of technical guidelines and protocols for supervising a wide range of market players (Shatzmiller, 1994:83). An evaluation by Levi-Provencal suggests that much literary work conducted in the field of *hisbah* is due to the cardinal role, which *hisbah* played in the city; however, a few of these manual have survived (as cited in Shatzmiller, 1994:83).

It should be noted that most of the manuals, which have survived are post twelfth century and they are significant in number. They attend to large scale of issues and their main point of focus is the consumer and producer relationships and socio-religious effects of socio-economic actions. The desirability and undesirability of the social effects were perceived within the religious context that resulted in the allowance or disapproval of actions, which resulted in these social effects.

Al-Shayzari's 12th century manual 'Nihayat al-Rutba fi Talab al-Hisbah' (*The Utmost Authority in the Pursuit of Hisbah*), due its wide citation by other manuals and its official use by various *muhtasib,* is considered to be one of the major work in this class (Buckley, 1999:v). Because of this importance, it is used as a primary source for many academic studies, such as: Stilt (2012), Shatzmiller (1994), Ghabin (2009), Sabra (2000) and others.

The oldest available manual is considered to be Yahya b. Umar's Ahkamal Suk, which is dated to the middle of ninth century (Cahen *et al.*,, December 18th, 2010). Although it does not mention the word *hisbah*, but it is a collection of fatwas on the matters of market and trade, written as questions and answers along with some legal discussions based on hadith, concerning matters mostly related to city of al-Kayrawan (Shatzmiller, 1994:71).

Chronologically very close to Ahkamal Suk, comes Al-Zaydi's Manual of Hisbah, which not only uses the *hisbah* but is also considered to be the first manual to describe the office of *hisbah* (Shatzmiller, 1994:71). The author of this manual is identified as Al-Nisar al-Hasan al-Utrush (Shatzmiller, 1994:71). The manual was written concerning the social and economic matters of Tabaristan, which had under developed market and trade, which adversely limited the contents and technical details included in the manual, however, the manual does accommodate more trades and market

actors, and is in far more detail, which could be due to Zaydi's approach of interpreting precise and unequivocal meanings of law (Cahen *et al*., December 18th, 2010). From legal perspective, the Zaydi's viewpoint within this manual coincides with the Sunni position in *hisbah* manuals from Middle East and Spain (Shatzmiller, 1994:72). The earliest disquisition on *hisbah*, which can be classified as treatise are recorded to be from the end of eleventh century and are of Spanish origin, while in east they appear at the end of twelfth century (Cahen *et al*.,December 18th, 2010).

The post eleventh century literature has various geographical orientation: from West the literature on *hisbah* originated from Al-Andalusia, while from the East it comes from Middle East, North Africa and Indian subcontinent. The wide spread establishment of institution and the manuals used in different geographical location had same epistemology.

3.3.1 Epistemology of *Hisbah* Manuals as Expressed in Class B Literature

Class B literature of *hisbah* manuals is based on the construction of Islamic legal theory, and it shares the epistemological foundations with other rulings of *Shari'ah.* While, Islam means total submission, *Shari'ah* can be understood in the sense that it is the way or the manner of submitting.

In classical sense, *Shari'ah* consists of two broad and latitudinous divisions: Islamic natural law (*ibadat*) and Islamic positive law (*muamalat*); where natural law concentrates on vertical relationship between God and humans, and is considered to be self evident truth that communicates an almost perfect expression of God's will. The positive law, on the other hand, is horizontally structured and focuses on relationships between humans, with an acknowledgement on its ever changing nature, although any process of adjustment or reconciliation with the socio economic realities "must be worked out strictly in accordance with the Qur'an, *hadith* and local legal traditions" (Janin and Kahlmeyer, 2007: 29). The Islamic natural law is considered a reflection of God's will, and is therefore not bound to much change, while the disagreement between different schools of law are minor and mostly related to performance of rituals, while, on the other hand, the Islamic positive law needs to change over time, so it can accommodate the changing socio-economic realities (Janin and Kahlmeyer, 2007:29), which can be rationalised through *maqasid al-Shari'ah*.

The question central to Islamic theology and Islamic law from the very first century of Islam was as to what degree we can depend or should allow human rationality to distinguish between right and wrong, and how much room the human rationality should, can and ought to play in the matters of Islamic natural law and Islamic positive law (Hallaq, 2009:15)?

While there was and to some extend still is a difference of opinion among jurists and theologians on the answer to this questions, however, the Sunni school of thought agrees on a position that if we alter the contents of the 'substantive assumption'[13] on which we build an argument, the results will automatically change with it (Hallaq, 2009:15). In other words, different perception regarding an event, which can arise from difference in contents of thinking, will produce different conclusion on the classification of an event as good or bad; while the method of reasoning could be constant no matter which conclusion is drawn. On this basis, they argued that if 'substantive assumption' is regulated and restricted then whoever follows the agreed method of reasoning would draw same conclusion, so there will be uniformity in the outcome. Therefore, by regulating the 'contents' of rational thinking, consistency can be achieved on conclusions, which are drawn. Moreover, when the contents of thinking are restricted to what is "predetermined, transcendental and above and beyond what we can infer through our mental faculties" (Hallaq, 2009:15), then God's will, which reflects in the predetermined and transcendental sources, should also reflect on the conclusion drawn from them. This line of reasoning is based on two assumptions; one is the assumption that the God's will replicates itself in the conclusion, when the contents on which the conclusion is based are transcendental. Hallaq (2009:15) draws on the second assumption and points out that the underlining belief in the above argument is the notion that the human beings are incapable of understanding the 'secrets of world', and human's knowledge lacks the capacity to comprehend the 'secrets of the world', but by using transcendental sources as contents of rational thinking humans can compensate themselves for this lack of capacity and inadequate capability.

The development of structure for regulating the 'contents' of rational thinking in Islamic legal traditions resulted in development of an Islamic theory of law known as

[13] 'Substantive assumption' loosely means, what a player knows and what they believe to be self evidently true.

usul ul fiqh. The Islamic theory of law hieratically organises and methodologically arranges the elements that can be used as contents for the process of rational thinking, in addition to constructing methods for appropriate usage of these elements.

Islamic legal traditions place Qur'an on top of this hierarchy, and all Sunni school of thoughts agree on its importance as unquestionable primary source of law and as a criterion for testing the accuracy of other sources. In classical Sunni schools, the only exception is in Dhaahiree School of Imaam Daawood (815-883 CE), in which the status of Qur'an as an unquestionable primary source of law is restricted to literal interpretation of text, and the text is only to be applied to the specific the circumstance that are termed within the Qur'anic text (Philips, 1990:95).

The subject matter of Qur'an is divided into three groups in Islamic thoughts, the versus that address human conduct are called legal verses; verses with exhortative nature are pronounced ethical verses and considered a subject matter of Islamic ethics (*ilm al-akhlaq*); and verses with theological description relating to Islamic theology (*ilm al-kalaam of aqeedah*) (Philips, 1990:23). Islamic legal traditions focus on legal verses, which make up about 8% of total Qur'anic verses. The contents of the legal verses are then further divided into two groups, that is: 'contents dealing with human-God relationship' and 'contents dealing with human-to-human relationship'.

All major schools of thought consider traditions of Prophet as next primary source of law, but all of them have also introduced different forms of qualifications for its acceptance. Hanafites require the tradition to be commonly known (*mashoor*); Maalikee leave out the Prophetic traditions that contradicts with the consensus of people of Medina (*ijmaa* of the Madeenites); Shafities concentrate on the validity in transmission (*saheeh*), while for Hambalee, any and every tradition that is ascribed to Prophet is acceptable without any question on its validity (Philips, 1990:98).

The third source of law is consensus or *ijma* that constitutes less than a percent of total law, which is "reached on rules that were based on inferential methods of reasoning" (Hallaq, 2009:22). Different schools of thought use *ijma* in slightly different way, as for Maalikee and Hanafites consensus of Prophet's companion and consensus of scholars is a source of law, while Shafities approach it with doubt and

for Zaydee consensus of companions is fourth sources after the sayings of Ali Ibn-Abi-talib (Philips, 1990:80-84).

The remaining sources are *qiyas* or deductive reasoning, *istislah* or public interest and *istihsan* or juristic preference, which, are technically not sources but rather are "set of methods through which the jurist arrives at legal norms" (Hallaq, 2009:22). The method widely used in *qiyas* is analogy deduction, where a new case is matched with an existing case from the first three sources of law, and the two are linked together in identifying a common denominator in them, thereafter the decree issued or agreed for the existing case is implemented on the new case. In other words, jurists construe a premises for a new case from an existing premises of a case referred in primary sources, and the process of inference stands on a common denominator, which is normally the reason connecting the decree and the act.

In some cases, the reason connecting the act and the decree is clearly stated in the sources, while in other cases jurist have to reason and speculate over the categories of premises and the connection between them. The jurists in favour of *qiyas* do not view it as an instrument for creating new laws, but rather a process of extending the already established laws within primary sources. However, the speculative nature of *qiyas* lead some jurists (Mutazilah, the Zahiri, the Shiites and some Hanbalites) to argue that the laws, created or extended as a result of practice of *qiyas*, have caused incoherence in the body of Islamic law, as these laws do not correspond with the *maqasid* or objectives of Islamic law ((Kamali, 2002:181). Therefore, to create coherence in the law, a process of evaluating the connection and premises was introduced, which is called doctrine of suitability (*munasaba*). The doctrine of suitability provides " "relevant" ways of reasoning that serve the public interest (maslaha)" (Hallaq, 2009:25), while public interest is understood in context with the purpose of law and the purpose of law corresponds with the will of lawgiver. This framework of creating coherence in the law rests upon the assumption that the will of the lawgiver is discernible. This is the very assumption that was challenged by Zahirites.

It should be noted that the fundamental aim of Islamic law is to forbid what is wrong and harmful, and to subscribe what is good and beneficial for this life and the next; as Hallaq (2009: 25) argues that "the systematic exclusion of harm and inclusion of

benefit are the fundamental aims of the law". Most Sunni schools agree on an aim and purpose of law and suggest that it is to bring benefit for and to the believers (*maaslih al-ibad*). The doctrine of *maqasid al-Shari'ah* and declaration that God, due to His qualities of goodness and justice is obliged to act for the benefit of His creations, and therefore the purpose of His laws must be to bring benefit to His creations, were developed in response to Mutazila's principle that "the God's decrees are subject to, rather than the origin of, the ideas of good and evil (Gleave, 2012).

Jurist's attempt to classify the benefits that law aims to nurture, resulted in its categorisation into three broadly defined groups, that is: *daruriyyat* or necessity,, *hajiyyat* or supporting needs, and *tahsiniyyat* or embellishments. In this categorisation, the necessity is then further understood as safeguarding of religion, life, intellect, lineage and property; which are the categories of *maqasid al-Shari'ah*. The principles of necessity are considered as elements fundamental to human existence and primary purpose of law, revealed text and 'will' of lawgiver is considered to be promotion and protection of these elements. The goal of principles of necessity sometimes contradicts with the conclusions constructed through *qiyas* and therefore requires the relinquishment of *qiyas* by creating exceptions. These exceptions are created by the inference of *istihsan,* in which the legal reasoning starts from the revealed text but produces resolutions different to *qiyas* that are mostly justified "on the basis of… consensus or on the principle of necessity" (Hallaq, 2009:26).As part of the sources of Islamic law, *istihsan* is similar to the principles of equity in English law, as it justifies departure from positive law. However, unlike equity, which is based on the principle of fairness, *istihsan* stands on the "underlying values and principles of the *Shari'ah"* (Kamali, 2002:217).

The next type of inference is *istislah,* which unlike previous two types, neither initiates from revealed text, nor requires textual support, but instead it is purely constructed on calculation of public benefit. This reasoning rests heavily on the principle of necessity as an object of justification and an important part of this legal reasoning relies on the perception of jurist on what 'ends' can and will promote and preserve the principles of necessity (Hallaq, 2009: 25).

Islamic law takes interest in every human action with an intention of not controlling or regulating the socio economic life but to establish an order based on peace and

harmony with emphasis on principles of necessity and public interest. This approach runs contrary to modern law, as modern law attempts to regulate and shape socio-economic life, while Islamic law concentrates on creating peace and establishing justice within the already established socio-economic dimensions. Islamic law is, therefore, an instrument which allows jurists to construct an order by altering the socio-economic activities through prioritising the human actions and then recommending and making obligatory the ones which fulfil the principles necessity and are in public interest, while restricting disapproving and forbidding the ones which do not. Islamic law, hence, attempts to achieve this by categorically dividing the entire set of actions performed by humans during their entire lifetime into five groups. The first group is of forbidden actions and second is the actions that one is obliged to perform. It should be noted that any violation from the contents of these groups incurs punishment. The remaining three do not entail any punishment and they are recommended, neutral and disapprove. The punishment incurred on performing forbidden actions and/or abnegating obligatory action, is balanced by the rewards. However, rewards are deferred to hereafter, while the punishment is immediate. The categorical classification of actions into five groups is based on linguistic analysis, and although these five groups distinguish between moral to legal actions, the classification is without any "conscious distinctions between the moral and the legal" (Hallaq, 2009:19), and all the acts are considered as moral-legal commandments as they are pronounced as law (*Sharia*). Hallaq (2009:19) further argues that "there are no words in Arabic, the *lingua franca* of the law, for the different notions of moral/legal". Lack of a conscious distinction between the moral and legal has its roots in the primary sources, which "embodies the whole of the Islamic *ethos* …, contains no ethical *theories* in the strict sense" (Fakhry,1991:1).

The concoct nature of law as moral-legal commandments meant that jurists, juriconsults, theologians, linguistic analyst and *muhtasib* conjectured a sense of legally and morally responsibility, and this sense of legally and morally responsibility reflects in the style of guidelines provided to *muhtasib* in the *hisbah* manual. The legal and moral responsibility also associates a level of trust, which Muslim community has to have in the ability of jurists, juriconsults, theologians, linguistic analyst and *muhtasib*. The possibilities of violation of trust is not entirely regulated and the abstract nature of notion of public interest and theoretical structure of

principles of necessity, provides a formation loose enough for construction of reasonable justification for regulations that somewhat makes the regulations, a result of arbitrary decisions of jurists, juriconsults, theologians, linguistic analyst and *muhtasib*.

The evaluation of public interest is not based on any democratic system and classification of what will constitute as public interest, remains in the hands of jurists, juriconsults, theologians, linguistic analyst and *muhtasib*; which makes the whole system remote, closed and circular. It could be argued that this increases the efficiency of the system and makes it easier to construct exceptions to create laws suitable for the purpose.

In context of *hisbah* manuals, the flexibility in derivation of law is required because of epistemological restrictions. When *hisbah* manuals are approached with an assumption that the will of lawgiver can be understood then philosophically *hisbah* manuals should reflect that 'will'. In an attempt to incorporate the divine directives into market regulations, Islamic ministers face the obstacle of limitation of primary text; on the face of ever changing market conditions textual deduction proves to be restrictive. The theories on *hisbah*, hence, were developed very close to the ideas of ideal doctrine and although they attempt to provide a framework for tackling practical problems, they were developed in isolation from the changing market, so they lack practically viable context that is relevant to the market conditions. Consequently, *hisbah* manuals had to be constructed without epistemological clarity and they mainly relied on the rules of *istislah* and *istihsan*, which is a characteristic somewhat consistent with entire corpse of Islamic law, as Sachedina (1999:26) suggests that when it comes to legal decisions in Islamic law: "there is one rule governing all the above, namely the "selection of the better course" (*istislah*) or the "application of juristic discretion" or "seeing fit" (*istihsan*)".

Major reliance on *istislah* and *istihsan* was necessary for the architects of *hisbah* manuals, as they attempted to regulate the factors of production in the market. The socio economic and political factors also influenced the notion of what efficiency is in the market? How it can be achieved?

The theories of *hisbah* with their moral restrictions did not translate into the regulation of *hisbah* manuals, because of their unpractical dimension. This left regulations without any clear moral boundaries or restrictions. The abstract sense of morality in primary sources was still available to the architects of *hisbah* manuals, but in efforts to tame the market and continuous development in the complexity of factors of production left little room for consolidation of moral values. The epistemic characteristic compromised the morality, while making the construction of regulations a reactive, instead of proactive matter. Thus, *hisbah* manuals are a product of innovative practical thinking on the face of uninformed theory.

The epistemic source for justification of regulations was mainly market conditions and the best response deemed necessary to tackle them. This justification also acted as an authority for existence of regulations. Most *hisbah* manuals include the justification with the regulations, which responds to the practice in response to which the regulation was constructed. The regulations in *hisbah* manuals, therefore, are categoised occupation wise, that is: author of the manual gives a heading of the occupation and then discuss the regulation that occupation should adhered to, while sometimes also including the malpractice for which the regulation is designed, along with list of possible derelictions within that line of work. This is historically and anthropologically significant as it helps in developing an understanding on the economic conditions of the time when *hisbah* manuals were written. Shatzmiller (1994:92) draws attention to uneven number of occupations mentioned across range of *hisbah* manuals and points out that some of the authors only included minimal number of occupations in their manuals. This diversity in contents across manual and difference in structure of manuals could be due to evolution in literary genre (Shatzmiller, 1994:92), or it may be, that authors only included those occupations, which they deemed troublesome or more prevalent in their time and space.

As regards to the epistemological attributes of *hisbah* manuals, the facts, description, information and the skills incorporated in the regulations, and the methods of acquiring them, do not address the existence of regulations. The existence can be understood from the perspective of constructivist epistemology, which implies that the regulations were response to historical events and the architects of *hisbah* manual constructed them, in agreement with their mental constructs of ‘what good needs to

established through legislation'. The mental construct of 'good' was a response to their sensory experience of 'wrong in the market and society'; instead of regulations being discovered from the ideological grounds of Islam. This epistemological perspective, however, does not facilitate the examination of regulations or in epistemological terms the 'test of truth', in respect to the accuracy of regulations as being the best response to the market conditions. This is, because it would require an observation of how market responded to these regulations, which is something not sufficiently available in the discourse. The examination of regulations with 'criterion of truth' is essential for understanding and establishing the adequate or inadequate nature of regulations. The adequateness or inadequateness can act as a measure of epistemological relevance of current framework of constructing regulations to efficiently and effectively regulating the market. This research will now attempt to evaluate the epistemological relevance of current framework, in order to suggest modification, adjustment, clarification or refutation to current epistemic model of *hisbah* regulations.

In epistemological philosophy, the test of truth are the rules, which are used to test the accuracy of a statement (Tannenbaum, 2010). Selecting the test of truth for *hisbah* manual is bit of an issue, because of their unique epistemic features and lack of reliable data on the consequence of these regulations. The *hisbah* regulations were designed to achieve certain goals and their construction was heavily influenced by the 'debt of meaning', therefore the test of truth for these regulations has to cover these areas. Therefore, the most appropriate method for checking their reliability would be mean-end analysis, within which we could check whether the regulations focus on goals set institution of *hisbah* by the theorists.

3.3.1.1 Test of truth

Truth is generally considered to be what is in agreement with reality, while falsity is that which disagrees with it. This definition is generally agreed by scholars and academics; however, the understanding on the meaning of 'reality' and 'agreement' varies across different groups. For testing the *hisbah* regulations, the meaning of 'reality' and 'agreement' has to be taken into context of epistemic characteristics of manual and regulations.

For *hisbah* regulations to be classified as 'truth' they have to be coherent with the reality. This reality has many dimensions but loosely it could be narrowed down to three major fronts (order does not signify preference or importance). Firstly is the reality that Islamic law aims to achieve, which is reflected in doctrines like necessity. This part of reality is significant because Islamic law provides epistemic foundations for the relevant regulations. Thereafter, comes the part of reality that is formed by the cognitive superiority of *Qur'an* and *Sunnah*. This part of reality is theologically eminent, as majority of discourse on Islamic thoughts assigns cognitive priority to the commandments of primary sources. The third part of reality is of moral nature and deals with dichotomy of right and wrong, which is predominantly essential as it gives the purpose of existence to *hisbah* manual. Institution of *hisbah* is charged with the responsibility of 'establishing right and denouncing wrong', so the *hisbah* manual's purpose is to act as practical guidelines of 'how' to fulfil this in socio economic life. Therefore, the 'reality' with which *hisbah* manual has to be in agreement with is the 'right' or 'good' as understood by Islam, the commandment directly prescribed in primary sources, and the goals of Islamic law.

The meaning, arrangement and measure of 'agreement' also need to be defined in such a manner that it gives opportunity space for the process by which the regulations can be validated, and the meaning of the 'agreement' remain in context. The 'agreement' cannot be understood in context of the consequence, as the consequence of regulation in the market and society could be driven by other factors, hence the agreement is understood in reference to the subject matter of regulations and issues it is addressing, instead of through consequential reasoning.

In other words, the purposed method for testing the validity of *hisbah* manual is through the verification of subject matter of regulations with the dichotomy of 'right' or 'good', the directly prescribed commandment, and the goals of Islamic law. For example: Nihayat al-Rutba fi Talab al-Hisbah (*The Utmost Authority in the Pursuit of Hisbah*), which is the work of a twelfth century Syrian *muhtasib*, and is written as guidelines on operations of *hisbah*, advices that non-Muslim should wear separate coloured footwear[14] in each foot (Buckley, 1999:39). There is no scriptural support for such a regulations and al-Shayzari, who authored this *hisbah* manual may have

[14] Women should wear two slippers, one of which is white and the other black.

some mental justification for the need to draw distinction between Muslim and non-Muslim within the market and the society; however, without a direct scriptural support and without any link or connection with principle of necessity, the agreement of this regulation is doubtful.

In other words, what *hisbah* manual tries to establish, should technically be 'what good looks like' and it attempts to achieve this by classifying the 'wrong' or 'evil', followed by establishing the 'right' which should replace the 'wrong', along with the 'right' way of establishing the 'right'. The legitimacy of regulations in *hisbah* manuals depends on the existence of 'evil' in their own respective classifications of 'wrong', existence of 'good' in their prescribed ways and in the state of matter that the regulations aim to achieve. In *hisbah* manuals the laws and ethics converge to form the regulations. Moor in his work suggests the subject matter of ethics to be 'goodness' (as cited in Tannenbaum, 2010:257) and therefore the examination of *hisbah* manual will revolve around the presence of goodness within its regulations, the goodness that it aims to establish within the society, through regulations.

3.4 MODELLING THE TEST OF TRUTH FOR *HISBAH* MANUALS: CLASS B LITERATURE

The deconstruction of *hisbah* manual based on the level of 'good' could also improve the understanding of semantic, epistemological, and psychological presuppositions, views and commitments of morals structured within the regulation; elaborate the degree of 'caricaturized subjectivism'[15] within the manual; and the legitimacy of underlying moral and value system of good within the regulations. This process may also allow a better understanding of ontological nature of ethical value concepts and might improve the current comprehension on epistemology of knowledge on ethical values.

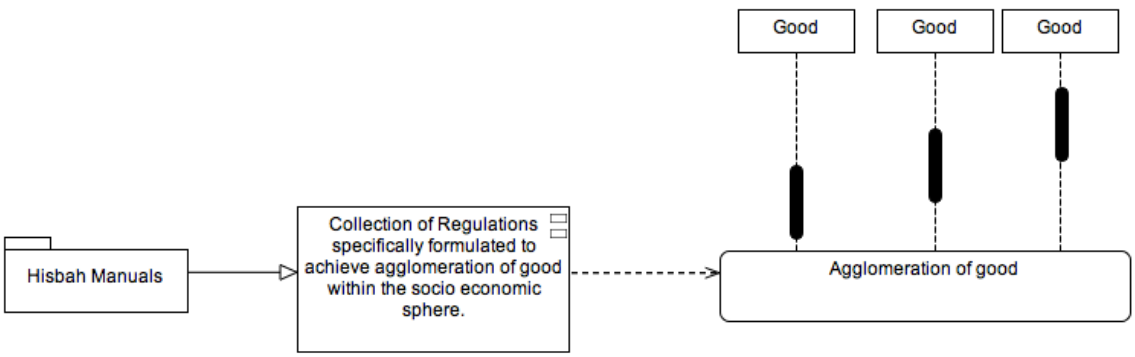
The *hisbah* manual selected for this purpose is *Nihayat al-Rubta fi Talab al-Hisba* (*The Utmost Authority in the Pursuit of Hisba*). Although there is disagreement on the exact authorship of this manual, the author is commonly referred as 'al Shayzari' (Buckley, 1999:12). Al-Shayzari's manual appears to be the first manual from the

[15] A view point in ethics which takes the position, that the moral positions are merely personal preferences.

Islamic east and is dated to eleventh century AD (Buckley, 1999:12). There are number of manuscripts from different time, which indicate the wide acceptance of this manual. Moreover, Buckley has translated an Egyptian manuscript from thirteenth century AD into English, which he argues is the complete version available for this manual (Buckley, 1999: v). The reason for selecting this manual is because it is widely cited by other manuals and used as guide lines by various *muhtasib* and jurists, along with the large extent of literary work conducted on this manual. The major focus of this manual is on describing the state of affairs in society and market, which allows an analysis on the understanding of medieval Islamic jurists on the 'good' and 'evil', within the context of institution of *hisbah*.

Al Shayzair's manual, similar to other *hisbah* treaties and manuals, is a collection of regulations. These regulations are formulated to achieve an agglomeration of 'good' within the socio economic sphere, that is: these collection of regulations are constructed as means to an end and as the end is 'good', therefore the assessment of the means (regulations) is being based on the categorical importance of end (good), which they aim to achieve. The agglomeration of good can be taxonomically separated based on the nature of ethical value concept of good, which the regulations aim to achieve. The Figure 3.5 shows the connection of good and *hisbah* manual; the *hisbah* manuals collect the regulations that have expressed the idea of good within a legal structure.

Figure 3.5: The Agglomeration of Good



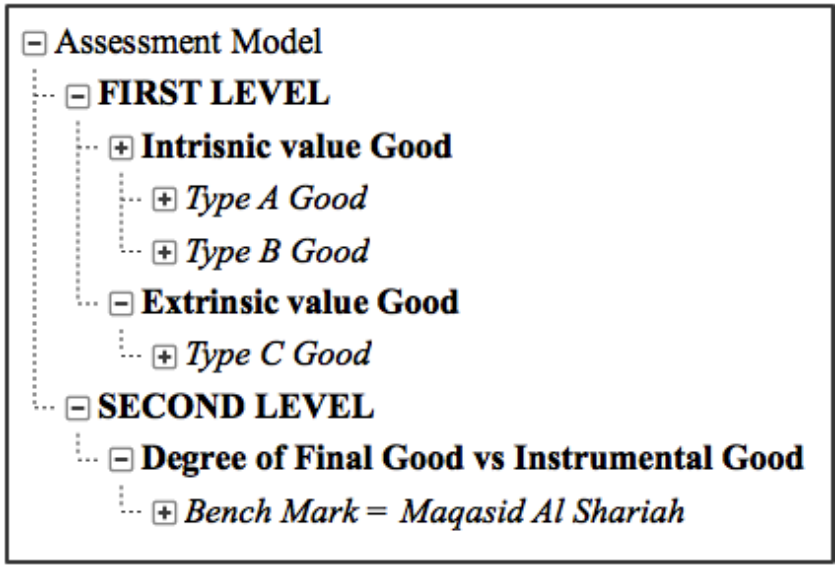
The historical investigation in the distinction of 'good' has resulted in various unique dimensional views, which produced numerous definitions and carved the foundations

of ethical theories. The unique dimensional views were constructed by attributing permutation of 'good'.

In the Islamic theology, there are two distinct views on the ontology of 'good'. In the opinion of Ash'arite, the ontological nature of the ethical value concepts can only generate through the divine revelations. This view takes the position of ethical subjectivism that perceives the 'right' to be the one, which is prescribed and approved by someone. The source of ethical subjectivism could be human, social or theistic; however, within the context of Ash'arite's view it is theistic. The rational argument for this view is that there is no intrinsic quality within 'good', for which it is classified as 'good' and the 'good' is 'right' only because it is approved, subscribed and categorised as 'good or right' within the transcendental sources. The contrasting opinion, which is also held by majority of Islamic theologians is that, the 'good' has an objective meaning and its values exist in the acts or things. Ibn-Taymiya explicitly renounced the Ash'aritian opinion and argued on the theological relevance of 'reason' as a principal rule in distinguishing good and bad, because the good has intrinsic values, which makes it different from bad. Furthermore, Ibn-Taymiya also insisted on the logical conformity of this position within the primary text of Islam (Al-Attar, 2010:13). The two opinions follow similar pattern of reasoning to Euthyphro[16] dilemma, which has been debated by many philosophers and theologians. The model designed for analysing good therefore has two-fold structure: the first part is referred as first layer and second as second layer, as demonstrated in the Figure 3.6. The first layer follows the logical argument of Ash'arites and compares the *hisbah* regulations to what is being prescribed, while the second layer focuses on the importance of ends within the regulation.

[16] Is the pious loved by the god because they are pious, or are they pious because they are loved by the god?

Figure 3.6: Layers of Goodness



3.4.1 First Layer Assessment

Moore (2005:9-22) begins *Principia Ethica* by proposing the hypothesis that 'good' in its self is undefinable and he further suggested that:

> it may be granted that "good" is an adjective. Well, "the good," "that which is good," must therefore be the substantive to which the adjective "good" will apply: it must be the whole of that to which the adjective will apply, and the adjective must always truly apply to it. But if it is that to which the adjective will apply, it must be something different from that adjective itself; and the whole of that something different, whatever it is, will be our definition of the good...[Moreover,] Whenever we judge that a thing is "good as a means," we are making a judgment with regard to its causal relations: we judge both that it will have a particular kind of effect, and that that effect will be good in itself. But to find causal judgments that are universally true is notoriously a matter of extreme difficulty.

Moore (2005:9-23) argues that its not defining the word 'good' by expressing its meaning in another word, that matters, as good is a non-natural property, therefore what really matters is analysing 'good' based on its source of value. The categorisation of good based on the source of goodness results in two categories: 'intrinsic good' and 'extrinsic good'. The quality of intrinsic good suggested by Korsgaard is that, the intrinsically good things posses the value of goodness internally and do not need to derive the value of goodness from an external source, while the extrinsically good things have an external source for value of goodness (as cited in Tannenbaum, 2010:269). This method of categorising good when entailed with the Ash'arite's approach on what is 'good', results in the following definition: the

intrinsic good is what is mentioned or subscribed directly as good within the transcendental sources, namely Qur'an and *hadith*. Due to the direct transcendental prescription, the subscription becomes the 'good' for its own sake and therefore is 'intrinsic good'.

Aristotle while exploring 'good', states that "every action ... aim at some good; and for this reason the good ...[is] that at which all things aim" (Aristotle, 2007:5). The characterisation of good based on the work of Aristotle and Plato gives three types of good: 'the good classified as good for its own sake'; 'the good classified as good for its own sake and for the sake of some other good'; and 'the good classified as good only for the sake of some other good' (Tannenbaum, 2010:258). In contrast to Greek philosophy, the Islamic thoughts distinguishing good with the 'doctrine of divisibility'. The standard form of this doctrine argues that the good can be bisected into two parts, that is: "the obligatory and the supererogatory, with the corollary that it is obligatory to command obligatory right[17], and supererogatory to command supererogatory right" (Cook, 2000:272).

The good directly mentioned within the transcendental sources is of both types, that is obligatory and the supererogatory, therefore the intrinsic good would be the obligatory or the supererogatory good subscribed directly within the transcendental sources. In terms of Aristotle's distinction, the 'intrinsic good' is classified as the good, which is 'good' for its own sake only; and the good that is 'good' for its own sake and for the sake of some other good. The first layer of assessment utilises this distinction as a benchmark for classifying the intrinsic good and extrinsic good. The bench mark definition is: 'the intrinsic good is that 'good' which is classified as 'good' for its own sake; and the 'good' classified as 'good' for its own sake and for the sake of some other good. It should be noted that the 'for the sake' test is based on the direct mention of 'good' within the transcendental source, even though it is obligatory or/and the supererogatory good'. In other words the good commanded or subscribed directly within the transcendental sources in taken as intrinsic good, and the good not directly mentioned in transcendental sources is classified as extrinsic good. The word 'direct' mentioned above indicates the restriction on the law derived using tools such as analogical deduction, from being intrinsic good, as such kind of

[17] The word 'right' is used by cook as a translation of Arabic word *Ma'ruf* .

law derives its value of goodness from the external source and is extrinsic good. Moreover, the first layer assessment only separates the intrinsic good from extrinsic good and do not attempt to further deconstruct the intrinsic good into its categories.

In theological terms the above benchmark for first layer assessment could be explained with the example of *sawm* (fasting). Observing *sawm* during the month of *Ramadan*[18] is an obligatory[19] act, as it satisfies one of the minimum standards required to be a Muslim, while *sawm* recommended outside *Ramadan* within hadiths is tool for development. Due to explicit mention of these types of *sawm* in transcendental sources, both will be considered as intrinsic[20] good. However, when *sawm* is observed outside the obligatory requirements and supererogatory recommendations, it loses its inherit value and becomes extrinsic good as it is no longer the exact practice of something directly mentioned in transcendental sources. In which case, in order to remain good it has to draw it's goodness from other sources of good, which could be piousness or achieving the *ridwan Allah* (pleasure of Allah). In conditions, where the connection with source is intermittently incoherent, the extrinsic good loses its goodness and therefore can no longer remain in this category. For instance, the extensive observance of voluntary *sawm* is such a case and is therefore forbidden in Islam through *hadith* (Al-Sijistani, 1984:666). The rationale for forbidding extensive observance of voluntary *sawm* could be due to its possible adverse effects on health; however, it is not the rationale, which relevant to the categorisation of good, but its the mechanism in which the voluntary *sawm* loses its goodness. In this example of *sawm*, the obligatory fasting and transcendentally recommended supererogatory fasting is suggested to be intrinsic good, while the voluntary fasting outside the transcendental recommendations becomes the extrinsic good, and when a 'condition' that is extensive observance is added, the voluntary fast outside the transcendental recommendations becomes forbidden, as the condition dissolves the connection of extrinsic good with its source of goodness.

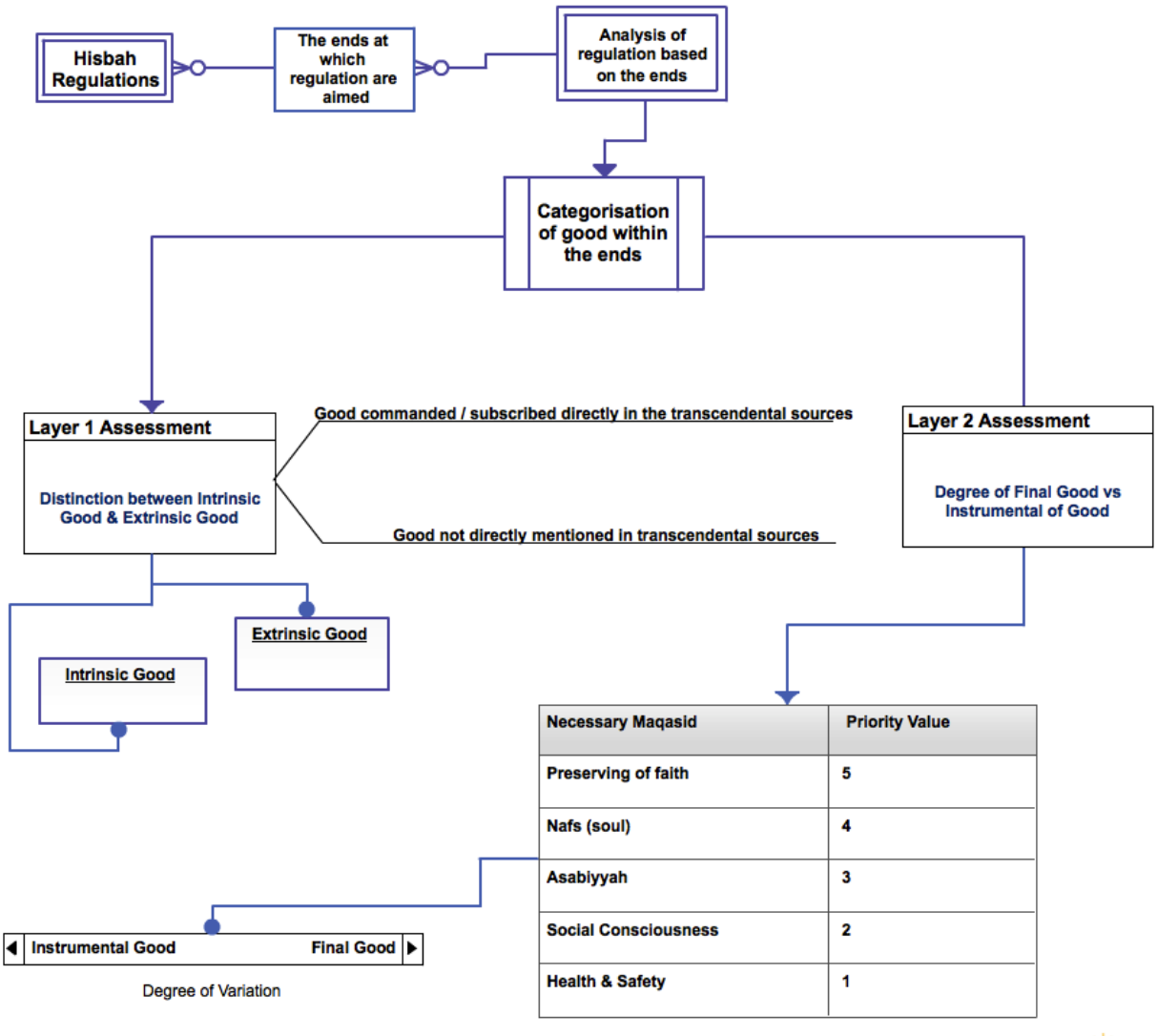
The relevance and importance of 'condition' as a criterion for good is a very vital factor, as Korsgaard (as cited by Tannenbaum, 2010:283) demonstrates in her

[18] Ninth month in Islamic calendar.
[19] During the month of *Ramadan.*
[20] If the good is viewed from the perspective of this world than the obligatory act can be suggested as extrinsic good as they draw their values from hereafter, however to set the bench mark for categorizing good, the good is considered under/with Ash'arite's view of good.

research on Aristotle and Kant's categorisation of good. She further argues on distinction of good based on the contextual dependency of good, because not all intrinsic good is unconditional good as the unconditional good is defined as "good under any and all conditions... no matter what the context" (Korsgaard as cited in Tannenbaum, 2010:283). The conditional good, on the other hand, is taken as the good whose value of good is dependent on the context and condition, that is in under some conditions the conditional good loses it's goodness value. In theological discourse, there are many example of this, for instance, cutting off the hands of thieves is explicitly prescribed in Qur'an (5:38), and, therefore, according to the above categorisation, it would come under intrinsic good. However, it was stopped by the Caliph Omar Ibn al-Khattab as in spite of being an intrinsic good, it is not unconditional good. The conditional and unconditional goods do not depend on the source of the good but circumstances, which can affect their value goodness. Tannenbaum (2010) base her argument on Korsgaard's work, and suggests that the conditional good is a form of a process as it "depends for its value on the value of its results or product", while the unconditional good is as an activity and is pure like 'justice' (Korsgaard cited in Tannenbaum, 2010:283). The unconditional good and conditional good is very subjective matter, and there is no bench mark available for identifying it, therefore, the first layer assessment only attempts to filter the intrinsic good from extrinsic good. Moreover, the extrinsic good is mostly clearly marked within the manual along with the conditions it needs to retain its goodness. For example, a regulation regarding bakers, in the manual advises *muhtasib* (*hisbah* official) to "stipulate that each shop must bake a certain amount of bread ... so that the town will not be disturbed through lack of it" (al-Shayzari, 1999:48). To assess the nature of goodness within this regulation, first it is established that the right to stipulating the production function of market players is not directly established in the transcendental sources, which signifies the extrinsic nature of this regulation. Moreover, the regulation mentions a condition when stipulating the production function of bakers will have a value of goodness; which is when there is a high probability for production of bread to be under the aggregate demand, as this will adversely affect the price and wellbeing of population. In the absence of such insecurity the act of stipulation would not have any goodness in it and therefore it reaffirms its extrinsic nature.

As can be seen in Figure 3.7, the first layer assessment filters the regulations into two parts that is: the regulations having intrinsic good and the regulations having extrinsic good. The process of filter is conducted on the above-defined criteria and benchmarks as described in figure 3.7. Thereafter, a ratio of the two is calculated and percentage out of total number of regulations is calculated. This process will not only allow the development of a better understanding on the ratio between intrinsic good and extrinsic good, it will also provide insight into the make up of manual in reference to scriptures.

Figure 3.7: The Process of Deconstruction



3.4.2 Second Layer Assessment

The Aristotelian views, along with other Greek schools of philosophy like Platonism, Neoplatonism, Stoicism and others had a profound affect on early Muslim thinkers, which lead to new kind of literature on ethics with a unique synthesis, in which multiple schools of philosophy were integrated together and an attempts were made to make them compatible with Islam. Miskawayh (1968: 69) in his work *Tahdhib al-Akhlaq* made a similar kind of attempt with Aristotle's characterisation of good, while supporting the views on good held by earlier philosophers, he asserts that "The good ... is that towards which all things aim ... and anything which is useful towards the end may [also] be called *a good"* (emphasis is original).

Aristotle categorises such a good as final good and describes it as greatest humanly achievable good, which 'we wish for', 'chosen', 'valued' and 'pursued'. (Tannenbaum, 2010:257-61). Miskawayh (1968:71) further interprets this and explains that:

> Some good ... are like ends, other like matter, and still others like tools... In substance - I mean what is not accident - God (exalted and blessed is He!) is the First Good, because all things turn towards Him in desire for Him and so as to obtain from such divine goods as immortality, eternity, and completion... Completion is that (end) which, once it is attained, we do not need anything else.

Miskawayh understood Aristotle's final good in the Islamic paradigm as a cause that leads to an 'end', which is an elements of a set of ' infinite divine good'. The set of divine good (*D*) in an uncountable infinite set, whilst the proper subset of it is a finite set of final good (*F*) which can be 'wished for', 'chosen', 'valued' and 'pursued' in this world. In an attempt to open the means, which achieve good ends, Maliki scholars especially al-Qarafi divided the rulings (or regulations in current context) into *wasail* (means) and *maqasid* (ends) (Auda, 2008:241). The second layer assessment similarly is also an attempt to evaluate regulations based on the means and ends, however it is using the 'finite set' of final good, which can be 'wished for', 'chosen', 'valued' and 'pursued', as shown in the equations below:

$$F \subsetneq D$$

while $D = \{...f_1,f_2,f_3...\}$

and $F = \{f_1,f_2,f_3...f_n\}$

The ‘completion’ as described by Miskawayh is the most significant attribute of set *F* and ‘completion’, which *Shari’ah* aims at as *maqasid al-Shari’ah.*

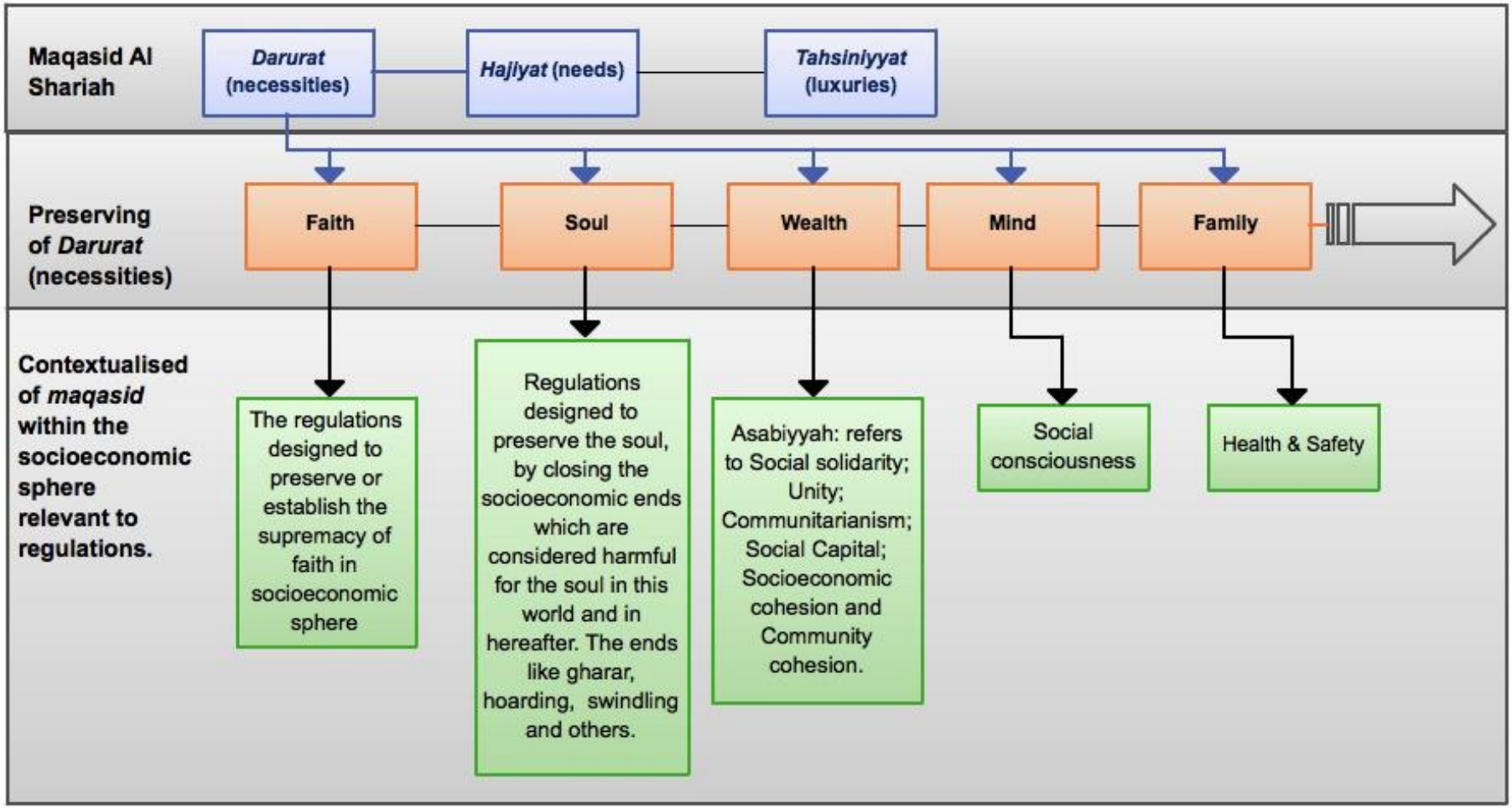
Maqasid al-Shari’ah is the purpose, objectives and aims of Islamic law which are noticeably observed throughout the entire body of Islamic law (Auda, 2008:5) and as *Shari’ah* is presented as a type of methodology to ‘turn towards the God, so as to obtain from divine goodness’; similar to the final good in Miskawayh’s description. Therefore, *maqasid al-Shari’ah* must also be a proper subset of set *F*, which in return is the proper subset of set *D*. For this reason, the second layer assessment is using *maqasid al-Shari’ah* as a benchmark for evaluating the concentration and quantity of final good within the regulation of *hisbah* manual. Moreover, such an appellation of *maqasid al-Shari’ah,* the inherit drawback of *maqasid al-Shari’ah,* as highlighted in Auda’s (2008:5) investigation is that they “fall short to include specific purposes for single scripts/rulings ... that cover certain topics”. Therefore, the standard *darurat* (necessities) in *maqasid al-Shari’ah* that is preservation of *din* (religion), *nafs* (soul), *nasl* (family), *aql* (intellect) and *mal* (private ownership) are re-contextualised in a manner that they are relevantly applicable in the socioeconomic sphere, while maintaining compatibility with the ways in which ministers of Islam would have approached them and historically comprehended them in settings of *hisbah*. The visual demonstration of this is shown in the Figure 3.8.

As can be seen in Figure 3.8, the first category of *darurat* or necessities, preserving of faith is taken in the context of regulation within the manual specifically designed to preserve the status quo of *Shari’ah* within the market, protecting the ascendancy of religious institutions and establish the preponderance of Islam. For example, a regulation in the manual states that *muhtasib* should prevent the *ahl al-dhimma* (non Muslims under the protection of Muslims) from constructing buildings higher[21] than those of Muslims and furthermore the manual prevents the *ahl al-dhimma* from publicly celebrating their religious festivals (al-Shayzari, 1999:122). These regulations were created for establishing or preserving the Islamic semblance of towns, and, therefore, it would fall under the category of faith, although under the first layer assessment it would come under extrinsic good. In the hindsight of current understanding on human rights and liberties, such regulation seems to carry no

[21] The regulation does not refer to construction any building higher than the mosques, but it refers to residential or commercial building owned by *dhimmis* to be lower than that of Muslims.

goodness value. However, the two layers of assessment within the model are categorising regulations based on the good they aim to achieve rather than their method of achieving it, and this model does not analyse the effectiveness or efficacy of the method by which regulations attempt to achieve that good. Although as the model shows that in spite of the above regulation falling in the first category that is faith, the contents of the regulation has an extrinsic value of goodness, and therefore this regulation is not good for sake of itself and is extracting good from 'preserving of faith'. This supposed link can be questioned and if proven insubstantial, it would result in the regulation losing its extrinsic value of goodness and consequently dropping from the category of faith.

Figure 3.8: Refining *Maqasid al-Shari'ah* for Deconstruction



The category of faith does not include the regulations designed to preserve the religious obligations and the religious legal requirements on the socio-economic conduct of agents. These are included in the second category, namely 'preserving of soul'., which includes the regulations designed extricate and conserve the socio-economic agents from calamities of this world and hereafter. The understanding of calamities in *Shari'ah* is used as a benchmark, which can result from many practices such as hoarding, *gharar*[22] (uncertainty), *riba* (interest), swindling and others; and any regulation aimed at preventing such practices would fall under this category as demonstrated in Figure 3.7.

The third category is protection of wealth, which is contextualised within this model as the concept of *asabiyyah* (*asabiyyah* as defined in the work of Ibn-Khaldun). Ibn-Khaldun considers wealth as a social product rather than individual (Ibn-Khaldun, 1950:76), for whom the wealth in socioeconomic sphere carries a wider meanings as it not only refers to the material gain but also to the quality of social fabric. Therefore, within the context of this model it is interpreted as the social relations and cooperation aimed at economic gain; the community cohesion towards a just, transparent and fair market mechanism; social solidarity; communitarianism that is, the inculcation of individuals on their responsibility towards the community, development of social capital; engendering and entelechy of assimilation for socioeconomic cohesion. Any regulation accommodating these ends would imply fulfilling this category.

The fourth category is the 'preservation of mind or intellect', and it is taken in the context of social consciousness. Mead (1912:401-406) elaborates the mechanism of social consciousness and explains:

> A physical object or percept is a construct in which the sensuous stimulation is merged with imagery which comes from past experience. This imagery on the cognitive side is that which the immediate sensuous quality stands for, and in so far satisfies the mind ... [Moreover] Inner consciousness is socially organized by the importation of the social organization of the outer world.

Transcendental sources of Islam attempt to develop the social consciousness by narrating the divine reactions to the actions of nations of previous Prophets. The regulations attempt to arrange the social organisation of the outer world in harmony

[22] Hazardous transaction, where details are uncertain or unknown.

with *fitra* (Islamic understanding of natural constitution) and towards the normative socioeconomic fabric, in such a way that it carves the social consciousness into the mould of Islamic doctrine while also resulting in social stimulation. The regulations satisfying these ends would come under the fourth category.

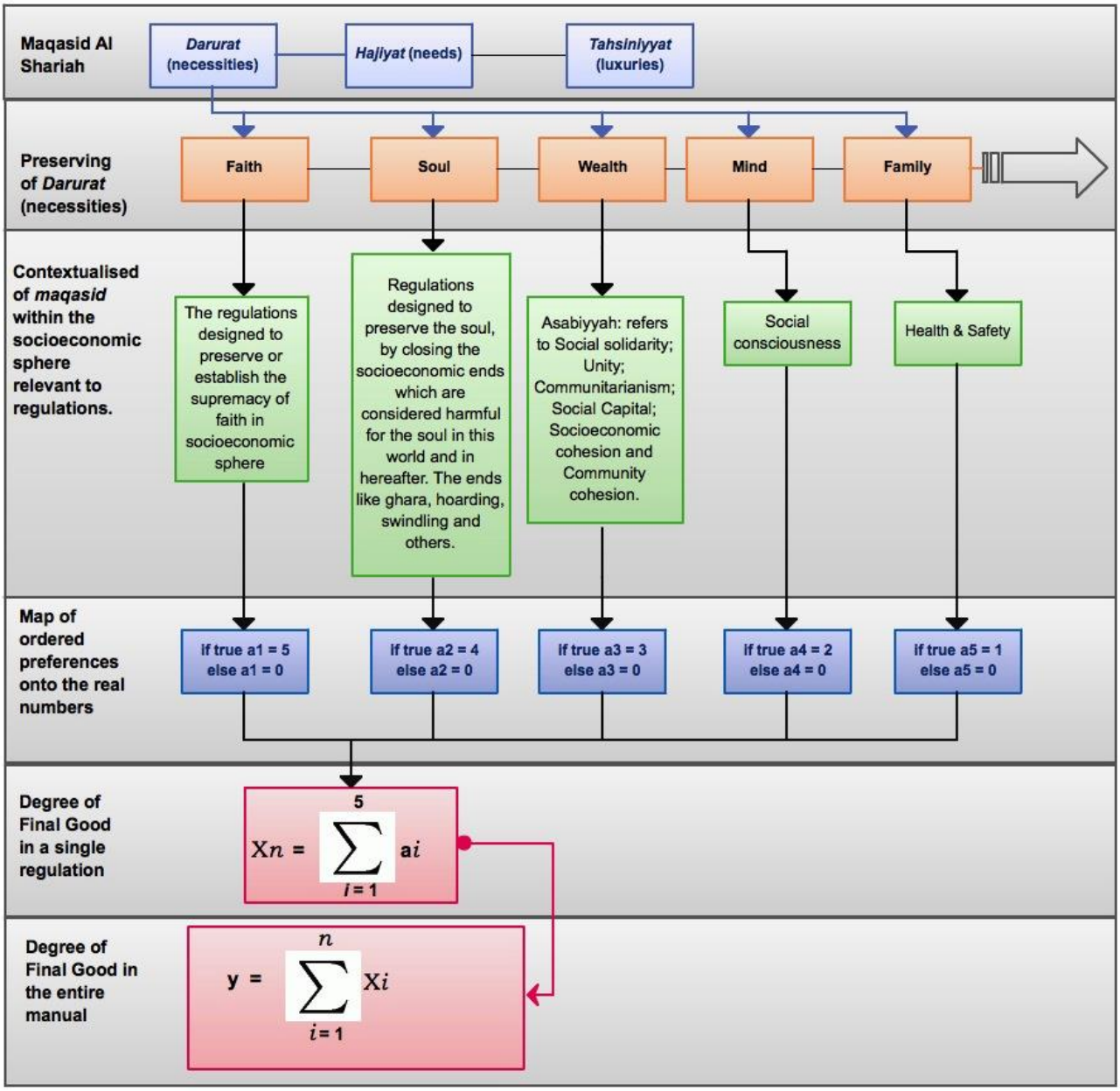
The fifth category refers to the salvation of family, which within the dimensions of the market and society would refer to preservation of the natural,[23] persons and legal[24] persons, which is achieved by implementing adequate health and safety measures. Therefore, any regulation concerned with the health and safety would classify under the fifth category.

Since contextualisation of *maqasid* within the socio-economic sphere involves formal reasoning; thus, a method can be devised for thinking it in mathematical terms. Therefore, each category has been assigned a variable that is faith is represented by *a1*, soul by *a2*, *asabiyyah* by *a3*, social consciousness by *a4* and, health and safety by *a5*. Thereafter, each variable is mapped with order of preference onto the list of real numbers, where the highest ranked *maqasid* is mapped onto the largest number in the list, second highest *maqasid* onto the second largest number in the list and so on, as shown in the Figure 3.8 Moreover, the list of real numbers do not measure any quantity (at present) other than preference in order of *maqasid*, and in conjunction with their respective variable, they are as follows: *a1*=5; *a2*=4; *a3*=3; *a4*=2 and *a5*=1.

The process of assessment is designed such that, the default value of each variable is zero and if the regulation satisfies one or more categories of *maqasid*, the variable is assigned its due value and all the variables are added together. The sums of 'a' series variables represent the degree of final good within those regulations. The addition of the variables based on the fact that one regulation can fit into more than one *maqasid* and the summing up of variables gives a regulation more weight, if it effectuates more than one *maqasid*. The degree of final good in the manual is based on the sum of score of all the regulations within the manual as shown in the Figure 3.9.

[23] Human beings
[24] Corporate personhood

Figure 3.9: Quantifying *Maqasid al-Shari'ah* for deconstruction



Due to the nature, definition and philosophical dimension of final good, the second layer assessment only attempts to calculate the proportion of final good in each regulation and in the manual as a whole. For further usefulness of this test of truth, which is outside the scope of this research, the overall score of the manual could be compared to the score of any similar collection of *fatwas* (legal opinion) to develop an understanding on the nature, quality and feasibility of manual. For instance, the *Shari'ah-screening* handbook of different Islamic banks or the policies built on

theological rationales within different Muslim countries can be examined and compared. The individual score of each regulation could not only help the jurists, *Shari'ah* scholars and theologians of current era to examine the legal opinions of past jurists. Therefore, the methodology of second layer assessment could further be developed and improved for utilisation of *maqasid* as a philosophy of Islamic law.

3.4.3 Empirical Analysis

Instead of conducting a purely syntax or semantics analysis, as is the norm in Islamic studies. This study will examine layers of complexity in the meaning, as Edwards (1991:523) asserts that the discourse is "not just a way of seeing, but a way of constructing seeing". Edwards' (1991) assertion is especially important in the context of this research, because *hisbah* manuals were constructed for the purpose of distinguishing between good and evil in the society and the market.

The *hisbah* manual will be deconstructed form a discursive perspective and by using critical discourse analysis, along with means-end analysis. This will allow us to examine each regulation in the manual as an idea that has "a straightforward linguistic expression" (Winch, 2008:128), which is constructed with an aim to achieve a certain output and has a very specific episteme. By examining the purpose and episteme of the regulations in the manual, we will be deconstructing each regulation. This approach will give us a method for examining the interaction of multilayer relations in construction of the regulation, and allow this study to investigate the value attending to these constructs, as suggested and supported by work of Gale (2010), Fairclough's (1992), Jorgensen and Phillips (2002), and others.

In order to prepare the *hisbah* manual *Nihayat al-Rubta fi Talab al-Hisbah* (*the Utmost Authority in the Pursuit of Hisbah*), for assessments, the text of the manual was divided into 402 independent regulations as shown in Appendix II. The set of 402 regulations were than subjected to the two layers of assessment described and explained above, which is demonstrated in the Appendix II.

3.4.3.1. Findings of first layer assessment

The first layer of assessment, which separates the regulations aimed at intrinsic good, from the regulations focused on the extrinsic good, discovered that out of 402

regulations, only 60 could be classified as intrinsic good, whereas the remaining 342 regulations fell under extrinsic good, giving a ratio of 10:57 between intrinsic and extrinsic good, as shown in the table 3.1.

Table 3.1: First Layer Results

No. of Regulations	Percentage
Intrinsic Good	60	14.93%
Extrinsic Good	342	85%
Total	402	
Ratio	10:57	

Table 3.1 depicts that for every hundred regulations, 85 incorporated extrinsic goods. On the ratio of intrinsic good and extrinsic good produced by this empirical analysis, it could be argued that the author's emphasis in this manual was to regulate the market with means, which in his estimate would lead to good. The extrinsic relationship present in majority of regulations also signifies that during the

implementation of these regulations *muhtasib*would need to follow two-fold process: initially the *muhtasib* would need to check, ensure and regularly monitor the continuance of extrinsic relationship of good, followed by the process of implementing the regulations.

The ratio of 10:57 statistically also suggests that the essence of transcendentalism in *Nihayat al-Rubta fi Talab al-Hisbah* is quite low; therefore, it cannot be considered as the pure representations of natural law and neither the regulations can be justified purely on religious grounds. The high concentration of regulations with extrinsic good also submits that the goals of regulation, that is 'what regulations were proscribing or what regulations were establishing?', was not bad, wrong or evil by any directly divinely prescribed measure. This indicates that the divinely prescribed measures, which are the primary sources, are not directly relevant to the market regulations and was used as an ethical torch in carving of regulations. However, when we examine the epistemology of regulations, the primary sources do not perform a role of an ethical theory and instead function as a source of law, while the bearing of regulations with the realities of the market is mostly established by the principles of "selection of the better course … application of juristic discretion" (Sachedina, 1999:26), and under the attempts "to promote people's welfare and to prevent corruption and hardship" (Kayadibi, 2010:33). Therefore, on grounds of low density of regulations with intrinsic goodness and with majority of regulations formulated with human cognition (juristic cognition) on public welfare and prevention of corruption; it could be suggested that the regulations do not fall in the roam of 'Islamic natural law', and neither they can be justified based on reasoning similar to 'Divine Command Theory'.

It could be argued that *hisbah* regulations, similar to other *Shari'ah* rulings, create a grey area outside the Islamic natural law, and this grey area infiltrates the boundaries of positive law. However, this style of reasoning raises serious questions, such as: Does the rulings (like *hisbah* regulations) that fall under that grey area carry the divine will? If we answer it 'yes' based on the argument that the method and scope of epistemological process of these rulings is inspired by the primary sources, and as primary sources reveal the divine will, therefore the subject matter of the rulings will or should also have divine will infused in it. This line of reasoning can then be followed further to argue that any system that is in someway or form inspired by

primary sources should also carry the divine will or otherwise there should be some acceptability criteria for a system to be 'inspired by primary sources'. However, there is no explicitly described criteria: some theologians use adherence to orthodoxy, acceptability and consensus as the criteria, but this posses further questions on practical distinctness of 'divine will' and 'jurist's whim'. If the answer to the above mentioned questions is 'no', then we have the unanswered questions fundamental to every theory of law, that is: 'Why should the law be obeyed?' and 'Why is it biding?'.

The epistemic issue underlining the *hisbah* regulations becomes prominent, when we test the result of the first layer assessment along with epistemological theory of *hisbah* regulations with theses of Kelsen's legal theory.[25] We discover that the subject matter of *hisbah* regulations[26] is "at the whim of the legislator, and that its concepts and principles are not founded on spatial and temporal data of experience" (Stone, 1964:101). It could be argued that the 'selection of the better course' and 'public interest' can be structured appropriately to compensate for the requirement of spatial and temporal data of experience, nevertheless this leeway would not affect the above argument. As within the current epistemological settings evidence from any other theory of knowledge (like empiricism) cannot over rule the regulations constructed using the higher sources of law like consensus. The current epistemological settings will also hold the focus on linguistic and textual analysis, while keeping the focus away from the historical experiences: from cause and effect of regulations in the market, 'from the cause and effect of market forces' and 'knowledge gained through observing the market mechanism'. In pursuit of regulating the market, the static and stagnant nature of text in primary sources, when faced with the variable and changing temperament of markets, would have to be more or less depend on the juristic cognition, while the principles of 'selection of the better course' and 'public interest' are also very much dependent on the juristic cognition.

The juristic cognition is itself inherent in the construction, derivation and interpretation of law. However, Kelsen argues for benchmark on it and suggests, "that there must unity of juristic cognition" (Stone, 1964:100). However, the current epistemological settings do not lead to unity of juristic cognition, as it does not isolate

[25] For further reading, see: Stone, (1964).

[26] *Hisbah* regulations in *nihayat al-rubta fi talab al-hisba.*

the sociological, psychological and ethical matters from the 'juristic subject matters'. The sociological, psychological and ethical matters remain embedded, or at least they are assumed to be by Muslim ministers, in the primary sources. The post eighteenth century development in the fields of sociology, psychology, economics and ethics were not seriously considered as knowledge and therefore they had little or no influence on the Islamic epistemological settings. The lack of isolation of these fields means that they are still jumbled up in the 'juristic' subject matter, which consequently leads to incongruity in juristic cognition. The uniformity in juristic cognition may be achieved by using *maqasid al-Shari'ah* as epistemic foundations, as argued by many jurists and mostly maintained by Muslim scholarship of last thirty years.

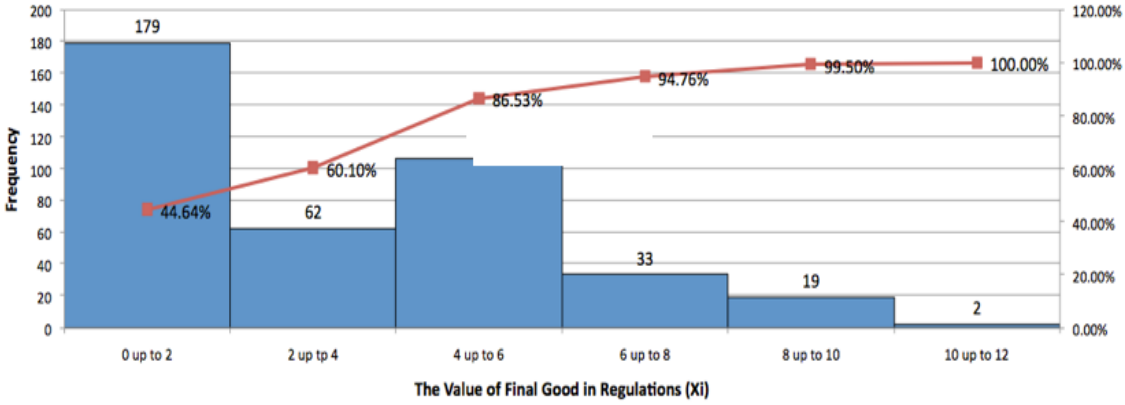
3.4.3.2 Findings of second layer assessment

As part of the conceptual and empirical analysis, the second layer of assessment measures the degree of final good relative to *maqasids* as the corresponding ends of regulation. When we consider the real numbers assigned to each *maqasid*, that is faith=5, soul=4, *asabiyyah* =3, social consciousness=2 and health and safety=1, and suppose that each regulation aimed to accomplish the respective *maqasid or maqasids*, would carry the weight of that *maqasid* or *maqasids* in terms of assigned real numbers. This is based on the assumption that regulation realising the goal of higher *maqasid* should have higher importance. Moreover, some regulations satisfy more then one *maqasid* and in that case, we have added the weight of the respective *maqasids* and assigned an aggregate total to the regulations. This data is plotted on graph and represented in form of a histogram in Figure 3.10.

The histogram in Figure 3.10 shows that more then eighty percent of regulations weighted five or below, which justifies the manner of categorisation carried in the layer, as majority of regulations aim to achieve one or two *maqasids.* This also suggests that majority of regulations where precise in their subject matter and did not have many broader subjective moral principles, which would apply to a more then two *maqasids.* This phenomenon makes it plausible that regulations may have been adversely affecting some *maqasid*, while satisfying the others. For example, a regulation might have been constructed for protecting the ascendancy of religion or a religious institution, but this regulation, due to its design or manner of execution, may

have been producing adverse affect for *asabiyyah,* faith or other *maqasids.* It could further be argued that there is a probability that affects of regulations may have been cancelling each other, as each regulation concentrated on the *maqasid* it was designed to protect, which may have made post-regulated market conditions worst than pre-regulated marked conditions. The protection of a *maqasid* at the cost of another *maqasid* could be justified through the hierarchy of *maqasids;* however, the Pareto chart in Figure 3.11 illustrates that the number of regulations does not follow the priority order of *maqasids,* as the manual focuses on some *maqasids* more as compared to the other ones.

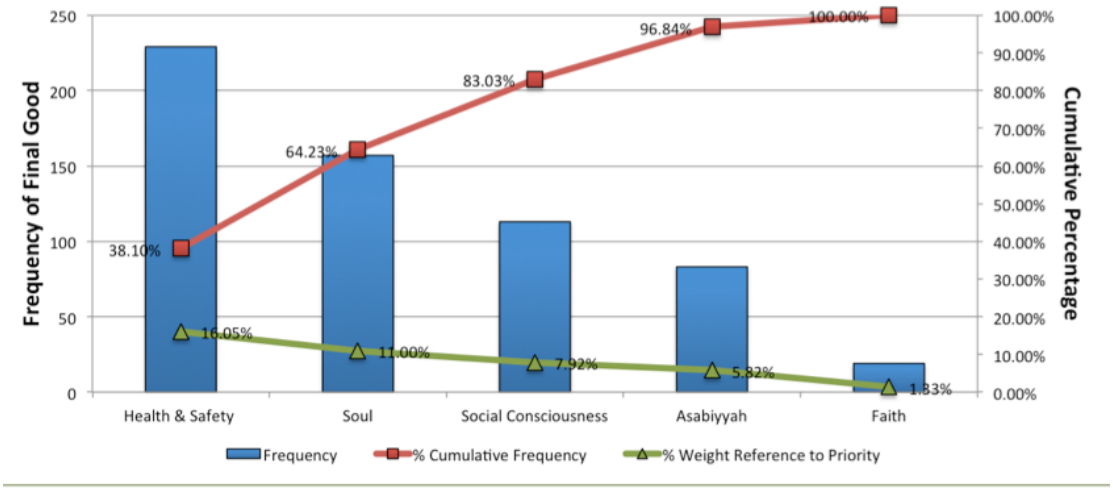
Figure 3.10: Frequency of Final Good in Regulations by *Maqasid*



Note: See Appendix I for data and estimation

This Pareto chart in Figure 3.11 presents distribution of regulations in reference to that *maqasids,* which they aim to achieve. This distribution is without any influence of weight from the assigned real numbers and the regulations that satisfied multiple *maqasid* are duplicated, and are counted separately under those *maqasids.* Figure 3.11 further demonstrate that majority of regulations in the *Nihayat al-Rubta fi Talab al-Hisbah* are focused on health and safety issues, while approximately 64% are devoted to protection of soul, and preservation of health and safety standards.

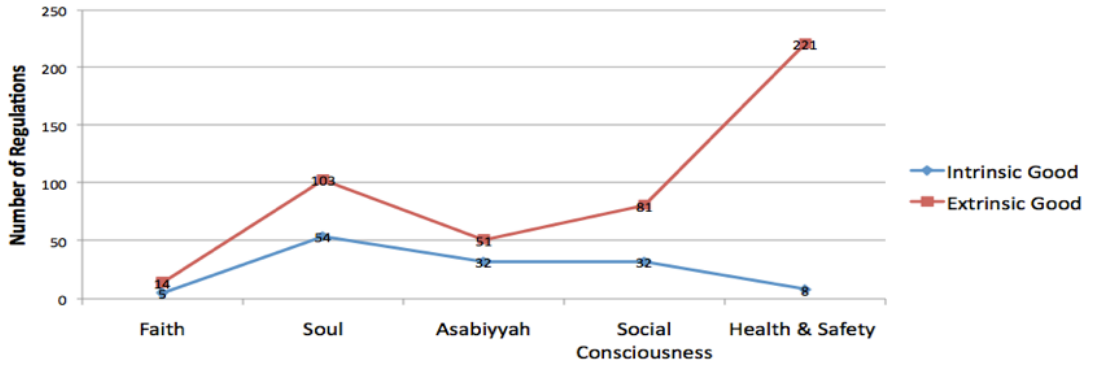
Figure 3.11: Pareto Chart of Final Good Per *Maqasid*



Note: See Appendix I for data and estimation

The high concentration of regulations focused on health and safety issues, corresponds to the account of historians and academics (such as Glick, Gotein, Buckley, Tyan and so on); many of them cited historical documents or examples to point out that the institution of *hisbah* was operating merely as a municipal authority; politically restricted and structurally disabled to utilise its actual potential. The interesting epistemological argument, which arises from having a *hisbah* manual with almost 40% regulations aimed to ensure health and safety, is that the health and safety at market place or workplace welfare revolves around occupational risks, which requires spatial and temporal data of experience, instead of textual analysis or linguistic analysis of static text. This issue with current epistemological settings becomes further clear in Figure 3.12, which confirms that majority (96.6%) of regulations in the *hisbah* manual in question in health and safety has extrinsic goodness and only minority (3.4 %) can be labelled as intrinsically good. The extrinsic goodness in bulk of regulations, under health and safety, suggests that these regulations were not good for their own sake, but drew goodness from something else. This 'something else' should have been spatial and temporal data of experience, but instead would probably been, an understanding built from juristic cognition based on their personal experience of markets, about the factors that could lead to 'wrongs' or about factors whose introduction in the market could lead to 'right'.

Figure 3.12: Sources of 'Good' in Regulations Categorised Under *Maqasids*



Note: See Appendix I for data and estimation.

The next *maqasid* with second highest number of regulations is protection of soul, while the protection of faith has the lowest number of regulations. It should be noted that the protection of faith has lowest number of regulations, because there is normally not much room in the market for expressing one's faith.

As can be seen in Figure 3.12, the 'soul', on the other hand, received much more attention, as in the absence of any theories constructed for improvement of market mechanism, the manual resorts to regulating the human activities based on there possible effects on the after life. The high density of regulations focused on soul could support the earlier discussion on the sociological, psychological and ethical matters being infused in the subject matter of juristic cognition.

Interestingly, 65% of the regulations aimed at protecting soul and 74% of regulations protecting faith have extrinsic good. The high concentration extrinsic good on the matters at core of religion, suggests that knowledge on the methods of protecting soul and faith within the market, has to come from the market itself. In case of this manual, this knowledge was probably processed and analysed through juristic cognition to create set of connections between intrinsic good and activities; these activities were then formulated in form of regulations, which carried that connections, making the regulations extrinsically good. It may, therefore, be suggested that regulations could be more efficient, if juristic cognitions was replaced by clearly drafted ethical theory, while the real quantifiable knowledge built on spatial and temporal data of experience on markets substituted the 'subject matter used of juristic cognition '.

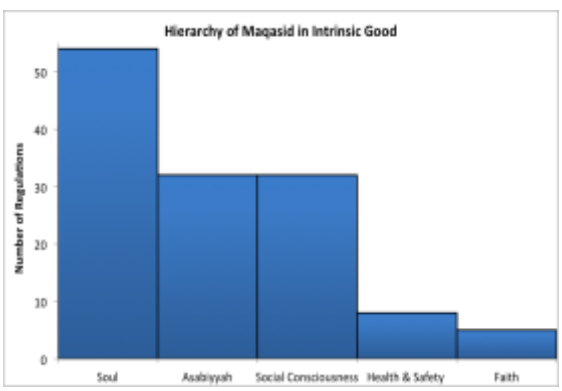
A rationalist approach using priority, can be argued as an antithesis for the above statement, which is often propagated by modern Muslim scholars. However, as can be

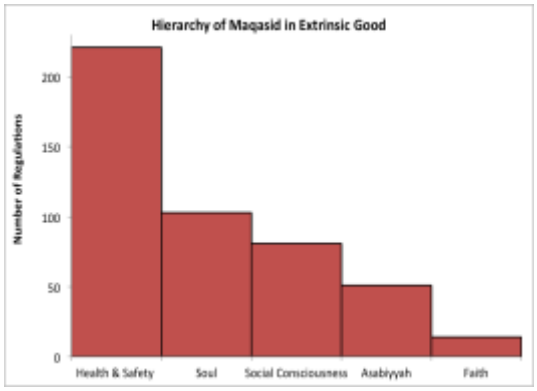
seen in Figure 3.13, when we look at the sequence of *maqasids* in reference to the number of regulations per *maqasid;* the hierarchy does not match with the theoretically proposed order of priority as shown in Figure 3.13, which is adopted from Maslow's hierarchy of needs.

Figure 3.13: Priority of *Maqasid*

Whereas when the regulations are separated on grounds of intrinsic or extrinsic good as in Figure 3.14 and Figure 3.15, and then sorted on basis of highest concentration of regulations per *maqasid,* the results are very different. As can be seen in Figure 3.14, the concentration of intrinsically good regulations follows the theoretically set priority of *maqasids,* with exception to protection of faith, this finding support the theoretical construct of priorities of *maqasid,* and suggests that primary sources are more concerned about protecting the soul from punishments of hereafter, than establishment or protection of other *maqasids.*

Figure 3.14: Intrinsic Good **Figure 3.15: Extrinsic Good**



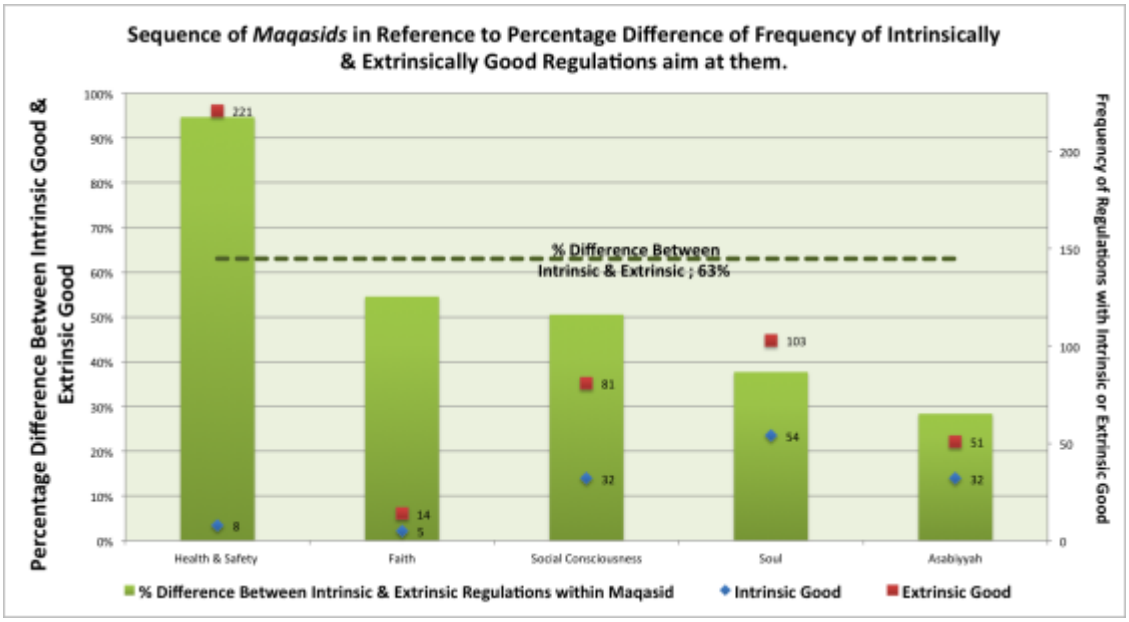


Note: See Appendix I for data and estimation

As can be seen in Figure 3.15, the regulations with extrinsic good, on the other hand, do not synchronise with the theoretical priority settings of *maqasids*. Accordingly, it could be suggested that the unsynchronised order could be the result of jurist's attempt to deal with practical issues within the market and society. If that was the case, then the results depicted in Figure 3.15 suggest a positive order of *maqasids*, which resulted from efforts of juristic cognition to regulate the market and/or society on contrary to figure 3.15, which suggests a natural (natural in context of Islam) order of *maqasids.* This underline the need to shuffle the *maqasids,* and the most apparent factor that could have influenced this rearrangement would be the understanding of market conditions through juristic cognition.

The results depicted in Figure 3.16 show the hierarchy of *maqasids* on the basis of percentage difference between intrinsically and extrinsically good regulations. In other words, it shows the *maqasids* arranged in the order, in which jurists deemed necessary to supplement the intrinsically good regulations with extrinsically good regulations. The estimation of regulations in Figure 3.16 is based on percentage difference for compensating the large variation in total number of regulations under each *maqasid.*

Figure 3.16: Sequence of *Maqasids*



Note: See Appendix I for data and estimation

As the depicted results in Figure 3.16 shows, jurists on total included 63% more extrinsically good regulations in reference to the intrinsically good regulations; for protection of faith, jurists had to construct 55% more regulations, while under protection of soul, the percentage difference is 38%. It could be argued that the hierarchy of *maqasid*, in Figure 3.15 renders an incomplete picture, as the hierarchy could suggest the order of *maqasids* where jurists contemplated the insufficiency of regulations with intrinsic goodness and therefore counterweighed it by constructing extrinsically good regulations. Thereupon the Figure 3.16 would represent the depth of insufficiency of intrinsically good regulations per *maqasid.* As can be seen, protection of faith has least number of extrinsic (Figure 3.15) and intrinsic (Figure 3.14) regulations while it comes second in Figure 3.16. This characterises that jurist had to construct twice as many regulations, as there were intrinsically good regulations in primary sources, so to protect the faith. It could be argued that either the primary sources provided twice as less protection to the faith, compared to what manual considered essential, or the manual provided extended protection than what primary sources advocate. These premises can be extended with relevant ratio to other *maqasids.* The Figure 3.16 grades the *maqasids* in reference to 'consideration' shown by manual in protecting them, in reference to the protection provided to them in primary sources.

It should be noted that the estimated classification of *maqasids* is further different from the earlier examined hierarchies. The factors that could influence the 'consideration' a *maqasid* receives over another should depend on the market conditions, as the market conditions can change leaving a *maqasid* more vulnerable than others. This would require any manual to take vulnerability of *maqasid* in consideration and address each *maqasid* in accordance with the needs of markets. The important point in all this discussion is that the theoretically argued hierarchy of *maqasids* will continuously change, as regulations try to protect these *maqasids* in changing socio economic conditions.

The contemporary Muslim scholars, arguing for *maqasids* as a philosophy of Islamic law, would argue that if and when the hierarchy of *maqasids* needs to be reshuffled, the instrument of that reshuffle has to be notion of 'public interest' in Islamic law. However as established earlier, the principles of 'selection of the better course' and 'public interest' are very much dependent on the juristic cognition and the predated Islamic thoughts on sociological, psychological and ethical matters, which are not isolated from the 'juristic subject matter' for these principles. This most of all causes disunity in the cognition. Moreover, different market conditions would result in different understanding on the right course of action that stipulate conditions guaranteeing public interest, which will create distinctive hierarchy of *maqasids*, followed by construction of regulations to protect the *maqasids* in that distinctively set hierarchy. The use of public interest in the current framework creates an almost ideal setting for 'regulatory capture'.

While the jurists are responsible for upholding the public interest but they are not accountable to public. At the same time, jurists themselves are subject to socio economic factors. In other words, the juristic activities are financially supported either by government funds or by charitable fundraising. There are interest groups and lobbyist in both cases, which can dominate the decision-making in their favour. In absence of any inclusion of public opinion, the costliness of information about uncertain socio economic conditions poses another challenge to the current epistemological settings. The jurists also require the willingness of polity, which should create further regulatory capture. This raises further questions such as: 'how much of theoretically designed and theologically shaped motive of jurist translates

into practice?', 'in principal would a jurist construct the 'best regulations'?' 'Principally to what extend would a jurist compromise self interest and interest of the their profession?', and finally: 'is it even possible to comprehend public interest in current epistemological structure?' and if it is possible to comprehend then 'is it possible to construct regulations on this understanding that would actually produce goodness in a civil sense?

3.4.3.3 Results and method of estimation

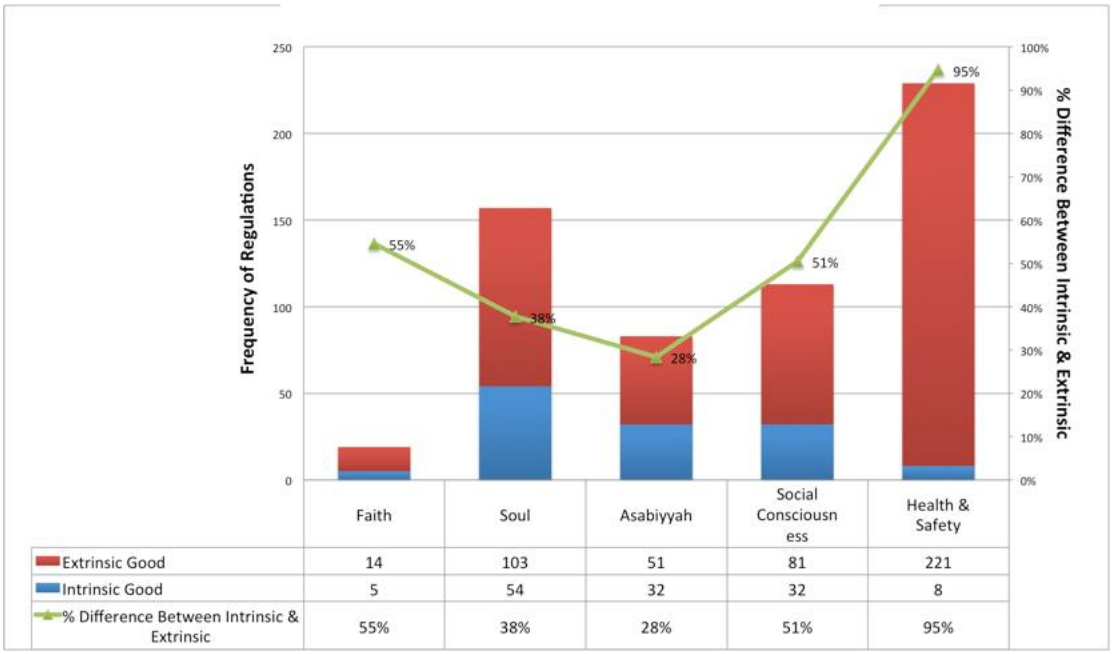
As the analysis and the findings presented above indicate, the test of truth raises very vital philosophical and practical questions, while also answering some important ones. The main objective of the test was to check the scale of coherence with the multiple realities in the constructed current epistemological settings. Additionally, the assessment of means (*hisbah* regulations) through the categorical importance of ends (good), that the regulations aim to achieve, gives a foundational idea on the relevance of regulations and their constructions.

Nihayat al-Rubta fi Talab al-Hisbah was one of the widely used manuals within *hisbah.* Therefore, in terms of methods of estimation, we can rationalise that entire corpse of regulatory manuals will have similar value of good in them. This estimation is rationalised mainly on the wide use and acceptance of *Nihayat al-Rubta fi Talab al-Hisbah.* Al-Shayzari, the author of the manual in question, was trained in theory of Islamic law and also practiced Islamic legal theory as a judge; his importance earned him an entry in 'Encyclopedia of Arabic Literature', and also the attention of many historians and bibliographers from other dynasties, such as Hajji Khalifa from Ottoman Empire (Giffen, 1998:711). Al-Shayzari's manual was considered as one of major work on institution of *hisbah*, and therefore it was widely cited by other manuals and used as guidelines by various *muhtasib* (Buckley, 1999: v). While in the modern era, Al-Shayzari's work and the *hisbah* manual are still as major discourse in many studies, such as Stilt (2012), Shatzmiller (1994), Ghabin (2009), Sabra (2000), Coetzee and Eysturlid (2013), and many others. On these premises, it is safe to deduce that the issues highlighted in the Al-Shayzari's *hisbah* manual are constant within most, if not all *hisbah* manuals, and regulations constructed using Islamic legal theory for supervision or governance of market and society.

This empirical model is designed to test also acts as a criterion for distinguishing higher quality of legal opinions from lower ones, as it provides a framework for assessment of collection of legal opinions, as demonstrated through appraisal of the *hisbah* manual of *Nihayat al-Rubta fi Talab al-Hisbah.* Though the test is based on a subjective construct as in any part of social sciences and would favour certain type of regulations regardless of their efficiency or suitability, nevertheless the two layers of assessment helps in developing some basic quantifiable understanding on the quality of regulations along with the zones of concentration and nature of legal opinions.

The first reality against which the regulations were tested was the epistemological relevance of primary sources. There are only 21% intrinsically good regulations with direct epistemic connection to primary sources, in comparison to 79% of extrinsically good regulations, which are product of juristic cognation largely on the basis of analogies between the real events in society and market, and "relations of the stipulations of the legal 'ought'" (Oeser, 2003:161). As can be seen in Figure 3.17, the results are therefore not statistically significant to conclude the coherence of regulations with this reality.

Figure 3.17:Intrinsic and Extrinsic Good in Reference with *Maqasid*



Note: See Appendix I for data and estimation

The second part of the test looked at the coherence between the philosophically created and theologically justified principles such as doctrines of necessity, on the one hand, and the aims of regulations, on the other hand. The findings of the second layer assessment suggest that there is no direct or apparent correspondence between the construction and subject matter of regulations, and the philosophical foundations and theological justification of principles of necessity.

3.5 SUMMARY AND CONCLUSION

The previous chapter provided the groundwork for the enquiry in this chapter, as it highlighted the institutional failures experienced in the operations of *hisbah* whereby it is argued that the institutional practices drifted largely from the theory. This chapter conducted an enquiry into the theories behind the concept of *hisbah.*

The results of this chapters have highlighted that it is not just operations, which are responsible for failures in institutional interventions, as the theory also plays a vital part. In exploring the theories, the existing literature is divided into two parts, that is: Class A and Class B. The class A literature are the philosophical constructs that outlines the duties and sets the political space for operations of *hisbah.* The major work in this class, is by al-Mawardi (1996), Ibn-Taymiya (1992) and Al-Ghazzali (2004:43). Some of these work, such as al-Mawardi (1996) provided the grounds for operations that created institutional failures. While, the common theme in almost all

of them is the use of Islamic legal theory as a theory of ethics. The Class B literature comprises of regulations that are the result of the use of Islamic legal theory as a theory of ethics. The deconstruction of Class B literature demonstrated a weak ontological authority and low levels of goodness within the market regulations.

In the process of deconstruction, this study discovered that ontology of theological authority of regulations within the manual of *Nihayat al-Rubta fi Talab al-Hisbah* is weak, and, therefore, the whole manual can be considered weak in terms of value of intrinsic good in it. The theological authority of a notion is taken within context of its authenticity to the divinely inscribed nature, as advocated by theology.

These results are consistent with the findings of other observers on corpse of Islamic law, as discussed in detail earlier in this chapter, who consider gap between theory and practice in regards to public interest and general good as a major component within the construction of regulations, as discussed by Hallaq, (1997) (2009), Schacht (1960) (1982), Cook (2000) and others.

The results raise important macro question on workings of Islamic law, such as: what exactly is 'good'? If we take the *Shari'ah hokum* or *Shari'ah judgement* as being good, then we could argue that the only measure of goodness in a *Shari'ah hokum* is its epistemological roots. The epistemological roots are in reality the juristic analysis and construction on logical concentration, which moves from general to specific, and the transcendental obligation claimed by such regulations is questionable, especially as our findings have shown that legal opinions and regulations does not necessarily have justifiable goodness that is traceable to the primary sources. This suggests that there is a problem in existing theories of governance in the institution of *hisbah*, as they are unable to justify their legitimacy to be observed.

From purely a theological point of view, the above discussed test of truth, suggests that we can not theologically classify existing regulations for institution of *hisbah* as 'good', and legitimise them via doctrine of 'will of God'. Moreover, there is also the question of epistemic sources that created the existing regulations, as they remain unchanged in the Islamic thought. There is also a large probability that unchanged sources when used by the same theory, will produce almost identical results. This takes us back to the original issue of intervention. The processes of institutionalised

intervention justify its existence by claiming the ability to foresee, distinguish, and prevent evil, while prescribing good. However, the analysis of *hisbah* manual reveals that the use of legal theory to substitute for an ethical theory for identifying good and evil is problematic.

The aim of this research is to explore governance within Islamic thought in the form of the institution of *hisbah* as well as exploring the episteme that is the cause of the recognized and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws associated with the institution of *hisbah.* So far, we have examined the operations of institution of *hisbah*, and the highlighted the institutional failures. During this process, we learned that theories of *hisbah* does not provide a framework to prevent these institutional failures. Therefore, we deconstructed the theories of *hisbah* and traced the root cause of these failures in the 'use of legal theory as a theory of ethics'.

In order to complete the second part of the aim, that is 'exploring the episteme that is the cause of the recognized and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws', we will now explore the Islamic legal theories, along with broader discourse on Islamic thought to understand three major issues. Firstly, what is the rationale for Islamic scholarship to heavily rely on Islamic legal theory for judging the moral conduct of activities in market and society. Secondly, what are the reasons that the Islamic legal theory, when used as an ethical framework, participated in creating institutional failures, instead of preventing them. Thirdly, whether there is an ethical theory within the broader Islamic thought that should have been used as a principal framework. By answering these three questions, we should be able to shed light on the sources of incoherencies and inconsistencies in the value judgments within theories, regulations, and laws, and hence fulfill the aim of this research. It is also important to highlight at this point that institutional intervention through *hisbah,* within the Islamic thought, is justified by the ability to effectiveness in judging the moral conduct of activities and intervening in them respectively.

CHAPTER 4

GENEALOGY OF CRISIS

4.1. INTRODUCTION

The aim of this research, as stated in Chapter 1, is to explore governance within Islamic thought in the form of the institution of *hisbah* as well as exploring the episteme that is the cause of the recognized and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws associated with the institution of *hisbah.*

The discourse being examined and developed in this research has so far focused on the first part of the aim and examined the operations of institution of *hisbah*, and the highlighted the institutional failures. The factors causing these failures were traced to the theory of *hisbah*, Whilst, deconstructing the theories on *hisbah,* this research uncovered that the underlying factors that are causing the failures in the operations of *hisbah* are grounded in the use of Islamic legal theory as an ethical theory within the framework of subscribing good and prohibiting evil.

These finding completed the first part of the research aim, as we successfully explored governance within Islamic thought in the form of the institution of *hisbah*. However, the second part of the research aim to explore the episteme that is the causing the incoherencies and inconsistencies in the theories, regulations, and laws associated to the institution of *hisbah.* The quest to find the episteme of the issues highlighted in the earlier chapters, have taken this research to Islamic legal theory, as in this chapter.

This chapter, hence, attempts to develop an understanding on the reasons for which the Islamic legal theory was used as an ethical framework, and, as to why it participated in creating institutional failures, instead of preventing them. This chapter, hence, deconstructs the Islamic theories to investigate the episteme of institutional failures, within the theory, when it is applied as an ethical theory. We examine the theological legitimacy of judging the moral conduct by a legal theory and how it philosophically affects the notion of morality in Islam. Thirdly, this chapter surveys the Islamic thought for an ethical theory, which could or should have been used as for judging the moral conduct of activities by the institution of *hisbah.*

The ontological justification for institutional intervention is the ability to effectively point out the wrongs in the market and the society, and then efficiently prohibit wrongs and subscribe good. To examine this, in the previous chapters, we looked at

the market regulations in the Islamic world and observed the operations of institution of *hisbah*. However, while observing the operations of *hisbah,* this research discovered continuity of institutional failures. Therefore, the research moved into theory of *hisbah* to examine the underlying factors within the theory and upon deconstruction of *Nihayat al-Rubta fi Talab al-Hisbah*, a *hisbah* manual, we substantiated that the majority of market regulation are not a result of direct manifestation of the primary sources of Islam. This suggests that in practice institution of *hisbah* was unable to foresee, evaluate and prohibit evil, and while the theoretical model, that was held responsible for judging the moral conduct for the institution of *hisbah,* was unable to provide the theologically and philosophically legitimate categorisation of good and evil. The findings of the previous chapter suggest that problem lies with the application of legal theory as an ethical theory. The market regulations are constructed using legal framework. Therefore, this creates an inherited religious duty to obey them. However, if legal theory is unreliable in acting as an ethical theory, then this inherited religious duty of obeying them, diminishes. Therefore, this chapter focuses on the Islamic legal theories and deconstructs them with the objective of understanding the underlying factors in its episteme that cause failures and inconsistencies, when the legal theory is treated as an ethical theory.

4.2 CONTEXTUALISATION

The inconsistencies caused by the use of legal theory within the religious ethics, also resulted in questions raised in the contemporary literature on the need for such a set up (Moten, 2013). These questions were initially posed by modernity to the Muslim world; however, the investigation within the last chapters suggests that there is a good case for raising these questions from within the Islamic tradition, without the need of superseding the whole tradition.

These questions have direct association with ‘what is good?’ These questions are not focused on the validity of Islamic belief system or the nature of Islamic law, but the validity of law and *sharia* within the Islamic creed.

The answers to these questions may be determined by understanding the criteria of membership of a rule into Islamic legal system. Any rule that fulfils the criteria is legally valid and therefore whoever is following the given legal system will also

follow that rule. There are many theses within legal positivism and natural law on the possible criteria of legal validity, as Islamic law has positive and natural sides to it, therefore its laws has to have natural and positive validity to it. The positive validity is especially essential for justifying the historical conflicts between the theological theory and legal practices. The natural validity is required because the entire legal theory of Islam stands on these grounds and without it, Islamic law becomes antiquate legal practice of previous epochs.

The uneasy truce between Islamic legal theory, legal practice and reality, begins in early years of Islam. The application of revealed law with its theological immutability to the mutable socio economic realities and varying circumstances, time and space created the gap between theory and practice. Over the history different theological arguments, legal tools, and philosophical standpoints emerged in an effort to reconcile the differences. This created a continuous vacillation on morality of things, while also raising the question of legal validity.

The intricate relationship between law and reality was acknowledged during the time of Prophet, and some Quranic legislation like on *zina* (a form of adultery) had an intrinsic oblique nature, established by constituting over stringent requirements for evidence, to accommodate for the social reality of the time. Donaldson (1953:46) considers this as an attempt to "provide occasions for the exhibition of brutality with the object of general intimidation", but Imber (1996:195) uses this legislative characteristic to argue that after demarcating the crime and subscribing a punishment, "the shari'a consciously and explicitly renders conviction impossible". Calder *et al.* (2010:63-64) analysis this further and elaborate that:

> it is reasonable to assert that a certain degree of hermeneutical dexterity could ensure that the ḥadd penalties need never take place. For all practical purposes, the management of sexual misconduct is trans-ferred to the category of taʿzīr, and thereby to human discretion, and to local and contingent custom and practice. But local custom (positive law?) is not a part of divine law.

The reliance of Qur'anic legislations on positive law as a correcting mechanism was not always the case. During the time of Prophet, where there was an apparent gap between the reality and the law, the divine would intervene to address the problem by issuing explanative peremptory commands or changing the legislative position. Qur'an (16:101), itself explains this process by the asserting that "We substitute a verse in place of a verse - and Allah is most knowing", which is then backed by the

justification that: “Allah eliminates what He wills or confirms, and with Him is the Mother of the Book” (Qur’an 13:39). Similar to most theological issues, there is diversity in the understanding of these verses and meaning of ‘Mother of the Books’, however, generally accepted theological argument is that the decrees and legislations ordained by God, are and can be abrogated by God, as God possesses the most thorough knowledge. This argument then inevitably goes further to suggest that the socioeconomic realities are one of the conditions that may trigger an abrogation and change in position; and the other reason for divine abrogation was the clarification of a Qur’anic passage that is obscure and contradictory by nature.

The theologians from all ages have considered the understanding of ‘abrogating and abrogated’ verses as one of the most important tool in understanding the script of Qur’an. Its importance is partly due to the regularity with which the verses were abrogated and partly due to the change in the legislative position and modification in theological understanding created by the abrogation. Some verses had far reaching affects and greater abrogating capacity than others; for example, Donaldson (1953:51) accounts a verse that abrogates or modifies a hundred and twenty four verses. The extent of abrogation emphasises the continuous need for clarification required on the face of ever changing socioeconomic realities that kept on making Qur’anic passages either obscure or contradictory.

Science of abrogation goes to the heart of Islamic philosophy, as Islam considers Adam, Hud, Salih, Abraham, Moses, Jesus and others as prophets from the same God, who either confirmed the previously revealed and established legislation, or abrogated it with the new one. The abrogation poses serious questions on the existence of independent and universal notion of good and evil. The orthodox position on abrogation takes a philosophically middle and theologically safe ground, as it neither fully confirms the existence of a universal good or evil, nor does it fully deny the presence of such existence, and in the absence of a workable clarity on this issue, it views abrogation as an expiry on the ‘time and space dependent’ usability of divine law, in which one divine law replaces the other in response to human progress. In metaethical sense the abrogation of divine commandments means abrogation of one notion of good actions for another. Al Shahrastani (as taken from Donaldson, 1953:52) conceptualises this orthodox position on abrogation and summarises it as:

> lawfulness and unlawfulness are not predications which belong to actions as if they were attributes of them, nor are actions to be classed as good or evil, nor does the law-giver cause them to acquire attributes which cannot annulled or confirmed. But the predications (of right and wrong) belong to the speech of the law-giver… Thus the prediction is verbal, not actual; legal not intellectual; and one can abrogate another.

The underline notion in orthodox position is: the historical progress of humans exposed them to new situations and challenges, and the God altered and modified its legislations accordingly, so that the 'righteous path' always remained clear for humans. With the death of the final messenger, the door of transcendental change in legislations was closed, and the process of abrogation ended. This denouement was theorised by jurists in context with the above stated notion, which lead to many conclusions such as "Muhammad… is the climax of man's evolution, as Islam is the climax of successive laws" (Al Shahrastani, as cited by Donaldson, 1953:52).

The view that law can efficiently serve the changing socio economic realities, while being constant and determinate in itself, created gaps between theory and practice. The gap between theory and practice was the first sign that a crisis is lurking under the development of corpse of Islamic law. The investigation into the operations of *hisbah* in Chapter 2 highlighted the existence of this phenomenon. Chapter 3 focused on the discourse on *hisbah* and highlighted the redundancy of current discourse to effectively subscribe good and forbid evil. This redundancy was grounded in the use of legal theory as a substitute for ethical theory. This chapter, therefore, further expands on this, by examining the Islamic legal theories to understand the underlying factors as to why it is not a substitute for an ethical theory by examining the workings of Islamic legal theory outside of institution of *hisbah* and in the context of governance. It observes that the gap between theory and practice, highlighted in the operations of *hisbah*, is a consistent phenomenon that exists in most applications of Islamic legal theory.

4.3 PIOUS FICTION, UNRESOLVED CONFLICTS AND UNEASY TRUCE

The socio politico conditions of the post Prophet Muslim world, the distribution of power, different concentrations of religious knowledge, dynamics in which jurists, juriconsults, theologians, polity and political authorities interacted with each other, created two major types of gaps in theory and practice. Schacht (1960:110) identifies

these two types, calling one a "pious fiction and unresolved conflict", and naming other "an uneasy truce" (Schacht, 1982:84) between the political authorities, theologians and jurist. However, Schacht points them out in two different discourse and does not analyse the interlink between them, contrary to this research which focuses on them as two different effects of the same cause.

Islamic law presents itself as a doctrine of understanding the divine commands and consequently does not recognise human agent as source of legislation; therefore, the government is theoretically limited in Islamic law to only implementation and administration of regulations without much or any powers for impinging them (Schacht, 1960:110). The subject matter of Islamic law does not have a uniform hold on every aspect of life, but it instead has concentrations points, that is: it has a thorough subject matter on matters related to family and inheritance, while for penal law, constitutional law and taxation, it's subject matter in minimal or non existent and the subject matter on law of contracts categorically falls in the middle of above two (Schacht, 1982:76).

The social facts regularly produced occasions where governments had to step in and legislate especially where the subject matter of Islamic law is thin. This existence of new legislation was purely based on social facts, however, "out of deference to the sacred law" (Schacht, 1960:110), the new legislations were and still are silently accepted as an extension of Islamic law, which is compatible with Islamic theology and primary sources. This fictitious acceptance of Islamic persona in formulated legislations, for bridging the gap between religious law and secular administration is what Schacht (1960:110) calls as pious fiction. Schacht (1960) highlights number of methods used by political authorities to accept the Islamic persona of legislations created by political authorities, but for us the essential characteristic is that the 'pious fiction' occurs when Islamic law's subject is almost nonexistence and new legislation is constructed based on social facts, and treated as if it belongs to, fits in and is extension of Islamic law's corpse. For instance, *zakat* (mandatory alms giving) is considered as the only theologically acceptable tax in Islamic law. However, throughout history governments levied different tax besides *zakat*, which were silently accepted by the population through maintaining the pious fiction.

The creation of Anglo-Islamic law in Indian sub-continent during the 18th century is also another example of pious fiction, as the Islamic law of family and inheritance was mixed with parts of British law and was applied under the rule of East India Company. This mixture was a workable solution and is practiced to date, without many questions raised on the contradiction of the holistic nature of strict theory of Islamic law, and theological and philosophical confusions that arise from a mix legal system.

Islamic law developed out of the ideas and principles formed in the first hundred years of post-Prophet era. These ideas and principles were collection of ethical, legal and spiritual standards that were argued by religious scholars as the main duties incumbent on every Muslim. The development of the legal theory took place within scholarly circles and implemented through the hands of political authorities. The remoteness between development and implementation of Islamic law produced challenges that required compromises. These compromises between the strict legal theory and functional legal practice formed an uneasy truce is Islamic law. The religious scholars were so much aware of this uneasy truce that they engineered tools like doctrine of necessity to "dispensed Muslims from observing the strict rules of the Law" (Schacht, 1982:84). The uneasy truce created the room required for preventing the full application of theory in practice, whilst the citizens were placid with just the official recognition of Islamic law by the State. For instance, the influence of Arabian Peninsula's legal culture on the development of the theory of Islamic law resulted in the deviation from explicit Quranic stance on the use of written document, as legal evidence towards the use of oral testimony.

The theory continued to develop throughout the Middle Ages focusing purely on oral testimony, whilst Schacht's (1982: 82) analysis suggests that on contrary to theoretical framework, the legal practice concentrated more on written documents and the witnessing was considered more of a formality. This contrasting and antagonistic priority in legal evidence is the gap between theory and practice; we are referring as 'uneasy truce'. The major characteristic of uneasy truce is that it is formed when there is doubt on judiciousness of an existing ruling in legal theory, which leads to it being desisted from practice and replaced by a more practical, effective or efficient ruling, thereupon leaving religious scholars to engineer a theological and legal justification

for the substitution of ruling. On of the examples of this is the discontinuation of punishment of theft by cutting the hands, just few years after the Prophet's death, which was later on justified by the religious scholars thorough the doctrine of necessity and principle of public good, although it is explicitly stated and emphasised in Qur'an and *hadith*.

4.4 THE ISSUE OF LEGAL VALIDITY

These two kinds of gaps between theory and practice, that is: uneasy truce and pious fiction raise an important question of legal validity. The pious fiction makes a ruling valid, because political authorities deem the ruling as essential or necessary, while the uneasy truce validates the rules based on its coherence with social facts.

On the issue of legal validity, the pious fiction follows the same line of reasoning as the classical Hobbesian[27]- Austinian[28] theory on 'pedigree thesis', which argues that it is the political sovereignty which assigns legal validity to law that is: the law needs to be obeyed because it is purely a coercive command of sovereign (Hobbes, 2004:120; Austin and Rumble, 212:1995). Pedigree thesis received extensive criticism from political scientists and philosophers. In Islamic theology and philosophy this thesis is supported by a very weak argument and is not accepted in its completeness, as the political authorities are theologically responsible for implementing the divine rule and sovereignty belongs to God; however, political authorities should be obeyed as they are divinely chosen. This, if strictly applied, makes the legal theory rigid to the degree of impracticality, while when loosely applied, it gives way for totalitarian State.

Some theologians suggest that political authorities have the power to temporarily suspend or alter the existing transcendental laws, as long as the permanency of transcendental laws is superficially acknowledged. This argument essentially attempts to bring the pious fiction in the roam of uneasy truce. The line of reasoning followed by this argument, along with all those theological arguments, which use the social facts as a rationale for suggesting that the transcendental law should be antiquated in favour of law, which better serves public interest; are essentially reasoning the

[27] "Law is the command of the law-maker, and his command is the declaration of his will." (Hobbes, 2004:120)

[28] "Every positive law, or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme." (Austin and Rumble, 212:1995)

'separability thesis', which historically made up the foundations for legal positivism. It is abstractive in nature as it suggests that there is a conceptual difference between morals and laws. Fuber (1996:122) interpreted this thesis in the broader terms, as he argued that: "Law does not necessarily have (positive) moral value [and]… The definition of 'law' should be morality-free". On the contrary, Hart[29] (1997:185-186) interpreted this thesis in a narrower sense and suggested that the legal validity of law is not necessarily dependent on the demands of morality. Whilst there is an accord among legal positivist on existence of legal system without any restriction imposed on legal validity by moral demands; however, dissension arises on the possibility of a legal system, with such restriction.

The 'inclusive legal positivism' (also known as soft positivism) subscribe to the 'social thesis' and takes the position that "moral principles or substantive values" (Hart *et al.*, 2012:250) can be incorporated to make up a criteria for legal validity, whilst 'exclusive legal positivism' (also known as hard positivism) endorses the 'source thesis' and argue that "moral considerations never affect the legal validity of norms" (Marmor, 2001:71).

While, on the other hand, social thesis is an extension Kant's suggestion that the powers of sovereign are grounded in the natural norms, which was structured by Kelsen, into the notion that the 'basic norms' (*Grundnorm*) are the source for the validity of law (Bindreiter, 2002:15). The social thesis, therefore, suggests that the "existence of the law is purely a matter of social fact" (Oladosu, 2004:53), and considers the "social facts, such as social rules or conventions which happen to prevail in a given community" (Marmor, 2001), as standards from which the basic conditions of legal validity should be extracted.

The social thesis gives the most suitable rationale for understanding the evolution of Islamic law and its current state in the Muslim world, which is also theologically justifiable, as it attempts to tap into the Islamic norms, which are imbedded in the Muslim society after centuries of practice. The primary source's account of consensus along with the divine commitment that Muslim community as whole will always

[29] "simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so" (Hart, 1997:185-186)

confirm to morally good, ethically right and divinely approved course of action, also theologically favours the social thesis. The acknowledgement of social thesis (instead of Qur'an and hadith as legal sources) by the Islamic law would not only solve the problem of legal validity, but also the epistemological and moral issues. However, contrary to the way primary sources perceive society, the Islamic law perceives society and social norms from very different angle, as it takes the society and social norms as something in need of constant correction.

Raz (1979) further developed the notion of social thesis within exclusive legal positivism and presents a case for 'sources thesis', in which he suggests that the validity of law in relation to institutions and claims, "Anything (however morally acceptable) not admitted by such institutions is not law, and vice versa" (Wacks, 2012:106) and suggests that the only acceptable criteria for testing are "efficacy, institutional character, and sources" (Wacks, 2012:106). Dworkin (as taken from Postema, 2011:405) argued for the distinction between 'rules and principles', 'facts and values', and 'what is law and what law ought to be', and used the pedigree thesis and obligation thesis to construct 'discretion thesis' (judges have discretion to alter and modify law). Dworkin by separating rules and principles suggested the moral nature of principles, which places him very close to natural lawyers. However, Dworkin does not agree to the premises that the "morally acceptable content is a precondition of a norm's legality" (Marmor, 2001). Currently Islamic law aligns itself towards the Dworkin's argument with an exception that Islamic law maintains the moral acceptability as a precondition for norm's legality. This requirement comes from the natural law that forms a part of Islamic law, and it stresses on the moral contents of norms to act as a criterion for legal validity. In the modern times Islamic law uses the combination of source thesis and discretion thesis for justifying the conversion of a rule into a law and for arguing the validity of law in Islam.

In current framework of Islamic law, a law is justified with a reference to its sources, as long as religious institutions or religious scholars accept that reference. A law may be accepted, but its may not be applied. The application of law is at the discretion of religious institutions or religious scholars, and when they identify an inapplicable law, they may modify or alter it into something more suitable for application. The legal validity in Islamic law becomes a function of reference to sources and acceptability of

scholars and consequently makes apparent the depth of the crisis. The crisis covers the subject area of epistemology and ontology, and it can be divided into three major categories, that is: 'crisis in sources of law', 'crisis of legitimacy' and 'crisis of morality'.

The part of legal validity that depends on the reference to the sources means that there is always a need for a connection between the law and the sources. The connection is established or justified by the use of hermeneutics, evidence and reasoning, whilst the law may formulate on the social facts. The interaction between the law, which is based on social facts and the primary sources of Islam, creates an arrangement where harmonisation is almost impossible to achieve. Most of the times the difference is such that jurist have to reply on weak reasoning to justify the connection, while in other times the difference is so great that even weak reasoning cannot be established, which results in silent acceptance. This creates a crisis in 'sources of law'.

Some jurists prefer position of primary sources and only accept a law to be valid, when it has a connection based on strong evidence and reasoning, while others give more weight to social facts and accept a law with weak reasoned connection, or no connection at all. The casual and desultory role played by primary sources raises the question on the practical importance of these sources in validating the law. The theologians and jurists argue that there is certain set of values, moral principles and ethical guidelines in the primary sources, which makes them absolutely theological necessity in the process of legal validity, although these values, principles and guidelines may be ignored or violated for a brief period of time; however, in the long run they are essential and obligatory. The form and substance of these values, principles and guidelines, or the lack of it, creates a crisis in morality.

Certain theological argument emphasis the acceptance by religious scholars as a criterion for morality and for legal validity; however, in absence of any central authority like Vatican or political authority like Caliphate, there is a crisis of legitimacy created by this argument.

4.5 THE EPISTEMOLOGICAL CRISIS

Crisis is a condition of a complex system or tradition, when the tradition functions poorly. MacIntyre (1998) who also coined the term 'epistemological crisis', described

the condition of a tradition, when its methods of enquiry cease to make progress by its own standards of rationality, and when the "Conflicts over rival answers to key questions can no longer be settled rationally" (MacIntyre, 1998:361-362), then that tradition is in a state of epistemological crisis. A tradition may reach this condition when:

> the use of the methods of enquiry and of the forms of argument, by means of which rational progress had been achieved so far, begins to have the effect of increasingly disclosing new inadequacies, hitherto unrecognised incoherences, and new problems for the solution of which there seem to be insufficient or no resources within the established fabric of belief. (MacIntyre, 1998:362)

Islamic scholarship is not alien to this condition, as Islamic law in its evolutionary development has repeatedly encountered this condition. We are using the term Islamic law instead of Islam, because, Islam's notion of "individual's submission to the will of God" (Cornell, 2005:13-20) developed into a corporative system governed by Islamic law, and with this development the focus shifted from individual's salvation to the construction of a schemata that may unite culture and creed by means of a legal system to create a virtuous society, where the emphasis is not on 'society as collection of individuals' but on 'society as a corporate entity' (Cornell, 2005:13-20).

Islamic law has historically experienced epistemological crisis in cycles. In second and third century of Islam, the epistemological crisis was resolved by the introduction of Greek logic. This occurred upon the realisation that tools and processes of an alien tradition could coherently solve the problems faced within the Islamic tradition. Although in spite of this realisation a pious fiction was still maintained for creating acceptability for the borrowed parts of alien tradition, by giving a superficial Islamic episteme to the borrowed parts of alien tradition. Cornell (2005) suggests that the need and importance for maintaining this pious fiction becomes apparent on observing the philosophical tradition in Islam, which unlike legal tradition, openly acknowledged the alien traditions as epistemological sources, and, therefore received immense criticism on "lack of authenticity" (Cornell, 2005:3).

From a very early period, the Islamic legal theory has attempted to use 'reason' as a combination of rationalism and empiricism, as a source of law to fill in the epistemological crisis (Auda, 2008). However, accepting an authority of reason has always raised difficult questions for jurists and theologians over the years. Due to the epistemological limitations of the primary sources, the reason always had and always

will have an authority within the Islamic law. This authority of reason is in the context of legal validity and as an epistemological source.

The early rationalists, such as Mutazilities and others, argued that the reason is not an authoritative source but rather a supportive one, which confirms the divine injunctions (Fakhry, 1991:11-14). They claimed that God can only act justly and can only do good, and these virtues (the good and the just) are actions of God and therefore separate and outside of Him. This assumption allowed them to view 'the nature' as purposeful creation of God that is just and good, and with this notion of nature, they argued that humans can develop better understanding of good and bad by observing the natural world. Emon (2010:26-27) observes that in rationalist's argument:

> the normative content of empirical assessments is founded upon the fusion of fact and value, by which nature is invested with a presumptive normativity that stems from God's purposeful creation of nature for human benefit.

The rationalist jurist's view point therefore is that: as there is a fusion between facts and values, we can distinguish between good and bad through observation of natural world, pursuing that good and refraining from that bad becomes a divine obligation which will be rewarded and punishable by the God (Emon, 2010:27).

The rationalist argued for the fusion of facts and values, and mixing the two, they addressed the problem with the theory of value in Islam and the epistemological crisis in Islamic law. This provided Islamic law with a new source of law and a workable theory of value.

The rationalist thesis stands on the assumption that the natural world is constant, static and determinate, whilst also implying that the God is obliged to honour human classification of good and bad, as long as classification is constructed on observation of the natural world. The rationalist jurists' thesis was heavily criticised, by the voluntarist jurist, on the assumption and implications of the thesis.

The voluntarist's antithesis is that the values and facts cannot fused in such fashion, as they argued that the "nature is not sufficiently determinative, objective, or foundational to ground the authority of reason" (Emon, 2010:29). They further objected to the bounding of God's will to the rational moral judgements of humans, as it has direct implication on the theological concept of omnipotence of God.

Voluntarist's critique, however, did not address the crisis in epistemology, and, the problem with theory of value; therefore, they used the principles on which they based their criticism, as foundation of building a synthesis. They argued for philosophically uncompromisable omnipotence of God and that the divine is under no obligation to honour or be subjected to human reasoning. The voluntarist then theologically engineered an argument on un-obliged grace of God and then used it to establish an epistemological connection between the natural world and the will of God. They argued for the examination and analysis of the "source-texts with divine authority to determine obligations and prohibitions that reflect the divine will" (Emon, 2010:29).

The theory of un-obliged grace of God allowed voluntarist to envisage nature as fusion of facts and values, and therefore recognise reason as "an ontologically authoritative source of Shari'a norms" (Emon, 2010:33). The recognition of reason was an attempt to address the epistemological crisis; however, voluntarist kept their commitment to the omnipotence of God, by devising models for restricting reason and by prioritising the sources. In theory, the utmost importance is given to the transcendental sources, and human reason can only be applied in circumstances where these sources are silent. The application of reason is also regulated, as theory argues that practical reasoning must satisfy some fundamental values, such as *maslahah* (public good) and *maqasid al-Shari'ah* (objective of *Shari'ah*) (Emon, 2010:33).

This theory of un-obliged grace of God was practiced with the support of pious fiction, and uneasy truce in most parts of Islamic history. The consequence of limiting the epistemological use of reason and ordering its ontological authority under the transcendental sources was that the epistemological crisis was reduced but not tackled completely, and with reason and observation of natural world, epistemologically restricted, and, hence exhausted, Islamic scholarship turned toward 'piousness' as an epistemological source Schacht (1960; 1982).

Piousness has a robust ontological existence in Islamic theology and philosophy, so much so that it is classified as a purpose of life. Islamic law utilised 'piousness' as an epistemological source in multiple ways (Auda, 2008). First the piousness was used as a foundation for the assumption that with the percentage increase in the literacy of Islamic law, the person's level of piousness will also increase, and once a person is well versed in the theory of Islam, they will be inclined to choose the good and right

course of action, as they will be a subject to divine guidance due to their level of piousness; therefore, their judgement should be trusted compared to a commoner's, as suggested by Hallaq, (1997) (2009), Cook (2000) and others. Secondly, piousness was used as a base argument to deter any cynicism towards the clergy, and officials such as *muhtasib* (Glick, 1972).

The manner in which reason was restricted and piousness was used, it marginalised any possibility of development in political theory along the lines of public accountability, while also relegating any illustrious developments in axiology (study of value and value judgements) or towards theory of knowledge that acknowledged empiricism or constructivism.

Similar to the early centuries of Islam, when Greek logic and Christian Theology forced Islamic law to reconsider its position, legal theory and episteme; the 19th century hermeneutic of suspicion, liberalism and politico economic challenges of post-colonial era also posed similar questions, which re-highlighted the epistemological crisis (Hallaq, 2004).

There were many efforts to reform the theory and practice of Islamic law over the years. Analogous to efforts of Jewish reformers like Samson Raphael Hirsch and Abraham Geiger, who argued against the rigid *halakhic* framework of the rabbis and attempted to substitute it with models built on rational faith and Kant's principle of morality as the genuine religion; Islamic law also went through similar phases from late 18th century onwards. From Indian subcontinent, Syed Ahmed Khan, Ghulam Ahmed Pervez and the in recent times Kassim Ahmad in Malaysia attempted reorientation of Islamic law's position on key socio economic aspects by arguing against the ontological authority of hadith and suggesting Qur'an as the only epistemological source which needs to be interpreted without making reference to *sunnah*. This approach, whose methods still required a trained authoritative clergy, was labelled as Quranism. In face of socio politico resistance the Quranism moment was unable to develop sufficient religious ministry to have a broader impact on the Muslim world. The requirement for theological experts was such a vital factor, as Quranism tried to keep Qur'an as a main source, while reinterpreting most of it's content concurrently, which required theologians who could develop the literature, whilst simultaneously creating an acceptance by educating the populace.

There have been many Islamic movements over the history, which do not fall under schism and instead are genuine attempts at reforming Islam by addressing its epistemological crisis. Some of them are liberal in nature, as they argue for private autonomy for interpreting sources; some are conservatives, as they argue for universal implementation of Islamic law whilst using the pious fiction and uneasy truce for addressing the crisis, and some are ultra conservatives, who attempt to alter the reality, instead of focusing on the sources.

The ultra-conservative reformists attempted to apply top down strategy, as they argued for establishment of an Islamic State, which could socially engineer the society into a condition of being where the epistemological crisis is bridged and the socio economic reality is aligned with all the positions, assumptions and expectations of Islamic law and Islamic theology. The ultra conservatists view this crisis as crisis in 'reality', rather than crisis in epistemology. Their adamant emphasis on unalterable orthodoxy of Islamic legal traditions meant that they inherently rejected and closed all the door for reformation. However, they did acknowledge the crisis, and responded to it by denying the ontological authority of 'modern reality' by disallowing it any moral grounds, consequently they rejected everything attached to or product of it, including the human knowledge that developed during this time. Sayyid Qutb, Muhammad ibn Abd al-Wahhab, Abul A'la Maududi and others attempted to politicise Islamic faith for dehellenisation of human beings from modernism. They argued for reshaping the human beings, redesigning the society and altering the reality in such a manner that a singularity between the 'changeable' (that is: human beings, the society and the reality) and 'unchangeable' (position of transcendental sources and Islamic law's assumptions) can be achieved. Through this methodology, the ultra conservatives concluded the current epoch as pure evil and developed a 'bad consciousness' of reality, and to balance this evil, they constructed a 'false consciousness', a conjured up utopia, where human beings will function according to every notion of 'unchangeable', and hence there will be no epistemological crisis. This phenomena is also observed by Rieff (1992), in context of Freudian conflict, as he claims that, "religion somewhere assumes a fixed point, at which conflict is resolved" (Rieff, 1992:267).

The ultraconservative, while bound by their extreme views on compliance to scriptures and with a desire to reach that fixed point, where all conflicts are resolved, argued for reconstruction of social fabric in such a manner that in the future that fixed point is attained, where the ultraconservative interpretation of scriptures and social reality are mirror reflection of each other, thus, all the conflicts are resolved and epistemological crisis is solved.

The use of, what Nietzsche refers to as 'false consciousness', for resolving the conflicts caused by the epistemological crisis is not unique to ultra conservatives and their political ideology. In post 1970s, an attempt to Islamise the knowledge also regularly fell in similar traps with the attempts of IIIT or the Islamisation of knowledge. The attempts on developing an economic system that conforms to the assumptions of Islamic law resulted in a narrative of an ideal economic agent called *homoIslamicus*, which is antithetical to *homoeconomicus*. The *homoIslamicus*, who upholds the moral commitments because of piousness and every course of action they take is filtered through their God fearing nature, was a concept thought out by speculative theology during the evolution of Islamic law. Historically, Islamic scholarship attempted to use this dimension of 'piousness' as an epistemological source, when they restricted the application of reason and downgraded its ontological authority. This concept failed in positive application, and, therefore is not applicable as a normative construct. However, as the discourse on *homoIslamicus* strictly follows same episteme as Islamic law, therefore it is rearguing the same position that was theologically assumed many centuries ago. This process of circling the conclusion is because of the stagnation in episteme; therefore, different types of reasoning will still provide similar results.

In the modern times, the neoconservative religious scholars, jurists and theologians face similar crisis, and in an effort to reconcile the present day reality with the conception of Islamic law, the current debate is largely focuses on using the doctrine (such as *maslahah* and *maqasid al-Shari'ah*) of the past, to extend the ontological authority and epistemological use of reason. These doctrines were essentially designed by the previous generations to restrict the use of reason, but the reliance of modern scholarship on these doctrines was, out of the fear of violating orthodoxy as

they tried to theologically engineer vents for using episteme that were otherwise alien for Islamic law.

The efforts to make reason "an authority source for divine injunctions" are centuries old, and for centuries these attempts are sidelined by labelling them as heterodoxy to extent of heresy (Emon, 2010:13). Therefore, the neoconservatives portrayed themselves as loyal to the traditional form of religion, whilst having ambivalence towards modernity, in which they applied distinctly modern epistemology to highlight the failures of modernism (Hallaq, 1997). The application of modern epistemology did not lead to direct acceptance of authority of these source, as the discourse on ontological authority of sources remained covered in rhetoric of the doctrine (such as *maslahah* and *maqasid al-Shari'ah*) of the past (Schacht, 1960, 1982). Moreover, the rhetoric allowed the neoconservatives to present themselves as a continuation of orthodoxy.

The multitude of schemas for reformation has one common denominator, which is that they all give perfunctory importance to Qur'an as an epistemological source and they argue that laws and policies need to be ruled by the religion in one form or another. The schemas deploy two main techniques that is they maintain a claim on the: "exclusive theoretical validity… of an autonomous customary law; [and] '*ulama*',… [as] the only qualified interpreters" (Schacht, 1960:84).

The emphasis on these two features is a result of political economy of religious scholars in Islam's religious market. These two features work together to legitimise 'the need and the authority' of religious scholars. Political authorities and in recent times the corporations, such as Islamic banks, then ratify this need and authority, as religious scholars in return theologically engineer the dispensation of "Muslims from observing the strict rules of the Law" (Schacht, 1960:84), so political authorities and corporations, such as Islamic banks, can create practically viable solutions. The practically viable solutions through this process are important for political authorities and corporations because of conscientious notion within the Muslim community on spiritual significance of theoretical validity of every solution by an autonomous customary law. The religious scholars personify themselves as the bridge between the impractical divine law and the practical reality, and as an architect of practical

solutions, they were successful in continuously reinventing the rationale for their existence and their authority.

In the post-colonial period, the newly born nation states opted for the positive law with an Islamic touch out practicality, which meant that the religious scholars who were trained as lawyers for religious courts by religious schools, had their work cut short; however, religious school across Muslim world continued to produce the religious lawyers *cum* religious scholars. The oversupplies created an over flow of religious scholars into political and social arenas, where they attempted to apply their expertise in Islamic legal theories. For example, the financial deadlock in Muslim world, due to aversion of interest bearing financial instruments, provided a unique opportunity for the emergence of a new creed of religious scholars and financial institutions. The financial institutions required theoretical legitimacy for using the Islamic brand, and for religious scholars it was another chance of rationalising their existence and their authority.

In the post 19th century, the argument on authority and need for religious scholars was challenged by many reformists (Hallaq, 2004); the developments in information technology, easy access to discourse and multiple opinion of specialists on Islam's subject matter also antagonised the traditional authority of religion, as it paved a way for individualisation of religious understanding. Many reformists, such as Tariq Ramadan, have also campaigned for a revaluation of the religious authority of scholars at institutional level.

Almost all the strands of reforms, along with all the schemas cited Qur'an as an epistemological source, whilst using reason, logic and even personal experiences to reinterpret verses or argue for a specific position. Even the sensitive topics, such as Islamic law's stance on homosexuality, is argued by all sides (that is: liberalist, activist and conventionalist) through reference quoting the Qur'an and reinterpreting its verses.

The reference to Quran is used as show of legitimacy, and, it does not act as a process of legal validity. In current practice, modernism forms the loose criteria for legal validity of the acceptance of rule as a law. This process is neither theorised, nor explicitly accepted in Islamic discourse, but it is practiced in political, economic and

financial strands of governance by Islamic law. For example, the liberals use Modernism as criteria for interpreting the sources of Islamic law, in which only those positions, laws or interpretations are acceptable that are coherent to modernism. Conservatives, on the other hand, stay loyal to the traditional interpretations of sources; however, they use coherence to modernism as a benchmark for sorting the interpreted rulings into implementable laws and impracticable rulings, whilst the ultraconservative use modernism as yardstick in theorising morality.

4.5.1 The Modern Crisis: The Unspoken Criteria for Validity

There are many theoretical constructs and politico-legal events that clearly display liberalism's setting standards of legal validity in Islamic law, by acting as an epistemological source. The citing of the ideas of liberty and equality in liberalism, as an epistemological source is crucial, because the corpse of Islamic law lacks any original discourse on these topics (as established in the earlier chapter). The narrative of some of the significant events, as relevant cases for evidencing, is as below:

In 2009, Saudia Arabia's *Shari'ah* governed Abha General Court issued death sentences for seven men, as they were convicted of armed robbery. According to the *shari'ah* law "the offences that they committed amounted to acts of 'corruption on earth'" (Amnesty International, 2008:10), which qualifies them for the severest of punishment. The court orders, which were corroborated by the King Abdullah, was to execute the six men by the firing squad, whilst the seventh man's body was to be "displayed to the public in a cruciform position for three days" (Spencer, 2013b; Telegraph, March 5th, 2013). The public display of dead body is coherent with the norms of Islamic law, as the Muslim tradition claim that it acts as a deterrent for to be criminals.

Many human right groups, along with Amnesty International and Human Right Watch lobbied against the sentenced; as they pointed out that the confessions were taken under intense physical and mental torture (Amnesty International, July 4th, 2013) and that at least two of the convicted were minors at the time of the crime (Spencer, 2013b; Telegraph, March 5th, 2013). The outrage expressed by human right groups, led to the negative publicity and international coverage of the many underlining facts, such as the rate of executions for non- murder offenses exceeds the

execution rate for murder in Saudi Arabia (Amnesty International, 2008:12). The governor of Asir province (Prince Faisal bin Khaled al-Saud) responded by issuing an order for the planned execution to be on an open-endedly held (Spencer, 2013b; Telegraph, March 5th, 2013).

This is not an isolated event, where decisions made under the governance of Islamic law, are indefinitely halted due the opposition based on the modern values. When we examine this event from the fence of epistemology of law and legal validity, we can observe that the decisions of Islamic law can in certain context be legally validated by modern values and international conventions, and if they fall short they may be invalidated or modified. The theological justification for any alteration in the ruling can be engineered by using tools like 'choosing the lesser harm' and so on. All violation of human rights or international conventions do not get noticed, and neither all noted violations receive enough support for Islamic authorities to be pressurised into altering, deferring or dropping the legal rulings. The fact that under certain conditions modern values and international conventions play a role of a filter by screening for the rulings of Islamic law that should not be applied. Although this role is only played in certain conditions, but assuming these certain conditions as ideal conditions, one can suggest the value intervention of modernism acts as criteria of legal validity. The value intervention that formulates a criterion becomes more prominent, when we examine the thoughts and discussions behind the current legal positions of Islamic law in the Muslim word.

The substratum behind the current positions of Islamic law is that the value judgements of modern thoughts are more coherent to the socio economic makeup of society in the era of post industrial revolution. Practitioners of Islamic law have, therefore, made many efforts to arrive at the value judgements similar to the ones achieved by modern thought. During such effort, they focused on those values within the legal sources that are closed to the modern value judgements and then attempted to develop them by tweaking the traditional methodology of Islamic law, to produce a discourse, which can bring Islamic law to similar conclusions as modern value judgements, because they do not assign or acknowledge any ontological authority of the discourse in modern thoughts, which creates these value judgements. The traditional position of Islamic law on issues such as: "polygamy, the marriage of

minors, the right of the father to give his children in marriage without their consent, and the right of the husband to unilateral and arbitrary dis- missal of his wife" (Schacht, 1960:106) were historically considered as just and fair. However, the Tunisian version of Islamic law has reformed the classic positions by accepting them as inadequate with the modern times. For example, the legal prohibition of polygamy in Islamic law, by the Tunisian authorities, in spite of its explicit allowance in scriptures was controversial, but nevertheless it is an attempt to arrive at the position similar to modern value judgements. The contentiousness arises in explicitly acknowledging that the Qur'anic legal contents are incommensurate to reality.

Overall, the legal decisions outside of scriptures are more frequently criticised and practitioners of Islam feel at ease to alter or modify them. However, when it comes to the Qur'anic legal ruling, they "restrict their criticism to the form in which the subject-matter appeared" (Schacht, 1960:104). The criticism is largely focused on the form, in an anticipation that the substance and spirit of the subject matter will have higher moral values, and it will allow Islamic law to produce legal rulings that are at least compatible, if not similar to the value judgements of modernism. The focus on spirit and substance is also used to justify and create human autonomy, which is largely absent in the traditional Islamic law. Bukhsh (as cited by Schacht, 1960:104) in an attempt to rejuvenate the Islamic law of inheritance (as it discriminates against the women), produced the simple methodology for reforming Islamic law, as he argued that the subject matter of Qur'anic legal rulings does not have an 'eternal value'. Therefore, we should not focus on their positive contents, but rather concentrate on the Qur'anic norm of establishing social justice through regulations (Schacht, 1960:104). Abdar-Rahman *et al.* (2008), on the other hand, focused on reinterpretation of the form of the subject matter and the positive contents; However, as Schacht (1960:105) suggests any scheme of reinterpreting the primary sources to make them coherent with modernism implies that "the Muslim scholars, for more than a thousand years, should have misunderstood the correct meaning of those 'sources' of Islamic law, and 'Abdur-rahman's whole method is unacceptable to an historian".

The schemes that attempt to annihilate all the historical understanding for reinterpretation of scriptures, not only commit the fallacies for historians, but also for theologians. Therefore, this research only focuses on the reformation schemes that

examine the scriptures for tendencies underlying the relevant passages in an attempt to rejuvenate and revive them. This is consistent with Tillich's approach, which proposes that revelations are relative and not absolute statements (Tillich, 1951:106-157). Philo in an attempt to harmonise the Greek philosophy and Jewish theology in 50 CE, followed similar methodology as he argues that the true meaning of scriptures are absent in the surface meaning and instead they lay beneath the surface meanings; therefore the literal interpretation needs to be supplemented by an 'allegorical interpretation' (McGrath, 2006:48). In case of Islamic law, the schemas of reformation do use value judgement of modernism as a benchmark to decide on what should constitute as the 'true meaning'.

Lewis (2006) examines the un-secular nature of Islam and highlights that the manner Qur'an covers socio, politico economic and religious matters, and the status of Prophet as religious and political leader, means that there are no historical foundations in Islam which follow secularization thesis, to the extent that the world secular or secularism are almost absent in Arabic language. In addition, Gellner identifies similar trends and declares Islam as 'secularisation resistant' (as taken from Cliteur, 2010:272). In explaining, Rashid al-Ghannouchi, the co-founder of Tunisia's largest Islamist party An-Nahdah, when faced a political necessity to officially acknowledge the notion of secular state, in the post Arab Spring Tunisia, he faced the phenomena examined by Gellner and Lewis, as there is lack of a clear rationale that can serve as foundational argument for justification of secular state in Islamic thought. Al-Ghannouchi grounded the argument in the treaty signed by Prophet in Medina, as he suggests that the treaty shows the dichotomy between the religious sphere governed by observance and obligation, and the political sphere directed by reason and *ijtihad* (Center for the Study of Islam and Democracy: Video, July 18th, 2013). This study does not focus on the theological cogency of the argument or its historical validity, as what is relevant for this study is that the 'process' followed by al-Ghannouchi to develop the Islamic thoughts in the manner that they coincide with already established positions in modern Western thoughts, without assigning any ontological authority to modern Western thoughts. The 'process' therefore treats modern value judgements as unspoken criteria for validating the Islamic law. It also shows that Islamic law shows a normative commitment with the modern value judgements, as the Islamic law attempts to develop itself in such a way that there remains a higher degree of

conformity between the Islamic law and modern value judgements; all this is being undertaken without acknowledging the existence, dominion or precedence of modern value judgements; hence, they remain outside roams of Islamic thoughts. Schacht (1960:120) suggests that the confusing of the past about what constitutes as legislation has lead to the current practice where jurists, juriconsults and theologians are using:

> … timid, half-hearted, and essentially self-contradictory… method of picking isolated fragments of opinions from the early centuries of Islamic law, arranging them into a kind of arbitrary mosaic, and concealing behind this screen an essentially different structure of ideas borrowed from the West, [which result in an] unreal and artificial…modernist Islamic legislation[s, which]… often appears haphazard and arbitrary.

The major issue with the modern Islamic legislations is the manner by which it opposes, whilst simultaneously utilising the modern westerns value judgements. This approach creates framework of 'post reformed Islamic legislations' that lacks "solid and consistent theoretical basis" (Schacht, 1960:120).

4.5.2 Paradoxes: The Sisyphus of Islamic law

This opposition and simultaneous utilisation of the modern value judgements formulates absurd and contradictory paradoxes. Although they may seem alike but this paradox is not similar to the ones, discussed by Kierkegaard (Westphal, 2014), in which we can only have "faith by virtue of the absurd" (McCombs, 2013:1-32). The dissimilarity between these paradoxes is because of the difference in episteme. In case of Kierkegaard's paradox, it rises from the narrative whose narrator and subject of narration is transcendental, that is: God narrating about the divine command issued by the God in an event which involved God and human beings; while the paradox created from fusion of Islamic law and modernity is a result of social construct with its roots in epistemological crisis.

The schemas of reformation, and the theories of Islamic law, categorise Qur'an as discourse that requires faith by the virtue of absurd, as demanded by philosophy of theology and similar to the Kierkegaard's Christianity (Westphal, 2014). This status, however, remains confined within the bounds of theory, and is not assimilated into practice. In the context of examining operations of Islamic law from the fence of legal philosophy, it could even be loosely suggested that in current settings, the interpretation of Qur'an is a social construct. The meaning of the verses exists outside

of the discourse of Qur'an, and within the society. These meanings are brought into the Qur'anic text by reader who lives in a social construct different from the time which is referenced in Qur'an. From legal point of view, within the current schemas it does not carry any intrinsic meaning as the meanings are assigned to Qur'an and its verses through socially constructed process. Therefore, its meanings cannot be true in every possible interpretation, and its legislative logic consequently is not tautological. The absence of intrinsic meaning originates from the difficulty in connecting the present day reality with the context, convention and circumstances of Qur'an. In the past, a whole discipline of Qur'anic exegesis was developed to create singularity in the meaning (Hallaq, 1997:22-32), yet, even in the bulk of available exegesis, some passages have singularity in the meaning assigned to them, due to formal or informal consensus between groups of religious scholars, while where such consensus is not established, passages have multiple meanings or possible schisms. It may further be suggested that the exegesis have somewhat lost their meanings as well, as they become more and more out of context with the present time. Advances in natural sciences has also forced Islamic thoughts into reinterpreting the primary sources, and sometimes contradicting the historical meanings in the exegesis. This cycle of reinterpretation to accommodate the continuously changing reality may cause continuous percentage decrease of the original meanings of Qur'an (original as the one historically understood and applied by Prophet) in the contemporary understanding of Qur'an. All of the schemas of reinterpretation have a common factor that is they focus on certain commandments, while rejecting the other. This rejection is not the rejection of the historically agreed abrogated versus, but it is focused on the commandments that are accounted for in the historical terms. Considering the theological assumption that every commandment is ethical, the process of selection in which some commandments are selected (Schacht, 1982), while others are rejected, creates an ethical dilemma and hints towards a moral crisis.

It should be noted that theory considers Qur'an as an unquestionable source of law; with Maliki tradition in special argue that there are no preconditions for its application (Philips, 1990:75). In explaining, the *dhaahiree* concentrate on the literal meaning, while others are open to consideration of form and substance, while assigning a meaning to it. In practice, however, the legislative rulings of Qur'an are adjourned with the 'rationale' of realising universal justice, attaining public interest, reducing

religious obligation or elimination of practical difficulties, which signifies that it is the social constructs that create the conditions for suspension of Qur'anic rulings. Therefore, it could be suggested that the social constructs have epistemological priority over Qur'an in the practice of modern Islamic law. Because the post-reformed Islamic legislations artificially mix the modern value judgements, while lacking any solid and consistent theoretical basis, whilst simultaneously using social constructs as rationales, without recognising the constructedness of reality, as a justification for reforming traditional Islamic law or for adjourning the legislations in the original sources, the end products is predominantly incongruous and absurd.

In order to observe the utilisation of modern value judgements without assigning any ontological authority to them as a source of knowledge; this research will use a modern Islamic financial instrument called *tawarruq* as an example. *Tawarruq* mitigates a cash loan, which is used in Islamic finance through modern value judgements to construct a contract that mitigates contemporary financial instruments. However, rejecting the empiricism as a source of knowledge within the construction of this contract.

4.5.3 *Tawarruq*: A Hamletian Dilemma in Epistemological Terms.

Tawarruq is one of the end products of the modern Islamic finance system; which is a transaction, by which Islamic financial institutions (IFIs) provide cash to their clients with the objective of overcoming their very short-term liquidity problem, where a client buys a tangible commodity from IFIs on deferred payment, which includes price and a profit rate for the bank, and then the client sells the commodity to third party (mostly organised by the bank) to generate the required cash (El-Gamal, 2006). Despite its growing popularity and wide spread use by IFIs, *tawarruq* transactions are subject to strong criticism (Al-Eshaikh, 2011:47). After extensive debate by contemporary Islamic scholars and jurists, the International Islamic Fiqh Academy in Jeddah, Saudi Arabia, issued a *fatwa,* or an Islamic legal ruling, which classified the existing practice of organised *tawarruq* as Islamically illegitimate (Haneef, 2009:1).

The contemporary practice of *tawarruq,* referred to, as 'organised *tawarruq'* is slightly different to the 'classical *tawarruq'.* It is argued that in classic *tawarruq* there was no arranged agreement between the client and the buyer of the commodity, unlike

in the case of organised *tawarruq*. However, classic *tawarruq* was not less controversial then the organised *tawarruq.*

In spite of the fact that four major school of thought considered classic *tawarruq* as permissible at one point or another in the past. Scholars, such as Al-Eshaikh, (2011) raised their concerns by arguing that classic *tawarruq* is worse than *riba* (interest), it has tendencies of *taljiah* (deceptive sale), it produces a debt culture, and suggesting that classic *tawarruq* is a type of *inah* (buy back sale) which is prohibited (Al-Eshaikh, 2011:47). The scholars, such as Haneef (2009), who historically supported the classic *tawarruq* argued on theological terms, such as suggesting that as long as a client does not buy and sell the commodity to same entity, and second sale is made to a different entity, there is no *riba* in this contract (Al-Eshaikh, 2011:46).

The debate on organised *tawarruq* is not that different from the historical debates on classic *tawarruq,* as the paradigm with which the debating parties approach this issue remains the same. The parties, such as Kahf and Barakat (2005:13-15) arguing against organised *tawarruq,* suggest that it is worse than *riba* as it is similar to usury, and that it encourages the debt accumulation, it lacks transparency, along with giving theological arguments on how different it is from classic *tawarruq* and how similar it is to the economic activities prohibited by the original sources. The arguments supporting the practice of organised *tawarruq* also give theological arguments (El-Gamal, 2006), while also arguing the necessity of such financial tool to modern financial institutions and customers. Almost all the arguments in favour of or against organised *tawarruq* assume that a customer will lose money in the transaction, as the bank would be charging a profit margin.

Alzaidi and Kazakov's (2012:321) research reveals that a customer equipped with forecasting tool can choose a profitable commodity for organised *tawarruq* and without violating any of Islamic law's principles, and consequently, the customer can make this transaction profitable. In exploring, Alzaidi and Kazakov (2012:319-320) created a simulation with 480 clients, and 100 retailers, who had 28,336 *tawarruq* (including the reselling) deal between them, in which clients made on average 0.03 percent profit after the reselling; with this they insinuate that it is a profitable market for clients, and as well as banks. Thus, Alzaidi and Kazakov's (2012) study shows the certainty expressed within the discourse on *tawarruq* that the clients will lose money

and that the clients are not able to resell the commodity bought within the *tawarruq* transaction, is incorrect, as the simulation based experiment shows that clients "can have full control of the reselling process and that on average they generate profit." (Alzaidi and Kazakov, 2012:319)

The discourse on *tawarruq* and the issues surrounding the debate are oblivious to the findings of Alzaidi and Kazakov (2012) work. This does not imply that the Islamic thoughts do not acknowledge empirical evidence, as the economic theories, arguments and empirical evidence are regularly quoted in Islamic economics and finance literature to support a position. The matter of problem with the Islamic finance, Islamic economic and to some extend all modern Islamic thoughts is that it acknowledges the empiricism as an epistemological source but denies any authority to it. For example, in a hypothetical situation, if there is a sufficient empirical and rational evidence to conceptualise that interest or *riba* reduces public difficulty, carries public interest, creates social capital, increases economic growth and improves piety, implements justice and fairness in the society, and so on, would it result in abrogation of Qur'anic versus, which prohibits *riba*. Or a more direct question would be 'could empirical evidence ever be enough for Islamic law to change its position on *riba* or any other transcendentally subscribed matter?'

If the answer to this question is 'no', then we are faced with the problem, where Islamic law will continue to propagate a practice knowing that it is creating more harm then good, whilst justifying the suffering on transcendental basis, with a compensation in the hereafter. This goes against the notion of *shari'ah,* as theologically it is supposed to ease human life and not make it harder. Moreover, the justification that there will be a compensation in the hereafter, can only be accepted with a faith by virtue of absurd, because there is no transcendental proof that God will acknowledge the human reasoning that a divine command for a specific epoch, social setting and circumstances when applied to completely different situation, resulting in harmful consequences will qualify for reward in the hereafter. Some of the scholars tried to classify the Qur'anic versus into groups, with versus that are open to interpretation and the unalterable ones. However, there is no theologically legitimate manner of this classification and it remain on the ground of subjectivity (Gatje and Welch, 1976).

If the answer to this question is 'yes', then we are faced with the question of 'why do we need scriptures as sources?', as 'yes' answer affirms that empiricism as an epistemological source has greater ontological authority as compared to scripture as source of knowledge (Hallaq, 1997), for which, Islamic practitioners may argue that there will only be temporary suspension of divine command and when the situation becomes favourable, the divine command will be revivified in its original form. This implies that divine commandments are not suitable for all times, which raises further questions, like the divine commandments are suitable for which time? The suspension of sentence for stealing, during post-prophetic era (Hallaq, 1997) can be given as an example. Therefore, the following questions emerge: Who decides the conditions for when divine commandments become suitable? And what are the conditions? Or most importantly, are divine commandments only suitable for the time and space at which they were transcendentally delivered?

All these strata of questions and many others issues are grounded in the futile state of current epistemological theory of Islamic law, with an underlined epistemological crisis. The epistemological crisis was lurking underneath development of Islamic law and to some extend this crisis influenced the evolution of Islamic law. However, the development of enlightenment thoughts, and progress in alternative epistemological theories produced challenges for Islamic law's static epistemological theory, and at the beginning of modernity, the effects of epistemological crisis started to become more prominent and identifiable (Heck, 2002). The modern epistemological theories consequently questioned and influenced the contemporary episteme of Islamic law, and ever since Islamic scholarship is inspired to produce value judgements similar to the value judgements produced by modern epistemological theories. However, due to theological constraints and political conditions of 19th century, such as colonialism, contemporary Islamic scholarship is always reluctant to assign any ontological authority to modern episteme, whilst they continue to use the modern epistemology theories such as empiricism to support their theologically constructed arguments (Khan, 2013).

Considering the favourable response of Islamic scholarship, for example, to socialism than to capitalism and neo-liberalism, suggests that the epistemological crisis also has normative connotation, as there is a lack of normative direction in contemporary

Islamic thoughts. In this lack of normative direction, and in the presence of working model of modernity, the Islamic scholarship indulge in replicating and imitating the value judgements similar to that of modernity, which creates an epistemological vacuum, where there are no sources adequate enough to provide or produce, what Islamic reformers are hoping to achieve. One of the primary reasons that practitioners of Islam deny ontological authority to modern value judgements is because they have a 'faith by virtue of absurd' that transcendental moral values will get carry forward to any notion that is grounded in the primary sources of Islam. There have been many historical debates within Islamic thoughts on the existence or non-existence of such transferable transcendental moral values (Moten, 2013).

There is much rhetoric in Islamic thoughts that draws on transferable transcendental moral values as means to justify legal, spiritual or customary ends (Rosenthal, 2009). The existence of transferable transcendental moral values may be used to justify the epistemological crisis, as it implies that any notion loosely attached to the primary sources may have a transcendental moral value in it. Although this in itself is a weak argument, because epistemological crisis, and lack of normative direction infers to the impracticality and credulousness of Islamic law. However, the argument based on transferable transcendental moral values is regularly applied within the Islamic scholarly circles. All the discourse on Islamic thoughts, which quotes, infers, deduces or refers to primary sources, indirectly acknowledges the existence of these transferable transcendental moral values. This is indifferent to the position taken by the discourse, such as liberal, conservative, orthodox or so on, because as long as there is a direct, causal or loose reference to the primary sources, the discourse implies the existence of transferable transcendental moral values.

In sum, the existence of transferable transcendental moral values is especially problematic when the legal theory is applied in the ethical settings, as it does not provide any normative direction to construct normative ethics, that is: it fails to give a picture of utopia. It also creates the operational failures, as discussed in Chapter 2 and theoretical problems as discussed in Chapter 3.

4.6 THE CRISIS IN MORALITY

Orthodox theory of Islamic law draws its sacredness from the assumption that anything allowed by legislation is morally correct and anything that it prohibits is morally corrupt. The primitive assumption behind this belief is the assumption that there exists, in the primary sources, a transferable transcendental moral values. The first issue with conforming to the moral values and legal commands is that nearly all the contemporary schemas of Islamic law pick out few historic Islamic legislations, while rejecting other historic legislation of Islamic law. The process of cherry picking historic legislations raises the question that is morality really based on Islamic law or is Islamic law morally redundant in contemporary sense. If Islamic law is morally redundant then it looses its moral claims and its theological legitimacy.

There are many schisms in the moral philosophy of Islam, and all of them do not stand by the assumptions that legal principles make up moral values. The orthodox schism that makes this assumption transmutes the legal principles into moral evaluations by categorising every act into "obligatory, or commendable, or permissible, indifferent, or reprehensible, or forbidden" (Schacht, 1960:107). The contemporary discourse also assigns these five qualifications to every act. However, the main emphasis remains on the technical legal aspect of the acts (Schacht, 1960:107). The development of this classification is the result of the evolution of Islamic law and the primary sources do not directly follow these qualifications, as they approach morality from dissimilar premises and with slightly different perspective. Theodicy plays an essential role in the way primary sources approach morality, as they do not demonstrate anti-hedonistic tendencies, instead they argue that there exists a singularity between the hedonist strives, moral development and aesthetic improvements.

4.6.1 Ethos of Islamic Axiology

The axiological perspective of primary sources combines aesthetics and ethics in a framework of theodicy; there is a conjunction between this perspective and the pre-Islamic Arab society that is somewhat similar to the way New Testament relates to Old Testament in the Christian theology.

Majority of Islamic discourse acknowledges this connection; however, it views the pre and post Islamic Arab society as a juxtaposition, where pre-Islamic society

demonised to emphasise the moral transformation of society, because of Islamic creed. Historically the pre Islamic Arab society not only were loosely aware of foreign Weltanschauung, but there were also traces of foreign influences such as the Christian and Jewish traditions (Donaldson, 1953:3). Apart from the bad morality that was a construct of superstition and fostered by constraints and exigencies of desert life, there was a strong moral stamina imbedded and preserved within the pre Islamic Arab society (Donaldson, 1953:4-13), which was based on following strands: generosity (*al-karam*), tranquillity (*al-hilm*), vendetta (*th'ar*) and clique mentality (*asabiyyah*).

Generosity formed the primary virtue behind hospitality; vendetta underpinning the notion of social justice influenced a large part of pre-Islamic Arab ethico-cultural understanding; clique mentality defined the ethical approach in political sphere; and tranquillity represented the acceptance of calamity and evil, with forbearance and clemency, by the virtue of absurd, which later on developed into the concept of predestined fate or *qadar* in Islamic theology. Majority of moral arguments and theological constructs in Islamic thoughts are grounded in these four pre-Islamic concepts (Heck, 2002). Thus, overall there is no singular moral theory, as there is variance and diversity in the moral judgements, the method constructing and obtaining the moral judgements, within the Islamic ethics.

There are two strata in Islamic ethics: the original uninterrupted ethos of primary sources, and then there are the ethical theories, developed by commentators, traditionalists and jurists, from the ethos of primary sources (Fakhry, 1991:10). This distinction is vital and it implies that primary sources does not contain any ethical theory or a blue print for one, which deduces the notion that there is no transcendentally subscribed criteria which could classify unconditional good, and without such criterion, everything endorsed by ethical theories falls under conditional good (Fakhry, 1991:10). There are two major issues with this: firstly any act endorsed as ethical or good has to accepted as right based on the assumption that there exist a 'transferable transcendental moral values', and as the ethical theories are grounded in divine discourse, they possess the values that enable them to distinguish between good and bad. The second issue is with the conditions that activate goodness in the conditional good and without clearly defined conditions, how can we ever be sure

there is goodness in the conditional good? These two issues connect the crisis in morality with crisis is epistemology, as its lack of episteme that creates the moral crisis.

From the perspective of institutional intervention, this suggests that institute of *hisbah* requires another theoretical framework, which could analyse the existence of goodness in the conditional good and look at the conditions necessary for the existence of goodness in the conditional good.

4.6.2 Scriptural Morality

The original uninterrupted ethos of primary sources, which make the first stratum of Islamic ethics, are "naturally a very vague and elusive concept" (Fakhry, 1991:10) that is grounded in problems of: right and wrong, divine justice and human responsibility, and free will and determinism.

Qur'anic discourse on ethics refers to some general principles such as: duty to God, moderation, forgiveness, retaliation, limited liability, oaths and rewards, while encouraging virtues such as humility, honesty, charity, kindness and trustworthiness, and condemning vices like boasting, blasphemy and slander, paired with regulation on matters such as property of orphans, nursing and weaning, divorce, inheritance, privacy, debt and accounts, spouses and relatives, and duties like subscribing good and prohibiting evil (Donaldson, 1953:14-17). However, the Medinan revelations are more focused on legal issues, whilst the Qur'anic verses revealed in Mecca has more faith and moral related connotation, as they are grounded in three religious convictions such as duty of humans, God's love and creations, judgement and retribution in the hereafter (Donaldson, 1953:21-29).

The Qur'an uses variety of terms to connote the notion of moral goodness, such as goodness (*khair*), equity (*qist*), justice (*adl*), known good (*maruf*), righteousness (*birr*), right (*haq*) and piety (*taqwa*) (Fakhry, 1991:12). Fakhry (1991:13) linguistically examines these terms and cross references them with their application in the context within the Qur'anic text, and suggests that the word 'goodness' "links doing good to per-forming the ritual acts"; the 'known good' is pre-Islamic word denotes moral approval and it signifies the morally approved actions; the term 'righteousness' "often occurs in somewhat abstract contexts…[it] may be described as

eschatological" Fakhry (1991:13), where a good work is correlated to its just reward in the hereafter. Qur'an, hence, in its entirety has an 'explicit textual basis' for two types of paradigm for morality: one is that in which the sanction of good is consequential as it is based on the punishment and rewards as promised in the Qur'an, which is instigated by jurists, theologians and Mutazilah tradition of Islamic thought, while the other paradigm for morality was developed in the 8th and 9th century Sufi school and it adds the 'love' and 'pleasure of God', and pursuit of piety in the sanction of good (Fakhry, 1991:11-14).

The word goodness or *khair* is announced in the Qur'an, with a call of doing good, which refers to the ritual acts, and its does not carry much relevance for the human activities outside of prayers and worship. The known good or *maruf*, which also has antithesis, that is reprehensible (*munkar*), along with a divinely subscribed duty of establishing the known good and forbidding the reprehensible, lacks the specifics on what may classify as known good or reprehensible. Al-Isbahani (taken from Cook, 2000:25-26) suggests that it is any good that can be known by revelation or by reason, while Zajjaj restricts this definition and suggests that it is the good known by revelation alone, whilst Tabri assimilates the good with social knowledge and customs (*urf*). The exegesis, therefore do not go in much detail of what good and evil are, but they hint towards the possible directions for developing an ethical theory. *Prima facie* (the apparent nature) inspection of the Qur'anic text and exegesis suggests that goodness ought to be defined in the social context, similar to social constructivist approach towards the episteme of good and bad. Social constructivist approach is different to relativism and objectivism, as it suggests that: "there are pockets of objectivities, and each pocket is demarcated by the group that acts according to what is believed to be true" (Cottone, 2001:41).

This approach takes the ethical debate away from psychology and theology, as it suggests that every community has their bracketed of absolute truth and the understanding of good and evil is part of the knowledge within the brackets. The community observes their bracket of absolute truth as objective, whilst outside communities view it as relative. The *prima facie* of Qur'an, traditions and exegesis provides a concept for this kind of moral understanding, where the bracket of absolute knowledge within the Muslim community is the episteme for morality. The usage of

Jewish law by Prophet Muhammad to judge between the Jewish people also supports this view, as the Prophet Muhammad used the Jewish bracket of absolute knowledge to judge between. The jurists and juriconsults, however, did not purely base the Muslim community's bracket of absolute knowledge as source of morality, instead they categorised it as lower source of law. This is because, the theory of Islamic law takes the assumption that whatever rule is validated as a law by the theory, that law becomes a known good and by becoming the known good, the duty of obeying and subscribing it falls on every Muslim (Hallaq, 1997). It could be argued that ontology of Islamic law is fundamentally flawed as it uses its own inventions and assumptions to support its existence and its authority.

Donaldson's (1953:40) work suggests that this divine authority of Qur'an, within the moral roam, "imposed lasting restriction on the moral development" as the divinely inspired doctrines are intrinsically rigid. While the restrictions on the moral developments can be witnessed historically, however, the main cause of these restrictions is not just rigidity of the text, as the explicit Qur'anic text is abstract enough for justifying the development of objectively grounded moral obligations. Instead the cause is a combination of changing conditions in Islamic religious market, the course of evolution of Islamic law and thoughts, along with historical dynamics between civil polity and ecclesiastical polity.

The Qur'anic text imposed restriction on the moral development, not just by the rigidly in its nature of being, but also through its subject matter. Other than previously discussed two schemas of morality in subject matter of Qur'an, there are also passages, which show that the right course of action is not always morally good and ethically correct. This adds further dynamics to the moral dilemmas and due to these complexities, there are multiple and contradicting moral theories in Islamic thoughts. For example: the additional burden of sustaining Meccan immigrants disturbed the equilibrium of Medina's economy, and after the six failed efforts to capture Meccan caravans in an effort to enforce an economic blockade on them and deteriorating living conditions of Muslims in Mecca, created an extreme and intense social situation; consequently, in the holy month for peace (Rajab), the Prophet sent forth seven men towards *Nakhlah* with sealed instruction, which were to be opened on the day after the departure and the instructions were to raid a Meccan caravan without

compelling those members of the group of seven, who may object to the violation of the terms of the holy month of peace (Donaldson, 1953:30-31). Five out of seven consented and successfully raided the caravan, which was poorly guarded due to the prevailing custom of cessation of hostilities during the holy month; on their return to Medina, further objections were raised on violation of this norm, which resulted in the revelation of Qur'anic verses of 2:217[30] and 22:39-40[31] (Donaldson, 1953:30-31).

Strict adherence to holy month of peace is a pre-Islamic custom, which was endorsed by Islamic scriptures; therefore, we can classify it as the known goodness. However, as the revealed verses mentioned above suggests that known goodness is not unconditionally good, as it was overridden or abrogated due to socio economic situations. Another way of rationalising this is by connecting it to pre-Islamic notion of vendetta (*th'ar*), in which case it could be suggested that in spirit of vendetta (*th'ar*), a known good maybe violated and it still will be classified as the right thing to do. Moreover, the verse in question ends with classifying social upheaval and chaos as a higher evil than taking a life. From categorical moral sense, this is similar to what Kierkegaard describes as "teleological suspension of the ethical" (Kierkegaard *et al*., 2008:39). The justification for this 'teleological suspension of the ethical' maybe connected to the Qur'an (18:01-82), which give a narrative of *Khizar*[32], who follows the divine will, and in doing so, gets cautioned by Moses on the killing of innocent and destruction of private property. While Moses's objections are based on the known goodness and evil, social responsibility and personal commitment to morality, however Khizar, who obeys God's will in his actions, responds (Qur'an, 18:68) to Moses's objections by pointing to the epistemological crisis in Moses's understanding of morality (Hallaq, 1997).

[30] "They ask you about the sacred month - about fighting therein. Say, "Fighting therein is great [sin], but averting [people] from the way of Allah and disbelief in Him and [preventing access to] al-Masjid al-Haram and the expulsion of its people therefrom are greater [evil] in the sight of Allah . And fitnah is greater than killing" (Qur'an, 2:217).

[31] "Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allah is competent to give them victory. There is sufficient explicit textual basis to support the social thesis, where "[They are] those who have been evicted from their homes without right - only because they say, 'Our Lord is Allah' And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might" (Qur'an, 22:39-40).

[32] The status of *Khizar* is unclear, as to whether he was a saint or a prophet.

The above Qur'anic narratives imply that there is not much ontological authority for the known goodness and evil, social responsibility and personal commitment to morality, as the final good defies the authority of them all. Fakhry (1991:22) examination of the Qur'anic moral motif for the final good suggests that the final good is the stipulation that humans ought to be in an appropriate relation to divine and through this relationship they will be able to satisfy the conditions required for righteousness and piety. The issue with such a notion of final good is that when it is contextualised with rest of discourse, it implies, due to lack of authority of known good, that any and all known moral codes can be and should be broken, in order to establish such a condition, when humans are in an appropriate relation to divine. The quixotic nature of what may be categorised as an appropriate relations and the ambiguity of what are the conditions that may produce this appropriate relation, make this notion imprudent, where any immoral acts becomes right, for the achievement of the final good of being in the ideal relationship with God. Moreover, by categorising killing as a lesser of an evil than social upheaval and chaos, signifies that protecting the *status quo* is far more important than establishing justice. There is also a sense of antinomianism in the text, with a view on epistemology similar to epistemic conservatism[33], as the Qur'anic morality focuses on the inwards (within in the person) process and the pursuit of an inward goal may justify the outward actions performed for it. In other words, the stipulation to attain piety and righteousness is an inward process and the overall concept of goodness in Qur'an is purely a matter of faith.

This theme continues in the oral traditions of the Prophet. Similar to Qur'an there is no clear definition of good or evil in the traditions; however, there are sufficient textual basis to infer that the goodness is identified in relation with: "conformity to the dictates of Islam… [,] to the will of the (orthodox) community and its head, and in dissociation from any schismatic or heretical groups" (Fakhry, 1991:24).

In other words, the locus of scriptural morality is the inward belief and intentions, whilst the outward actions are viewed as something of lesser importance, and the natural morality concerning them can be ignored under circumstances. There is also insufficient textual ontological authority for outwards morality and inadequate

[33] Epistemic conservatism suggests that a person's believing some premises or claim is a reason in support of that claim or premises.

episteme for construction of an ethical theory for outward actions in un-interpreted ethos of scriptures (Fakhry, 1991:24).

Theologically the consequence of inward beliefs is deferred to hereafter in contrast to the consequences of outward actions. Islamic law attempts to ignore the inward focus of morality and tries to morally regulate the outward actions. This paradox of regulating the outward actions using the inward focusing scriptural morality creates an incongruous setting, which forms the part of crisis in morality. Thus, Islamic scholarship, particularly commentators, traditionalists and jurists have developed ethical theories by interpreting the primary sources to settle the incongruous moral settings in scriptural morality. This is specifically problematic for the institutional interventions justified on the grounds of morality, as intrinsic morality of scriptures is judgement on the subjectivity, which cannot be theorised into a model. This takes us back to the initial problem of lack of normative direction.

4.6.3 Theological Ethics

Theological theories of ethics are grounded in the primary sources, namely Qur'an and traditions, or hadith and *Sunnah,* and they attempt to bridge the gap between the need to regulate the outward actions and the focus of primary sources on inward believes. There are two major approaches within this category, that is: the rationalist approach by Mutazilites and Qadri, and the voluntarist approach by Asharites based on theistic subjectivism (Fakhry, 1991:11-14).

The Mutazilites were the first to extensively discuss the dichotomy of good and evil. They argued for a correlation, between good and praiseworthy, and between bad or evil and blameworthy, whilst rejecting the ontological perspective of Neo Platonist's such as Al Farabi and Avicenna, which states that "a thing is good simply because it is" (Fakhry, 1991:32). The Mutazilite methodology is built on the understanding of good on the foundations of intuitive ethical knowledge, which is: "autonomous and self-validating… [and] requires neither 'acquired' nor 'deductive', evidence to support it, not even the warrant of divine revelation" (Fakhry, 1991:33).

The Mutazilites, unlike the naturalist Islamic philosophers, made room for the revelation within the ethical domain by suggesting that it demonstrates the ethical principles already established by reason. They further created a framework for

practical use of the intuitive ethical knowledge of individuals by detaching the four terms in commanding good and forbidding evil, then independently defining them as:

> … commanding' (amr) is telling someone below one in rank (rutba) to do something, while forbidding (nahy) is telling them not to; 'right' (ma'ruf) is any action of which the agent knows or infers the goodness (husn), and 'wrong' (munkar) any action of which he knows or infers the badness (qubh) (Cook, 2000:205).

The Mutazilites' methodology is very close to the scriptural morality, as they used inwards moral function, of intuitive ethical knowledge as an episteme of moral theory, to regulate the outward actions. This theory also uses the social and political *status quo* to create legitimacy for commanding good and forbidding evil within the social and political hierarchy. However, it fails to create a well defined and clear structure for normative ethics. Moreover, such form of ethical theory would create autocracy where the political and religious powers will be concentrated in the hands of a few and their decisions could not be subject to any legal or moral restraints, as any decision they make would have ontological goodness based on their intuitive ethical knowledge, with the legitimacy of their intuitive ethical knowledge epistemologically grounded on their social or political status, hence legitimising anything or everything they may do. If the moral presuppositions in Mutazilites' theory of ethics are accepted, then any attempt to criticise them creates a pattern of circular reasoning, for example actions of a tyrant ruler are right because they are the rulers. The intuitive ethical knowledge can be accepted at an individual level, however there are fallacies, which become prominent when this theory is approached from the fence of political economy.

Contrary to Mutazilites' deontological theory that argued for an intrinsic obligation of abiding the good that has been identified by reason, the Asharites attempted to produce antithesis in which they debated that there is an obligation in goodness only when there is a divine command to do so. They inferred this from the moral presupposition that good is what god wills and evil is what he prohibits (Fakhry, 1991:46). In other words, the known good and known evil is only that which we know through revelation, therefore the obligation to act upon is grounded in revelation.

The Asharites perspective had far reaching effects in the Islamic thought and they act as a prototype in the post Asharites development of Islamic law. The presupposition in Asharites' ethical theory poses the question of, 'why should Muslims follow those

rulings of Islamic law that are not explicitly mentioned in scriptures?', especially when they cannot be accepted using the pedigree thesis, as there is no current political sovereignty, which may assign validity to these rulings and laws. Even in a hypothetical case of an existing sovereign political power and an assumption on acceptance of pedigree thesis, the question arises of what validates the power of sovereign. In the roam of ethics, this theory gives way to crisis in ontology of episteme for morality, because if the obligation is limited to scriptures, then on majority of matters, which are not addressed in the scriptures, there is a problem of legitimacy of any existing source from which morality can be drawn. If they are to be drawn from the scriptures on the assumption that there are transferable transcendental values, then one may argue that why does the transcendentally assigned obligation is not transferred along with the scripture's transcendental values? It may be advocated that the reason the transcendentally assigned obligation does not transfer along with transcendental values is because there is no direct divine assurance or positive declaration from God or the Prophet that the conclusion inferred from scriptures is good, right or correct. The lack of divine assurance, eschatology indemnity and certainty implies that there is an intrinsic doubt in the existence of goodness in the any conclusion, rule or ethical statement inferred from scriptures. This doubt, which is grounded in lack of divine assurance, eschatology indemnity and certainty, forms the fundamentals of crisis in morality. The crisis in morality is an offshoot of the overall crisis in epistemology, which is the root cause for creating inconsistencies in the institutional implementation of the morality by the institute of *hisbah*.

The acceptance of assumption on ontology of transferable transcendental values and transferable transcendentally assigned obligation forms another enigma. Under this assumption the values and obligations are transferred when a conclusion is inferred from scriptures. The socio economic reality we live in and the course of human development or even the socio economic development of Muslim community is not inferred from the socio economic reality of the Prophet's era. The socio economic reality and the development in it, is a reactive reaction to socio economic needs, and if we attempt to morally regulate a reality developed as a result of socio economic needs, using the regulations inferred from the directives in scriptures focused on the Prophet's era, than the result is that there is a gap between the socio economic reality and the inferred moral regulations. In other words, the episteme of moral regulations

is the ‘good’ transcendentally subscribed for a society almost fourteen hundred years ago; in order to relate this good with present socio economic settings requires further epistemological sources and theological engineering. These required epistemological sources or lack of them goes back to the epistemological crisis. Even in case these sources are identified using theory of Islamic law, correlating and connecting the ‘good of the past’ with ‘what is ought to be good in the present?’, becomes a matter of perspective. The multiple perspectives lead to a crisis in legitimacy, where there is a lack of framework to classify the existing multiple perspectives into valid and invalid (Heck, 2002).

The only valid form of acceptance for the underlining assumption on ontology of transferable transcendental values and transferable transcendentally assigned obligation is through the ‘faith by virtue of the absurd’, which implies that the prior stated assumptions can be replaced by any similar analogous assumption, as long as they are accepted based on the ‘faith by virtue of the absurd’. An alternative assumption could be that, the Prophet embedded the transcendental moral values into society and they continue to exist in the bracket of absolute truth of Muslim community; Muslim communities’ bracket of absolute truth is the only available source, where the transcendental values exist, they exist because they can be represented, as all the evolution in socio economic conditions of human beings have, over the time, abrogated all the sources of Islamic law, within the socio political domain, especially the primary sources. This assumption, similar to the one taken by theologians, is to be accepted by faith in the virtue of absurd, and the epistemological crisis, which exists with or without this assumption, requires new epistemic sources so that it may be resolved, but this assumption paves a way for new epistemic sources.

Switch in the paradigm of assumptions is not heretical is the larger sense, and neither it should be dismissed as an historical fallacy, because the most claims of Islamic law and Islamic thoughts are “the best account which anyone has been able to give so far” (MacIntyre, 1977:455); with the socio economic progress, and with the progress in human knowledge, the narrative of ‘the best account’, along with the belief on what categories as ‘the best account’ vicissitudes and changes. The claims of Islamic law and moral presuppositions may be vindicated as the best of what has emerged from Islamic tradition, however as they fail to correspond with reality whilst maintaining to

produce claims that are highest moral guidelines, for all of human kind, as there is an epistemological crisis in current schema. As MacIntyre (1977:445) elaborates that resolving such a crisis demands questioning the prevailing "criteria of truth, intelligibility and rationality" and constructing from ground up a fresh and different narrative, which could reformulate the criteria of truth and result in new understanding. The rhetoric on logical invulnerability to scepticism of Islamic tradition and claims that emerge from those traditions does not apply in the socio-economic domains, as it does not categorically fall in the same class as the unfalsifiable religious truth of dogmatic theology; such as the *hisbah* manuals and the market regulations justified based on theology. This in context of of judgement of activities is based on morality through institutional intervention, which means that there ought to be different narrative of morality that could provide that moral judgements. That is, a new epistemic source upon which the institutional intervention can be based and justified. In context of institution of *hisbah* and governance of society and market, this suggests that Islamic law should no longer be used as an ethical theory and instead an ethical theory based on a new epistemic source needs to replace it.

4.6.4 Philosophical Ethics

Islamic philosophers were the first to disregard the assumption in theologian's ethics, and instead they grounded their theories in Stoic, Platonic or Aristotelian philosophy. Fakhry (1991:67) examines that Islamic philosophers used scriptures only for "literary embellishment or dialectical reinforcement", as they abjured the use of scriptures as an epistemological source. The philosophical endeavour in Islam is an autonomous enquiry; however, Islamic religious doctrine still plays an integral part in its development, as the philosophers attempted to create an inner coherence between the revealed knowledge and philosophical investigations, which becomes more prominent in the political dimensions of Islamic philosophy. Due to the religious influence, Islamic philosophy presupposes the singularity of truth and therefore it sometimes goes to great lengths in order to justify the prevalence of religion, while maintaining the superiority of philosophical method of enquiry, which consequently produced a body of ideas variant with the orthodox set of beliefs (Esmail, and Nanji, 2010:71).

The development of philosophical traditions was a major step in creating the body of ideas, which are not based on legalism. The political and legal practice strayed from nomism in very early stages of Islam; while the theory continued to view the legal decisions as strong moral conclusions. However, as Donaldson's (1953:269) analysis on Islamic nomism and Islamic ethics of legalism suggests that it "is opposed to those conceptions of morality which postulate an end to be pursued or an ideal to be realized". Whilst, not all, but few of the ethical theories constructed by philosophers attempt to construct new epistemological sources, while some even focus on the normative ethics, and in doing so they systematically depart from the Islamic nomism and Islamic ethics of legalism. Therefore, in order to find an alternative to the Islamic legal theory, at this stage, this research explores the epistemological and ethical thoughts of Islamic philosophers.

Al Kindi (Butterworth, 2005) advocates the search for a new epistemological source, as he argues that Aristotle's work on metaphysics has insufficient guidance on normative issues and suggests a need for a new source of moral guidance which is neither grounded in "metaphysical knowledge nor divine inspiration" (Butterworth, 2005:268). Al Kindi's own work is less focused on the definition or construction of ends, as his focus is more towards the methods of making the way to undefined ends comfortable, although he does construct a presupposition "As long as we know of no purpose for human existence, virtue – above all, moral virtue – must be our goal" (Butterworth, 2005:271). Al Kindi's work is grounded in the concept of moderation, anti-hedonism, Stoic moral fortitude and *apatheia*[34] as he examines the notion of sorrow, its causes and remedies, whilst keeping the focus on individuals and not on society as a whole; the underline theme of al Kindi's work continues on in the work of al-Razi, Miskawayh and Avicenna (Fakhry, 1991:68).

Al-Farabi's work follows a slightly different theme, as it coalesces the logical rigour and empiricism in the work of Aristotle with the Plotinus and Neoplatonic mystical intuition (Critchley, 2009:86). It introduces the notion of ultimate happiness, in the debate, as an end to human action, whilst theorising a concept of utopian society with a philosopher king as a ruler; al-Farabi associates the morality with political theory and loosely builds a case for application of theory of value in the normative ethics to

[34] State of mind undisturbed by passion and sufferings.

the political economic settings (Butterworth, 2005:279-280). Al-Farabi continues with the theme of singularity asserts that knowledge emanates from the God and is transmitted to humans, where some knowledge is inherently possessed by all human, while specialised knowledge, like philosophy, needs to acquired; with this assertion al-Farabi orchestrates the "subordination of prophecy to philosophy" (Therese-Anne, 2003:104-110), which is contrary to al-Ghazzali (in his post philosophical years) who argues for even the basic laws of physics and principles of astrophysics to be grounded in the scriptures (Therese-Anne, 2003:110).

In terms of causation, Al Farabi accommodates the Islamic thoughts in the Greek philosophy, while Avicenna accommodates the Greek philosophy in the Islamic thoughts. Al Farabi whilst justifying the subordination of prophecy to philosophy proposes that "Prophecy is simply an overflow of intelligibles on the imagination" (Therese-Anne, 2003:104), and Avicenna suggests superiority of prophecy to philosophy by explaining that the prophetic intelligibles do not require logic as a connection, as they directly "overflow into the imagination, which translates them into symbols, parables, and so forth" (Therese-Anne, 2003:111). Al Farabi philosophise the Islamic thoughts and Avicenna Islamise the philosophical thoughts, however, in spite this difference in their schematics, together they create a world view in which:

> a distinctive emanation scheme is superimposed on the Aristotelian universe, and wherein the last of the incorporeal intelligences, the transcendent active intellect, performs functions in respect to both the sublunar physical world and the human intellect—is embraced by a fair number of Moslem thinkers. (Davidson, 1992:128)

After al-Ghazzali's attack on philosophy, Averroes attempted to reconstruct the argument that philosophical endeavour provides religious and political wellbeing (Butterworth, 2005:282). Averroes uses Qur'anic discourse as an epistemological source to argue for an epistemological source for morality outside of scriptures, so it could be suggested that by building his argument in such a fashion, he adheres to the assumption of transferable transcendental values (Davidson,1992). In his work, he argues for an objective view on morality, as advocated by the majority of Greek philosophy, and he loosely assembled a theory of value, which considers the existence of 'good' with intrinsic value of goodness and a meaning of good which is independent of scriptures, along with an assertion that such a meaning should be preferred even when it contradicts scriptures (Hourani,1985:250-251).

Averroes, while wrestling with an ages old debate of 'how and why does a perfect God create evil?' and 'what is God's responsibility?', further postulates two major points, that is: the outcome of theistic subjectivity imply absurdity, as it transforms the basic tenets of Islam into intrinsically empty and valueless conventions, because under 'theistic subjectivity' they are only 'good', because God says they are good and they do not have any intrinsic value in them; thereafter he asserts the presence of objective values in good and in truth (Hourani,1985:253).

The theistic subjectivism stands only on the notion of authority of scriptures and it was largely a construct of Shafi, which was further developed by Asharites and rigorously asserted by al-Ghazzali in the pre-Averroes era. However, in spite of Averroes' efforts to put forward a case against the theistic subjectivity, it became a dominant view in Islamic jurisprudence. The acceptance of theistic subjectivism as a convention introduced rigidity in the episteme of morality and of law, resulting in epistemological crisis, and this is also the point in history, where the accretion in the understanding of morality reached the tipping point and transformed into a crisis in morality.

This does not imply that Averroes' theory of value or his notion of existence of objective truth may have prevented the crises in epistemology or in morality, as in modern philosophy the concept of objective truth is largely contested due to lack of reference point in notion of objective truth. The discourse focusing on philosophical issues in Islamic thoughts is rich and diverse, and the above discussed scholarship is not the only personalities, which argued against the orthodox view and theistic subjectivism. For instance, Ibn Hazm examined paradox of religious obligation and moral responsibilities in Islamic thoughts, while also critiquing the paradigm in which Islamic law uses analogy and deduction; and al-Tusi further developed Miskawayh's work to assert the parallelism between the political economy and ethics (Fakhry, 1991:143,168).

The root of the mentioned crises, however, are not in un-acceptance of a certain perspective or discontinuation of certain schism, but they are grounded in the establishment of an orthodoxy, which rejected any ontological authority to epistemological sources, which are outside the rigid list of sources that it classified as primary sources. The narrative discussed above also does not imply that the

philosophical thoughts ceased with Averroes, instead the philosophical endeavour in Islamic thoughts continued into the 20th century; in post Averroes era, Abu al-Barakat worked on expanding Avicenna's discourse on active intellect; Suhrawardi constructed science of illumination; Mulla Sadra's work coalesces the Suhrawardi's science of illumination and Avicenna's concept of intellect with Sufi and Shiite thoughts (Davidson, 1992:179), as Mulla Sadra constructs the existentialist argument within Islamic thought, without debilitating history of Islamic thought, by constructing the principle of "existence proceeds the essence" (Razavi, 1997:130). Despite such attempts, in overall the Sunni orthodoxy continues to be defined in context of theistic subjectivism.

The reliance on theistic subjectivism creates issues, when a state official exerts his views to morally judge the market or the society, and justifies the legitimacy of their views based on this logic. The theistic subjectivism is also problematic because the view point of God can be theologically argued to be uncomprehend-able, while in practical terms it is unknowable because of the termination of lines of communication between humans and the God. The theistic subjectivism on its own is unable to provide any explicit answers, especially for the large number of modern issues that are alien to history of medieval times, so the during the process of constructing an answer, the theistic subjectivism changes to juristic subjectivism.

The juristic subjectivism justified on the grounds of theistic subjectivism embedded in the theories of *hisbah* discussed in the previous chapter, which consequently create institutional failures, as highlighted in the Chapter 2.

4.6.5 Religious Ethics

Some juriconsults, jurists and theologians attempted to address the problems within theistic subjectivism by breaking away from dialectic, hermeneutic and methodological approach, and concentrating on spirit of Islam through construction of an Islamic worldview. Al Hasan al Basri is one of the famous scholar within this category, who attempted to compile a list of virtues that portray goodness in one's character and they are to be achieved by a continuous process of reflection, self-assessment and absolute submission to God; his teachings not only influenced the Qadari sect and development of Mutazilites' creed, and are also regularly quoted by

Sufis (Fakhry, 1991:151-153). Al-Ghazzali also generated a notion of Islamic worldview, by assembling the category of things, which ought to be protected, which he called the purpose of Islamic law. Al-Ghazzali's work has political economic connotation, while the al Basri is focused on the individual's pursuit to salvation.

While Al Juwayni first introduced the concept of purpose of Islamic law in the 11th century, later al-Ghazali formulated five objectives as the purpose of Islamic law. In line with such developments, al-Qarafi then added another objective, while al-Salam extended the scope of the purpose of Islamic law. In addition, ibn Taymiyyah asserted on an open-ended list of objectives and Al-Shatibi initiated an inductive approach to Qur'an for documentation of this open ended list of objectives (Rane, 2010:94). The more contemporary jurists from this category solely focus on the doctrine of purpose of Islamic law, considering it to be a lens that allows a birds eye view on all of human affairs (Auda, 2008:192-244).

Overall, the notion of purpose of Islamic law is not only accepted in the orthodox theory of Islamic law, through recognition of its ontological authority, but it is also presented as something that parallels to a theory of value. However, the close examination of its historical evolution and the investigation on the method of its contemporary usage suggests that resoluteness of this doctrine is to systemise, rationalise and legitimise the 'juristic subjectivism', along with permitting a dimension of consequential moral reasoning within the framework designed on concept of categorical reasoning, within the Islamic law (Hallaq, 2004).

The inductive reading of scriptures for identifying the purpose of Islamic law is problematic, because there is no method for testing the findings, other than using an endorsement by other scholars as criteria of qualification. The test-less inductive reasoning makes the end product or identified purposes of Islamic law, a product of jurist's subjective understanding, built on personal experiences and influenced by the confirmation bias. The acceptance of this process, also means that any socio economic or politico religious motive can be justified as an objective of Islamic law, by simply grounding it in scriptures; such process would also not only legitimise positions of Islamic fundamentalism but also would hint towards the normative of Islamic law. The criterion based on endorsement by other scholars is also a challenging notion, because of crisis in legitimacy.

A more recent effort to address the crisis in epistemology and in morality is by Islamic scholarship, such as Ahmad (1980), Ariff (1989), Chapra (1992), Naqvi (1981, 1994), Siddiqi (1981), and others, resulted in formulation of an axiomatic approach in constructing Islamic economics. Within this approach, a premise is devised by inductive reading of scriptures, and thereafter it is treated as a 'self evident truth', so it may be used as an episteme for constructing a reasonable argument to justify variable positions. For instance, Malik (2011:197-198) similar to most scholarship working within this genre, starts from oneness of God (*tawhid*), and the oneness of his message to infer that all human beings are one nation, and concludes with formulating the axiom of equality constructed on the notion of oneness of God. However, it could be argued that God distinguishes between humans based on their piety, and then advises humans to only follow the examples of the examples pious or face the consequence in the hereafter, based on this an equality axiom may be formulated, which implies that there is no equality in human beings, neither in this world nor in hereafter, or another axiom could be formed similar to line of reasoning of Shiite doctrine of pure blood that implies that humans are not even equal at birth.

The question is not that human beings are equal or not, and neither is the focus on whether Malik's (2011) argument is valid or not. The point of stating above example is to demonstrate that it is possible to accommodate most, if not all, positions by formulating a corresponding axiom through selective inductive reading of scriptures; once a desired axiom is formulated, a relevant argument to prove one's subjective position can be manufactured.

Naqvi (1994; 2003) attempts to address this issue in his conceptualisation of Islamic economics by constructing a criterion, which may bring coherence to axiom approach. However, there is only one of four criterion stated by Naqvi, which attempts to directly address this issue, and that is the axiom should be cohesive with Islamic ethical views and should not violate the ethics of Islam (Naqvi, 1994:1-40). A question may be raised on which Islamic ethics are to act as a criterion, to which, Naqvi (2003:100) may assert that ethics of Islam are those that are "universally accepted by those who believe in them". There are no universally accepted ethics in Islam, however Naqvi may be hinting towards the ethics in orthodox Islam, which is founded on the concept of theistic subjectivity with an under layer of juristic

subjectivity. The issue with such method is that the axiomatic approach attempts to address the epistemological and moral crisis caused by the theistic subjectivism, by using epistemological source same as theistic subjectivism, that is: scriptures. In other words, the axiomatic approach attempts to restrict the development of knowledge, by drawing parameters grounded in epistemological source similar to the method of enquiry, that is the theistic subjectivism, which it attempts to replace. This would imply that either axiomatic approach would create another copy of the same knowledge produced by the orthodox ethical understanding of Islam and the crisis within the orthodoxy will remain as it is, or the second scenario would be that axiomatic approach would violate the imposed conditions and create new knowledge that may address the crises, but the very structure through which the axioms are created, can be used to create anti-axioms to refute it. The axiom on equality is an example of this inherent problem, as it violates the historical orthodox understanding and hence violates the criterion. The classic jurisprudence or orthodox theory in Islam has always taken an antagonistic position to equality of human beings, especially within political theories, economic understandings, social structure and religious domain. There is suffice discourse to take the positive position on equality, and there is also sufficient narrative in scriptures, along with historical references that can allow the construction of an antithesis of equality. This inherent flaw exists within the form of enquiry that constitutes axioms, because there is no adequate test of truth designed for the inductive approach with the axiomatic approach, and the paradigm presented within the current framework as a test of truth, is structurally loose enough to allow creation of antithesis of most postulates, while some of axioms, by their very nature, self-violate the parameters of set by this paradigm.

Moreover, analogous to most discourse in the genre of religious ethics, the focus in the line of enquiry within majority of discussions that debate the axiomatic approach is on establishing logical foundations for ethical prepositions and logically justifying their existence, rather than constructing a theory of ethics. They remain inflexibly grounded in traditions and scriptures, with occasional use of Greek philosophy. Moreover, similar to work from early period of Islam, the discourse circles around key Qur'anic concepts, by quoting and referring to "Koran and Traditions in support of their moral or religious disquisitions" (Fakhry, 1991:151).

The four type of ethics discussed so far have distinctive forms of enquiry, but in terms of their stand points, they are very close to each other, this is because the epistemological sources play an integral part in construction of stand points, and as there is uniformity in the epistemological sources used by the four types, with slight exception to philosophical ethics, therefore the results are very similar. The philosophical ethics does comprise of efforts to establish an epistemological source with an ontological authority outside of scriptures. However, they are not fully developed frameworks. Avicenna's work on absence of any innate knowledge in human beings at birth (*tabula rasa*), influenced enlightenment thinkers such as Lock and also loosely contributed towards the development of empiricism, and they are relevant to the history of psychology and philosophy. However, within the original settings, they are inadequate to solve the epistemological or moral crisis of Islam. Similarly, religious ethics also attempt to formulate a different standpoint; however, their form of enquiry based on the inductive reading of scriptures is problematic.

The moral crisis is a strand of epistemological crisis, but autonomously it is formed in Islamic thought, as there is no fully developed paradigms, which can provide a practical, workable definition of good and bad, produce a reasonable theory of value that could be used in normative ethics to set normative worldly goals. By accepting few assumptions, theistic subjectivism may be argued to be a moral framework, whose moral judgments may have a moral value even when they defy the reason. However, the theory of Islamic law allows for a qualitative distinction to exist between the right action constructed using pure reason, and the right action explicitly grounded in the scriptures. The reconciliation of this qualitative distinction requires a new episteme that provides a decisive factor. In the current format of Islamic law, the juristic subjectivity is used as a decisive factor to create a mixture of the two above categorised actions: different jurists have different subjective perspectives and therefore create a different mixture of the two categories, and the judgement calls by different jurists can be and historically have been contradictory in their nature, which transfers the question of 'what is ethically correct?' to roams of legitimacy. In other words, which jurist's subjectivity is legitimate to the effect that the assumed 'transferable transcendental values' gets carried forward in their judgement? Some scholars have attempted to create a criterion, for identifying the jurists with correct subjectivity to jurists with incorrect subjectivity; however, most of the discourse on

this topics revolves around character traits and reputation, though this is also not a well-developed arena within Islamic thought, as there is no database similar to in function to credit history, credit score or credit report that may check the worthiness of the jurists. Even with a database like this, a decisive factor would still be required to choose between the opinions of highly ranked jurists (Hallaq, 2004). The issue with the existence of difference of opinion between jurists is that the Muslim would only abide by Islamic legal decisions, so that they are awarded with the expected rewards in the hereafter. For a legal decision to have the theological legitimacy that its violation will definitely result in penalty in the hereafter, then only can it be subscribed as good, and its violation be considered as evil.

When there are conflicting views on 'what may constitute as good?', then there is no certainty that consequence of following such law or moral judgement will result in reward in the hereafter. If there are two conflicting views between two jurists, then there is an equal probability that following anyone of them could result in penalisation in the hereafter. Without this certainty, Islamic legal decisions and moral judgements lose their legitimacy to demand abidance from Muslims. The improbability in knowing which one of numerous juristic subjectivisms would classify for the reward in the hereafter, means that the notion of obeying Islamic law for the sake of hereafter, is not statistically significant rationale for demanding obedience, especially considering the assumptions on which the theory of Islamic law is constructed are also human suppositions. If we take hereafter out of the equation, then Islamic law loses its monopoly on the reward in the hereafter, along with its moral grounds when compared to other legal systems, which implies that Muslims are under no obligation to follow the decisions made by jurists in constructing Islamic law. This type of metaphysical and spiritual issues, along with practical problems with the structure of Islamic jurisprudence produce a crisis in legitimacy.

This issue became more problematic, when Islamic legal theory is applied as an ethical theory. Without legitimacy to morality the tradition looses the grounds for institutional intervention, as there is no certainty that what is subscribed will actually be good and what will be prohibited will actually be evil.

4.7 CRISIS IN LEGITIMACY

The crisis in epistemology, when creates crisis in morality, also creates ethical questions on the use of Islamic legal theory as an ethical theory; however, the crisis in legitimacy completely renders all the rules and regulations created by Islamic legal theory as obsolete. Therefore, this research explores this crisis in legitimacy in further detail, due to the large-scale effect it has on the manner Islamic law when used for the governance of the society and the market

The crisis in legitimacy has two major strands, the first part is an off shout of crisis in epistemology and morality, and it is produced essentially when pedigree thesis is applied to legitimise juristic subjectivism as an epistemological source and to assign moral value to the decisions produced by this process. The second part of crisis in legitimacy deals with the premises of rightfulness of subscribing good and forbidding evil, that is: who has the legitimacy to advocate good, and the extent to which a good needs to be implemented and the scale to which an evil is to be prohibited.

4.7.1 Either\Or: The Simulation of Consensus

The first strand of crisis in legitimacy has many layers. The ontological authority of juristic subjectivity is justified by the Islamic legal theory by using the assumption that supposes the existence of transferable transcendental values, and the extension comes is the notion that these transcendental values are transferable, not only through inferring a statement from scriptures, but they also transfer into jurist's consciousness as they receive training from traditional Islamic educational institutions. The earlier widely quoted Islamic scholarship was not trained in the traditional Islamic educational institutional settings, and this part of assumption creates historical inconsistencies (Hallaq, 1997).

When jurist produce conflicting decisions or propositions, then that puts into question the premise that Islamic legal theory's assumption that there exists the transferability of transcendental values, and in the absence of any other test to check for the transferable transcendental values, the aptness of taking such assumptions is also questionable. The conflicting views question the Islamic legal theory's assumption because within the conflicting views, one of them has to be incorrect. If one has to be incorrect, then there is also plausibility that both could be incorrect. The incorrectness is not based on the consequence of the views, but whether they will result in positive

outcome in hereafter, as Islamic law draws its legitimacy from hereafter, and with the existence of the plausibility of being incorrect, Islamic law loses its legitimacy. Certainty in the existence of goodness within the rulings of Islamic law is essential, because Islamic law does not acknowledge the separatist thesis as its theory asserts the existence of moral values in its legal judgements.

Historically, ecclesiastical juristic authorities have presented themselves as a group divinely endorsed to have a monopolistic hold on many religious and political activities, such as acting as a counsel to rulers or monarch, being the only legitimate educational establishment to teach Islamic thought, being suitable for performing missionary duties, being able to act as judicature, and most importantly being the carriers of all goodness present within entirety of Muslim community when it comes to performing 'consensus' (Hallaq, 1997). In other words, the Muslim jurists restricted the notion of consensus by introducing a qualification of righteousness, and being a jurist classifies as being righteousness. The legitimacy is, therefore, based on righteousness, similar to the way the Islamic political theory considers righteousness as a qualification to be a ruler. By introducing righteousness in the equation, which is an immeasurable and unfathomable concept, the juristic monopoly on legitimacy was constructed.

In support of this paradigm, the argument of general ignorance of Muslim community was constructed and it was argued that their representative, similar to Muslim community, would not be able distinguish between good and evil, however many contemporary thinkers have challenged this notion. For example, Rahman (1986:95) asserts that the notion of Islamically unenlightened and uninformed community of Muslims cannot be philosophically accepted, because it implies that the Muslim community does not exist, which is equal to "rendering Islam null and void". Therefore, consensus of community, instead of consensus of scholars ought to be entertained by the discourse and practice of Islamic thought.

The idea of consensus of community, instead of consensus of scholars, is a progressive notion, as it acknowledges the existence of the understanding on known good and known evil within the aggregate knowledge of the community, but the contemporary discourse that supports this notion, does so to create an episteme for creating legitimacy and for assigning value to moral and immoral actions, which

would work parallel with the ecclesiastical juristic authorities in Islam in such a manner that ecclesiastical authorities will continue with their claim over morality and legitimacy, and only the roam of exercising their power would be reduced by introducing the new variable of 'knowledge of community'.

Other than the question of which one of these two, that is: ecclesiastical juristic authorities and knowledge of community, carry the 'transferable transcendental values' especially when they will contradict in their judgements, which is an observable issue, for example, in Iranian political system, as it attempts to coalesce the two: the major issue with the notion of communal consent is that it shares the same episteme as the antithesis of communal consent, and the line of enquiry is also very much similar, as both ideas are constructed through inductive examination of scriptures. This raises the question of which one of these notions is legitimate and why?

The contemporary discourse favours the later notion of communal consent as a criterion for deciding goodness, because this notion is validated by the idea of global democratisation as part of modernism. The value judgements of modernism are used to validate the notion, without assigning any ontological authority to its values. This forms the part of crisis in legitimacy as the arguments and the counter arguments have similar line of enquiry and share the same episteme, so both are on the same plane when it comes to legitimacy, and the theory does not recognise the existence of the external factor, which it implicitly uses as a judicator, that is: value judgements of modernism, and such set up creates the legitimacy crunch.

The orthodox Islamic thoughts does acknowledge the ontological presence of communal knowledge on goodness, however they restrict its use in decision making by limiting the notion of consensus to consensus of earlier generations or consensus of current religious ministers, and through this restriction the theory constructs the need for the existence of religious scholars and religious institutions that can produce scholars, so these scholars can create legitimacy of edicts through based on consensus or through juristic subjectivism.

The lack of singularity in the institutionalisation of religious scholars and religious institutions gave rise to diversity in edicts based on consensus or decrees based on

juristic subjectivism, and as the claim on legitimacy of all these multiplicity is grounded in same framework, the result is cancelling[35] each other's authenticity. As an operational example in Islamic finance, for instance, Farooq (2006) cites the list of scholars who have surveyed the Islamic literature on the definition of *riba*, and they claim there's a consensus on it, and he then lists the scholars who after reviving the discourse on *riba* claim that there has never been a consensus on definition of *riba*, which demonstrate the lack of consensus on whether there was a consensus. Khan (2013:216), while acknowledging the issue that the there is "no agreement about whose, opinion, of which period, to what extent" should be used in the doctrine of consensus, suggests that consensus should be understood through law of numbers, and should be taken as "agreement of the majority (of scholars) that is also accepted by the people in general". Khan (2013) adds the notion of acceptability by the people, because the science of consensus in Islamic law is going through the crisis of legitimacy, and, therefore needs an external validator to validate, which consensus is legitimate and which is not (Khan, 2013). The issue with validating the consensus of scholars by consensus of general public is that, the concept of consensus of scholars was introduced, because of the assumption that general public is ignorant and not well informed. So, this forms a pattern similar to circular reasoning, as it tried to use the same idea, which it was meant to replace. Moreover, consent of Muslim community creates the problem of geographic boundaries, as Muslim population is dispersed in different nation states, along with the lack of a system that provides a public space, where Muslim community can express opinion and create consensus. Even if these questions were answered, then the question would be what makes them legitimate? The issue of legitimacy would always be present within consensus, because the concept of consensus is being developed from within the model of Islamic law, and is being applied as an external validator to validate the output of Islamic law.

[35] They cancel each other out because of their claims on carrying a consequence of carrying divine rewards and punishment within them, and divine judgment cannot be valid in the hereafter, if the divine subscribes contradictory notions of goodness. Moreover, if it is argued that the transferable transcendental values are present in both contradictory statements, then questions come to the method of deciding which on of the statements carries more value. If it is the human realities (like socio economic reality) that decides the superiority of value, then the orthodox assumption of good is what is what God says, does not stand, as such notion (the presence of transferable transcendental values in contradicting statements) is true then, it may be suggested that God prescribes good, but human realities decide assign intrinsic value to 'prescribed good', which would mean human realities are superior when it comes to making an action good. This however is not theologically plausible, as it goes against the goes against the idea of omnipotent God.

If the concept of consensus is developed from outside of sources of Islamic law, so that it does not share the same episteme and line of enquiry, then it can be used to validate the Islamic rulings, because in this setting, it will not share the same problem of legitimacy, morality and epistemology as the ones it is trying to validate. The discourse on who's entitled and who is obliged to command good and forbid wrong has similar complications on issue of legitimacy. The entitlement to 'commanding good and forbiding wrong' is also theoretically restricted, and the theory has always favoured the political establishment.

4.7.2 Delphic Veil of Legitimacy

The historic discourse on who's entitled to command good and forbid wrong revolves around the categorical capacity of state to command good and forbid wrong, and the capacity to confront state for the purpose of commanding good and forbidding wrong. The orthodox Islamic scholarship, while validates rebuking the state or rulers and deplores the rebellious against state for commanding good and forbidding wrong, however, when it comes to the question of whether the state has monopoly over use of violence for the purpose of commanding good and forbidding wrong, the opinions of orthodox scholarship is so much apportioned that "those who espouse the idea and those who reject it are alike part of the mainstream." (Cook, 2000:479).

The two propositions create a very different type of society, and the synthesis between them is very much possible, either by using the judgement values of modernism as a validator and choosing the opinion that allows the use of violence only by the state, or through manufacturing consensus by simply ignoring the historical discourse that claims the conflicting position (Cook, 2000:480). In both cases it would be a fallacy, as in prior case it is a fallacy in ontology, as validity is based on something, whose existence is not recognised, while in later case it is fallacy on the historical part. In other words, there is no legitimate method within the current framework to legitimise the superiority of one proposition over another.

The essence of crises is in the opposition to the separatist thesis, as Islamic law combines the notion of morality with obedience of law. This is because the theory of Islamic law is constructed on the assumption of transferable transcendental values, which create the crisis in morality and legitimacy, and as there is no epistemological

source, with recognised ontological authority, that could validate the legitimacy or existence of morality within the current framework of *Shari'ah*; the unresolved issues, along with unsolved problems within the tradition has produced inadequacies by creating rival concepts of reality. The continuous development of human knowledge outside of Islamic tradition has challenged almost all the rival concepts of reality within the tradition. Other than recognised incoherence in historically constructed certitudes, the development of new epistemologies that are unrecognised with Islamic thoughts, has generated "new problems for the solution of which there seem to be insufficient or no resources" (MacIntyre, 1998:362). The major problem that has proved intractable within Islamic tradition is the identification of good and wrong, followed by the legitimacy of such identification, this is because the form of enquiry applied by the current setting of Islamic tradition, either connects good with the practices of the past or with the hereafter. Attempts by the traditional-constituted enquiry to create coherent relevance between the practices of the prophetic period with the problems of today, made the tradition sterile, which further lead the traditional form of enquiry to create complicated assumptions, such as transferable transcendental values, that created incoherent outputs. The connection of good with the hereafter, gave way to the issue of juristic subjectivity, which formed the problem of legitimacy and resulted in the supposition on existence of transferable theistic subjectivism, which transferred to humans, when they get trained by an Islamic educational establishment. While this supposition was constructed to formulate a theory of ethics, it, however, resulted in producing incoherence in the classification of categorical imperative of good. The tradition went through these conceptual engineering, as it attempted to create an understanding of ethical goals and moral values, and in doing so, it entered the period of epistemological crisis.

MacIntyre (1998:362), while examining the tradition-constituted enquiries as they enter a state of epistemological crisis, observes that such a crisis can only be resolved through the development of new concepts and different theoretical models, because:

> the new theoretical and conceptual structures…[will] escape the limitations of those theses which were central to the tradition before and as it entered its period of epistemological crisis,[because of this, the new concepts can]…in no way be derive-able from those earlier positions. Imaginative conceptual innovation will have to occur. The justification of the new theses will lie precisely in their ability to achieve what could not have been achieved prior to that innovation.

The new conceptual and theoretical structure would neither be derivable using the conventional episteme of the tradition, nor through the customary form of enquiry customary to the earlier positions within the history of tradition. However, the construction of the new conceptual and theoretical structure, through 'imaginative conceptual innovation' that essentially is foreign to the history of the tradition, does not imply that the fundamental continuity of the shared beliefs historically defined up to this point within the bracket of absolute knowledge, will be disrupted. In other words, in the history of Islamic tradition, the schemas of reformation carried over the epistemological ideals from one paradigm to another, but to address the epistemological crisis, the perpetuation of epistemological ideals will require interruption. However, the discontinuation of epistemological ideals does not entail the disruption of progress in a 'single intellectual life' (MacIntyre, 1977:467) of Islamic tradition. Any new episteme that could replace the juristic subjectivism and resolve the epistemological crisis needs to be constructed without the disruption of Islamic tradition as a 'single intellectual life'. This new episteme could then provide a new conceptual and theoretical structure for defining good and evil, within the society and the market, and provide the required normative direction. While, the crisis in legitimacy caused by crisis in morality, which is grounded in crisis in epistemology, require a new episteme for defining good and evil. Until, Islamic tradition can address these crises, there are no grounds for institutional intervention for the purpose of subscribing good and prohibiting evil in the society or the market.

This research now explores the Islamic tradition to define the 'single intellectual life' of the Islamic tradition, which needs to be kept alive, whilst a philosophical construct from outside of the tradition can be introduced as the new epistemic source.

4.8 GROUNDWORK FOR THE METAPHYSICS OF MORALS

The continuation of single intellectual life form of tradition can be suggested, as long as there exists an establishable association of the narrative and tradition with the theory and method of the new conceptual and theoretical structure. For instance, Mulla Sadra's work without replicating or debilitating the previous forms of enquiry in the in Islamic philosophical thoughts, constructed a paradigm shift in the Islamic tradition, whilst maintaining the continuation of single intellectual life form of tradition (Razavi, 1997:130; Kamal, 2005:106).

The essence of single intellectual life form of Islamic tradition can be traced in the stereoscopic vision of three themes, that is: pain and pleasure, hierarchy and eternity. The hierarchy and eternity are like the "temporal and ontological coordinates… with eternity embracing all time and hierarchy vertically grading all beings" (Marenbon and Luscombe, 2003:51). 'Pain and pleasure', on the other hand, form the episteme for injunctions and human purpose, in the Islamic tradition. All three of the concepts are "at any rate both presuppositions and problems" (Marenbon and Luscombe, 2003:51), and much of Islamic thoughts are dedicated to creation of a synthesis of the paradoxes within these themes.

The dichotomy of pain and pleasure is multiplex within the tradition, as unlike Christianity and more like Judaism, Islamic tradition encourages its followers to pursue pleasure, but it simultaneously nudges them to create equipoise between immediate gratification and delayed gratification, with an ascertain that the equilibrium has to be created and maintained for greater good.

The tradition uses the concept of hierarchy as a substructure to objectify the ontology of an order in the Universe as a whole and an order in every form of being, be it intelligible, material or transcendental, and within this order every being has its specific place and a certain function; the principle authority a being possesses determines its place and function (Marenbon and Luscombe, 2003:60).

The theme of eternity was explored within the tradition in two different dimensions: the philosophers viewed eternity as timelessness, and discussed the problems like freewill and fate, whilst others perceived eternity as perpetuity. The transcendental beings are considered to be in timeless state, whilst all the material and intelligible beings are yield that forms the part of perpetuity of temporal existence. The existence of human beings is temporal within the 'perpetuity of temporal existence', while infinite as a whole, because human beings move to timeless state after their temporal existence within this world.

One of the perpetual things within the 'perpetuity of temporal existence' is the 'shared ethic' of life forms. The 'shared ethic' is perpetuity within 'perpetuity of temporal existence'. While existence of a individual human is temporary within the 'perpetuity of temporal existence', the existence human species is perpetual. In this perpetual

existence, each generation of human beings creates a packet of goodness, which accumulated in the 'perpetuity of shared ethic'. The customs, conventions and social consents maybe a reflection of goodness in 'perpetuity of shared ethic'; however, they are neither the measure, nor the gauge for understanding goodness. The goodness in 'perpetuity of shared ethic' can be understood by observing the evolutionary trajectory followed by human species, after the state of self-consciousness, that is: if we could draw a path from the point where human achieved self-consciousness, to the present time, and then considering all the possible paths, we may have chosen in our post self-consciousness evolution, the path chosen by us is the path towards goodness, and have value of good in it. The 'perpetuity of shared ethic' is, therefore, not just values shared vertically by all the humans of one particular generation, but it also has a horizontal dimension, whereby it includes the values shared by all the human beings that ever existed. For instance, Pinker (2011) scientifically examines the human history and suggests that there's a gradual decrease in practice of violence and decline in aggressive impulse within human being. This suggests that we are evolving away from violent creatures, which within this narrative would infer to the premises that violence is bad or evil. The value of good, in the settings of 'perpetuity of temporal existence' is similar to existence of matter and energy.

Matter and energy are also perpetual things within the 'perpetuity of temporal existence', and their existence within 'perpetuity of temporal existence' is forever, because, they may alter their form, but they can neither be destroyed, nor created[36]. The value of good, in the settings of 'perpetuity of temporal existence', can also not be destroyed, although it may alter its form, however it can be created. Evil, on the other hand cannot be created but maybe destroyed or allowed to exist in different form. Therefore, evil is not the lack of goodness, but instead an inherent ingredient of fabric of the universe.

Budiansky (1999) in *The Covenant of the Wild: Why Animals Chose Domestication*, loosely follows a similar theme, where he examines the human attitudes towards animals, in contrast to the treatment of wild animals by nature in the natural worlds, and asserts that the domestication of animals is a natural evolutionary process of mutualism, which provides a comparatively better well-being for animals in contrast

[36] The word creation here, does not touch upon the divine capability of creation.

to the living conditions in the wild. The biological interaction between the species that is based on predation or parasitism is categorically the result of fabric of nature, whilst mutualistic or commensal interactions are innovative techniques, which are metaphysically grounded in life's intrinsic goodness that produces cooperation, and is used by living organism to gain advantage, through goodness, in the competitive environment created by nature. The grouping of predation or parasitism as grounded in evilness of nature, and mutualistic or commensal interactions as grounded in intrinsic goodness of life, are not based on their biological origins, instead the categorisation is at metaphysical level, to substantiate the origin of good and evil (Cook, 2000).

In the pre-life universe (nature), there was an absence of goodness, and with the start of life, the 'perpetuity of temporal existence' also started, and each life form, in the human evolution, added a value of goodness to the 'shared ethics'. Therefore, life and living things are intrinsically good; however, they maybe forced to do evil because of the conditions created by nature, as the evil is the building block of personality of nature. To balance this evil, human beings were created, with a capacity to change the makeover of the nature and replace the evil with goodness in 'shared ethic', and because of this capacity they were labelled as a 'vice-regent' of God. The divine contribution towards human endeavour was made in the form of chain of revealed religions, which ended with Islam. Islam is the final transcendental contribution towards goodness in 'shared ethics', because after this contribution, the accumulated goodness in the perpetuity of 'shared ethics' is considered to be enough to set human beings on a course, where they can materialise their capacity of changing the very fabric of the nature, by replacing the evil with goodness of the 'shared ethic' (Fakhry, 1991).

These are the presupposition for construction of an assumption, which imply that fabric of nature is evil and the humans in particular, and life forms in general, during their life span, add a small value of goodness within the perpetuity of shared ethics. This valued is added through their actions, which are grounded in life, as life is intrinsically good. The evils committed by the humans in particular, and life forms in general, are a result of circumstances created by the nature, which is intrinsically evil.

Accordingly, the extinction of evil is only possible in a scenario, where humans are able to control and transform the very fabric of nature.

The individual human beings maybe judged in the hereafter based on the amount of value of goodness they may add in relation to the circumstances produced by nature, the aggregate of goodness added, to perpetuity of shared ethics, by every generation is always a positive value. The input added by every generation gets accumulated in the perpetuity of shared ethics, and therefore it could be the valid criterion for categorising the actions as good or evil.

This narrative implies that Prophet of Islam delivered the final piece of divine contribution and it exists as a part of the perpetuity of shared ethics, and all the values of goodness are embedded in the aggregate consciousness of all humans (Fakhry, 1991). This assumption is essential, as it essential to move forwards from the crises, whilst keeping alive the single life form of Islamic thoughts.

The notion of goodness embedded in the aggregate consciousness of all humans is not practically absurd. While the consequence of difference between Islamic world and Western world is clearly visible one, however, the difference is more on the operational side, then on understanding of values, as Cook (2000:591) examines that:

> On the Muslim norms are usually intelligible to us to the extent that they tend to be closely related to what we recognise as moral dangers. Mainstream Western culture has little use for an outright prohibition of alcohol; but we do not approve of drunken drivers or like to see people become alcoholics. Our ideas as to how women should be dressed and the degree to which they should be segregated, while puritanical by some West African standards, are a long way from traditional Islamic mores; yet we worry a great deal about the less desirable consequences of the interactions we permit between the sexes.

The difference between the two worldviews is the consequence of difference between the understanding of public matters and private ones, as where Islamic thoughts do not distinguish between the duty of forbidding wrong, and concept of rescue, the Western thoughts uphold the concept of rescue by citizens, while institutionalising the duty of forbidding wrong (Cook, 2000:594). These differences are not the difference in concept of value, but between autonomy of humans and implementation of objective values, even with issues of banning or discouraging consumption of alcohol, or implementing completely segregated society or unisex wards in hospitals, or punishing the crime of theft by chopping off the hands or by jail sentence, difference

is not in moral value, but the extent to which these values are to be upheld. Therefore, the idea of goodness embedded in the aggregate consciousness of all humans is not a radical notion in Islamic thought.

In terms of sources of law and legal validity, our narrative aligns with soft positivism, as it subscribes to the 'social thesis' and takes the position that "moral principles or substantive values" (Hart *et al.*, 2012:250) can be incorporated to make up a criterion for legal validity. However, morality and law are distinct disciplines, and while law may reflect some moral principles, it is not the pure reflection of morality. This narrative also goes against the notion that *homosapiens* are actually *homoeconomicus* (Khan, 1995) and this narrative is also antithesis of the idea that "Behind every act of altruism, heroism, and human decency you'll find either selfishness or stupidity" (Haidt, 2013:107).

As Hume and Mencius analogically suggested that "morality is like taste in many ways" (Haidt, 2013:106), for which numerous receptors are required to capture it's various dimensions. Whilst, we can judge the already performed actions by using the already existing values of goodness in perpetuity of shared ethic, but in order for us to add further value of goodness in the perpetuity of shared ethics, we need a theory value for the normative ethics, that can be used to set goals for humankind and set the course for humanity in socio economic and political domains. Such a theory should be able to address the responsibility human beings have, due to their position in the hierarchal chain of beings, towards other material or intelligible beings in the universe. The theory of value for the normative ethics should also be constructed in such a way that it creates equipoise between immediate gratification (pleasure) and delayed gratification (pain), so that positive wellbeing is reasonable achieved, along with normative wellbeing.

Such a theory of value for the normative ethics can then provide the moral measure by providing a new episteme to judge the activities in the society and the market. This will essentially address the crisis within the tradition, and such theory could be used to replace the Islamic legal theory and juristic subjectivism for subscribing good and prohibiting evil, which will legitimise the process of institutional intervention through institutions like *hisbah.*

4.8.1 Islam, Objectivism and Moral Foundational Theory: A Scene of Thematic Importance

The normative wellbeing of human beings is of paramount importance in the Islamic thought, however the lack of clear moral code in the primary sources, and in the major theological discourse could be due to theological reason, as Hume (1817:156) observes that: "immutable measures of right and wrong impose an obligation, not only on human creatures, but also on the Deity himself".

The Qur'an on the matter of justice tries to address this theme, by suggesting that there is no obligation on God to do justice, but he still does it out of divine grace. In the absence of immutable measures of right and wrong, the Islamic thoughts produce a theme, which is the undercurrent connecting the three notions: pain and pleasure, concept of hierarchy and conception of eternity. This theme shows a very close conceptual relation with rand's objectivism and moral foundation theory.

The theme charted by Islamic tradition, follows similar line of reasoning to rand's objectivism. Both perceive the pursuit of a moral life as a necessity for survival. While, Rand argues that the standard of value is human life, and suggests that the reason, purpose and self-esteem are three values, which work parallel with virtues of rationality, productiveness and pride to act as a mean for realising one's life (Rand,1964:26). Rand builds on the theme of selfishness and further elaborates this idea, by asserting that (Rand, 1964: 28):

> The basic social principle of the Objectivist ethics is that just as life is an end in itself, so every living human being is an end in himself, not the means to the ends or the welfare of others—and, therefore, that man must live for his own sake, neither sacrificing himself to others nor sacrificing others to himself. To live for his own sake means that the achievement of his own happiness is man's highest moral purpose.

This theme is similar in much ways to the theme of orthodox Islamic tradition, as every human being is seen as an end in himself or herself, because any moral actions they perform are not considered sacrificial, and instead they are perceived as an investment towards their salvation in this world or the next (Fakhry, 1991). The metaphysics of hereafter makes the selfishness a virtue, as long as this selfishness is not short sited. This places Islamic theme in very close proximity to basic social principle of objectivism.

This is not to suggest that objectivism and theme of Islamic tradition are entirely similar, because on many important issues, such as epistemology, they are miles apart. Objectivism's coordinal value of reason and purpose coordinated with virtues of rationality and productiveness are defined in a metaphysical manner within orthodox Islamic tradition (Fakhry, 1991). This Islamic understanding of these virtues is antithetic to objectivist ethics; however, these definition and concepts of orthodox Islamic tradition are part of crises and therefore would need alteration.

Another dimension to the theme of Islamic tradition is that it not just upholds the selfish behaviour of individuals, but also attempts to balance it, so the society as a whole is not damaged by the selfish pursuits. The tradition attempts to create the balance between the two using the foundations of care for others, fairness and justice in treatment of other fellow Muslims, liberating the oppressed Muslims, keeping loyal to the mainstream Islam and subversion to authorities and traditions along with practicing sanctity and degradation. This is similar to the discourse of Moral Foundation Theory, with an inherent mechanism to produce values that create a cooperative group, which gives advantage to the group in competing communities (Haidt, 2013). Haidt elaborates on this point by examining the difference in Qur'anic approach to apostate and to Jewish tribes, and suggests that: "The love of loyal teammates is matched by a corresponding hatred of traitors, who are usually considered to be far worse than enemies" (Haidt, 2013:329).

In modernism and with the birth of nation states, this leitmotif, however, is unable to balance the selfish pursuits and social development, because there are no distinguishable barriers, which can be used to distinguish Muslim community at micro or macro level. The issue of pledging allegiance to country or undetectable global Muslim community, or to any other available identity is widely discussed in the problem of identity crisis of Muslims living in West or in East. Therefore, there is also a need of a fresh leitmotif, which may be used to balance the selfish pursuits and social development.

4.9. SUMMARY AND CONCLUSION

This chapter focused on the Islamic legal theories with the objective of deconstructing them to understand the underlying factors in its episteme that cause failures and

inconsistencies, when the legal theory is treated as an ethical theory. During the process of deconstruction, we discovered that the primary sources of law are almost impossible to contextualise within the modern life and this resulted in the heavy use of juristic subjectivism as an epistemic source within the legal theory. Juristic subjectivism is subject to the problem of moral hazard and adverse selection, and therefore it is the epistemic source that is causing the major institutional failures, when the legal theory is used as an ethical theory. Chapter 2 elaborated on these institutional failures, while Chapter 3 demonstrated the juristic subjectivism creating alternate morality to scriptures.

This chapter also discovered the underlying epistemological crisis within the Islamic tradition, which led to heavy reliance on the juristic subjectivism as an epistemic source. It is argued in this chapter that the use of juristic subjectivism as an epistemic source causes a crisis in legitimacy and crisis in morality, which then causes the institutional failures, when institution of *hisbah* intervenes in society and market to subscribe good and forbid evil.

The previous two chapters consolidated on the first part of the research aim, as we explored the governance within Islamic thought in the form of the institution of *hisbah.* The institutional practices suggested that the philosophical and theological framework behind operations of institution of *hisbah* is problematic. While the enquiry into the theory of *hisbah* showed that the root cause of the problem is in the use of legal theory to judge the moral conduct of activities. In this chapter, we explored the episteme of these problems and highlighted the reliance on juristic subjectivism as an epistemic source to be the underlying factor; hence, this chapter achieves the research aim set for this research.

As a theoretical frame, MacIntyre (1977) is utilised in this chapter to develop the argument presented, and further argue that the epistemological crisis can only be solved by creating a new epistemic source for the tradition. That is, the resolution to the crisis requires construction of a new epistemological source that is outside of the current tradition and it is able to replace juristic subjectivism. A new understanding of value has to be constructed which forms a part of this new source. The construction and formulation does not mean the discontinuation of single life form of Islamic

tradition, and the only criteria for acceptability of this new source is that, that it can address all the issues raised in this chapter.

In responding to the identified deficiencies, an attempt is made in the next chapter to construct an epistemic source, that could replace the juristic subjectivism and resolve the epistemological crisis within the tradition, which can pave the way to better understand the observed tensions in the Islamic finance sphere in reference to 'form versus substance' debate, namely legality *vs*. ethicality.

CHAPTER 5:

BEYOND CERTITUDES: AXIOLOGY OF OBJECTIVIST SUBJECTIVISM FOR DEVELOPING AT ETHICAL REALM FOR OPERATIONALISING *HISBAH* INSTITUION

5.1. INTRODUCTION

In the previous chapter, this research deconstructed the Islamic legal theories and discovered that the primary sources of law are almost impossible to morally

contextualise within the modern life, as the ethical judgements within the primary sources are based on inward subjective morality, which makes it very difficult to theorise them into a theory of normative ethics. This phenomenon created an epistemological issue for theologians, philosophers and jurists, and the majority of them relied on Islamic legal theory as a framework, with juristic subjectivism as an epistemic source for judging the moral conduct. This epistemic source, however created philosophically and theologically incoherent theories, which were discussed in Chapter 3. This consequently created institutional failures when institutional intervention was used to subscribe good and forbid evil. However, the ontological authority for institutional intervention was justified in the tradition by the assumption that the state is capable of distinguishing between good and evil, which is able to so while subscribing good and forbidding evil. The explorations in Chapter 2 and Chapter 3 demonstrates that this in not the case. The previous chapter investigated the source of this problem, and we discovered that the Islamic tradition is in an estate of epistemological crisis, which is creating crisis in morality and in legitimacy within the tradition.

The debates in Chapter 2 and Chapter 3 consolidated on the first part of the research aim, as we explored the operational and theoretical side of governance within Islamic thought in the form of the institution of *hisbah.* The previous chapter, focused on the second part of the research aim as we explored the episteme of the problems highlighted during the examination of theory and operations of institution of *hisbah*. In the previous chapter, the research discovered an epistemological crisis in the Islamic tradition, which has caused a crisis in morality and crisis in legitimacy.

In the last chapter, the research also utilised MacIntyre (1977) as a reference frame to argue that the epistemological crisis can only be solved by creating a new epistemic source for the tradition. That is, the resolution to the crisis requires construction of a new epistemological source, which could replace the juristic subjectivism. It need to be from outside of the current tradition and it need to provide a new understanding of value. The construction and formulation of such episteme does not mean the discontinuation of single life form of Islamic tradition, and the only criteria for acceptability of this new source is that it can address all the issues raised in the earlier chapters.

This chapter attempts to construct such an epistemic source, which could resolve the epistemological crisis within the tradition, and provide an understanding, which could solve the current tension in regards to 'form versus substance' and 'legality vs ethicality' debate. This study will firstly attempt to understand the origin of personal and public realms, and the interaction between the two. The study will then attempt to construct a framework through which we can suggest ideal interaction between the boundaries of the two realms. The constructed framework would be argued on the grounds of philosophical and theological coherent, and it will be presented a normative theory of ethics.

In the last chapter, we constructed the assumption that divine contributions to human ethos are embedded in the perpetuity of shared ethos, which forms a part of perpetuity of temporary existence. Therefore, the objective normative goal of human beings, as a whole, is to safeguard the perpetuity of temporary existence, by ensuring its continuity, so individuals can add a value of subjective-goodness into the perpetuity of shared ethos, within their temporary existence in the material world. The subjective-goodness is the good perceived by an individual through their subjectivity, while the perpetuity of temporary existence is the human civilisation in its totality. In this, the perpetuity of shared ethos is the accumulated aggregate human knowledge of goodness that manifests in the perpetuity of temporary existence.

Over the human history, the values, ethics, traditions and world view is used by the people to assign meaning to their lives, to apprehend the reality and develop an understanding of the world around them. Heiberg and Stewart (2005) examines that the development of human civilisation, the new discoveries, scientific breakthroughs and growth of knowledge, creates a certain incoherence in the prevailing worldview, which makes it difficult for the people to assign meaning to their lives and to apprehend the reality. With the emergence of an incoherence, the prevailing worldview cannot provide a point of orientation for the people to create a stable stance for their existence and a perspective for understanding the reality of their time (Stewart, 2013). In this state, the belief in traditional institutions and practices becomes "like a ghost from past ages, which had lost all meaning in the present" (Heiberg and Stewart, 2005:90). In the absence of any firm point to comprehend the human life and the world around it, the age becomes engulfed with uncertainty, and

this condition becomes the crisis of that age, in this uncertainty lies an 'inner necessity' for the values, traditions and the worldview of the past to change and accommodate the realities of the present.

Kierkegaard (Kierkegaard *et al.,* 1989:260) also investigates this phenomenon in observing that "The given actuality at a certain time is the actuality valid for the generation and the individuals in that generation", and when this actuality becomes incoherent to the reality of the next generation, the values vital for the sustainability of prevailing worldview starts to disintegrate, resulting in the breakdown in the plausibility of the worldview.

The Islamic tradition of our age, has reached a similar stage, where a new form of worldview is required, a worldview that is relevant to our time and space. The aftermath of the crisis in Islamic tradition of our time, which is somewhat similar to the crisis of Heiberg's era, is the 'juristic subjectivism', the 'religious relativism', and 'religious nihilism'. The 'religious nihilism' is the practice of a religious custom, when the metaphysical meanings in the practice of that custom are absent from the conscious minds of followers of that religion. The 'religious relativism' is when the followers of a creed hold contradictory moral judgements about an action or an event. The important distinction here is the distinguishing worldview of a tradition, and single life form of a tradition as two separate identities, and the assumption that the worldview may change with change in times, while maintaining the continuation of single life form of that tradition.

Kiekegaard *et al.* (1989: 260), similar to MacIntyre, Heiberg and many others, suggests that in the state of such crisis the "actuality must be displaced by another actuality, and this must occur through and by individuals and the generation". In Keikegaard *et al.* (1989: 242) is in the view that the mode of substituting one actuality for another, "must result from the assertion of subjectivity in a still higher form. It must be subjectivity raised to the second power, a subjectivity's subjectivity, which corresponds to reflection's reflection".

Similarly Heiberg and Stewart (2005:90), while examining the crisis of his ages, suggests that "when the present had ended and was finished and therefore belonged to

the past, to what is dead, when there was a material, that is, a formless substance which, in the creation of a new form, could find a resurrection from what is dead".

The resurrection of Islamic tradition, thus, requires a new form of worldview with new set of goals that assert the subjectivity of our subjectivity, as objective values that are valid for our generation, so that this new form may be used as a point of orientation for understanding the life and the reality, which we live under.

In an effort to understand the fundamental nature of value, this research is focusing on the juxtapositions of: 'external objective universals demanded by tradition or culture', 'the individual's internal subjective 'will' based on rationality', and 'the individual's internal rhetoric, which is contingent and relative, that may be based on whims and feelings of individual'.

This study, therefore, attempts to explore the origin of these realms, and by doing so, endeavours to construct the boundaries between the two realms from the perspective of their origin. The objective of this chapter, hence, is to develop a deeper understanding of value, in abstract and in concrete sense, so that the important and unimportant facts can be distinguished in non-spiritual socio economic matters, and the human actions can be categorised as good or bad in this world. However, "A whole metaphysical picture is needed to underpin this fact–value distinction" (Brinkmann, 2004:61) that "may not be benign or Utopian" (Crawford, 2004:11). This understanding can then be used to construct a theory of normative ethics for the objective of engineering a post crises source for Islamic tradition. The aim of this chapter is, therefore, to formulate a framework for institution of *hisbah*, both in abstract and philosophical, and practical and operational sense.

5.2 FUSION OF OBJECTIVITY AND SUBJECTIVITY: CONCEPTUALISING THE OBJECTIVIST SUBJECTIVISM

The forerunner of the above-mentioned juxtapositions is the Athenian society, where the Daimon of Socrates, the Oracle at Delphi, and Sophists representing the three positions simultaneously existing and interacting with each other. This co-existence, interactions and its outcome, is also marked as the start of the transition from the objective and external morality to the subjective and inward morality, while it took over two thousand years for this transition to produce practicable notions of human's

subjective autonomy. The examination of the three juxtapositions in the Athenian society, in their underdeveloped simplest forms, can, hence, help us to develop a better understanding of their nature.

The examination of conflicts in Athenian society is not just an analysis of the events of the past, because, these conflicts are pertinent to the problem of our time; as the rapidly changing reality put into question the demands of tradition and culture, consequently the conflicting groups of above mentioned three juxtapositions emerge in the postmodern times. These conflicting positions contradict with each others' notion of truth and its validity; therefore, the construction of a synthesis between them requires the examination of conflicts in Athenian society.

The sophists are the relativists who consider the moral judgements as subjective, that are dependent on human will, but the Daimon of Socrates is distinct to the sophists' relative subjectivism, as the Daimon of Socrates does not represent Socrates' will, but rather it represents an objective truth acquired by individual's subjectivism, while the Oracle at Delphi or the Athenian society represents the demands of traditions and culture that are considered as objective and universal by that tradition and culture. The relativism of sophists reduces all the moral judgements to subjective and relative opinions that lack any validity or authority, and following them becomes a matter of individual choice; any regulatory framework for socio, economic or politico system requires certain validity and some authority. Therefore, this study focuses only on the external public morality, as in the case of Oracle at Delphi, and the internal subjective moral understanding, as in this case of Daimon of Socrates.

The Athenian society did not recognise the freedom of individual subjectivity, where ethics were understood in context of established traditions and norms. Socrates rejected the external objective morality of Athenian society and tried to replace it with the subjectivy constructed on thoughts, while Sophists attempted to replace it by subjectivity constructed on individual whims and feelings such as pain and pleasure.

Hegel (1995:411) also examines these three positions, and suggests that "Socrates opposed to the contingent and particular inward, that universal, true inward of thought. And Socrates awakened this real conscience, for he not only said that man is the measure of all things, but man as thinking is the measure of all things".

According to Hegel, Socrates asserts the freedom of individual's subjectivity and approaches the notion of good from the stand point of reflective morality, where good is determined by the virtue of perceptions, by exercising individual's subjectivity through reflective thinking (Hegel, 1995:411). In other words, good is neither what is externally taught by tradition or customs, nor it is based on the feelings of individual, but it is the thoughts of an individual that filters things into the category of good and bad, and every individual ought to have the right to exercise this reflective morality.

Hegel (1995), marks the Socrates' Daimon as the start of paradigm shift in the understanding of morality from the external towards the internal, and creation of a value system for subjectivity, which resulted in the worldwide acknowledgment of subjective freedom. However, unlike Tennemann, Hegel (1995) does not view Socrates' actions as righteous and his conviction as injustice, instead Hegel (1995) points that Socrates denounced the public morality and rejected the value system of the tradition, and by doing so undermined the concept of democratic state. Hegel (1995:426) elaborates on this, and explains that:

> The Spirit of the Athenians… in itself, its constitution, its whole life rested on a moral ground, on religion, and could not exist without this absolutely secure basis. Thus, because Socrates makes the truth rest on the judgment of inward consciousness, he enters upon a struggle with the Athenian people as to what is right and true.

Hegel's (1995) interpretation of Socrates' Daimon is that it encourages people to disregard the public morality that exists in the outward sphere, and look for truth inwardly, such notions threaten the secure basis required to build a law-abiding society.

Socrates' notion places private views of an individual above the established customs, public morality and the law of the state. Two-and-half millennium after Socrates, a mock trial of Socrates was conducted in Greece, which divided the international panel of judges, on whether Socrates is guilty or not (Bouzali, Nov 28th, 2013). In this, five of the ten judges chose the superiority of external objective values of Athenian over subjective freedom of Socrates, while the other five showed corresponding logic of past, such as the one followed by Tennemann, Kant, Mendelssohn and others, and voted in favour of Socrates. In past, Socrates trial was viewed as gross injustice; however the majority of the modern discourse no longer express the same view, such

as Cartledge's (2007) work. The modern discourse is mostly consistent with Hegel's interpretation of Socrates', as it takes the position that Socrates trial and the guilty verdict was completely justifiable, although the reasons for this justification may vary from discourse to discourse.

The paradigm shift in morality that started from Socrates has over the years created realm of subjective freedom for individuals to express themselves according to their inwards morality; laws, such as Human Rights Declaration, theoretically protect this realm. One of the key features of postmodernism is that it emphasis that every individual should exercise their inner subjective morality within the realm of subjective freedom, and any attempts to employ the subjective morality outside of the allowed realm is not only rejected, but it is also subjected to all-out retaliation. The realm outside of the 'realm of subjective freedom' is governed by accepted customs, validated traditions and social postmodern norms; we are referring to this realm as external realm, while realm of subjective freedom is referred as internal realm.

If *R* is the entire realm where moral judgements can be expressed or extracted from, then the combination of internal realm (*I*) and external realm (*E*) is the power set of *R*, as there are no other subsets of realms outside of the subset of *I* and *E*, which come together to form the power set of *R*. In other words, the internal realm consists of an individual and everything outside it belongs to the external realm, so when a person interacts with another person, theoretically that person is interacting with contents belonging to external realm. Moreover, all the contents of internal realm or the area of internal realm, acceptable by the postmodernism in form of social agreement, is not completely protected by the laws and conventions. We are calling the area of internal realm protected by law as 'fenced internal realm' and the area of internal realm unprotected by law is being referred to as 'unfenced internal realm'.

The opposition to Socrates' Daimon, in postmodern world, is mostly the consequence of attempts on imposing the individual subjectivity outside the internal realm, while any discourse or position sympatric to it is mostly the consequence of external realm invading that space of internal realm, which is not protected by law, but established as a pace for internal realm by historically agreed social contracts. It should be noted that the invasion of unfenced internal realm is very plausible and regular phenomenon, because societies are more powerful and therefore able to influence, erode or invade

the realm of individual's subjective freedom, especially the unfenced internal realm. Hegel (1995:426) rationalises this invasion by asserting that there needs to maintain an absolute secure basis for the external realm to ensure its existence; therefore, society cannot allow the inward consciousness of internal realm to challenge the external realm, and in a process of avoiding such conflicts the external realm may overwrite and invade the unfenced internal realm. Consequently, more a society's basis is unsecure, the more it attempts to invade the internal realm, which sometime results in invasion of fenced internal realm that is theoretically protected by international conventions and laws. In Islamic discourse, this invasion is discussed as the factors that may lead to social chaos and upheaval, and Islamic legal theory sometimes goes to great length to stop them.

The internal realm and external realm have their distinct value system, moral judgements and validity of truth. Over the history, the philosophical discourse, customs and traditions have developed in such a manner that they encourage individuals to focus inwardly for truth and morality, rather than extracting it from outward public morality. The contradiction between the internal realm and external realm has led to laws and conventions, and many political systems and distinctive social ideologies have emerged that focus on the establishing pragmatic divisions between the two realm. This study, therefore, attempts to explore the origin of these realms, and by doing so, it endeavours to construct the boundaries between the two realms from the perspective of their origin. The construction of boundaries of two realms based on the origin of these realms would imply that the understanding of what may constitute as a prudent scope of these realms, would be inferred from subjectivity of each realm. This assertion of higher form of subjectivity, which is like the "subjectivity raised to the second power, a subjectivity's subjectivity" (Kierkegaard *et al*., 1989:242), would mean that the normative goals of each realm and the contents of such goals can be understood from the subjective prospective of each realm. Thus, the validity and authority would carry forward in the normative goals and value system, as they will assert a higher form of subjectivity in their corresponding realms, and this feature makes this conceptualisation different from relativism.

5.2.1 Objectivist Ethics

This study uses the objectivist ethics as a point of orientation for conceptualising the origin of the two realms (external realm and internal realm) with the objective of Rand (1964:11). This study employs theory of objectivist ethics, because this theory takes the position that "Ethics is not a mystic fantasy—nor a social convention—nor a dispensable, subjective luxury, to be switched or discarded in any emergency. Ethics is an objective, metaphysical necessity of man's survival" (Rand,1964:11). This coincides with 'single life form of Islamic thoughts', as primary sources construct their narrative on the grounds that ethics are metaphysical necessity for survival of human beings (Fakhry, 1991).

This study shares this foundation stone with the objectivist ethics. The objectivist ethics theorise the ethics as objective, metaphysical necessity of humans by considering the life of an organic life form (human beings) as an end in itself, and not a means to any end, such as welfare of others. As Rand asserts an individual has to live for their own sake, "neither sacrificing himself to others nor sacrificing others to himself" (Rand, 1964:16). Therefore the highest moral purpose of human beings, according to objectivist ethics, is the achievement of happiness by means of survival, and anything that sustains the life of the being is proper and good, while anything that negates it is evil and blameworthy. This notion does not outreach to the issue of life and death, but instead focuses on survival, within broad sense of the word, by linking all the activities that sustain one's own life to the happiness and the links all that which challenge one's own life to suffering (Rand,1964).

This notion is similar to Kant, as both consider the morality as objective, rather than relative. However, as Kant considers a 'good will' as good, "not because of its fitness to attain some intended end, but good… in itself" (Kant *et al*., 2011:17), the objectivist ethics consider life as good in itself. Similar to utilitarianism, our interpretation of objectivist ethics also uses the consequentialist premise, and similar to utilitarian argument it also uses the proposition that "happiness is the end and aim of morality" (Mill, 1990:34), but instead of "considering utility to be the test of morality" (Mill, 1990:34), it proposes the survival and sustaining the life-form as a test for morality (Rand, 1964). The objectivist ethics suggests that the survival of life form requires values, which are established by a code of ethics; and the ethical code is

determined through the virtues of reason through rationality, purposefulness through productivity and self-esteem through pride (Rand, 1964:11-14).

Objectivist ethics conceptualise life as 'the standard of value' and the individual life as 'the ethical purpose' of that individual. Accordingly, life is considered as an instrument that provides assessment on the choices one ought to take, and these choices are the means to the achievement of the purpose; and the purpose is surviving in such a manner that one lives "a life proper to a rational being… and the life he has to live is his own" (Rand, 1964:11-14). The 'standard' and 'purpose' does not come automatically, instinctively, involuntarily or infallibly, and it can only be realised by the virtue of productive work that optimally utilises human's "creative ability, his ambitiousness, his self-assertiveness, his refusal to bear uncontested disasters, his dedication to the goal of reshaping the earth in the image of his values" (Rand, 1964:15).

The conceptualisation of 'standard' and 'purpose' is essential construct for the normative understanding within the theory of ethics. This is also important, because the examination of the previous chapters revealed that this dimension is largely missing from the discourse of the Islamic tradition.

5.2.2 Power of External Realm and Autonomy of Internal Realm

When we consider the external realm and internal realm as two separate life forms, where external realm represents the shared ethos' perpetuity of temporary existence, practiced in form of traditions and social norms, and the internal realm as individual's subjectivity based on individual's faculty of reasoning, and then on this notion, when we apply the abstract principles of objectivist ethics, we are drawn towards the conclusion that the external realm and internal realm ought to value the things that sustain their life. Therefore, the 'standard' for 'external realm' is the 'survival and continuity' of external realm, and the 'purpose' of external realm is to achieve that productivity, which optimally uses the creative ability of available resources in the realm to reshape the nature and the world in the image of its values. The internal

realm subsequently has similar standard and purpose within its realm. The goal for both realms is to reshape the nature and the world, within its realm, in the image of its values, and this corresponds to the assumption constructed in the previous chapter, which states that the very fabric of nature is intrinsically evil. The reshaping of the nature and the world means the development of the world and restyling of the nature so it assistances the realm in its survival, assuring its continuity.

The notion of 'nature as intrinsically evil', proposed by this study, is very much similar to Hobbes description on state of nature, which is constructed on "a number of individually plausible empirical and normative assumptions" (Lloyd, 2013:62), and in which he describes the life as: "solitary, poore, nasty, brutish, and short… [with] no account of Time; no Arts; no Letters; and… worst of all, continual fear, and danger of violent death" (Hobbes *et al*., 2006:102).

Thereupon, what this study is purposing is that both the realms, that is: the 'external realm' of socially enforced traditions, and 'internal realm' of individual's subjectivity, are driven by the quest for survival. This quest for survival is not the animalistic survival, which only demands the perseverance and continuation of life form, but this quest for survival is humanistic, as it demands meaning and purpose. The purpose is the transformation of reality, surroundings and nature, so it becomes partner rather an adversary in the quest. The external realm and internal realm, both try to express themselves in their surrounding reality, and by expressing themselves, they are alter the surrounding reality to make it fit for their individual quest.

At a fixed time, there's only one space, which the two realms attempt to alter and transform. This creates an unresolvable conflict and rivalry between the two, and to resolve this issue we, over the history, have attempted to divide this single space into two partitions, so both realms have a designated area to express their subjectivity. The subjectivity's subjectivity of each realm is to transform the space, at any given time, to make it suitable and compatible with its survival.

While majority of the discourse, including objectivist ethics, on this topic only treats internal realm of individual's subjectivity as grounded in the existence of individual human life forms, this study, however, proposes to view the external realm as life form in itself. By considering both realms as two independent life forms, we are able

to rationalise the conflict in such a manner that it may be possible to theorise a solution to this conflict. Treating external life form follows similar doctrinal argument to 'corporate personhood', which recognises corporates and other groups of people with common interest, as single life form from the legal perspective. We are treating the social, economic and political traditions, customs and laws, of external realm, as a phenomena generating out of a single life form, and the purpose of these traditions, customs and laws is to ensure the survival of that life form. The single life form of external realm, hence, is the perpetuity of temporary existence, where the shared ethos exists, and the external realm facilitates the existence of individual lives of humans who temporarily exist alongside it.

When we assign a value to things based on their assistance in survival, then the internal realm must give some positive numerical value to the existence of external realm, as it assists in its survival, and when an individual's internal realm values the existence of external realm, it contributes towards the things that assist in the survival of external realm. This is when external realm also places a positive numerical value to that individual's internal realm. When these positive values are placed from both parties, then a social contract forms. Our argument is similar to 'contractarianism' of Hobbes (Darwall, 2002), and Rawl's 'contractualism' (Rawls, 2000), as it acknowledges the existence of an unspoken contract. However, our argument does not consider these unspoken contracts as a legitimate moral norms that one ought to follow. The reason for this distinction is that we purpose that in pursuit of survival the internal realm and external realm assign each other positive values, which results in unspoken contracts, but the legitimate moral contents are those that assist in survival, not the unspoken contracts. The unspoken contracts may reflect the legitimate moral contents that assist in survival, but it may not always be the case, and the unspoken contracts are the results of legitimate moral contents, but not the foundations for determining the morality.

Similar to unspoken contracts, all the traditions and laws of external realm and all the moral principles formed by an individual through reflective thinking, do not form a test of morality and neither do they define the moral correctness, as these are only time and space dependent conclusions drawn from legitimate moral contents for a particular life form, and they only provide the moral reflection of what was correct for

that particular life form in that time and space. We are calling this time dependent moral premises as 'restrictive morality'.

5.2.3 Restrictive Morality and Moral Stickiness

Restrictive morality therefore exists in pockets, where each pocket is objective to a particular life form (external realm or internal realm) and simultaneously relative to other life forms (within or outside of that time and space); a particular life form view's its pocket of restrictive morality as an absolute truth. An individual has only one pocket of restrictive morality within the internal realm, while it may contain conflicting moral principles. However, the external realm has many pockets of restrictive morality that compete with each other to create a worldview for the external realm.

The model of normative morality proposed by this study is not based on the restrictive morality, because the restrictive morality suffers from the 'moral stickiness', and because of moral stickiness it can illustrate an incorrect reflection of legitimate moral contents. The legitimate moral contents are the moral contents one ought to follow, and our aim in this section is to develop an understanding of the form and substance of the 'legitimate moral contents', along with the measure or criteria that may decide on what thing or action may constitute as part of 'legitimate moral contents'.

The 'legitimate moral contents' project an image of morality for an individual life form and that life form can consciously read this image. The reading and hence the interpretation of this image is dependent on the time and space, in which that life form exists. The conscious reading of this image results in formulation of restrictive-morality, and the restrictive morality provides the building blocks for internal subjective values, customs and believes. This process occurs in the internal realm, for a human being, and also in external realm, for a society or community.

The restrictive morality provides point of orientation for constructing the meaning of life and making sense of the reality, and by doing so, it also produces the rationale for the customs, values, and believes for internal realm and for the traditions, laws and duties in external realm. This use of restrictive morality makes it rigid and resistant to change. As the space and time alters the 'legitimate moral contents' produce a new image, but the conscious reading of this image ought to form a new restrictive

morality, which ought to replace the old one. However, the life form (human or society) resist to change the point of orientation, through which they make sense of themselves and the world around them, and due to this resistance, they contest and defy to change the old restrictive morality for the new restrictive morality. In such circumstances, the life form continues to practice the old restrictive morality and in doing so, the life form perceives the actions and choices made on old restrictive morality as morally correct, while they might not be morally correct according to the new restrictive morality. We are referring to this phenomenon as moral stickiness. During moral stickiness the life form, in spite what it pursues and what it perceives as morally correct, does not improve its chances of survival and may not progress to meet the standard and the purpose, and the actions and choices made during moral stickiness may even be detrimental to life form's survival, as the moral stickiness makes the value system of life form independent of the conditions, situation and reality in which that life form lives. The solution to moral stickiness is the outside intervention; in case of internal realm, the intervention may come from external realm and in case of external realm it may come from an internal realm of an individual. One of the rationales for constructing a 'theory of ethics' is that it provides realm with a framework to self-adjusting its restrictive morality and move away from the state of moral stickiness, without foreign intervention. An ability to self-adjust and avoid moral stickiness is one of the most vital instrument for fulfilling the standard and achieving the purpose of life, as it allows life form to constantly and pragmatically benefit from the 'legitimate moral contents'.

Objectivist ethics is not the only solitary discourse that asserts that the legitimate moral contents are based on survival of the life-form. Many interdisciplinary approaches have been used in the past to explain the moral and ethical problems in the philosophy. The recent development in this field has used sociology, psychology and evolutionary theory to support or undermine different metaethical positions, or to construct an episteme of good and evil, or to rationalise the origin moral behaviour and capacity in humans (Korsgaard, 2006).

Some of the empirical approaches by the moral philosophers looking for scientific inquiry, such as Joyce (2006), Korsgaard (2006) and Kitcher (2006), into the origin of moral behaviour in human beings use evolutionary theory, while others who do not

want to consider morality as an unintentional 'by product' of natural selection, such as Prinz (2008), argue for independent evolution of morality. Many of the inquiries using evolutionary biology, focus on origin and nature of human behaviours such as altruism, by appealing to discourse such as Hamilton's (1964) 'inclusive fitness' theory or to Trivers (1971), Smith (1982), Axelrod (1984) or to Alexander (1987) and Joyce (2006); while other inquiries, such as Wheatley and Haidt (2005), concentrate on the contents of morality, the factors that might influence the contents of moral judgements, and the factors that might influence the motivation to act on moral judgement.

Whilst this study acknowledges the influence of the natural selection on morality and psychological and social connotations of moral judgements, the focus of this study, however, is not on scientifically explaining origin of morality or exploring the contents of existing moral judgements or rationalising the moral or immoral behaviour of people; instead this study concentrates on the normative contents of morality rather than an empirical sense.

The normative sense of morality focuses on ability of a framework to judge the moral conduct of an activity, in relation to the goal. It shows the course of action that needs to be taken in a given situation and a ratio of sacrificing one value to achieve another. The nature of inquiry pursued by this study is, therefore, normative in its nature, and the episteme of morality this chapter attempts to construct focuses on normative direction.

5.2.4 Formulating the Metaethical Foundations

In lieu of discussing the answers to the fundamental questions raised above, we first have to state the foundational principles of ethics that give us a metaethical perspective to approach these questions. As discussed earlier, we are considering nature, by its very nature, as evil and every action of an individual life form to alter the fabric of nature, by developing partnerships with others, by adapting or by evolving, is an attempt by that individual life form to introduce goodness, the goodness from the perspective of that life form. This consequently makes 'life' an epistemological source of goodness.

The perspective of goodness held by an individual life form, which we are referring to as restrictive morality, suffers from moral stickiness and therefore its contents may not correctly reflect what is to be considered as good. The moral stickiness occurs when the conception of morality shifts to accommodate the change in reality. The shift occurs because 'legitimate moral contents' are essentially a 'collection of all the things' that aides the life form's survival, whilst also maintaining the 'standard' and giving way for the life form to achieve its 'purpose', and with change in reality and circumstances the "collection of the things' also changes, which are mostly time and space dependent. The restrictive morality does not always keep up with this change and may not update all its contents, resulting in moral stickiness.

The solution to moral stickiness is some sort of intervention that forces the life form to change the point of orientation, which it uses to understand its life and reality around it. The change in point of orientation gives way to for restrictive morality to update. In this metaethical perspective, therefore, 'a thing 'X' is to be defined as good, 'if X, when objectively viewed, is subjectively beneficial for the survival of realm of individual life form in question.' When X is no longer beneficial then X will move from category of good things to bad or evil things.

Moral goodness, therefore, is contingent, as it differs from time to time and comes in to, and goes out of, existence with change in circumstances, time and space. Restrictive morality, as it fails to keep up with these changes, becomes liable to arbitrariness of moral stickiness, and consequently loses any possibility of dependency or any legitimate moral authority. The claim to legitimate moral authority relies on the certainty that moral contents exist without any contingencies; therefore, restrictive morality is not the reliable source of morality. In context of 'is' and 'ought'; an internal realm relies on the restrictive morality as a point of orientation to create a moral understanding of things, what the realm ought to do is use the 'legitimate moral contents'.

In practical sense, when an individual commits or participates in anything that has a potential to harm, or harms the existence of its internal realm, that individual is acting on a restrictive morality that is suffering from moral stickiness. We have theorised the existence of two realms from everyone's perspective, that is: internal realm and external realm. An individual acts or reacts positively to parts of external realm that

the restrictive morality interprets as advantageous or valuable to the survival of internal realm, while the parts of the external realm that it perceived as inimical to existence of internal realm is treated with hostility by the individual. In the cases, when the internal realm of an individual and the external realm act in a manner that they protect each other's existence, helping each other in survival, then a maximum productivity towards the achievement of the independent purposes of both realms may be accomplished in that setting through mutual effort. In other words, there are billions of people in the world at a given time, indicating billions of settings between internal realm of an individual and external realm, which therefore does not only suggest a maximum productivity within even a single setting, but also even suggesting a positive progress towards the purpose of each realm in majority of settings would be a utopian vision.

When an individual is born, external realm provides the resources required for the construction of internal realm of that individual, and all the effort put together by the external realm that fosters the development of the internal realm. Hence, it would be wasteful if external realm is unable to extract any benefit from the internal realm, while internal realm pursues its independent purpose. Thus, it is in the interest of external realm to benefit from internal realm, in as many settings as possible, so that the external realm may progress towards its purpose. However, a realm only positively contributes towards the other realm, when it perceives the purpose other realm is pursuing will benefit the realm's survival and help the realm in pursuit towards its own purpose.

From the perspective of the external realm it is not possible to positively contribute in the pursuit of an internal realm towards its purpose in every or even in majority of the settings; which, therefore, require a measure through, which it can select the settings, in which it is viable for the external realm to implement a mutual beneficial agreement, where external realm contributes towards the pursuit of internal realms purpose, and internal realm reciprocates the same.

The external realm, by definition, requires such mutual beneficial contracts, because the 'labour' required for external realm to pursue its purpose is only provided by internal realm of individuals. The survival of internal realm, in most of the cases, is therefore in the benefit of the external realm, due to possibility of contribution of

labour towards the purpose of external realm, and for internal realm the existence of external realm is vital to its own survival. Therefore, a mechanism maybe required that could constructively and prolifically allow a realm suffering from moral stickiness to reposition its point of orientation. Moreover, the finite space is either ruled by the external realm or the internal realm and more space a realm has to express itself, the more it can transform that space for the its own benefit; therefore, a measure is also required that can pragmatically divide a space between external and internal realm in each setting. The theory of normative, from perspective of this metaethical view, should be able to give some guidelines on these three fronts.

The 'purpose' and 'standard' referred above, also need to be defined in the context of this metaethical view, as this definition is slightly different, in abstract and in concrete sense, to the objectivist ethics' understanding of these terms, in spite of the conceptual borrowing from the objectivist ethics. This research at this stage explores the meaning of standard and the purpose within the context of this study, while it also compares it with the original position of objectivist ethics.

5.2.5 The Standard and The Purpose

Objectivist ethics consider 'life' as an instrument, source and standard of value, while the ethical purpose is the measure of life: the ethical purpose of an individual's life is to live her own life, which Rand (1964:11-14) phrases as one has to life a life best to the creative ability they have; "a life proper to a rational being… and the life he has to live is his own". Such a life can only be realised by the virtue of that productive work, which is undertaken purely for one's own (Rand, 1964:15).

In context of internal and external realms, the objectivist ethics, claim that it is ethical responsibility of an individual to always act in interest of their internal realm, in such a manner that the space within their internal realm is used in an optimal way. This purpose of individual is not realised mechanically, instinctively or involuntarily, so that individual has to use their rational faculty to push towards this purpose (Rand, 1964:15). The rational faculty mentioned here is more in sense of Socrates' Daimon, rather than the desires and whims of the individual.

In perspective of this metaethical view, the internal realm's standard and purpose is similar to the one described by the objectivist ethics, as we propose that the purpose

of life, in context of internal realm, is to subjectively, but rationally, undertake the productive work, according to one's ability. When an individual *X* is born, *X* takes a small part of external realm '*S*' and declares it as *X*'s internal realm. *X*'s ability depends on the combination of nature, determined by the biological development, and nurture provided by the external realm such as physical, psychological, social and other nutriments. What *X* ought to do is, use its ability productively for the betterment of its internal realm by creating physical value for self-preservation. In other words, the ethical demand from an individual is to productively progress towards a consciously chosen and rationally defined endeavour; "It is not the degree of a man's ability nor the scale of his work that is ethically relevant" (Rand, 1964:15), rather what is of utmost ethical importance and what morality truly demands from an individual is "the fullest and most purposeful use of his mind" (Rand, 1964:15). Therefore, when an individual *X* uses its mind in the most purposeful manner, while using preservation and betterment of her own life as a measure to differentiate between good and evil, whilst pursing the consciously chosen and rationally defined endeavour, then *X* is doing what is morally correct.

When it comes to external realm, the objectivist ethics take the assumption that if every individual pursue a consciously chosen and rationally defined endeavour, then such endeavours would not contradict or be counterintuitive to the progress of human civilisation as a whole, because rationality does not contradicts (Rand, 1964). The external realm is the most important realm in the perpetuity temporary of existence, as it nourishes the newly born internal realms; therefore, it can be left to invisible hand of rationality to iron out any antithetical settings and, therefore, theorising the workings of external realm does not dispute the assumption of objectivist ethics. Moreover, the external realm has many diverse sectors, such as social and cultural settings, and the consciously chosen and rationally defined endeavour selected by an internal realm, to some extent, depends on which sector of external realm, internal realm comes in contact with and the variety of social and cultural settings there are in the external realm, can produce even more diverse endeavours for internal realms. The construction of objective normative goals for external realm is important, not just because of this, but also because the purposeless existence of external realm threatens its existence, by undermining its claim to authority and purposeless existence of

external realm means that external realm has no grounds to compel an internal realm to conform.

The external realm is an eco-system, it is a "whole complex of physical factors" (Tansley 1935:299), which creates: "nonliving environment interacting as a functional unit" (United Nations, 1992: Article 2) with all the organism-complex. In other words, it is the system, outside of the internal realm, that is "composed of physical-chemical-biological processes active within a space-time unit" (Lindeman, 1942:400). The external realm differs from Grinnell's (as cited by Vandermeer, 1972:107). concept of niche, due to its scale, as external realm encapsulates everything. However, external realm is to be understood in the perspective of an "ultimate distributional unit, within which each species is held by its structural and instinctive limitations" (Vandermeer, 1972:107).

When we approach external realm as an "ultimate distributional unit, and examine the distribution of resources, we find that the distribution of resources is normally achieved by combination of predation, and competition and an effort to gain advantage may result in corporation (Connell, 1979:461-462). The structural and instinctive limitations of species, their interaction with each other and their classification, along with the mechanism through which the species benefit from the 'ultimate distributional unit' (external realm), by consuming material resources, such as food and non-material resources such as knowledge, are widely discussed in detail with ecology, as it focuses on the organisms and their environment, such as the work of Vandermeer (1972), Martin and Diamond (1979), Kingsland (1985) (2002), Cooper (2004), Haila and Levins (1992) and so on. However, the focus of this study is not to concentrate on 'why' and 'how' of ecological endeavours, but to use ecological findings and concepts as building blocks to conceptualise a theory of value, because of this, instead of using jargons specific to field of ecology, we are calling everything that exists outside an individual's subjective realm (internal realm) as an external realm, which includes the 'ultimate distributional unit', the environments and so on. The word 'environments' here refers to the specified set of operational habitats of all the organisms.

Historically 'natural ecosystems' were viewed as the highest form of eco-systems, and humans were considered as an external disturbance (O'Neill *et al.*, 1987:9).

However, however modern ecologist, like Egler (1964; 1970), Costanza (1996) and other, recognise the need for integrating, humans and human made environment as an important part of earth ecosystem. One of the results of this was conceptualisation of 'the total human ecosystem' in the work of Naveh and Lieberman, (1994), and Naveh (2000). If the total human ecosystem can be seen as an "overarching conceptual super-system" that also includes the mental, physical and spiritual spheres, and it can be regarded as "the highest evolutionary ecological entity" (Naveh, 2000:358), and defined as concept: "integrating humans with all other organisms and their total environment at the highest level of the global hierarchy, should become the unifying holistic paradigm for all synthetic ''eco-disciplines" (Naveh, 2005:228). Then the external realm would be 'total human ecosystem minus the internal realm of one life-form'. Such distinctions are necessary for correct conceptualisation of purpose of external realm.

The rationale for using ecosystem approach as a paradigm for this research, is that ecosystems "represent a perception of systems in the natural world that maybe inherent to human experience" (O'Neil, 1987:40), and they categorises the resources and then integrate them in a system that promotes "conservation; sustainable use; and the fair and equitable sharing of the benefits" (Alcamo *et al.*, 2003:52). It is also one of the most comprehensive scientific methodologies that allow us to take an holistic approach to the problem at hand, as it includes human beings "with their cultural diversity,… [as] an integral component of many ecosystems." (Alcamo *et al.*, 2003:52). We have used 'total human ecosystem' as a point of orientation to define external realm, because it allows way to genetic and observed, rational and empirical, natural and positive "knowledge, wisdom, and ethics with their scientific and professional expertise from the natural and social sciences and the humanities" (Naveh, 2005:228). This would also allow us to accommodate for the continuity of the Islamic thoughts within this thesis.

Each generation of an organism inherits genes and environment to build its internal realm. The selective biases imposed on the ancestors of that organism, by the blind action of natural selection are indirectly reflected in the genes. In addition, in the environment, the inherited information provides details on "past adoptive successes…[of] earlier generations relative to [their]… selective environment"

(Odling-Smee *et al.*, 2003:180). This information is, what we conceptualized earlier as restrictive morality.

In context of the environment, the external realm has two major parts: the natural ecosystem and the novel system (derived from novel ecosystem); both of them have a distinct evolutionary history. The natural ecosystem, which resembles its historic natural state in past and present, when altered, tempered or modified by human beings into a hybrid state is the 'novel system'. Therefore, the human footprint index that quantifies the trends in evolution and ecology at a global scale, suggests that the rate of change from natural to novel system has rapidly increased in the past fifty years and "many biotic and abiotic variables is greater than in the previous 10 000 years" (Hobbs, Higgs, and Harris, 2009:600). The human intervention, historically, evolved from being non-existence, to existence but under the influence of natural ecosystem, to being a cause of external disturbance to the natural ecosystem, to a major player within the earth's ecosystem (Steffen *et al.*, 2004:12). The evolution from simple to complex, most of the times "appear suddenly as 'bifurcations' " (Naveh, 2005:230) as a previously stable system transforms into a new complex state. The emergence of this new order that can be observed by the appearance of new structures and new behaviours, within the novel system can be marked by the bronze revolution, agricultural revolution, industrial revolution and so on within historical trajectory of developmentalism.

The novel system which initially started as a part of natural system, has developed to such an extent that it does not only influence the natural systems but it has taken over the natural system to such a degree that causes of major effects in the natural system can be traced to the novel system. This position is empirically supported by many studies, including IGBP's research that observed various variables from non-human dominant state to human intervention in natural systems (Steffen *et al.*, 2004:12).

The external realm has two major parts: the novel system and natural system. The purpose of external realm, based on the evolutionary development of external realm, is to transform the natural system into novel system, and by doing so the external realm is expressing its subjective view, which it derives from the perpetuity of shared ethos, discussed earlier.

The purpose of external realm is the trend in which it has developed and that is: taking the natural ecosystem and modifying it for its own use. The external realm, therefore, requires the input of all the internal realms of individuals from every generation. In return of this input, the external realm provides the resources to individual for development of their internal realm, which enables external realm to transform the control of an ecosystem from nature to itself. The rationale for this quest for transfer of control from purely natural to hybrid (human and nature) or totally human controlled ecosystem is because external realm extracts resources from these ecosystems and the distributes it to individuals, and in return individuals provide input to the external realm that allows it further take charge of ecosystems or parts of an ecosystem. Through this circular process the external realm assures its survival and survival of internal realms. In order to further expand on the interaction between external and internal realm based on survival, we will conceptualise the realms as a living organism in the following section.

5.2.6 Justification of Scientific and Philosophical Coherence and Consistency

Conceptualising external realm as a living organism with evolutionary history, entropy and a purpose is not foreign to science, as many non-living things, such as celestial bodies are considered to be evolving from simple to complex, with observable stages of bifurcations (Maeder, 1987). The uncertainties of modern time have led to a major paradigm shift in the method of scientific enquiry, from "entirely reductionistic and mechanistic… to more holistic, organismic and hierarchical ones" (Naveh, 2005:229) that recognise the reality of complex systems and the uncertainties and ambiguities within them. This paradigm shift has produced many interdisciplinary studies that focus on nonlinear chaotic processes (Naveh, 2005:229-230). Many studies such as Gibbard (1990) and Kitcher (2006) appeal to evolutionary biology to focus on the origin of ethical guidance, and acknowledge the normative implications of moral contents. However, most of these studies do not support the existence of independent moral facts, as they tend to sympathise towards the *expressionist*[37] position on moral issues, while other studies like by Gould (1997), Gould and Lewontin (1979), Fodor (2000), Copp (2008), Fraser (2010) and so on, use moral

[37] Further reading on expressivism, *see*: Horgan and Timmons (2006).

psychology, instead of psychological Darwinism (Fodor, 1998; McCloskey, 2006:440) to argue ontological existence of universal human morality, while maintaining the evolutionary biology's premises that morality is an "ineluctable consequence of consciousness evolved for other reasons." (Gould, 1997:56). However, most of these studies concentrate on episteme of moral behaviour by analysing and evaluating the empirical nature of moral behaviour in humans, and inspite of acknowledging the ontology of psychological moral facts, they are not focused on 'ought'.

The narrative of objectivist ethics, which does address the origin of morality is consistent with the premise of evolutionary biology, as the morality, at a very basic level, is not perceived as an end in itself, but as a mean to an end and the end is survival. The acts like altruism can also be justified in this concept of selfish pursuit for survival, as demonstrated by Dawkins (1989, 171-77), where he focuses on how selfish genes produces biological altruism. While this study agrees with the stance of evolutionary biology and moral psychology and uses their findings to support the thesis, however this study does not adhere to the philosophical standpoint of *expressivism*, instead the findings are interpreted from the standpoint of objectivist ethics. This study takes the position that moral judgements exist and they are objective. However, this objectivity is not universal, but subjective to the organism observing the moral issue, which we are calling 'objective subjectivity'.

From the point of view of methodology used in the process of conceptualising the narrative, through the speculative metaethical interpretation of scientific observation for creating a metaethical stance for theorising a goal and a purpose to describe moral obligations (ought) is not a new form of inquiry, as the attempts on "seeking a philosophical foundation of morality" (Hussain and Shah, 2006:270-272) by "engaging in discourse of a certain kind is not a matter of mere guess work; it requires taking into account certain fact" (Cuneo, 2006:60) for contextualising " 'ought'… [that] seems to be relative to a particular goal or purpose" (Wedgwood, 2006:152). However, Korsgaard's (1997:210) work on normativity explains that there is a significant difference between "What justifies the claims that morality makes on us?... and… Is there anything we must do?".

This research is, therefore, based on the objectivist ethics, and therefore the burden of proof on justifying the claims of morality is not on this research, as it is using the proof provided by the objectivist ethics. Nevertheless, this study satisfies the premises of Humean theory of motivation, which suggests that beliefs on their own cannot motivate us and therefore they "must be combined with some *independent* desires" (Parfit, 2006:341), and the independent desire, conceptualised within this study, that provides moral motivation is survival, as this research takes into account the facts provided by the ecology, and determined by evolutionary biology to contextualise the concept of internal and external realm, and defines the 'ought' relative to these realms by using the framework of objectivist ethics.

So far we have conceptualised the existence, jurisdiction and prerogatives of internal realm and external realm, along with the relationship between them, which is consistent with concept of niche and ecosystems within ecology. The purpose of each realm is defined by observing their evolutionary path to development. An individual's purpose is to survive and sustain its life, which deduces and becomes the purpose of internal realm. The purpose of external realm is also to survive and it manages and sustains its life by utilising the resources from the natural system, by transferring them to a novel system, and these are the resources it ought to efficiently distribute among the internal realms and ensure their survival, so internal realms, created within the perpetuity of temporary existence, can continue to provide it with labour that is necessary for converting natural system into novel system. The study then uses the stance taken by objectivist ethics to argue that the purpose of each realm is also the moral obligation of that realm.

This notion of moral obligation of each realm is to pursue its purpose and by doing so it ensures its survival, makes this ethical approach "an objective, metaphysical necessity" (Rand, 1964:11), as it rationalises the subjective reason for having a subjective moral judgement, which is like "subjectivity raised to the second power, a subjectivity's subjectivity" (Kierkegaard *et al.*, 1989:242). This conception is also philosophically consistent with Hegel's (1995:426) interpretation of Socrates and the modern interpretation of Socrates' trial (Cartledge, 2007; Bouzali, 2013), as it justifies the hostility the external realm, which may show towards the internal realm that threatens the existences of external realm.

During the above conceptualisation of metaethical foundations, we have also theorised the phenomena of moral stickiness. Genetic innate information and the environment comes together to govern human's behaviour, imprinting and instinctive, similar to other animals (Breed and Sanchez, 2012:68); while the genetic innate information is shaped by their ancestral biological heritage, and the environment is shaped by the ancestral social heritage, whilst both heritages are a by product of natural selection. The material they gathered by the genetic innate information and the environment, allows human to form a picture of morality, in the form of reflective morality, which they use to distinguish between right and wrong, and exhibit of this sociobiological foray into ethical behaviour by humans is due to their biological makeup (Ayala, 1995:118). But this information used for construction of reflective morality, which is within the biopsycho-sociocultural construct of human nature, and it is usually based on the outcome of events from the past and therefore might not be relevant to the problem at hand (Holcomb, 2004:69-70), and this phenomena, when occurs, we are referring to it as moral stickiness. An example of such a phenomena, which is also widely discussed in evolutionary biology is the necessity for hominoids to abandon their heritage when they become full time biped, that is once the human ancestors left the life in trees and started roaming permanently on the land, the new environment of the biped life on the planes must have demanded that they abandon their heritage, so they can successful take right course of action to ensure their survival (Kinzey, 1987:76); if hypothetically they would not have abandoned their outdated heritage, then any decision they would have made, in respect to their survival, would have suffered from moral stickiness. This phenomenon is not a conceptualised abstract, as it has biological basis, as an increase in an allele's representation in the gene pool through a process of phenotypic variation (Dawkins, 1989:171-77; Dawkins, 1982) can create phenomena, which we are referring to as moral stickiness.

The phenomena of moral stickiness have raised concerns about the use of biological heritage (reflective morality) as an epistemological source of human behaviour, for developing public policy and other socio economics purposes, due to the aggressive behaviour and inhumane social organisation of human's biological ancestors (Rose and Rose, 2000), and the fear that any such steps would "reinforce immoral aspects… induced by natural selection" (Holcomb, 2004:70). Crawford (2004:11) elaborates on

this concern and explains that “Bees, wasps and ants do not need to develop laws and institutions to help make their society better”, because their moral reflection is largely based on biological usefulness. However, humans strive for things beyond mere biological usefulness and this pursuit of autonomous goals translates into their reflective morality, making reflective morality prone to moral stickiness (FitzPatrick, 2000, 355-356), therefore it would be logical to suggest that if bees, wasps and ants developed to same rational level as humans and started pursuing goals beyond biological usefulness, than they may also suffer from similar problems (McDowell, 1995) such as moral stickiness.

This research has so far constructed the philosophical grounds and metaethical foundations. This conceptualisation is essential prior to constructing the theory of value that ought to act as a new episteme and solve the epistemological crisis. During the deconstruction of discourse on *hisbah* and then the examination of use of Islamic legal theories as a replacement of an ethical theory, this research discovered the theological and philosophical incoherence. In order to address this issue, the above discussion was structured to provide a coherent philosophical and theological grounds. The following section, hence, presents an attempt to construct a theory of value, which then can be used as an epistemic source for judging the moral conduct of activities by the state institutions. Such a theory of value is to be grounded on the philosophical grounds and metaethical foundations as discussed discussed above. The construction of the proposed theory of value is done in such a manner that the theory can provide a normative direction to morality.

5.3 OBJECTIVIST SUBJECTIVISM: THEORY OF VALUE

Human beings, due to their pursuit of goals beyond the dominion of biological usefulness, can suffer from moral stickiness, and therefore require institutions and laws to correct their moral compass, so that they, the humans, do not harm their internal realm or external realm, while pursuing goals relative to biological usefulness and relative to human’s ecology (biological relativism). Some metaethical views, consider this biological as a unique character of human beings, and define morality as pursuit of these goals. However, these goals while are important, they are also relative to human ecology, biological usefulness such as survival and therefore are relative to morality.

The laws and institution that are supposed to intervene and cure the reflective morality of moral stickiness and influence the human behaviour through education and social intervention, assume that the human behaviour is malleable (Crawford, 2004:11). However, such approaches have raised concerns from different sides of political spectrum, as some perceive that such course of action would lead to a dystopian society, similar to the ones sketched by Orwell (1977) in *1984* and by Huxley (1946) in *Brave New World*, while others view this approach as recipe for creating utopia, such as the one depicted by Skinner (1974) in *Waldon Two*. There are also those who foresee a complete breakdown of humanity, in the absence of an intervention that can cure moral stickiness, as described by McCarthy (2006) in the narrative of *The Road*.

The intervention is a well-debated concept within politics, economics, and other social and life sciences. Generally, the various form of interventions are foreign, economic and social. The concept of intervention is separate from the problem of realisation of socialism (Mises, 1977:2-3). Therefore, by using the term intervention we are focusing on the intervention in social or economic matter to correct the market of social norms.

Intervention works on the principle of causation, where an event *A* is identified as a cause of a distinct event *B*, and manipulating the occurrence of *A* "would be an effective means by which a free agent could bring about the occurrence of *B*" (Price and Menzies,1993:187), because "A causes B if control of A renders B controllable" (Hoover, 1988:173) and by altering the value A, we can alter the value of B; in other words, "manipulation of a cause will result in the manipulation of an effect" (Cook and Campbell, 1979:36). Intervention, therefore, is when a socio-politico institution, such as government, with an intention of maintaining or establishing "the good society" (Peacock, 1992:59) issues "an isolated order by the authority in command of the social power apparatus" (Mises and Greaves, 1998:10) that either aimed at "an alteration of the social structure" (McClelland, 1998:481) or "to change behavior in the interests of society" (Lees-Marshment, 2009:220), which we are referring to as social intervention. In the case of an economic intervention, it forces the "owner of the means of production to use these means in a way different from what they would do under the pressure of the market" (Mises and Greaves, 1998:10). An example of

social intervention would be the government advertisement of a policy, such as the UK government's health social marketing strategy of 2007 or Canadian government's 'aboriginal's welfare campaign' of 1995 (Lees-Marshment, 2009:220). It is common practice for governments to intervene by advertising the "incentives available for people to join the legitimate and the risks for staying in the underground economy" (Bajada, and Schneider, 2005:232). In addition, there are many systematic studies, such as Kotler and Roberto (1989), McKenzie-Mohr and Smith (1999), Mohr (2012) and Andreasen (1995), that focus on methodology, effectiveness and history of the government social intervention to alter public behaviours. While, for economic intervention, there are many examples in the post financial crisis policies of various countries around the world, Kaye (2011:41) asserts that "there is no such thing as a free market economy – the pure Adam Smith is always tweaked".

It should be noted that since the great depression there is a general consensus on the necessity for government intervention (Aikins, 2009:23). However, economist, sociologist, human right activists and others debate on the extent of government intervention in social and economic sphere, for example the human right advocates would recommend the government intervention for protection and promotion of human rights, but condemn government intervention that may violate natural human rights; the point of this example is that the scale of intervention is debatable issue, and not the act of intervening, and by intervention we are only assuming the institutional or government interventions that attempt to maintain or establish a 'good society'. The interventions are not just at state level, but there are also global interventions, such as the international conventions.

In context of metaethical narrative, the external realm intervenes in an internal realm, when external realm perceives that the actions of that internal realm maybe harmful to the existence of external realm. The action of an internal realm could be harmful to external realm, due to moral stickiness of internal realm, or due to the fact that self-interest of internal realm is set on such a path that it is counterproductive to subjectivity of external realm. There are many international conventions, which are designed to intervene and protect the internal realms from over-intervention or exploitation from external realm, as shown in Table 5.1. Alcamo and Bennett

(2003:123) examine the reasons, why internal realm requires protection from external realm, and emphasise that:

> states view indigenous knowledge and institutions as local in scope, relevance, and power, whereas the rules and knowledge of the state are viewed as bigger in scale, scope, and significance. As a consequence of this thinking, there is a strong tendency to override, minimize, or ignore local considerations, issues, or preferences.

It is completely moral, from external realms perspective, for external realm to act in its own interest. However, from perspective of internal realm, the above-mentioned situation is immoral and unethical, and therefore requires intervention. An internal realm can also indulge in activities that threaten the existence of external realm and to prevent such scenarios to occur at large scale, there are also many international conventions that protects certain resources for the usage of external realm, by prohibiting any individual internal realm to utilise them for subjective benefit, and by assigning the exclusive ownership of these resources to the external realm, such as the idea of 'common heritage' devised by the UN, which was theorised the "exclusion of a right of appropriation; the duty to use resources in the interest of the whole of humanity" (Held, 2003:170). This was later used in the seminal treaties such as the Moon Treaty of 1979, Declaration of Principles Governing the Seabed and Ocean Floor, the 1982 Convention on the Law of the Sea, and world heritage convention.

Table 5.1: Idea of Common Heritage by UN

Jun 1945	Charter of the United Nations
Jun 1946	UN Commission on Human Rights
Dec 1948	Genocide Convention/Universal Declaration of Human Rights
Nov 1950	European Convention on Human Rights
Jul 1951	Convention Relating to the Status of Refugees
Dec 1952	Convention on the Political Rights of Women
Sep 1954	Convention on the Status of Stateless Persons
Sep 1956	Convention Abolishing Slavery ILO's
Jun 1957	Convention on the Abolition of Forced Labor
Nov 1962	Convention on Consent to Marriage
Dec 1965	Convention on the Elimination of Racial Discrimination International
Dec 1966	Covenants on Economic, Social, and Cultural Rights/Civil and Political Rights; Optional Protocol.

Nov 1973	Convention on the Suppression of Apartheid
Jun 1977	Two additional protocols to the Geneva Conventions
Dec 1979	Convention on the Elimination of all Forms of Discrimination against Women
Dec 1984	Convention against Torture
Nov 1989	Convention on the Rights of the Child
May 1993	International Criminal Tribunal for the Former Yugoslavia
Nov 1994	International Criminal Tribunal for Rwanda
Jul 1998	UN conference agrees treaty for a permanent International Criminal Court

Source: Compiled from The Economist (1998), Manasian (1998), United Nations (1988) and Held (2003).

There are few concepts that theorise the balance between protecting the existence of external realm and assuring the autonomy of internal realms, but the nature of this divide is such that there always are trade-offs. The common practice is to turn to economics for analysing these trade-offs and then to turn to politics for selecting an appropriate trade-off, as these trade-offs are not politically neutral, Because, each trade-off benefit certain group, and sometimes these "trade-offs…become conflicts or crises created by a more powerful group (often the state) around the provision of one favored form of ecosystem service from which they can obtain rent or other benefits" (Alcamo and Bennett, 2003:123).

Internal realms and external realm are two separate systems that are aware of each other: "suppose that one of them is prosperous whereas the other is extremely impoverished" (Caney 2005, 111). In such a situation, there are two major kinds of crises that may arise, and would require some sort of intervention: one is of positive nature, where the prosperous realm pushes the impoverished realm to extreme poverty. This positive issue is widely discussed in politics and economics, and under local and global distributive justice, poverty and global and national wealth. For instance, one of the theories is Rawls', where he focuses on this issue and suggests that, "Well-ordered peoples have a duty to assist burdened societies" (Rawls, 2003:106), or in any text book on economics the notion of justice is defined using the inequality of income distribution.

The second kind is, of normative nature, when the prospect of normative prosperity is sacrificed for the quest of positive prosperity of either or both realms. The prospect of this normative crisis leads to the understanding of the need for safeguarding the

interests of future generations (Dator, 2006:190), which later translated into UNESCO's 1997 'Declaration on the Responsibilities of the Present Generations Towards Future Generations', in which it is asserted that:

> With due respect for human rights and fundamental freedoms, the present generations … have the responsibility to bequeath…[,] to identify, protect and safeguard the tangible and intangible … common heritage [,] to future generations [.]…Each generation inheriting the Earth temporarily should take care to use natural resources reasonably [. It] … may use the common heritage of humankind, …provided that this does not entail compromising it irreversibly [and]… progress in all fields does not harm life on Earth.

The philosophical entailment of this notion is the paradigm shift from conception of future generations 'will have' rights once they are present to the concept that future 'do have' rights even before their time. Baier (1981:171) elaborates on the underlining meaning of this and suggests that his understanding of 'rights' gives rise to "obligation on our part" because other than political and civil rights that future generation will have or do have, they "*now* have right to share… to a share of what is *now* left of" (Baier,1981:171, the emphases are original) tangible and intangible scare resources. In other words, the condition of external realm should be such that they can benefit from external realm, when their time comes.

There is a consensus in the current scientific discourse that homoeconomicus, by producing the "exponentially expanding technosphere, has become a major destabilizing biological and geological force" (Naveh, 2005:359), so much so that the earth is approaching a tipping point. Furnass's (2012) analysis suggest a global move towards strategy similar to Bhutan's, where growth in GDP would need to be replaced by qualitative measures, and future policies to make economic and social trade-offs for achieving sustainable state.

The philosophical standpoint of different disciplines, such as economics and politics, and environmental sciences and ecology, creates a different vision of what futures should be like: economics emphasises on continuous growth, "reproducible capital and education and training (human capital)" (Streeten, 1998:251); the ecology and environmental sciences look at the exhaustible resources and viability of ecosystems, while the politics focuses on public choice and sociology concentrate on equality.

Pasek (1992:513) analysis these dichotomies and suggests that economics has very thin focus on value judgements when it comes to allocation of resources. Therefore,

the problem of economic consideration of future generations, "seem to raise issues that are probably more in the domain of philosophy than of economics" (Pasek, 1992:513), while Leopold (1949:vii–ix) elaborates that: "community is the basic concept of ecology, but that … [it] is to be… respected is an extension of ethics" (Paavola, and Lowe, 2004:34); many others, such as Sidgwick (1907), Pigou (1952), and Ramsey (1928) also suggested that there is an "unfavourable treatment of future generations" (Asheim *et al*., 2001:253) in the current system, which should act as a rationale for manoeuvring such a shift in understanding.

Schneider and Volkert (1999:123), while analysing the effectiveness of incentive driven environmental policies by using the public choice approach, suggest that environmental policies may never be effectively implemented in representative democracies, because of competitive political market that largely focuses on utility maximisation, and on occasions when these policies are implemented, they are effectuated with ineffective instruments. However, the distribution of resources needs not to be a matter that is subjective to a discipline, as an objective method can be designed. Solow (1974:16) asserts that such a method should be able to "keep the future in the style to which we have become accustomed" and the rate, of utilising the scare resources of earth, that can achieve this, would be the 'right rate'. Naveh (2005:359-240) cites many studies that show that we are at a stage where further indecorous choices in utilisation of resources may push evolutionary trajectory towards extinction of life on earth, while our current technological capabilities far exceed our ethical understandings; the only available measure of value is sustainability.

5.3.1 Sustainability: Autonomous Measure of Value

The manner in which resources are utilised impact the environment, while the environment creates spatial changes, and the human actions along with public choice responds to these change. It could be further argued that the value created by public choice changes according to changes in human environment interaction (Adger et all, 2003). While the value created by environment or sustainability of the environment is more intrinsic and objective and the public choice large provides the context for that value. As Geertz (1973:14) suggests:

> Culture is not a power, something to which social events, behaviours, institutions, or processes can be causally attributed; it is a context, something within which they can be intelligibly that is, thickly described.

While discussing the prospect for valuing the sustainability over public choice, Held (2003:174) argues that:

> From the location of nuclear plants, the management of toxic waste, and the regulation of genetically modified foodstuffs, to the harvesting of scarce resources (e.g., the rain forests) and the regulation of trade and financial markets, governments by no means simply determine what is right or appropriate [as]… Decision- making… is often skewed to dominant geopolitical and geo-economic interests whose primary objective is to ensure flexible adjustment in and to the international economy.

Peacock (1997:33) discusses the reasons for this skewness in decision making and concludes that "political institutions are… influenced by the underlying economic and social structure." This notion is supported by empirical evidence in study conducted by Horbach (1992), which shows that the environmental goals are traded-off in favour of higher environment. Schneider and Volkert (1999:127) also examine this issue and suggest that voter have a very "little incentive for casting his/her vote for the approval of such an environmental/economic policy". While, public choice does have its position, and it can help prevent economic or political injustice, however sustainability is outside the scope of democratic authority. There are many things that are considered as beyond the democratic authority, such as human rights (Locke and Laslett, 1988:307-318). The environmental policies, like human rights, are therefore currently implemented as an international policy; for instance the bioethics are implemented by affirmation through international conventions (Agius, 2006:101). Moreover, valuing and preferring sustainability over public choice is a widely debated idea in literature relating to environmental sciences, and in the publication of global institutions that are focusing on the issue, such as UNESCO.

In context of the metaethical view constructed earlier, the public choice, which is a function of external realm cannot be a measure of value of goodness, because it can suffer from moral stickiness, while sustainability acts as a measure of value, because through sustainability the continuation in life form of external realm and internal realms may be guaranteed.

The first obstacle faced by the discourse advocating sustainability to be a measure of value, is to argue a philosophical foundation for this concept. However, majority of

literature has chosen to incorporate the concept of sustainability in other widely acceptable philosophical standpoints, such as consequentialism and utilitarianism. The popular argument is to argue on the existence of rights for future generations, with attached obligation for present generation, or to use White's (1967) thesis to suggest a shift from anthropocentrism to non-anthropocentrism, where non-human natural things are assigned values independent of their usefulness to human beings. Both of these arguments are then extended to include the benefit to future generations or preservation of the non-human natural things as form of public good, followed by a utilitarian approach in which the future generations or non-human natural things are included in the notion of 'greater number of people' (Schneider and Volkert, 1999:127).

The major problem with such arguments is that the use philosophical foundations of utilitarianism and modem deontology, which are deeply entrenched with the notion of "development and progress and that they fail to consider the negative consequences of it" (Roo, 2003:162), because they approach the resources of earth as an instrument, and due to their individualistic nature, Norton (1982:319) stresses that due to these reasons "they cannot provide the basis for an adequate environmental ethic". While majority of discourse on these topics, including the UNESCO declaration, agrees on the necessity and requirement for protecting the interests of future generations (Dator, 2006:190). However, as Pasek (1992:516) points out that considering future generations as moral subjects has significant moral significance, because they do not exist at this point in time, and even if the present generation adequately protects the interests of future generations, it may not be seen as adequate in the subjective view of future generations. Assigning rights and values to non-existence human beings also raises the ontological questions of definition of 'being'. Many other studies, such as Koopmans (1960), Diamond (1965), Svensson (1980), Epstein (1986), and Lauwers (1997), has also raised similar concerns about impracticality and implausibility of a notion that advocates protecting the interests of 'infinite number' of future generations, while Dasgupta and Heal's (1974) examination of this notion suggests that such framework may never produce optimal solutions for creating a sustainable planet for future generations, or for solving the environmental issues facing the present generations.

The solution, therefore should be something other than a mere tweak to current utilitarian reasoning, as the technosphere is rapidly creating significant social, economic and political realities (Tonn, 2007:1097), the development that took centuries in the past is materialising in months, "faster than natural selection can do its work" (Vinge, 1993:89), subsequently the earth's ecosystems are degrading and deteriorating with a similar rate (O'Neill and Kahn, 2000).

On contrary to the above stated approach and the problems that approach creates, this study proposes different perspective. This study turns back towards the classic understanding of internal and external sovereignty, which was "dislodged within the boundaries of nation-states by successive waves of democratization" (Held, 2003:170; Potter *et al.*, 1997). The utilisation of the classic understanding for conceptualisation of a new paradigm does not deny that the classic concepts were laden with contradictions (Krasner, 1999). The rationale for using the classic concepts is that this research does not use public choice as a measure of morality, and therefore turns towards only other framework available to construct this model.

This study, therefore, proposes that external realm and internal realms have right to pursue what succours and assists their individual survival, and by grounding this in the objectivist ethics, this pursuit is ethically right and morally good. However, these realms may suffer from moral stickiness and threaten their own existence either by conflicting with other realm, or through the act of self-harm, and therefore moral stickiness, like price stickiness, requires some sort of intervention. Such a scale of this intervention need be decided by the measure of value, which is sustainability. Sustainability is to be understood in the context of each realm creating conditions that will assist it in prolonging its own life. The sustainability of internal realm is very much dependent on the sustainability of external realm, and as internal realms exist for comparatively shorter period of time in this perpetuity of temporary existence, therefore we are focusing on the sustainability of external realm. In this understanding of sustainability, through conceptualisation of external realm as an individual life form, we no longer have to theorise the safeguarding of infinite number of future generations, and neither have to face the issue of impracticality that consists within it.

While the majority of the discourse on this topics refrains from defining sustainability, including the publication of World Commission on Environment and

Development, some of the discourse considers the definition of sustainability as an obligation on us to ensure that the "average quality of life [such as]… nature's instrumental value… be shared by all generations" (Asheim, 1994:4). However, as this study has taken a perspective different to current literature, therefore we have to define sustainability independent of the obligation to infinite future generations.

Overall, the concept of sustainability has an inherent vagueness to it, therefore there is still no clear agreement of its scientific definition; there are few indicators acting as tools of measurement, however there is no clear understanding about the goals of sustainability (Phillis and Andriantiatsaholiniaina, 2001:435-436). The discourse committed to defining sustainability advocate diverse perspectives, some conceptualise this concept from the point of understanding the optimum level of population that can be supported by the environment, such as Mitchell (1971), and Watt (1977), while others consider sustainable growth as zero economic growth or maximum economic growth, such as Thurow (1980), Georgescu-Roegen (1971), Daly (1980), and Boulding (1966). Then, there are those that instead of defining sustainability, they focus on characteristics of a sustainable society, such as Goldsmith (1972), Brown (1981), Milbrath (1984) and Pirages (1977). There is also some discourse, notably by Julian Simon (1998), which stresses that only measure of scarcity of any resource is the continuous increase in prices, and then uses empirical data on commodity prices to suggest that that is not the case or point towards the example of food production matching the rate of population increase (Lam, 2005:113-114), and he continues on to assert that historically human beings have always avoided Malthusian scarcity via substitution mostly through technological advancements, therefore sustainability in not a significant issue (Toman, 2006:248), whilst others, such as Pearson (1985), think the notion of sustainability is important, but the concept is elusive.

The criticism on the notion of sustainability largely depends in the context it is defined. Toman (2006:248-249) suggests three major conceptual issues that needs to be addressed in a definition of sustainability: the notion of fairness, clear understanding of what is to be sustained, and a reliance on the human impact relative to capacity of environment to sustain humans. The notion of fairness is taken in the context of dividing economic benefits and costs between present and future

generations "according to some representative set of individual performance" (Toman, 2006:248), with a clear understanding of what is it that ought to be sustained, accompanied with the clear reliance on either the economist perspective of dependency on human skill to innovate substitute of resources or ecologist suggestion of proactive management of resources at a safe level.

This study defines sustainability as the ability of external realm to support the existence of internal realms, by providing them with space and resources, of any kind, so internal realm can express its subjectivity in the space provided. This definition of sustainability needs to be understood in the context of the direction on which the external realm as a life form evolved.

In context of three conceptual issues raised by Toman (2006), this research with a metaethical view of nature as intrinsically evil, consequently favours the economist's notion of reliance of human ingenuity to alter the fabric of nature of converting it into good, which aligns this study with concept of anthropocentrism.[38] The point of separation from economist's notion on sustainability is that this study, by use of objectivist ethics, values life rather than economic progress, and therefore it takes a standpoint on sustainability of life in its entirety, and not the sustainability of economic progress, or ecological systems or current way of living. This makes this research different from majority of discourse on the topic.

In regards to what needs to be sustained, this research asserts that: if we take the tangent on which the external realm has evolved over the known history; then we can call the gradual evolutionary progress as a direction, which is taken by evolution to sustain, support and preserve the traditions and the environment. We can then argue that the course on this direction was metaphysical set by the perpetuity of shared ethos, which has the pockets of divine revealed guidance embedded in it along with all the good produced by all the human kind over our history.

The tangent followed by the gradual evolutionary progress of external realm may be nigh impregnable concept to define. However, there are many measures through which we can map this tangent. In an effort to map this tangent, we are starting from the time of Socrates, where he was condemned because of exercising his Daimon

[38] Evaluating reality exclusively from perspective of human values.

(internal realm) in opposition of accepting the morality of Oracle of Delphi (external realm). We are approaching this concept from stand point of classic theory of internal and external sovereignty, and sovereignty has essential rights (Hobbes, Martinich and Battiste, 2011:285). These rights in case of external and internal realm are the rights of survival and right to express their subjectivism in the space and time allocated to them. The incident of Socrates marked a major shift in, what later developed to be the recognition of sovereignty of internal realm, while the recognition of sovereignty of external realm maybe traced back to the ancient societies with "a continuous and uninterrupted line of development" (Gurvitch, 2000:95) of civil law. Since Socrates, there has been a gradual acknowledgement of simultaneous sovereignty of both realms. This recognition has translated in the increase in the space for internal realm, and decrease in the space of external realm. While, this increase in the space of internal realm and decrease in the space of external realm fluctuates from society to society, however, over time, we have globally consented on the absolute restrictions for each realm, where the other realm should not intervene. In case of internal realm these restrictions are in the form of human rights, while for external realm they are imbedded in the global conventions on collective human heritage. Table 5.1 depicts the gradual legal recognition of sovereignty and equality of internal realms. The tangent followed by the gradual evolutionary progress of external realm has been such that it has over the period provided more space and resources to internal realms, and have intervened less in their subjectivity. This evolutionary progress has resulted in gradual decrease in such conflicts between the two realms that may threaten each other's existence. The gradual decrease in the conflict between the realms can be measured.

For example, Pinker's (2011) empirical analysis, which looks at different cultures, communities, race, religion, democratic and non-democratic states around the world and examines the timeline of: rate of death in warfare, homicide rate, death as a result of quarrels, judiciary torture, rate of capital punishment and state sponsored executions, rate of death in state-based and non-state based conflicts, hate crime murders and nonlethal hate crimes, death in Islamic and world conflicts, domestic violence and assaults, timeline of laws propagating violent punishments, rate of abortion and child abuse, time line for the decriminalization of discriminatory laws, interpretation of animal cruelty in media, Flynn effect of raising IQ and evolution of

tolerance, empathy and reason in human brain and timeline of vegetarianism and feminism, concludes that there is not just continuous reduction in violence, but "the global trends … in violence at many scales, viewed from the vantage point of the present, point downward" (Pinker, 2011:30). Pinker's (2011:29) analysis also suggest that the "decline of violent behavior has been paralleled by a decline in attitudes that tolerate or glorify violence". Pinker's (2011) work is not an isolated study in this area, as many other empirical researches all conclude similar attributes, such as Crafts (1997) compares the data from human development index and looks at human wellbeing since 1870 to suggest similar trend, while many other studies, for instance Prados-De-La-Escosura's (2000) examination of timeline of trends in GDP, Crayen and Baten's (2010) mapping of timeline of global trends in numeracy, and Riley's (2001) investigation of the global rise in life expectancy, support and extend Pinker's (2011) findings.

In terms of the metaethical view constructed earlier, the above facts transpire that the external realm is tangent of evolutionary development follows a path where external realm is continuously recognising the autonomy of internal realm, by providing it more resources and space to express its subjectivity. For example, a child born in today's world is not forced into the same profession as his forefathers, unless he/she chooses to do so. In other words, the authority of ancestral heritage is replaced by the authority of inner subjectivity. The tangent also follows a path where external realm is fencing the space and resources that are essential of its own existence and should be out of the reach of any internal realm, such as UN's constructed notion of common human heritage. The metaethical view rationalises the direction of this tangent as something that was and is materialised by the perpetuity of shared ethos.

It is, therefore, the continuous development in this direction that needs to be sustained, along with the ability of external realm to support the future internal realms by providing them with resources and space. In other words, what needs to be sustained is the external realm's ability to support the life form of internal realms within the perpetuity of temporary existence, and the level of support should be such that it is coherent with the tangent of evolutionary development followed by the external realm over the history.

This notion is antithesis to the existing idea within the literature on environmental sustainability, which attempts to freeze the developed ecological terrain of earth as it asserts to "keep the future in the style to which we have become accustomed that (Solow, 1974:16), or from the thesis that argues that infinite number of future generations should have an equal right in current resources (Asheim *et al*., 2001).

In spite of being different from the existing concepts on sustainability, this construct satisfies the very basic criteria set for defining sustainability. Brown *et al.* (1987:717) suggest that criterion for defining sustainability is that in the narrowest sense it should propagate "the indefinite survival" of the human beings, while in the broad sense it mean that human beings "once born, live to adulthood and that their lives have quality beyond mere biological survival", while Tonn (2009:429) argues the principal criteria should be standard of fairness, that ensure that: "risks imposed on the potential existence of future generations should not be greater than the risk of death accepted by current generations".

Alongside safeguarding the survival of homosapiens and other life forms on earth into the distant future (Tonn, 2007:1098), Slaughter (1994:1084-1085) concludes two basic themes, one is that the definition of sustainability should include some sense compensation for the future generations for any disadvantage caused by our actions, and the definition should also provide initiation for "the process of safe-guarding … options… on which all future generations depend".

The basic theme in these criterions is the survival of life for infinite timescale, in a form that the quality of life is beyond mere survival and fairness in the distribution of risk between present and future generations. This study, by valuing life, instead of the habitat, and by narrowing the concept of sustainability to sustainability of external realm fulfils these criterions. The external realm, within its current stage, provides resources more than required for just biological survival, and the concept of fairness is grounded in the tangent of evolutionary development of external realm, as the only responsibility present generation has is to not to undo or reverse the direction of this tangent, if they manage to develop it further then that is an extra input on their end. In other words, the obligation is to sustain the external realm and to sustain the evolutionary developed state of the external realm.

Morality based on value of life propagates the perseverance of every life form, but through division of internal and external realm, the obligation to sustain a life form is on that life form, but obligation to ensure continuation of specie is on external realm. The population of specie may be reduced or increased based on what is sustainable for existence of external realm. For example, it is individual moral reasonability of a human to ensure its own survival; same way the external realm, as an independent life form, is responsible for its own survival, and within this survival lays the survival of species. If human population threatens the existence of external realm, then it is a moral obligation to intervene and work towards reducing it. In doing so, external realm would be intervening in the space of internal realm and infringing its right under the condition that it is necessary to do so for the survival of external realm. This is the same moral obligation which external realm must exercise when HIV virus, an independent life form, threatens the existence of human species, and by threatening human species, threatens the existence of external realm. This notion when expressed in the context of Thomas Hobbes 'contractarianism' of (Darwall, 2002), and Rawl's 'contractualism' (Rawls, 2000) translates as, all social, spoken or unspoken, contracts, conventions and norms stand until they threaten the existence of external realm.

Sustainability of external realm is the measure of value, as the value is life, and external realm is the vehicle that supports all life forms. Maintenance, if not further growth, of tangent followed by the gradual evolutionary progress of external realm is vital because it provides the protection to all the internal realms from being unduly violated by external realm, especially since the sustainability of external realm is the measure of value. It also forms the criteria for intervention, as Pinker (2011) asserts that although external realm has developed along this tangent, the nature of this unmistakable development is such that although it is "visible on scales from millennia to years… but… it is not guaranteed to continue" (Pinker 2011:26) on the current tanged.

With this restriction of maintaining the tangent and with sustainability of external realm as a measure of value, it could be decided when and to what extent an external realm can intervene in space of internal realm. These criteria may also be used to decide the optimal boundaries between the external realm and internal realm, that is the socio, economic and political areas where Socrates' Daimon over writes the

Oracle of Delphi and the areas where Oracle of Delphi has superiority over Socrates' Daimon, and the occasions when it is moral responsibility of Oracle of Delphi to intervene in the space of Socrates' Daimon and attempt to correct the moral stickiness.

5.3.2 Dry Run of Objectivist Subjectivism

The above purposed mechanism, in operational sense, means that every internal realm should be allowed to express as much subjectivity on as much space as possible, unless until their subjectivity threatens the sustainability of external realm, and in scenarios when it does threaten the survival of external realm, then there is a moral obligation on external realm to safeguard its survival via act of intervention. The only restriction on extending and scope of intervention is that the tangent on which external realm has been developing over the years is not reversed or diverted.

Now we will attempt to dry run this concept within multiple scenarios. If we assume that 2007-2008 global financial crisis was a threat to the existence of external realm, then it was a moral obligation on the external realm to act in a manner to neutralise this threat, even when the act of intervention may cause greatest distress to greater number of people, because it is a moral obligation on part of external realm to act in a manner that benefits its survival. The only restriction on the actions of external realm would be the avoidance of any diversion or reversal of the tangent, for example the response to the financial crisis could not be forceful abolishment of private property or reversal of employment laws that were developed over centuries of struggle. As long as the tangent is not adjusted, the moral obligation is on individual internal realms, to act in a manner that favours their chances of survival within the time of greatest distress to greater number of people. If the initial assumption of financial crisis as a threat to the existence of external realm, is proved incorrect, then external realm is under no moral obligation to act or intervene in the crisis, unless the crisis affects or has potential to affect the tangent. In such circumstances, the moral obligation is on internal realms to act in their survival, and if they do not act, and if their inaction endangers the existence of external realm, then external realm should intervene, but only to correct the moral stickiness of internal realms, so that their legitimate moral contents are correctly presented in their reflective morality, that is they, the internal realms, can act to secure their survival. A more variable example

would be: when a situation *x* arises due moral stickiness in y number of internal realms, then external realm would assess the situation *x* along with the consequences of further developments in situation *x*. The assessment would be in context of whether it is a threat to the survival of external realm, if it is a threat then external realm would need to choose such course of action, such as nudging or forceful intervention, that will neutralise the situation without adversely affecting the tangent. However, if *X* is not a threat then there is a moral obligation on external realm not to intervene in any way or form in the situation *x*.

There are many methods through which one can assess what may or what may not adversely affect the chances of survival of external realm. The discussion on ways of ascribing truth-values to future assertions goes back to Aristotle's work on assertorics in *De Interpretatione* (Whitaker, 2002:109-131), and over the centuries, there has been many development on this issue and currently there are multiple models with the discipline of Futurology through which the effects of possible future events can be measured. Delphi method, constructed and assembled as a research method and procedure for assessing future events in the work of Schmidt (1997), Dalkey, Brown, and Cochran (1969), and Linstone and Turoff (1975), is one of the tools that systematically identifies and priorities issues for decision making based on alternative future scenarios and especially useful in context "where judgmental information is indispensable" (Okoli and Pawlowski, 2004:15). 'Causal Layered Analysis' is another tool of similar kind that is used by numerous studies (Riedy, 2008), as it contextualises the past and present (Inayatullah, 2004), for "creating transformative spaces for the creation of alternative futures" (Inayatullah, 1998:815) with multilevel textual and non-textual analysis such as things such as social causes and worldview, to map empirical, interpretive and critical dimensions of future scenarios to provide an epistemological framework. These techniques maybe used alongside other qualitative and quantitative measures, such as 'environmental scanning' that examines trends that may affect the likelihood of an outcome, 'PEST (or STEPS)' that analysis internal and external political, economic, social, and technological factors at macro-level to suggest viability of a solution in that context, and 'scenario method' that outlines the future for effective decision making. Using these tools possible effects of a current trend or a sudden event on future of external realm can be quantified, and through these tools, a decision for or against intervention maybe made. For decisions

on scope and scale of intervention, based on the tangent of evolutionary development, tools such as Causal Layered Analysis can used. There are many studies that use these methods in ways similar to the one purposed above: such as Riedy (2008) demonstrates the use of Causal Layered Analysis; (Riedy, 2008), Linstone and Turoff (1975) and Okoli and Pawlowski, (2004) expand on the Delphi method, while Peng and Nunes (2007), and Clulow (2005) use PEST analysis; Wright and Goodwin (2009) and Godet (1986) discuss the use of scenario analysis, and Jain (1984), Hambrick (1982), and Kroon (1995:50-83) concentrate on the use of environmental scanning.

In view of the presented debate and also the mentioned methods, the approach constructed by this study is consistent with the dominant trend in this field in which monetary values is assigned to concepts such as environmental goods and services (Vatn and Bromley, 1994:129). After conceptualising the method of determining when external realm is morally obliged to intervene and the scope of the intervention, the issue that still needs to be addressed is that how this may be achieved, that is: what will be the efficient way for external realm, as a living organism, to act morally and protect its own survival without suffering from moral stickiness, in context of current framework that governs external realm?

5.3.3 Reflections

The purpose of this chapter is to construct such an epistemic source, which could resolve the epistemological crisis within the tradition, and provide a framework that could solve the current tension in the theory and practice of institutional intervention for subscribing good and prohibiting evil. The episteme constructed above, theory of objective subjectivism**,** attempts to do so, by providing a theory of value through which moral conduct of an activity can be graded and judged.

So far, we have focused on the theological and philosophical foundations, which includes the origin of personal and public realms, and the interaction between the two. The theory of objective subjectivism creates a set of rules through which one can

define the moral obligation of a realm to intervene in the other realm. The proposed theory is also being in line with the requirements set by the MacIntyre (1998) for addressing the epistemological crisis. The epistemological crisis is discovered by this study whilst observing the theories and practice of institution of *hisbah*. The study discovered the use of legal theory as an ethical framework to judge the moral conduct of the society and the market is considered causing the issues discussed in Chapter 2. This chapter has so far constructed a theory of objectivist subjectivity, which could provide a standalone framework of normative ethics, hence eliminating the need for Islamic tradition to use juristic subjectivity and Islamic legal theory. However, one of the important requirement argued in the previous chapter is the continuation of a single life form of the Islamic tradition.

While the discussion so far is focused on constructing the epistemic source of morality, along with an explanation of its operations, this study does not address the requirement of 'continuation of single life', to suggest that the adoption of the theory of objectivist subjectivity by the Islamic tradition will not hinder the continuation of single life form of the Islamic tradition.

5.4 OBJECTIVE SUBJECTIVISM, INSTITUTION OF HISBAH AND CONTINUATION IN ISLAMIC THOUGHTS

The issue with current framework of governance in Islamic thought is that the system of value it follows is derived from public choice and it is not based on objectivist ethics' notion that value is ought to be derived from the standard and purpose of life; consequently, when internal realms, through public choice, agrees on a policy, it naturally favours the survival of internal realm, and consequently it has very less or no consideration of external realm. There are many studies that empirically observe this and theoretically explain it as a rational choice for internal realms, from the perspective of internal realms.

5.4.1 The Dispossessed Road to Institutionalisation

Zarsky (2002:34-35) examines that variance of regulations in the highly similar industrialised countries, and notices that regulations on human rights are far more consistent, as compared to environmental regulations. The reason of this policy gap in environmental regulations, and lack of it in basic human rights regulations is

explained by Vatn and Bromley (1994:129-130), where they analyse a various empirical studies on the preference reversals and conclude that value of environmental goods are not valued by individuals same as they may value human rights, as individual valuate and weigh different attributes of environmental factors. Due to this, Oates and Portney (2003:332-334) while investigating the political economy of environmental policies suggest that because of this issue, the current framework of environmental policies is not a result of pure public choice, but rather a consequence of efforts of few interest group that were able to lobby the government, in spite of this effort, they suggest that the tone of regulations is set to such a frequency that they produce inefficient measures in protecting the environment, and interest groups on realisation of this, are currently trying to rally public support, however, that is turning out to be difficult after the last financial crisis, because the trade-off for ecological objectives can result in economic growth. Kirchgassner and Schneider (2003:373), in their empirical analysis, observe that voters prefer pure economic objectives, in competition of choice with environmental objectives. Kahneman and Knetsch (1992a; 1992b), Gregory *et al.* (1993), Edward (1986), Gregory and McDaniels (1987), and many others have discussed the dominant moral dimension of sustainability, and the issue it creates when subjected to the value judgment through public choice or in the evaluation by contingent valuation. Carson's (1997:145) examination shows that empirical evidence points that the "public policy issues are generally sensitive to the specifics of … the societal conditions at the time the question is asked."

When individuals make decisions, their rationality is limited to the information available to them, which is known as 'bounded rationality'. Vatn and Bromley (1994:134) argues that large body of evidence points towards this 'bounded rationality' of internal realms and then further asserts that the solution to bounded rationality in societal processes is "Contextual devices- institutions- are constructed to help people through this problem".

The environmental goods are non-market goods, as market cannot correctly measure the value of these goods. In addition, the public choice institutions with their current mechanism for evaluation of goods also do not favour the correct evaluation of the environmental goods, as the current mechanism is sensitive to other outside factors,

such as economic conditions, which can influence towards an adverse evaluation of environmental goods; and market mechanisms evaluation of goods, by measuring monetary trade-offs, which are subject to marginal concepts, such as marginal utility, marginal value and marginal benefits. When environmental goods, according to the theory of value presented by this research, are not measured by utility to internal realms or present generations, then the implementation of policies on sustainability should also not be subject to the institutions of public choice or market mechanisms, as notion of human rights is not, theoretically, dependent on the decisions of institutions of public choice or market mechanisms.

The policies on sustainability could be included in the statute as a 'supremacy clause', through the philosophical stance of rule of law, similar to bill of rights in American constitution (Cass, 2003) and by using United Nations' stance to rule of law (Brownlie, 1998). However, the issue with such approach is that the notion of sustainability constructed in this chapter is not based on the saving of habitat, but the ability of external realm to support future life forms, this makes understanding of 'what is to be sustained' and 'how it may be sustained', relative to the condition of external realm. Therefore, due to the relative and non-universal nature of this construct, it cannot be implemented through the philosophy of rule of law, by declarations and conventions.

The conceptualisation of 'quasi-autonomous non-governmental organisation' in 1967, followed by their proliferation in developing and developed world was a result of a need to fill the gap within the current governance framework of nation states, where neither the public choice institutions, nor the market forces can be used to regulatory tools, as discussed by Van Thiel (2004), Willetts (1996) and Hogwood (1995). Sustainability is a concept, which lies in that grey area, where an independent quasi-autonomous non-governmental organisation is required to objectively and externally providing the regulations required for preservation of external realm. The provision of powers to such quasi-autonomous non-governmental organisation is dependent on existing structure of political system within a state. However, this study is proposing that the formation of regulations should be independent and autonomous to the market and public choice institutions.

The institutionalisation of objective morality and autonomous regulating of society and market, independent of government and market forces, by taking a position of an external observer, was historically theorised in form of institution of *hisbah*, which is the core of this study. This feature of having an objective view on morality and then total autonomy is key feature of *hisbah*. It was this key feature that exists in theory and notion of *hisbah* and lacked in the practice of *hisbah*, that became the rationale for criticism of institution of *hisbah* by historians, where they claimed that the institution of *hisbah* was not able to realise its true potential, as discussed in the Chapter 2 and as discoursed by Mundy and Riesenberg (1958:87), Buckley, (1999:9), Glick (1972) and others.

Institution of *hisbah*, therefore, can use the proposed model, while keeping its identity and purpose, as an institution of public morality, responsible for regulating society and market, using an objective notion of morality, which is neither dependent of timely desire of populace, nor overly sensitive to the appeal of the market forces. Considering that the institution of *hisbah* is a by-product of Islamic thoughts, only matter that requires further discussion is the evidence of continuation of Islamic thoughts as a single life form within the proposed ethics of objective subjectivism. This discussion is not required for establishing the legitimacy or authority of objective subjectivism, because the objective subjectivism uses categorical moral reasoning to establish the value and then uses the consequential moral reasoning to measure it, and therefore the legitimacy and authority is drawn from mix of categorical imperative and consequential obligations. The argument for the continuation of Islamic thoughts is essential, because the strands and pointers used in the construction of objective subjectivism are grounded in the Islamic thoughts, and therefore this discussion is an implicit case for acceptability of objective subjectivism as a slice in the evolution of Islamic thoughts.

5.4.2 Objective Subjectivism Grounded in Perpetuation of Islamic Thoughts

For the purpose of ensuring the continuation of 'single life form' of Islamic thought, an attempt is made in line with the above debate to use Haidt's (2013) 'moral foundation theory' to deconstruct and understand the essence of Islamic thoughts. The reason for opting for this theory is that it uses 'social intuitionalist model', and goes beyond the rationalist model by taking into account conscious moral reasoning and

unconscious moral reasoning based on intuition and spirituality, as demonstrated by Keefer (2013), Maxwell and Narvaez (2013), Graham *et al.* (2013) and others.

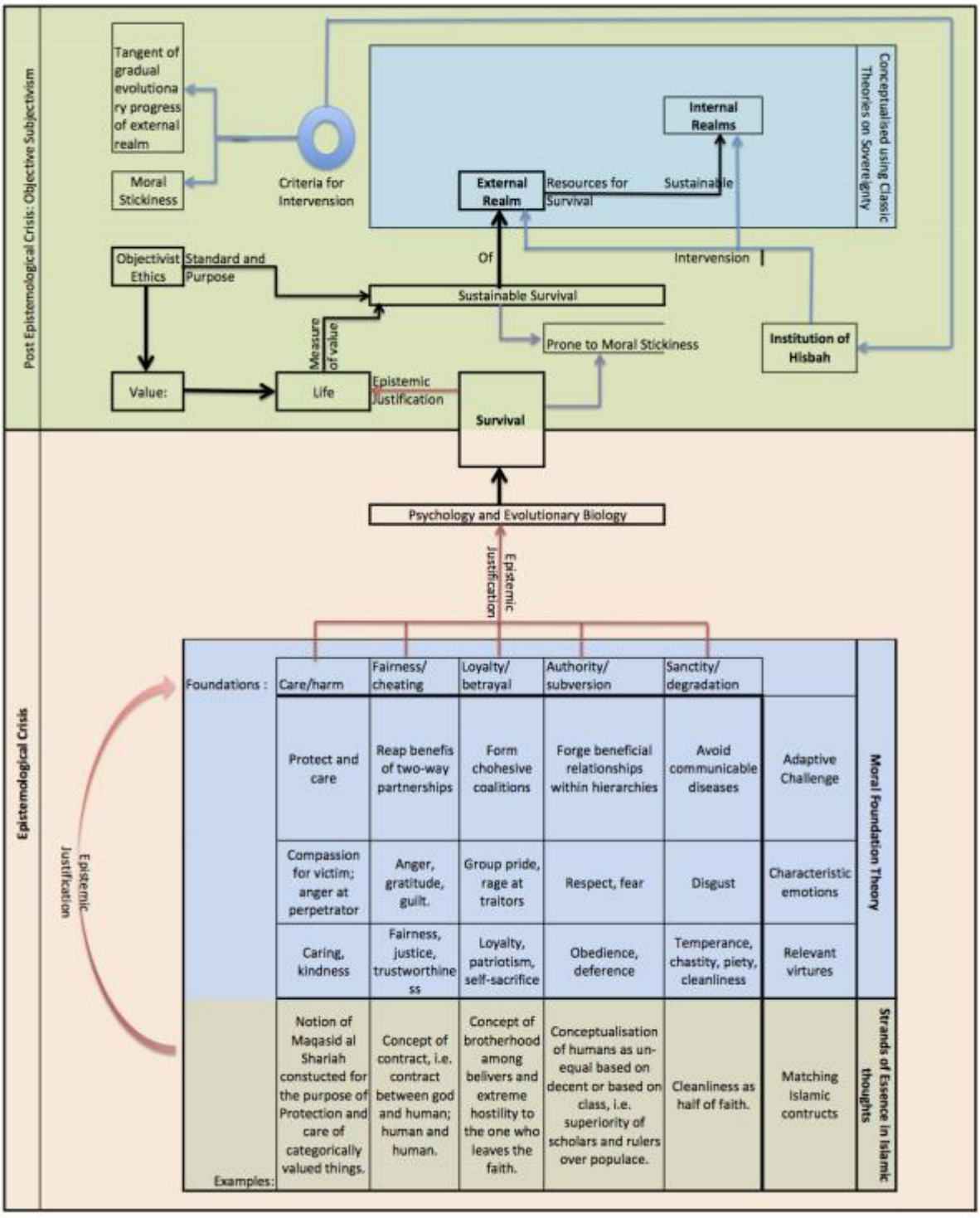
The use of 'social intuitionalist model' in moral foundation theory, provides us with a tools for describing the process through which the moral judgements in Islamic thoughts were constructed consciously or unconsciously, which will give us weighable evidence, in form of epistemic justification to conclude the ontological existence of tendencies in Islamic thought that are the strands of essence of Islamic thoughts.

This study, therefore, suggests that when we examine epistemic justification alongside strands of essence, we can suggest, with weighable evidence, that the moral judgements of Islamic thoughts provide point of orientation to its followers, through which they, the followers, can objectively view the options that increase their chances of survival. Hence, it is this notion of survival that this study carries forward in the construction of 'objectivist subjectivism' and hence warrants the continuation of Islamic thoughts, whilst providing a new point of orientation, based on the notion of survival, which address the current epistemological crisis in the Islamic thought. The rationale for presenting the case for 'objectivist subjectivism' with such tangled line of reasoning is that this line of reasoning allows us to argue that considering all the current sources used for the purpose of governance in Islamic thoughts are obsolete, is not same as suggesting the end of line for Islamic thoughts. By keeping the Islamic thought alive, while stripping it of its legalistic morality, allows this research to claim distinctiveness from the existing paradigms that also aim to address the epistemological crisis. This distinctiveness is discussed in detail in the next chapter.

The Figure 5.1 depicts the visual representation of the proposed model, within which the constructed episteme could be used for the institutional intervention by the institution of *hisbah* for judging the moral conduct of activities in the market and in the society. For the purpose of comparison, Figure 5.1 also visually represents the processes currently in use within the epistemological crisis, along with the processes if the constructed episteme is applied. As can be seen in Figure 5.1, Haidt (2013) and Graham *et al.* (2013) assert that our genes write the first draft of morality, and then it is "organized in advance of experiences" (Haidt, 2013:308) and the five moral foundations that specify the reorganisation of morality to create moral diversity are:

care/harm, fairness/cheating, loyalty/ betrayal, authority/subversion, and sanctity/degradation. Figure 5.1 expresses the challenges, emotions and virtues attached to each of the five moral foundations.

Figure 5.1: Modelling Institutional Intervention by *Hisbah* for Judging Moral Conduct of Activities in the Market and Society



Source: Adapted from Haidt (2013) and Graham *et al*., 2013) (modified version)

As can be seen in Figure 5.1, Haidt (2013:317) argues that the foundation of care/harm "is not universalist; it is more local, and blended with loyalty", such as pooling of funds to support locals. The theoretical principle that evolved in Islamic

thoughts to express the concerns of this moral foundation is doctrine of *maqasid al-shari'ah* (purpose of the law), which revolves around protecting different categories, because they are important for individuals and for society's survival, while the practical principle is *zakat* that attempts to provide some financial support to the needy. The foundation and essence of care/harm is approached from the perspective of intent of lawgiver in Islamic tradition, as explored by Raysūnī (2005) and Al-Attar (2010), and the system approach is used for broad application of this foundation in Islamic tradition, as examined by Auda (2008).

Haidt (2013:320), while discussing fairness/cheating, and the origins of morality from evolutionary perspective, suggests "'selfish' genes can give rise to generous creatures, as long as those creatures are selective in their generosity". The concept of *zakat*, for example, teaches and preaches selective generosity, as the category of recipients is limited; moreover, the protection created in the doctrine of *maqasid al-Shari'ah* is also limited. At time of development of Islamic thoughts the environment was not a concern, therefore there is no protection for it in the doctrine, which creates an epistemological crisis in modern times, as discoursed in previous chapter. The concept of fairness/cheating acts as a major foundation stone in Islamic theology, the concept of God, the reckoning in hereafter and most Islamic religious or social practices revolve around it, and it is this concept, which motivates and legally bounds the polity to the previous foundation of care/harm. The tradition approaches to these two foundations as: it is within the rights of divine that one should be fair with the fellow creatures, and the fairness is understood with the foundation of care/harm. The fellow creatures are a very broad; therefore, it is defined and restricted through the foundation of loyalty/betrayal in Islamic thoughts, as Islamic tradition creates a room for exercise of hostility. Haidt (2013:328), whilst tracing the evolutionary basis for the notion of loyalty/betrayal, refers to studies such as of Boehm (1999), (2012) and Goodall (1986), and asserts that:

> human beings are not the only species that engages in war or kills its own kind. It now appears that chimpanzees guard their territory, raid the territory of rivals, and, if they can pull it off, kill the males of the neighboring group and take their territory and their females.

The Islamic thoughts developed in medieval times, provide strong basis for acts of hostility, which are grounded in the impression of loyalty towards fellow Muslims and loyalty towards god, which is then equally balanced with hostility towards

apostate and traitors of community or god. The theological concepts in Islamic thoughts that use loyalty/betrayal foundation, are actually identifying the terms of who to trust and team up with, for creating a cohesive coalition of individuals, and Islamic thoughts focus the hostility towards any notion or individual that is considered a threat to this cohesive coalition. The cohesive coalition is necessary for creating an atmosphere of care driven by a unique understanding of fairness, as explored by Ibn-Khaldun (1950:76) under the title of *asabiyyah* (social cohesion achieved through the concept of brotherhood in Islam).

The cohesive coalition is not achievable just through the divine authority and threat of repercussions in hereafter, as Islamic political authority subject related scholars, such as Al-Mawardi (1996), created human authority, by theologically engineering argument for authoritative class and classified the subordination of this class as a religious duty. The theological arguments were mainly based on the principal of inequality of human beings, where discrimination was either created based on superiority of bloodline or on the social class such as rulers, religious clergy and so on, as discussed in Chapter 2. Boehm (1999; 2012), Haidt (2013) and Graham *et al.* (2013) examine that authority not just raw power, but the socially constructed authorities is considered as human beings and within animal kingdom are responsible for maintaining order and justice, and the *status quo* of authority is rigorously protected. The barring of commanding good and forbidding evil to the ruling class is one of the examples of these protections in Islamic thought, as discussed by Al-Ghazzali (1982b:245). Schaller and Park (2011) illustrates the manner in which the concept of disgust acts as a behavioural immune system, and Islamic thoughts not only creates a comprehensive concept of disgust, but also impose dietary requirements, and incorporate cleanliness as a religious practice, to provide a thorough framework for foundation of sanctity. The foundation of sanctity also has a spiritual dimension, where different attitudes and attributes such as envy are theologically discouraged to create a healthy mental state, along with healthy physical condition.

The above argument, on equality, connects the strands of essence in Islamic thoughts to moral foundation theory, which holds to the principal that moral diversities are created due to diverse conditions, as the communities construct their morality to value

the things that benefit their survival. Approaching moral discourse in Islamic thoughts from 'moral foundation theory' and 'social constructivism', allows us to suggest, argue and assert that Islamic thoughts developed under a similar principle that is: to value what supports the survival. If we assume this connection to be correct, then we can argue that any neo-moral paradigm designed and developed to replace the existing understanding of morality in Islamic thoughts, will be and can be considered as continuity of Islamic thoughts, as long as it also attempts to value what supports the survival.

The notion that the model in Figure 5.1 constructed by this research addresses the epistemological crisis, while ensuring the continuation of Islamic thoughts is grounded on the above argument, as demonstrated in the Figure 5.1.

5.5 CONCLUSION

This aim of this research is to explore governance within Islamic thought in the form of the institution of *hisbah* as well as exploring the episteme that is the cause of the recognised and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws associated with the institution of *hisbah*. The Chapter 2 and Chapter 3 highlighted that the source of problems is the application of legal theory within the ethical settings. In addition, Chapter 4 discovered that the legal theory heavily relies on the juristic subjectivism, which is the root cause of the problems discovered within theories and operations of the institution of *hisbah.*

The purpose of this chapter is to construct a framework which can be used as an epistemic source for judging the moral conduct of activities within the society and the market. The ability of this framework to judge the moral conduct provides the theological grounds for institutional intervention, as discussed in Chapter 2.

In this chapter, we first argued for the metaphysical grounds in the sense that there is a coherency between the philosophical and theological foundations of the new episteme. Before approaching the problem of value and goodness, we first discussed the interaction between personal and public realms. This approach was used to ensure that the new episteme does not contradict with the tradition as a 'single life form'. Thereafter, we proposed the theory of value, in form of 'objective subjectivism', which has a normative dimension to it. The normative dimension of theory is

necessary, because lack of normative direction in the current state of Islamic tradition is such an issue that was raised during the examination of the theories of *hisbah*, as explored in previous chapters.

The 'objective subjectivism', provides institution of *hisbah*, with a point of orientation, of when the institution needs to intervene in the market and society, along with the extent and scope of the intervention. It does so, by suggesting the notion of sustainability of external realm as a measure of value for distinguishing between the important and unimportant facts in non-spiritual socio economic matters, and then using this measure to categorically conclude things as good or bad in this world, in the new metaphysical picture that underpins fact–value distinction (Brinkmann, 2004:61) that is not utopian (Crawford, 2004:11). This framework of governance uses the episteme that was alien to the tradition in the period of epistemological crisis. The study suggests a new criterion for moral judgement through objectivist subjectivity, which forms the new episteme. This provides a new method of enquiry and a form of argumentation that may identify good and bad within market and society, along with a scale to suggest the intervention required for subscribing of that good or forbidding of that evil. This follows the recommendations of MacIntyre (1998:362), who advocates that by providing the above we can address and resolve the epistemological crisis, until the time the newly suggested episteme exhausts itself, as every episteme follows a cycle and eventually takes a tradition towards an epistemological crisis.

CHAPTER 6:

CONCLUSION AND DISCUSSION

6.1. SUMMARISING THE RESEARCH

The first task of this research was to study the history of institution of *hisbah* by using critical discourse analysis. During this initial phase, this study highlighted development of the institution of *hisbah* by observing the evolution of the institution and its market inspectors. We cited the pre-existence of role of market inspector with similar duties in pre-Islamic Arabia and in Greek civilisation. However, due to lack of historical evidence on cultural borrowing and traceable development of *hisbah* from a concept to an institution within the history of Islamic tradition, we concluded *hisbah* as a concept intrinsically original to the tradition. Whilst, observing the evolution of practice of *hisbah* and its development as an institution, from the standpoint of social constructivism, we uncovered the socioeconomic and political dynamics that influenced the manner in which the *hisbah* was developed. We also highlighted the institutional failures of *hisbah*, which were mainly caused by the political economy framework, within, which the *hisbah* as an institution operated. Among the failures, the most vital were the charges of corruption and lack of accountability of *hisbah* officials.

Whilst the political turmoil experienced historically accounts for some accounts of corruption, there seemed to be flaw in the theoretical infrastructure and philosophy, which we explored by analysing the theories on *hisbah*. The contemporary discourse on *hisbah* is written using hermeneutics methodology by mostly religious apologetics, while the classic literature does have narratives on *hisbah*. However, the classic literature are dispersed within the work of scholars and we were unable to find theories compiled with a single publication. In some cases such as Ibn-Taymiyah's work on *hisbah*, the discourse focuses on theological construct and metaphysical side rather than the institutionalised nature of *hisbah*. Therefore, we collected the prevailing themes on *hisbah* within the works of Al-Mawardi, Ibn-Taymiya, and Al-Ghazzali, and we deconstructed the model proposed by each of these scholars. Thereafter, we analysed it by comparing them against the institutional operational failures of *hisbah*. These scholars were mainly chosen due to the availability of discourse on *hisbah* developed by them. However, the unique background and life

history of these scholars provided interesting similarities on the concept of *hisbah* as an institution and as a duty.

The conclusion of this comparison is that the theory purposed by these scholars do not provide much safeguarding against the failures, and in some cases, such as in al-Ghazzali's model, the purposed model is almost not practically implementable, or in al-Mawardi's case motivated by the political conditions of his time. Consequently, from the perspective of current era these models should be considered as obsolete. As a result, we focused on the *hisbah* manuals, which are essentially collection of regulations implemented by the institution in the past, and were constructed using Islamic legal theories.

A theoretical enquiry, with an empirical dimension, into the traceable episteme of goodness within the regulations is conducted on an eleventh century manual. Enquiry consisted of two layers of analysis. The results of the first layer are that most of the regulations, about eighty five percent, adjust a social or market action, which is not intrinsically good, that is: it is not good for its own sake, but it drawn goodness endogenous of it. The second layer of analysis suggested that highest concentration of regulations is focused on health and safety issues, almost forty percent, while the second highest are aimed at protecting of soul in the hereafter, while only less than four percent are intended for the protection of religious faith.

The high concentration of regulations on health and safety confirm the findings of historians, such as Glick, Gotein, Buckley, Tyan and so on, that most of the time institution of *hisbah* was operating merely as a municipal authority; politically restricted and structurally disabled. The combination of the two layers, therefore, suggest that sixty-five percent of regulations aimed at protecting the extrinsic goodness, and over ninety-six percent of regulation within the category of health and safety also have extrinsic goodness. The high concentration of extrinsically good regulations aimed at health and safety can be rationalised, as the goodness drawn from the notion of protection of human life can translate in many ways within the regulations. However, the regulations on protection of the soul were not expected to be low in intrinsic goodness. It should be noted that the primary sources of Islamic law were used as criteria of intrinsic and extrinsic good, and with inferior intrinsic

good in regulations, our enquiry moved on investigating the link that connects extrinsic good with goodness, which in this case are legal theories in Islamic law.

We examined the sources of law and the possible rationale, along with its ontological authority, in extensive use of the principles of 'selection of the better course' and 'public interest' that are extremely dependent on the juristic cognition and the predated Islamic thought on sociological, psychological and ethical matters. This examination concluded that there is an epistemological crisis in the tradition, which extends to crisis in morality and crisis in legitimacy.

With these crises in mind, the research continued on constructing a possible solution to the crises in the form of designing a new episteme along with ensuring the continuation in the life-form of tradition. For this, we first suggested an indivisible essence of the tradition, and then used it in conjunction with classical theories on sovereignty, objectivist ethics and narratives of sustainability in ecology to construct the theory of objective subjectivism.

Overall the conclusion to the research question, that is: 'What are the causes, within the method of enquiry and episteme of Islamic tradition that produces values, which were also historically used for governance by the institution of *hisbah*, that are contradictory to the value judgement of modernity?; and 'what is the nature of schema that is required for continuation of the continuity in the evolution of the tradition?', is that: there is an epistemological crisis, which fuels crisis in legitimacy and crisis in morality, within the tradition, and it is this crisis which is the main cause of the values contradictory to the value judgement of modernity. The solution of this crisis is the replacement of current episteme and method of enquiry of the tradition, and we have purposed the theory of objective subjectivism, which can act as a schema for the new episteme and resolve the crisis. Therefore, the third hypothesis, which was 'the causes are recognisable and solution, in form of a schema, that provides the continuity in the evolution of the tradition is constructible', is considered as valid. While, by mapping the inconsistencies in the operations of *hisbah*, and the incoherence in its theories, the first hypothesis was proved wrong. Thereafter, by using MacIntyre's (1998) work as based argument for creating a solution for these inconsistencies and incoherence, and thereof constructing a new episteme; this research also invalidated the second hypothesis.

6.2. CRITICAL REFLECTIONS ON THE RESEARCH

As mentioned, this research, with intention of understanding the issue of governance within Islamic thought, investigated the historical theories and operations of institution of *hisbah*, and explored and analysed the issues faced by the institution in the past. In addition, this study traced the problems in general and in particular in *hisbah* to an existing epistemological crisis in the Islamic thought within the roam of governance. Then we examined every form of epistemic setting currently theorised within the Islamic thoughts, and argued that all of these setting produce epistemological crisis.

The result of deconstruction of *hisbah* manuals and theories of *hisbah*, was similar to the ones predicted by King *et al.* (1994), and Taylor and Littleton (2006); as the method of this enquiry was design to "un- earth enormous amounts of information… with a rounded or comprehensive account" (King *et al.*, 1994:4). The result, therefore, was that, we were able to suggest existence of an incoherence of good within subscribing of good and subsequently an ambiguity on existence of evil within forbidding of evil. Thereof, by including the socio-political-historical context, this research explored the existence of this incoherence throughout the body of the tradition, and from there we inferred the existence of this incoherence as one of the main obstacle in evolution of the tradition, which by definition affected the governance and operation of *hisbah* institution.

In a process of exploring this incoherence, the study formulated the model for operations of *hisbah* in Chapter 3, individually purposed by Ibn Taymiyah, Al Ghazzali and Al Mawardi. The framework proposed by each of these Islamic scholars, previously existed in fragmented form within their authorship; therefore, after surveying the literature, the study gathered the relevant material to construct the framework through step-by-step process in Chapter 5. The framework was then analysed in context of previously discovered incoherence and theological philosophy of *hisbah*, which resulted in the detection of traces of the incoherence within the proposed model of these scholars. The thesis thereafter focused on an eleventh century *hisbah* manual, which was widely quoted in other historical discourse and largely accepted by Islamic scholarship. For analysing the regulations within the manual, we first constructed a method of enquiry that can analytically and

systematically examine the regulation by categorically separating the 'good', by using the work of Korsgaard (1997) and Tannenbaum (2010), that each regulation attempts on subscribing, with the episteme providing the source for cataloguing of that action as good, along with the separating the episteme is a hierarchy of the ontological authority of the episteme. Such method of enquiry was required, as it allowed this study to develop an understanding on the sources that have had large influence on categorisation of good and the theological authority of these sources. After constructing this method of enquiry and applying it on all the regulations listed in the selected *hisbah* manual, the result was that the top epistemological sources that provided bases for categorisation of good and then subscribing of it had very low ontological authority from theological perspective. This, consequently, inferred that the manual as a whole has a very low ontological authority and therefore asking for public abidance and conformity to these regulations on purely theological grounds is not justified, especially when the regulations may cause more socioeconomic problems then they solve, as historically observed.

Thereupon, the study surveyed other possible episteme and listed the reason for why they cannot be used as epistemological sources for identifying good and evil. This transformed the incoherence into an epistemological crisis within the tradition, as predicted by MacIntyre (1977; 1998). We then investigated the depth of this crisis and in the process cited underlying crisis in morality and crisis of legitimacy within the tradition.

The thesis then used MacIntyre (1977) guidelines on construction of new episteme to address the epistemological crisis, along with philosophical premises of Hawking and Mlodinow's (2010:30-60) Model Dependent Realism, to develop 'theory of objective subjectivism' that can address all three crises and act as a sole episteme for providing criterion for distinguishing good and bad, from perspective of governance.

MacIntyre (1998:362) asserts that the justification for the new episteme "will lie precisely in their ability to achieve", while model-dependent realism (Hawking and Mlodinow, 2010:51) provides simplicity in a model, such as using the lowest arbitrary or adjustable elements to explain the complex observations as the major criteria for model's acceptability.

The objective subjectivism uses the notion of sustainability to create a point of orientation, from which we may judge what is good and bad. This keeps the morality within the roams of universalism and objectivism, and outside from relativism. The rationale for calling it 'objective subjectivism' is that our - namely human beings' - subjective view has objective effects on the sustainability of our and other's life within that specific time and space, until it, the view, is forced to change by change in circumstance or by increase in our knowledge. However, until that change, this subjective view is objective, which is to be used as a criterion for differentiating good and bad, so that good maybe subscribed and that evil or bad maybe stopped through regulations, laws or policies.

Having said that the conventional episteme of the Islamic tradition was not able to provide a universal and objective point of orientation that may act as a moral criterion, in spite of efforts to unify and universalise juristic subjectivism by creating theorising legal instruments, creating a veil of legitimacy by creating segregation of scholars on religious sects, by attempting to codify the law or by using coherence with historical legal opinions as test or by creating concepts of exception within exception as an exception to justify nominalistic nature of legal construction. The theory of objective subjectivism, however, offers a framework for universal and objective regulations, and by doing so fulfils the criteria set by model-dependent realism (Hawking and Mlodinow, 2010:30-51; MacIntyre, 1998:362).

In process of constructing and justifying the objective subjectivism, we have also argued that this episteme offers a continuation in life-form of Islamic thoughts, by keeping intact the philosophical premises, such as a universal and objective approach to morality, which constitutes the underlying foundations of traditional approach to regulation of society and market. We have also suggested a metaphysical explanation for this at the end of Chapter 4, which by constructing concepts such as: perpetuity of temporary existence and divine contribution in human's perpetuity of shared ethos, creates room for a doctrine 'unknown' (*ghaib*) and hence giving way for existence of reality outside of our comprehension, whilst arguing that such reality and discourse of and on that reality should not be part of epistemic sources that regulate the comprehensionable reality.

In summary, this research argued for existence of epistemological crisis in the Islamic tradition, within the realms of governance of society and market. In responding to the research question, this research concludes that the inconsistencies and incoherence within the Islamic tradition in the context of institution of *hisbah* are due to the use of juristic subjectivism and Islamic legal theory for judging the moral conduct of the activities in market and society. These inconsistencies and incoherencies can be addressed, by constructing a new episteme for the tradition, such as the on constructed within this thesis in the previous chapter.

6.3. COMPARISON WITH OTHER SCHEMAS FOR REVIVAL

This research is not the first that argues for an ontological existence of crises in the tradition. The hints of crises was picked up at the time of al-Shafi, who attempted to address it by constructing a framework for legal theory, thereafter much scholarship have focused their attention on it. In recent times, Rudolph and Piscatori (1997), Donohue and Esposito (1982), Banuazizi and Weiner (1988), Khalid (2003), Iqbal (2003), Umar (2006), Lapidus (1967, 1988, 1996) and many other studies have also focused on it. In comparison, what makes our approach slightly unique is that this study instead of hinting a crisis in tradition, suggests that there is a crisis in epistemology within the tradition, which is anomaly, when it comes to life cycle of traditions, as according to MacIntyre (1998:362), every tradition will eventually face such crisis and it would require construction of a new episteme to resolve the crisis.

Similar to studies hinting the existence of crisis, there are many attempts that tried to construct the next evolutionary step for Islamic tradition, which would take the tradition out of the state of crisis. Overall, there are four broad categories of such schemas, that is: traditionalists, secularists, modernist and fundamentalists, as discussed in Chapter 4. All of these schemas are reactive efforts to the value of judgement propagated by modernity. A number of secularist such as Shibli Shumayyil (1850–1917), Farah Antun (1874–1922), Ya'qub Suruf (1852–1917), Salama Musa (1887–1958) and others (Tamimi, 2007:45), aim to dissimilate the entire tradition, and such course of action furthers the crisis into an identity crisis. On the other hand, among others such as: Bennabi and Ghannouchi (as cited by Tamimi, 2007:54), attempt to engineer an explanation, using the classic episteme of tradition, to make room for the value of judgement of modernism within the classic episteme, which

takes the problem further into epistemological crisis, as discussed in Chapter 4, which is predicted by MacIntyre (1998:362). Hashemi (2009:2) examines this by suggesting that road out of this crisis "cannot avoid passing through the gates of religious politics… a critical reading of the historical record suggests [the recovery for crisis in other traditions]… emerged not in strict opposition to religious politics but often in concert with it".

This study, hence, coincides with Hashemi's (2009:22) position, and therefore argues and takes the position that in societies, where ion is "key marker of identity", the road to implementation of secularisation thesis has to come in accord with the religious tradition. While, the secularists take the tradition towards crises, the fundamentalists, who are product of modernism, attempt to dissimilate the actuality of reality, by radically enforcing the tradition's value judgement on modernity as a solution for the reconciliation of the tradition and modernity (Elmessiri, 2000:57). The two schemas, which sufficiently negotiate with reality and concert with religion in an attempt to create a progressive development within the evolution of tradition, are the modernist and traditionalist. Hallaq (2004:42) investigates these schemas by arguing that:

> To put our argument more plainly, in order to rejuvenate the entire traditional system- in its founding principles, axioms, hermeneutics, and financial, educational, and madhhab institutions –it would be required that Islamic law be more than a dead "branch." And this, in light of the intractable and well-nigh irreversible modernity and its imperatives, is a manifest impossibility. Since traditional shari'a can surely be said to have gone without return, the question that poses itself therefore is, can a form of Islamic law be created from with or without the ruins of the old system?

In other words, the modernist and traditionalists attempt to reform from within the ruins of the old system, as modernists reform the legal theory, while traditionalist attempt to preserve whatever form of practical implementation of old system exists (Yavuz and Esposito, 2003). However, unlike the four schemes, this research attempts to reform without the ruins of the old system, but from within the tradition and it does so by conducting an epistemological enquiry, which cites crises and then uses discursive logic to construct a solution in the form of 'objective subjectivism'. In doing so, it uses ecology to construct and assert this as "a guiding vision as to the end point" as suggested by Amin *et al.* (2012:15), and uses objectivist ethics as foundation to suggest a plan for a "legal infrastructure" (Kuran, 2003:415) through a model that is capable of pointing towards the goodness within the reality comprehensible within

this world. Overall, the method of enquiry and the schema of reformation constructed within this study make it different from the above schemes.

The enquiry within this study was run, with three possible hypotheses, which are as follows:

(iv) the causes, of the contradictory values of the tradition, are unrecognisable and therefore no resolution may be constructed or suggested; and
(v) the causes are recognisable, but there is no solution that can provide the continuity in the evolution of the tradition; and
(vi) the causes are recognisable and solution, in form of a schema, that provides the continuity in the evolution of the tradition is constructible.

The examination of *hisbah*, in Chapter 2 and Chapter 3 demonstrated that the contradictory values of Islamic tradition are recognisable; therefore the first hypothesis is nullified. The deconstruction of Islamic legal theory in Chapter 4, allowed this research to investigate the episteme of these contradictory values within the tradition, and by constructing a new episteme for the tradition in Chapter 5. The analysis in Chapter 5, hence, proved that hypothesis two is also nullified. As discussed above and in the relevant chapter, this study supports the third hypothesis, that suggests that causes are recognisable, and a solution in the form of new episteme can be constructed allowing the continuity of the tradition, while addressing the crisis within the tradition.

6.4. THE POTENTIAL IN THE THEORY OF OBJECTIVE SUBJECTIVISM: THEORETICAL AND METHODOLOGICAL IMPLICATIONS

This study argues that there is an epistemological crisis in the Islamic thought, which has caused a crisis in morality and crisis in legitimacy. The research used MacIntyre's (1998) work as a conceptual framework to argue that these crises can only be solved by introducing a new source of knowledge to the tradition. This is due to the fact Islamic tradition in its current state of crisis heavily relies on the juristic subjectivity through the Islamic legal theory as source to construct moral. However, the political representation of Islam, such as Islamist party An-Nahdah in Tunisia, continue to use the same epistemological sources to solve the crisis in the tradition, while these source are the root case of the crisis. Similar is true for the case in economic

representation of Islamic morality (Khan, 2013), such as the case with Islamic finance operations..

Within such a context, this research has examined the operations and theories of *hisbah* on the governance of society and the market, and discovered consistencies and incoherence similar to other scholarship in this field (Khan, 2013). However, instead of revisiting the epistemic sources of the Islamic tradition for finding the solutions, this research focused on the source of consistencies and incoherence (*see*: Chapter 4), and revealed that the use of Islamic legal theory based on juristic subjectivism for judging the moral conduct is the root cause of the problem. Consequently, in the previous chapter, this research attempted to construct a new episteme for the Islamic tradition, by working within the guidelines provided by MacIntyre's (1998) work on solving epistemological crisis.

Islamic tradition focuses on the governance of society and market through its moral principles as main regulative instruments. The theoretical implications of this research is that it has, firstly, highlighted the nature of crisis in the tradition, and secondly provided an alternative for moral normative governance of society and market. Furthermore, the larger discourse within the Islamic tradition, constructs the premises on ideological basis, and occasionally borrows from sources outside of the tradition. However, the tradition does not acknowledge any ontological authority of these source of knowledge. This research first argues that the state of Islamic tradition is such that the only solution is to construct a new episteme. Thereafter, this research has constructed a new episteme, whilst ensuring the continuation of life of Islamic tradition. Hence, the proposed new episteme in expanding the Islamic knowledge articulation, in the case of *hisbah*, should be considered an important theoretical contribution, which also identifies the methodological contribution of this study, which is the way a new knowledge and approach is constructed and articulated. As an essential methodological contribution, the attempt in this study to construct a theory of value should be noted, which can be the foundation of the new episteme in responding to the crisis.

This research, hence, highlights the state of crisis within the tradition, should provide the necessary arguments against the use of Islamic legal theory within the realm of morality. Moreover, the new episteme could act as a benchmark for creating a

paradigm shift in the tradition, from legalistic and positive focus, towards normative and ethical approach.

6.5. IMPLICATIONS OF THE RESEARCH FOR ISLAMIC FINANCE AND *HISBAH*: CONTEXTUALISATION OF THE FINDINGS

Islamic finance is one of the modern endeavours of Islamic thought, where Islamic tradition has introduced moral judgments to the operations of finance and banking. Similar to institution of *hisbah*, Islamic finance also attempts to use Islamic legal theory based on juristic subjectivity to judge the moral conduct of financial instruments. This has resulted in the problems similar to the ones faced by the institution of *hisbah* (Al-Eshaikh, 2011:47). This has lead to criticism raised against the ethicality of Islamic finance, with a broader theme of legality and morality debate (Asutay, 2007, 2012; Khan, 2013; Alzaidi and Kazakov, 2012).

The use of Islamic legal theory for the ethical governance of Islamic finance created an industry, which criticized from economic grounds to be overly complicated and baring additional risk, while from theorist for lacking the ethical dimension. Islamic finance, similar to other endeavors of Islamic tradition that try to judge the moral conduct by using a legal framework are in a state of epistemological crisis, as discussed in Chapter 2. The entire debate around 'form vs. susbtance' is a consequence of such a crisis, as Islamic rational legality in shaping the form of Islamic finance ignores the substantive morality by assumption of the Shari'ah scholars that their legal decisions on fatwas are derived also by use of *maqasid al-Shari'ah* implying the internalisation of Islamic morality. However, a critical examination of this directly shows that *Shari'ah* scholars by such claims have failed to shape the industry along the Islamic morality leading to 'social failure' (Asutay, 2007, 2012). In responding to such a failure, the theory of value constructed within this research can provide the episteme and normative direction necessary to address these issues in moderating the consequences of crisis.

The theory of value constructed by this research have the philosophical foundations, as discussed in Chapter 5 and theological grounds as discussed at the end of Chapter 4, which can provide the episteme required for the ethical governance in Islamic finance. Moreover, the theory proposed within this research works on normative

grounds; therefore, it can also provide the necessary direction for the development of Islamic finance industry.

6.6. LIMITATIONS AND FUTURE EXPLORATIONS

The lack of published and available material on the institution of *hisbah* should be considered as an important difficulty, which includes material on its theories, manuals and historic account of its operations. While, every effort is made to ensure the complete picture on institution of *hisbah* can be drawn, however the research was limited to the availability of the discourse. It is important to note that whatever the material is available in English language was utilised.

This thesis used MacIntyre's (1998:362) work as a foundation to argue that objective subjectivism can solve the experienced crises, because it does not follow the method of enquiry of the tradition and uses sources outside of the existing set of sources that created the crises. However, the future line of investigation could be to dry run the model of objective subjectivism against real life scenarios, in case of anomalies, this model could be further tweaked or completely discard in favour of another model. Overall, further research is required on ontology of the epistemological crisis in the tradition, and the dynamics of current sources of the tradition that cause the crisis, along with development of a strategy for construction and practice of new sources within the tradition. Using Islamic finance as a case study will help to discuss such issues in expanding the debate, as after all Islamic banks and financial institutions are perhaps the main if not the only institutions that have emerged in modern times from the Muslim world indicating an essential source for testing such debates.

6.7. EPILOGUE

This study focused on the governance within Islamic thoughts in the form of the institution of *hisbah*, which started by examining the operations of *hisbah*, and discovered a series of institutional failures, which is then followed by the deconstruction of theories of *hisbah*. In this, the study investigated the use Islamic legal theory, which has substituted itself as an ethical theory; and this study recognises this as the root cause of the problem. At that stage the research had successfully completed the first part of the research aim, and explored the governance within Islamic thought in the form of the institution of *hisbah*. However, to complete

the second part of the research aim, that is to explore the episteme that is the cause of the recognised and unrecognised incoherencies and inconsistencies in the theories, regulations, and laws associated to the institution of *hisbah*; this research examined the Islamic legal theories in Chapter 4. This enquiry detected that Islamic tradition is in the state of epistemological crisis, which has caused the crisis in morality and crisis in legitimacy within the tradition. The research then used MacIntyre's (1998) work on epistemological crisis to construct a new epistemic source for the tradition, in the form of theory of objectivist subjectivity. In particular, this research engaged in constructing a theory of value in responding to the need for a new episteme. In concluding, this research, hence, has successfully achieved its research aims and objectives by responding to the identified research questions.

BIBLIOGRAPHY

Abdar-Rahman, D. I.; Clarke, A., and Siddiqui, A. A. (2008). *Shariah: Islamic law*. London: Ta-Ha.

Abu-Tapanjeh, Abdussalam Mahmoud (2009). "Corporate governance from the Islamic perspective: A comparative analysis with OECD principles*". Critical Perspectives on Accounting,* 20, pp.556–567.

Agius, E. (2006). "Enviromental Ethics: Towards an Intergenerational Approach", in A. M. J. Ten Have (ed.). *Environmental Ethics and International Policy* (pp. 89-116). Paris: UNESCO.

Ahmad, K. (1980). "Economic Development in an Islamic Framework," in Khurshid Ahmad and Zafar Ishaq Ansari (eds.), *Islamic Perspectives: Studies in Honour of Mawlana Sayyid Abul A'la Mawdudi*. Leicester and Jeddah: Islamic Foundation and Saudi Publishing House.

Ahmad, M. (1991). "Islamic Fundamentalism in South Asia: The Jamaat-i-Islami and the Tablighi Jamaat". *Fundamentalisms Observed*, 1, pp. 457-530.

Ainley, M.; Mashayekhi, A.; Hicks, R.; Rahman, A. and Ravalia, A. (2007, November). *Islamic Finance in UK: Regulation and Challenges.* London: Financial Services Authority.

Akama, S.; Nakamatsu, K. and Abe, J. M. (2010). "Constructive Discursive Reasoning" in, Mircea Gh. Negoita (ed.), *Knowledge-Based and Intelligent Information and Engineering Systems* (pp. 200-206). Springer Berlin Heidelberg.

Al Mawardi (1996). *The Ordinance of Government - A Translation of Al-Ahkam al-Sultaniyya w al-Wilayat al-Diniyy.* Translated from Arabic by W. A. Wahba. London: Garnet Publishing Ltd.

Al-Attar, Mariam (2010). *Islamic Ethics: Divine Command Theory in Arabo-Islamic Thoughts.* UK: Routledge.

Al-Eshaikh, Nourah Mohammad (2011). *Jurisprudence on Tawarruq: Contextual Evaluation on Basis of Customs, Circumstances, Time and Place*. Masters by Research Thesis, University of Durham.

Al-Ghazali, Abu Hamid Muhammad Ibn Muhammad (1990). *Al-Ghazzali on Repentance: Book Thirty-one of the Revival of the Religious Sciences.* Translated from Arabic by Martin S. Stern. Islamabad: Vanguard.

Al-Ghazzali, Abu Hamed Mohammad ibn Mohammad (1982a). *Ihya Ulum-Id-Din: Book I*. Translated from Arabic by Fazlul-Karim (1982). New Delhi: Kitab Bhavan.

Al-Ghazzali, Abu Hamed Mohammad ibn Mohammad (1982b). *Ihya Ulum-Id-Din: Book II*. Translated from Arabic by Fazlul-Karim (1982). New Delhi: Kitab Bhavan.

Al-Ghazzali, Abu Hamid Muhammad Ibn Muhammad (2004). *The Alchemy of Happiness*. USA: SIME, Available at: <URL:http://majalla.org>, Access Date: 27th March, 2014.

Al-Hindi, Ala al-Din Ali ibn Abd-al-Malik Husam al-Din al-Muttaqi (1998). Kanz al-ʻUmmāl fī sunan al-aqwāl wa'l afʻāl, Mahmud Umar al-Dumyati (Ed.). Lebanon: Dār al-Kutub al-ʻIlmīyah.

Al-Jarbou, Ayoub M. (2004). "Judicial Independence: Case Study of Saudi Arabia". *Arab Law Quarterly*, 19 (5), pp. 5-54.

Al-Jaziri, Abd al-Qadir b. Muhammad, (n.d.). *Al-Durar al-Fara'id al-Munazzamah fi Akhbar al-Hajj wa Tariq Makkat al-Mu'azzamah*, Riyadh: Dar al-Yamamah.

Al-Nashif, Nada and Bahous, Sima (2012). "Foreword", in *Rethinking economic growth: Towards Productive and Inclusive Arab Societies*. International Labour Organisation. Available at: <URL:http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_208346.pdf> Access Date: 27th March, 2014.

Al-Shayzari, Abd al-rahman b. Nasr (1999; originally 1310). *The Book of the Islamic Market Inspector: Nihayat al-Rutba fi Talab al-Hisbah (The Utmost Authority in the Pursuit of Hisbah)*. Translated from Arabic by R. P. Buckley. UK: Oxford University Press.

Al-Sijistani, Abu Daud Sulayman ibn al-Ashʻath (1984). *Sunan Abu Dawud: Chapters 519-1337*. Lahore: Sh. M. Ashraf.

Alahmed, Ali (2013, March 15). "The Execution of the Saudi Seven", *Foreign Policy*, Available at<URL: http://www.foreignpolicy.com/articles/2013/03/15/The_execution_of_the_Saudi_Seven> Access Date: 04th July, 2013.

Alcamo, J.; Bennett, E. M., and Millennium Ecosystem Assessment (Program). (2003). *Ecosystems and Human Well-being: A Framework for Assessment.* Washington, DC: Island Press.

Ali, Mustafa Ali (1979). *Mustafa Ali Counsel for Sultans of 1581: Part 1*. Translated from Turkish by Andreas Tietze.. Austria: Verlag Der Osterreichischen Akademie Der Wissenschaften Wien (Austrian Academy of Sciences Press).

Alzaidi, A. and Kazakov, D. (2012). *Earn More, Stay Legal: Novel Multi-agent Support for Islamic Banking*. Highlights on Practical Applications of Agents and Multi-agent Systems: 10th International Conference on Practical Applications of Agents and Multi-Agent Systems, 156: 315-322. Springer.

Amin, M.; Assaad, R.; al-Baharna, N.; Dervis, K.; Desai, R. M.; Dhillon, N. S., and Galal, A. (2012). *After the Spring: Economic Transitions in the Arab World.* Oxford University Press.

Amnesty International (2008). *Affront to Justice: Death Penalty in Saudia Arabia*. Amnesty International Publications, Available at<URL: http://www.amnesty.org/en/library/asset/MDE23/027/2008/en/dc425c41-8bb9-11dd-8e5e-43ea85d15a69/mde230272008en.pdf> Access Date: 04th July, 2013.

Amnesty International (2013, March 1). *Urgent Action: Seven Men to Be Executed*. Amnesty International Publications, Available at<URL: http://www.amnesty.org/en/library/asset/MDE23/008/2013/en/c00888f9-7d63-4002-b114-1eee6aa44874/mde230082013en.pdf> Access Date: 04th July, 2013.

Andreasen, A. R. (1995). *Marketing Social Change: Changing Behavior to Promote Health, Social Development, and the Environment.* San Francisco, Calif: Jossey-Bass.

Adger, W. N.; Brown, K.; Fairbrass, J.; Jordan, A., Paavola, J., Rosendo, S., and Seyfang, G. (2003). "Governance for sustainability: towards a 'thick'analysis of environmental decisionmaking", *Environment and Planning A*, 35(6), 1095-1110.

Antaki, C.; Billig, M.; Edwards, D. and Potter, J. (2003). "Discourse analysis means doing analysis: A critique of six analytic shortcomings". Discourse Analysis Online, Available at: http://www.shu.ac.uk/daol/articles/v1/n1/a1/antaki2002002-t.html. Access Date: 04th July, 2013.

Aristotle (2007). *The Nicomachean Ethics.* New York: Filiquarian Publishing, LLC.

Arkoun, M (2002). "Islam", in J. D. McAuliffe (Ed.), *Encyclopaedia of the Quran: Volume two E-I* (pp. 565-570). Leiden: Brill Publications.

Asheim, Geir B. (1994). *Sustainability: Ethical Foundations and Economic Properties*. World Bank Policy Research Department.

Asheim, Geir B.; Buchholz, Wolfgang and Tungodden, Bertil (2001). "Justifying Sustainability", *Journal of Environmental Economics and Management*, 41, 252-268.

Asutay, Mehmet. (2007). "A Political Economy Approach to Islamic Economics: Systemic Understanding for an Alternative Economic System". *Kyoto Bulletin of Islamic Area Studies*, 1(2), pp. 3-18.

Asutay, Mehmet and Zaman, Nazim (2009). "Divergence between Aspirations and Realities of Islamic Economics: A Political Economy Approach to Bridging the Divide". *IIUM Journal of Economics and Management* 17(1): pp. 73-96.

Asutay, M. (2012). Conceptualising and locating the social failure of Islamic Finance: aspirations of Islamic moral economy vs. the realities of Islamic finance. *Asian and African Area Studies*, *11*(2), 93-113.

Auda, Jasser (2008). *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach.* The London: International Institute of Islamic Thoughts.

Austin, J. and Rumble, W. E. (1995). *The Province of Jurisprudence Determined*. Cambridge: Cambridge University Press.

Ayala F. J. (1995). "The Myth of Eve: Molecular Biology and Human Origins", *Science*, 270 (5244), pp. 1930-1936.

Bagnall, Roger S. (1995). *Egypt in Late Antiquity.* New York: Princeton University Press.

Baier, A. (1981). "The Rights of Past and Future Persons". *Responsibilities to future generations*, 171-183.

Bajada, C. and Schneider, F. (2005). *Size, Causes and Consequences of the Underground Economy: An International Perspective*. Aldershot: Ashgate.

Banuazizi, A. and Weiner, M. (1988). *The State, Religion, and Ethnic Politics: Afghanistan, Iran, and Pakistan.* New York: Syracuse University Press.

Baron, S. Wittmayer (1952). *A Social and Religious History of the Jews. Volume I: Ancient Times, Part I.* US:Jewish Publication Society of America.

Bekker-Nielsen, T. (2007). "The One That Got Away: A Reassessment of the Agoranomos Inscription from Chersonesos", in V. Gabrielsen and J. Lund (eds.), *The Black Sea in Antiquity. Regional and Interregional Economic Exchanges* (pp. 123-132). Denmark:Aarhus University Press.

Bello Dogarawa, A. (2013). "Hisbah and the promotion of ethical business practices: A reflection for the shari'ah implementing states in Nigeria". *International Journal of Islamic and Middle Eastern Finance and Management*, *6*(1), 51-63.

Bentham, Jeremy (1948). *An Introduction to the Principles of Morals and Legislation*. New York: Hafner.

Bentham, Jeremy (1988). *The Principles of Morals and Legislation.* New York: Prometheus Books.

Berger, Adolf. (2004). *Encyclopedic Dictionary of Roman Law: Transactions of the American Philosophical Society, New Ser., V. 43, Pt. 2.* US: The Lawbook Exchange Ltd.

Bhatti, Maria and Bhatti, Ishaq (2009). "Development in Legal Issues of Corporate Governance in Islamic Finance", *Journal of Economic & Administrative Sciences*, 25(1), 67-91.

Bindreiter, U. (2002). *Why grundnorm?: a treatise on the implications of Kelsen's doctrine*. The Hague: Kluwer Law International.

Black, Antony (1984). *Guilds and Civil society in European Political Thought from the Twelfth Century to the Present.* Cambridge: Cambridge University Press.

Blume, Fred. H. and Kearley, T. (Ed.) (2009). Annotated Justinian Code. (2nd Edition). Available at <URL:http://uwacadweb.uwyo.edu/blume%26justinian/> Access Date: 8th September, 2009.

Boehm, C. (1999). *Hierarchy in the Forest: The Evolution of Egalitarian Behavior*. Cambridge, MA: Harvard University Press.

Boehm, C. (2012). *Moral Origins: The Evolution of Virtue, Altruism, and Shame.* New York: Basic Books.

Bonte, Pierre. (1981). "Kinship and Politics. The Formation of the State Among the Pastoralists of the Sahara and the Sahel", in Henri J. M. Classen and Peter Skalnik (eds.), *The Study of the State* (pp. 35-58). Hague: Mouton Publishers.

Boulding, K. (1966). "The Economics of the Coming Spaceship Earth", in H. Jarrett (ed.), *Environmental Quality in a Growing Economy* (pp.3-14). US:Johns Hopkins University Press.

Bouzali, Leda (2011). "The New Trial of Socrates", in *International Online Magazine,* 19(August). Available at <URL: http://www.onassis.gr/online-magazine/issue-19/article-3.php>, Access Date: 28th November, 2013.

Brandt, Richard B (1959). *Ethical Theory.* Englewood Cliffs, N.J.: Prentice-Hall

Breed, M. and Sanchez, L. (2012). "Both Environment and Genetic Makeup Influence Behavior",*Nature Education Knowledge,* 3(10), 68.

Brinkmann, Svend (2004). "The Topography of Moral Ecology", *Theory and Psychology*, 14(1), 57-80.

Brown, B. J., Hanson, M. E., Liverman, D. M., and Merideth Jr, R. W. (1987). Global sustainability: toward definition. *Environmental management*, 11(6), 713-719.

Brown, L.R. (1981). *Building a sustainable society*. New York: W.W. Norton.

Brownlie, I. (1998). *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations (Vol. 1).* Martinus Nijhoff Publishers.

Bucar, E. M. (2008). "Methodological Invention as a Constructive Project: Exploring the Production of Ethical Knowledge through the Interaction of Discursive Logics". *Journal of Religious Ethics*, 36(3), 355-373.

Buckley, R. P. (1999). *The Book of Islamic Market Inspector: Nihayat al-Rutba fi Talab al-Hisbah (The Utmost Authority in the Pursuit of Hisbah).* UK: Oxford University Press.

Budiansky, S. (1999). *The Covenant of the Wild: Why Animals Chose Domestication*. New Haven: Yale University Press.

Bukari, Muhammad bin Ismail bin Ibrahim (1999). *Sahih al Bukhari:Kitab al Munaqib.* Dar-ussalam, Saudia Arabic: Riyaz.

Burr, V. (1995) *An Introduction to Social Constructionism*. London: Sage.

Burrell, G., G. Morgan (1979). *Sociological Paradigms and Organisational Analysis*. Heinemann, London, U.K.

Butterworth, Charles E. (2005). "Ethical and political philosophy" in P. Adamson (Ed.) and R. C. Taylor (Ed.) (2005). *The Cambridge companion to Arabic philosophy* (pp.266-286). Cambridge: Cambridge University Press.

Cahen, Cl.; Mantran, R.; Lambton, A.K.S.; Bazmee Ansari, A.S. "Ḥisba.", in P. Bearman (Ed.), Th. Bianquis (Ed.) , C.E. Bosworth(Ed.), E. van Donzel (Ed.) and W.P. Heinrichs (Ed.), *Encyclopedia of Islam, Second Edition*. Brill, 2010. Brill Online. Durham University Library. Available at : <URL: http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0293> Access Date: 18th December, 2010

Calder, N., Imber, C., & Gleave, R. (2010). *Islamic Jurisprudence in the Classical Era.* Cambridge, U.K.: Cambridge University Press.

Campion, M. A.; Medsker, G. J. and Higgs, A. C. (1993). *"Relations Between Work Group Characteristics and Effectiveness: Implications for Designing Effective Work Groups". Personnel Psychology.* 46 (4 Winter), 823-850.

Caney, Simon (2005). *Justice Beyond Borders.* Oxford: Oxford University Press.

Carson, R. T. (1997). "Contingent Valuation Surveys and Tests Of Insensitivity To Scope.", in R. J. Kopp (Ed.), *Determining the value of non-marketed goods: Economic, psychological, and policy relevant aspects of contingent valuation methods* (pp.127-163). Boston: Kluwer Academy Publications.

Cartledge, P. (2007). *Political thought in Ancient Greece.* Cambridge: Cambridge University Press.

Cass, R. A. (2003). *The Rule of Law in America*. US: JHU Press.

Cassirer, Ernst. (1979). *The Philosophy of the Enlightenment.* US: Princeton University Press.

Catholic Encyclopedia. *Usury*. Available at: <URL:http://www.newadvent.org/cathen/15235c.htm> Access Date: 28th April, 2009.

Center for Inquiry (2008). *Islam & human rights Defending Universality at the United Nations*. Available at: <URL:http://www.centerforinquiry.net/uploads/attachments/ISLAM_AND_HUMAN_RIGHTS_REPORT.pdf> Access Date: 15 June 2012.

Chaghatai, M. Ikram (2006). *Muhammad Asad: Europe's Gift to Islam, Volume 2.* Pakistan: Sang-e-Meel Publications.

Chapra, M. Umar. (1992). *Islam and the Economics Challenge.* UK: The Islamic Foundation.

Cliteur, P. B. (2010). *The Secular Outlook: In defense of moral and political secularism.* Chichester, West Sussex: Wiley-Blackwell.

Clulow, V. (2005). “Futures dilemmas for marketers: can stakeholder analysis add value?”. *European Journal of Marketing*, 39(9/10), 978-997.

Cody, Martin L. and Diamond, Jared M. (1979). *Ecology and Evolution of Communities.* Cambridge, Mass: Belknap Press of Harvard University Press.

Coetzee, D., and Eysturlid, L. W. (2013). *Philosophers of War: The Evolution of History's Greatest Military Thinkers*. California, Santa Barbara.

Colander, D., Goldberg, M., Haas, A., Juselius, K., Kirman, A., Lux, T., and Sloth, B. (2009). “The financial crisis and the systemic failure of the economics profession”. *Critical Review*, *21*(2-3), 249-267.

Conklin, William E. (1979). *In Defence of Fundamental Rights.* Martinus Nijhoff Publishers.

Connell, J. H. (1979).”Some Mechanisms Producing Structures in Natural Communities.” in Cody Martin L. (Ed.), & Jared M. Diamond (Ed.), *Ecology and Evolution of Communities* (460-491). Cambridge, Mass: Belknap Press of Harvard University Press.

Cook, Michael (2000). *Commanding Right and Forbidding Wrong in Islamic Thought.* Cambridge University Press.

Cook, T. and Campbell, D. (1979). *Quasi-Experimentation: Design and Analysis Issues for Field Settings*. Boston: Houghton Miflin Company.

Cooper, G. J. (2004). *The Science of the Struggle for Existence: On the Foundations of Ecology*. New York: Cambridge University Press.

Copp, D. (2008). “Darwinian Skepticism about Moral Realism,” *Philosophical Issues*, 18(1), 186-206.

Cornell, Vincent J. (2005). “Chapter 7: Crises of the Holy: Islam”, in Alon Goshen-Gottstein (Ed.). *The Crises of the Holy.* The Elijah Interfaith Institute. <URL: www.elijah-interfaith.org/uploads/media/Holy_Crisis_-_Chap_7_Islam.rtfAccess < .Date: 19th May, 2013

Costanza, R. (1996). “Ecological economics: Reintegrating the study of humans and nature”, *Ecological Applications*, 6, 978–990.

Cottone, R. R. (2001). “A social constructivism model of ethical decision making in counseling”. *Journal of Counseling & Development*, 79(winter), 39-45.

Crafts, N. F. (1997). “The Human Development Index and changes in standards of living: Some historical comparisons”. *European Review of Economic History*, 1(3), 299-322.

Crawford, C. (2004). “Public Policy and Personal Decisions: The Evolutionary Context”, in C. Crawford, C. (Ed.) and C. Salmon (Ed.), *Evolutionary psychology,*

public policy, and personal decisions (pp.3-22). Mahwah, N.J: Lawrence Erlbaum Associates.

Crayen, D., and Baten, J. (2010). "Global trends in numeracy 1820–1949 and its implications for long-term growth". *Explorations in Economic History*, 47(1), 82-99.

Critchley, S. (2009). *The Book of Dead Philosophers*. London: Granta.

Cuneo, Terence (2006). "Saying What We Mean: An Argument against Expressionism", in R. Shafer-Landau (Ed.), *Oxford studies in Metaethics,* (pp. 35-72). Oxford: Clarendon Press.

Dalkey, N. C., Brown, B. B., and Cochran, S. (1969). *The Delphi method: An experimental study of group opinion (Vol. 3)*. Santa Monica, CA: Rand Corporation.
Daly, H. (1980). *Economics, ecology, ethics: essays toward a steady-state economy*. San Francisco:W. H. Freeman.

Darwall, S. L. (2002). *Contractarianism/contractualism.* Oxford: Blackwell.

Dasgupta, P. S. and Heal, G. M. (1974). "The optimal depletion of exhaustible resources". *The review of economic studies*, 41, 3-28.

Dator, J. A. (2006). *Fairness, globalization, and public institutions: East Asia and beyond*. Honolulu: University of Hawai'i Press.

Davidson, H. A. (1992). *Alfarabi, Avicenna, and Averroes on intellect: Their cosmologies, theories of the active intellect, and theories of human intellect*. New York: Oxford University Press.

Davis, N. J., and Robinson, R. V. (2006). The egalitarian face of Islamic orthodoxy: Support for Islamic law and economic justice in seven Muslim-majority nations. *American Sociological Review, 71*(2), 167-190.

Dawkins, R. (1982). *The Extended Phenotype*. New York: Oxford University Press.

Dawkins, R. (1989). *The Selfish Gene*, 2nd ed., expanded. Oxford: Oxford University Press.

Diamond, P. (1965). "The evaluation of infinite utility streams". *Econometrica*, 33, 170-177.

Donald A. Hay (2003). "Christianity and Economics: Theological Ethics", Paul Oslington (Ed.), *Economics and Religion Volume II* (pp. 136-167). Edward Elgar Publishing Limited.

Donald A. Hay. (1989). " Christianity and Economics: Biblical Foundations", in Paul Oslington (Ed.), *Economics and Religion Volume II.* (pp. 89-179). Edward Elgar Publishing Limited.

Donaldson, D. M. (1953). *Studies in Muslim Ethics.* London: S.P.C.K.

Donnelly, Jack (2003). *Universal Human Rights in Theory and Practice.* Cornell University Press.

Donohue, J. J. and Esposito, J. L. (1982). *Islam in transition: Muslim perspectives.* New York: Oxford University Press.

Edwards, D. (1991). "Categories are talking: On the cognitive and discursive basis of categorization". *Theory & Society*, 1, 515-542.

Edwards, D., and Potter, J. (1992). *Discursive psychology (Vol. 8).* Sage.

Edwards, S. F. (1986). "Ethical preferences and the assessment of existence values: does the neoclassical model fit?". *Northeastern Journal of Agricultural and Resource Economics*, 15(2), 145-150.

Egler, F. E. (1964). "Pesticides in our ecosystem: Communication II". *BioScience*, 14, 29-36.

Egler, F. E. (1970). *The way of science: A philosophy of ecology for the layman*. New York: Hafner Pub. Co.

Eide, Asbjorn (1998). "Freedom from Want: Taking Economic and Social Rights Seriously". In Barend Van Der Heijden (Ed.) and Bahia Ahzib-Lei (Ed.), *Reflections on Universal Declaration of Human Rights: A Fiftieth Anniversary Anthology* (pp.121-129). Kluwer Law International.

Ekelund, Jr., Robert B. and Hebert, Robert F. (1990). *A History of Economics Theory And Methods. (Third Edition).* US: McGRAW-HILL Publishing Company.

El-haj, Rifaat Ali Abou (2005). *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries, Second Edition*. Syracuse University Press.

El-Gamal, M. A. (2006). *Islamic finance: Law, economics, and practice*. Cambridge University Press.

Elmessiri, Abdelwahab (2000). "Secularism, Immanence and Deconstruction." in Azzam Tamimi (Ed.) and John L. Esposito (Ed.), *Islam and Secularism in the Middle East* (pp.52-80). New York: New York University Press.

Emon, A. M. (2010). *Islamic natural law theories*. New York: Oxford University Press.

Encyclopædia Britannica. *Aedile*. Available at: <URL:http://www.britannica.com/EBchecked/topic/6946/aedile> Access Date: 8th September, 2009.

Encyclopædia Britannica. *Eparch*. Available at: <URL:http://www.britannica.com/EBchecked/topic/189449/eparch> Access Date: 14th September, 2009.

Encyclopaedia of Islam, Second Edition (2012). *al-Māwardī.* Brill Online, Durham University Library. Available at: <http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/al-mawardi-COM_0713> Access Date: 09 June 2012.

Epstein, L. G. (1986). "Intergenerational preference orderings". *Social Choice Welfare*, 3, 151-160.

Epstein, S. A. (2006). *Wage Labor and Guilds in Medieval Europe* (Reissue Edition). North Carolina Press.

Erdem, Ekrem (2010). "The Function of State in Determining Economic Policies in Islamic Traditions". *Erciyes Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi*, 35, 19-36.

Esmail, Aziz A. and Nanji, Azim A. (2010). " Philosophy in Islamic Context". C. Taliaferro (Ed.), L. P. Quinn (Ed.), and P. Draper (Ed.) . *A companion to philosophy of religion* (pp. 67-80). Malden, MA: Wiley-Blackwell.

Euben, R. L. (1999). *Enemy in the mirror: Islamic fundamentalism and the limits of modern rationalism: a work of comparative political theory*. Princeton University Press.

European Court of Human Rights (2003). *Case of Refah Partisi (The Welfare Party) and Others V. Turkey (Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98)*. Available at: <URL:http://www.iilj.org/courses/documents/RefahPartisivTurkey.pdf> Access Date: 27th December, 2011.

Faber, Klaus (1996). "Farewell to 'Legal Positivism': The Separation Thesis Unraveling," in George, Robert P. (Ed.), *The Autonomy of Law: Essays on Legal Positivism,* (pp. 119-162), Oxford: Clarendon Press.

Fairclough, N. (1992). "Discourse and text: Linguistic and intertextual analysis within discourse analysis". *Discourse & Society*, 3(2), 193-217.

Fairclough, N. (1995). *Critical Discourse Analysis.* London: Longman.

Fairclough, Norman (2003). *Analysing discourse: Textual analysis for social research.* London: Routledge.

Fakhry, Majid (1991). *Ethical Theories in Islam*. E. J. Brill, Leiden.

Farooq, M.O. (2007), "The riba-interest equivalence: is there an ijma (consensus)?". *Transnational Dispute Management (TDM)*, 4(5).

Fassin, Y., and Gosselin, D. (2011). "The collapse of a European bank in the financial crisis: an analysis from stakeholder and ethical perspectives". *Journal of Business Ethics*, *102*(2), 169-191.

Foucault, M. (1972). *The archeology of knowledge.* New York: Pantheon.

FitzPatrick, W.J. (2000). *Teleology and the Norms of Nature.* New York: Garland.

Fodor, J. (1998). "The Trouble with Psychological Darwinism". *London Review of Books,* 20(2), 11-13.

Fodor, J. (2000). *The Mind Doesn't Work That Way: The Scope and Limits of Computational Psychology*. Cambridge, MA: MIT Press.

Forrest, Barbara. (2000). " Methodological Naturalism and Philosophical Naturalism: Clarifying The Connection". *PHILO*, 3(2 Fall-Winter 2000), 7-29.

Foster, Benjamin R. (1970). " Agoranomos and Muhtasib". *Journal of the Economic and Social History of the Orient,* 13(2), 128-144.

Fraser, B. (2010). "Adaptation, exaptation, by-products, and spandrels in evolutionary explanations of morality", *Biological Theory*, 5(3), 223-227.

Friedman, Hershey H. (2001). "The Impact of Jewish Values on Marketing and Business". *Journal of Macromaking.* 21(June), 74-81.

Furnass, B. (2012). "From Anthropocene to Sustainocene". *Challenges and Opportunities*. Public Lecture. Australian National University, 21.

Gätje, H., & Welch, A. T. (1976). *The Qurʾān and its exegesis: selected texts with classical and modern Muslim interpretations*. Routledge and Kegan Paul.

Gale, J., Lawless, J., & Roulston, K. (2004). Discursive approaches to clinical research. In *Furthering Talk* (pp. 125-144). Springer US.

Gale, J. (2010). "Discursive analysis: A research approach for studying the moment-to-moment construction of meaning in systemic practice". *Human Systems: The Journal of Systemic Consultation and Management*, 21, 176-208.

Gallie, W. B. (1956). "Essentially Contested Concepts". *Proceedings of the Aristotelian Society*, 56(1955 - 1956), 167-198.

Gaus, Gerald F. (2003). "Green, Bosanquet and the Philosophy of Coherence", in C.L. Ten (Ed.), *The Nineteenth Century* (pp. 408-436). London: Routledge.

Gaus, Gerald F. and Courtland, Shane D. (2007). "Liberalism", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), Available at: <URL:http://plato.stanford.edu/archives/fall2008/entries/liberalism/> Access Date: 28th January, 2010.

Georgescu-Roegen, N. (1971). *The entropy law and the economic process*. Harvard University Press.

Gergen, K. (1985). “The social constructionist movement in modern social psychology”. *American Psychologist*, 40(3): 266–75.

Ghabin, A. (2009). *Ḥisba, Arts and Craft in Islam (Vol. 7*). Otto Harrassowitz Verlag.

Ghannouchi, Rached (Speaker). (2012, March 2nd). *Conference de Sheikh Rached Ghannouchi sur le Secularisme et la Relation entre la Religion et l'Etat (Secularism and Relation between Religion and the State from the Perspective of the Nahdha Party)* [Video]. Tunisia: Center for the Study of Islam and Democracy. Video Available at: <URL: http://www.ustream.tv/recorded/20827717?utm_source=Transcript+of+Rached+Ghannouchi%27s+lecture+on+Secularism+-+March+2%2C+2012&utm_campaign=Tunisia+Democracy+Rached+Ghannouchi+Transition+Center+for+the+Study+of+Islam+and+Democracy+%28CSID%29&utm_medium=email> Access Date: 18th July, 2013.

Giffen, L. A. (1998). “al-Shayzari”. in J. S. Meisami (Ed.) and P. Starkey (Eds.), *Encyclopedia of Arabic literature (Vol. 2)* (pp-711). Taylor & Francis.

Gleave, R.M. (2012). “Maḳāṣid al-Sharīʿa.”. *Encyclopaedia of Islam, Second Edition*. Brill Online. Reference. Durham University Library. Available at:http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/makasid-al-sharia-SIM_8809 Access Date: 22 September 2012.

Glick, Thomas F. (1972). “ Muhtasib and Mustasaf: A Case Study of Institutional Diffusion”. *Viator: Medieval and Renaissance Studies*, 2, 59-82.

Godet, M. (1986). “Introduction to< i> la prospective</i>: Seven key ideas and one scenario method”. *Futures*, 18(2), 134-157.

Goldsmith, E. (1972). *Blueprint for survival*. Boston:Houghton Mifflin.

Goodall, J. (1986). *The Chimpanzees of Gombe: Patterns of Behavior*. Cambridge, MA: Belknap Press.

Gould, S. J. (1997). “Evolutionary Psychology: An Exchange”. *New York Review of Books*, 44, 55-56.

Gould, S. J., and R. C. Lewontin (1979). “The Spandrels of San Marco and the Panglossian Paradigm: A Critique of the Adaptationist Programme”. *Proceedings of the Royal Society of London*, B 205, 581-598.

Graham, J., Haidt, J., Koleva, S., Motyl, M., Iyer, R., Wojcik, S., and Ditto, P. H. (2013). “Moral Foundations Theory: The pragmatic validity of moral pluralism”. *Advances in experimental social psychology*, 47, 55-130.

Gregory, R., and McDaniels, T. (1987). “Valuing environmental losses: What promise does tlolophe right measure hold?”. *Policy sciences*, 20(1), 11-26.

Gregory, R., Lichtenstein, S., and Slovic, P. (1993). “Valuing environmental

resources: a constructive approach". *Journal of Risk and Uncertainty*, 7(2), 177-197.
Grice-Hutchinson, Marjorie (1978). *Early Economics Thought in Spain 1177-1740.* UK: George Allen & Unwin.

Geertz, C. (1973). *The Interpretation of Cultures.* New York: Basic Books.

Grunebaum, G.E.von (1976). Medieval Islam: A Study in Cultural Orientation, Volume 64. University of Chicago Press.

Gurvitch, G. (2000). *Sociology of law*. New Brunswick, N.J: Transaction Publishers.

Habermas, J. (1984). *The theory of communicative action: Reason and the rationalization of society (T. McCarthy, Trans. Vol. 1).* Boston: Beacon.

Hackett, Lewis. (1992). *The Age of Enlightenment: The European Dream of Progress and Enlightenment.* Available at: <URL:http://history-world.org/age_of_enlightenment.htm> Access Date: 4th August, 2009.

Hagg, Claes. (1983). " Just Price and Equal Opportunity". *Journal of Business Ethics*, 2(4), 269-272.

Haidt, J. (2013). *The Righteous Mind: Why good people are divided by politics and religion.* London: Penguin.

Haila, Y. and Levins, R. (1992). *Humanity and Nature: Ecology, Science and Society*. London: Pluto Press.

Hallaq, Wael B. (1997). *A History of Islamic Legal Theories: An Introduction to Sunni USUL AL-FIQH*. Cambridge University Press.

Hallaq, Wael B. (2004). "Can Shari'a Be Restored", in Y. Y. Haddad (Ed.) and B. F. Stowasser (Ed.), *Islamic law and the challenges of modernity* (pp.21-54). Rowman Altamira.

Hallaq, Wael B. (2009). *An Introduction to Islamic Law.* Cambridge University Press.

Hambrick, D. C. (1982). "Environmental scanning and organizational strategy". *Strategic Management Journal*, 3(2), 159-174.

Hand Book Online (2010). Available at<URL:http://fsahandbook.info/FSA/index.jsp> Access Date: 05th January, 2010.

Haneef, Rafe (2009). "Is the Ban on 'Organised Tawarruq' the Tip of the Iceberg?". (2). International Shari'ah Research Academy for Islamic Finance.

Harris, Edward M. (2003). "Law and Economy in Classical Athens: [Demosthenes] Against Dionysodorus" ,in Adriaan Lanni (Ed.), C.W. Blackwell (Ed.), A. Mahoney (Ed.) and R. Scaife (Ed.), *Athenian Law in its Democratic Context: Demos Classical Athenian Democracy: A consortium for electronic publication in the humanities*. Available at:

<URL:http://www.stoa.org/projects/demos/article_law_economy?page=3&greekEncoding=> Access Date: 11th September, 2009.

Hart, H. L. A. (1997). *The Concept of Law.* Oxford: Oxford University Press.

Hart, H. L. A., Raz, J., Bulloch, P. A., and Green, L. (2012). *The Concept of Law*. Oxford: Oxford University Press.

Hashemi, N. (2009). *Islam, secularism, and liberal democracy: toward a democratic theory for Muslim societies*. Oxford University Press.

Hawking, S., and Mlodinow, L. (2010). *The Grand Design: New Answers to the Ultimate Question of Life.* Newyork: Bantam Books.

Heck, Paul L. (2002). *The Construction of Knowledge in Islamic Civilization: Qudāma b. Ja'far and his Kitāb al-Kharāj wa-ṣinā'at al-kitāba*. Netherlands: Koninklijke Brill.

Heck, Paul L. (2004). " Abbasid Political Thought from Ibn al-Muqadda' (d. 139/756) to Qudama b. Ja'far (d.337/948)", in James Edward Montgomery (Ed.), *Abbasid Studies: Occasional Papers of the School of 'Abbasid Studies Cambridge 6-10 July 2002 (Orientalia Lavaniensia Analecta 135)* (pp. 83-110). Belgium, Peeters Publishers & Department of Priental Studies Bondgenotenlaan.

Hegazy, Walid (2005). "Fatwas and the Fate of Islamic Finance: A Critique of Practice of Fatwa in Contemporary Islamic Financial Markets", in S. Nazim Ali (Ed.), *Islamic Finance: Current Legal and Regulatory Issues* (pp. 133-149). Massachusetts: Islamic Finance Project, Islamic Studies Program, Harvard Law School.
Hegel, G. W. F. (1995). *Lectures on the history of philosophy*. Lincoln: University of Nebraska Press.

Heiberg, J. L., and Stewart, J. B. (2005). *Heiberg's On the significance of philosophy for the present age and other texts*. Copenhagen: Reitzel.

Heimann, Eduard. (1947). *History of Economic Doctrines.* UK: Oxford University Press.

Held, David (2003). "The Changing Structure of International Law: Sovereignty Transformed?", in David Held (Ed.) and Anthony McGrew (Ed.), *The Global Transformations Reader: An Introduction to the Globalization Debate* (pp. 162-176) Polity Press.

Hezser, C. (1993). *Form, Function, and Historical Significance of the Rabbinic Story in Yerushalmi Neziqin (Texte und Studien zum antiken Judentum).* Germany: Mohr Siebeck.

Hodge, R. I. V., & Kress, G. R. (1993). *Language as ideology*. Routledge.

Hobbes, T. (2004). *De cive*. Whitefish, Mt: Kessinger Publ. Rare Reprints.

Hobbes, T., Martinich, A. P., & Battiste, B. (2011). *Leviathan: Parts I and II*. Peterborough: Broadview Press.

Hobbes, T., Rogers, G. A. J., and Schuhmann, K. (2006). *Leviathan*. London: Continuum.

Hobbs, Richard J., Higgs, Eric and Harris, James A. (2009). "Novel ecosystems: implications for conservation and restoration", *Trends in Ecology & Evolution*, 24(11), 599-605.

Hogwood, B. W. (1995). "The 'Growth' of Quangos: Evidence and Explanations". *Parliamentary Affairs*, 48(2), 207-225.

Holcomb, H. (2004). "Darwin and Evolutionary Moral Psychology", in C. Crawford, C. (Ed.) and C. Salmon (Ed.), *Evolutionary psychology, public policy, and personal decisions* (pp.69-92). Mahwah, N.J: Lawrence Erlbaum Associates.

Holland, M. (1992). *Al-Hisbah and the Islamic Economy*. Leicester: The Islamic Foundation.

Hooker, R. (1996a). *The European Enlightenment: The Scientific Revolution*. Available at: <URL:http://www.wsu.edu:8001/~dee/ENLIGHT/SCIREV.HTM> Access Date: 4th August, 2009.

Hooker, Richard. (1996b). *ROME: The Roman Republic.* Available at: <URL:http://www.wsu.edu/~dee/ROME/REPUBLIC.HTM> Access Date: 8th September, 2009.

Hoover, K. D. (1988). *The new classical macroeconomics*. Oxford:Blackwell.

Horbach, J. (1992). *Neue Politische OV konomie und Umweltpolitik*. Frankfurt :Fischer

Horgan, Terry and Timmons, Mark (2006b). "Expressivism, Yes! Relativism, No!", in Russ Shafer-Landau (Ed.), *Oxford Studies in Metaethics*, (pp. 73-98), 1. Oxford: Oxford University Press.

Hourani, G. F. (1985). *Reason and tradition in Islamic ethics.* Cambridge: Cambridge University Press.

Huberman, L. (1937). *Man's Worldly Goods.* London: The Camelot Press Ltd.

Human Rights Watch (2013, March 4). "Saudi Arabia: Halt Planned Executions", *The HRW*, Available at<URL: http://www.hrw.org/news/2013/03/04/saudi-arabia-halt-planned-executions> Access Date: 04th July, 2013.

Hume, D. (1817). *A Treatise of Human Nature: Volume II.* London: Thomas and Joskph Allman.

Hunt, E. K. (1981). *Property and Prophets: The evolution of economic institutions*

and ideologies. New York: Harper & Row.

Hussain, N. J. Z. and Shah, N. (2006). "Misunderstanding Metaethics:Korsgaard's Rejection", in R. Shafer-Landau (Ed.), *Oxford studies in Metaethics*, (pp. 265-294). Oxford: Clarendon Press.

Huxley, A. (1946). *Brave new world*. New York: Harper & Bros.

Ian, Talbot (1990). "Review of Farzana Shaikh 'Community and consensus in Islam: Muslim representation in Colonial India, 1860–1947' " in *Bulletin of the School of Oriental and African Studies*, 53, (549-549). doi:10.1017/S0041977X00151766
Ibn Iyas, Muhammad b. Ahmad, (1960) Bada'iʿ al-Zuhur fi Waqa'iʿ al-Duhur, Cairo: Lajnat al-Talif wa'l-Tarjamah.

Ibn Khaldun (1967a). *The Muqaddimah: An Introduction to History, Volume I*. Translated from Arabic by Franz Rosenthal Andreas Tietze (1958). London: Routledge & Kegan Paul Ltd.

Ibn Khaldun (1967b). *The Muqaddimah: An Introduction to History, Volume II*. Translated from Arabic by Franz Rosenthal Andreas Tietze (1958). London: Routledge & Kegan Paul Ltd.

Ibn Khaldun, M. (1950). *An Arab Philosophy of History: Selections from the Prolegomena of Ibn Khaldun of Tunis (1332-1406).* London: John Murray.

Ibn Khaldun, M. (1950). *An Arab Philosophy of History: Selections from the Prolegomena of Ibn Khaldun of Tunis (1332-1406).* London: John Murray.

Ibn Taymiya (1992). *Al-Hisbah and the Islamic Economy*. Translated from Arabic by M. Holland. Leicester: The Islamic Foundation.

Ibn Tulun, Muhammad b. Ali, (1998). *Mufakahat al-Khullan fi Hawadith al-Zaman*. Beirut: Dar al Kutub al-Ilmiyah.

Imamuddin, S. M. (1963). "Al-hisbah in Muslim Spain". *Islamic Culture: An English Quarterly*, 37(1), 25-29.

Imber, C. (1996). *Studies in Ottoman history and law*. Istanbul: Isis Press.

Inayatullah, S. (1998). "Causal layered analysis: poststructuralism as method". *Futures*, 30(8), 815-829.

Inayatullah, S. (2004). "Causal layered analysis: Theory, historical context, and case studies". *The causal layered analysis (CLA) reader: Theory and case studies of an integrative and transformative methodology*, 1-55.

International Labour Organisation (2012). *Rethinking economic growth: Towards Productive and Inclusive Arab Societies*. Available at: <URL:http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_208346.pdf> Access Date: 27th March, 2014.

Iqbal, M. (2003). *The reconstruction of religious thought in Islam*. Stanford University Press.

Iqbal, Muhammad ([1974] 2008). *The Reconstruction of Religious Thought in Islam.* New Delhi: Kitab Bhavan.

Islahi, A. Azim (1988). *Economic Concepts of Ibn Taimiyah.* Leicester, UK: Islamic Foundation.

Islahi, Abdul Azim (2008): "Works on market supervision and shar`iyah governance (al-hisbah wa al-siyasah al-shar'iyah) by the sixteenth century scholars". *Quarterly Journal of the Pakistan Historical Society*, 54(3), 7-20.

J. Stewart (Ed.) and K. Lun (Ed.), *Kierkegaard and the Greek world*, (pp.267-313). Farnham, Surrey, England: Ashgate Pub. Ltd.

Jain, S. C. (1984). "Environmental scanning in US corporations". *Long Range Planning*, 17(2), 117-128.

Janin, Hunt and Kahlmeyer, Andre (2007). *Islamic Law: The Sharia from Muhammad's Time to the Present.* North Carolina: McFarland & Company.
Janisch, H. N. *Regulatory Process.* Available at: <URL:http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0006752> Access Date: 18th February, 2010.

Johnson, Robert, "Kant's Moral Philosophy", *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), Available at: <URL: http://plato.stanford.edu/archives/sum2010/entries/kant-moral/>. Access Date: 19th May, 2012.

Jorgensen, M. W., and Phillips, L. J. (2002). *Discourse analysis as theory and method.* Sage Publication.

Kahf, M. (2004). *"*Outlines of a Brief Framework of Tawarruq (Cash Procurement) and Securitization in Shariah and Islamic Banking*". A Paper written for the Seminar of the AAOIFI*, 15th February 2004, Manama, Bahrain. Available at:<URL: kantakji.com/fiqh/Files/Markets/o111.pdfAccess Date: 27 <th July, 2013.

Kahf, M. and Barakat, E (2005). "Tawarruq banking in its contemporary applications", presented at *Conference of Islamic financial institutions on features of reality and prospect for the future*, May 8-10, 2005, Al-Ain, the United Arab Emirates organized by the United Arab Emirates University, Emirates.

Kahneman, Daniel, and Jack Knetsch (1992a). "Valuing Public Goods: The Purchase of Moral Satisfaction." *Journal of Environmental Economics and Management*, 22, 57-70.

Kahneman, Daniel, and Jack Knetsch (1992b) "Contingent Valuation and the Value of Public Goods: Reply." *Journal of Environmental Economics and Management*, 22, 1,

90-94.

Kamal, M. (2005). *Mulla Sadra's transcendent philosophy*. Aldershot, Hants, England: Ashgate.

Kamali, M. Hashim (2002). *Principles of Islamic Jurisprudence*. Islamic Texts Society.

Kant, I., Gregor, M. J., and Timmermann, J. (2011). *Groundwork of the metaphysics of morals: A German-English edition*. Cambridge: Cambridge University Press.
Kayadibi, Saim (2010). *Istihsan: The Doctrine of Juristic Preference in Islamic Law.* Malaysia: Islamic Book Trust.

Kaye, F. W. (2011). *Goodlands: A meditation and history on the Great Plains*. Edmonton: AU Press.

Kearns, Emily (1985). "Change and Continuity in Religious Structures after Cleisthenes", in Cartledge, P. (Ed.), Harvey, F. D. (Ed.), & De, S. C. G. E. M. (Ed.), *History of Political Thoughts: Essays presented to G.E.M. de Ste. Croix on his 75th birthday*, 6(1/2). Exeter: Imprint Academic.

Keefer, M. W. (2013). "The righteous mind: why good people are divided by religion and politics". *Journal of Moral Education*, 42(1), 134-136.

Kennedy, Hugh (1981). The Early Abbasid Caliphate: A Political History. UK: Croom Helm Ltd.

Khadduri, Majid (1946). "Human Rights in Islam". *Annals of the American Academy of Political and Social Science*, 243(Jan.), 77-78.

Khalid, A. (2003). "A secular Islam: nation, state, and religion in Uzbekistan". *International Journal of Middle East Studies*, 35(04), 573-598.

Khan, M. Fahim (1995). *Essays in Islamic economics*. Vol. 19. Islamic Foundation.

Khan, M. A. (1992). ''Public Duties in Islam: The Institution of the Hisbah'', in M. Holland (Ed.), *Al-Hisbah and the Islamic Economy* (pp. 135-152). Leicester: The Islamic Foundation.

Khan, M. A. (2013). *What is wrong with Islamic economics?: Analysing the present state and future agenda*. Cheltenham: Edward Elgar Pub. Ltd.

Kierkegaard, S., Evans, C. S., and Walsh, S. (2008). *Fear and trembling*. Radford, VA: A & D Publishing.

Kierkegaard, S., Hong, H. V., and Hong, E. H. (1989). *The concept of irony, with continual reference to Socrates: Together with notes of Schelling's Berlin lectures*. Princeton, N.J: Princeton University Press.

King, G., Keohane, R. O., and Verba, S. (1994). *Designing social inquiry: Scientific*

inference in qualitative research. Princeton University Press.

King, M. L., & Washington, J. M. (1986). *A testament of hope: The essential writings of Martin Luther King, Jr*. San Francisco: Harper & Row.

Kingsland, S. (2002). "Creating a Science of Nature Reserve Design: Perspectives from History." *Environmental Modeling and Assessment*, 7, 61-69.

Kingsland, S. E. (1985). *Modeling Nature: Episodes in the History of Population Ecology*. Chicago: University of Chicago Press.

Kinzey, W. G., American Anthropological Association., and American Association of Physical Anthropologists. (1987). *The evolution of human behavior: Primate models*. Albany: State University of New York Press.

Kirchgassner, G., and Schneider, F. (2003). On the political economy of environmental policy. *Public Choice*, 115(3-4), 369-396.

Koonin, E. V. (2011). *The logic of chance: the nature and origin of biological evolution*. FT press.

Koopmans, T. C. (1960). "Stationary ordinal utility and impatience", *Econometrica*, 28, 287-309.

Korsgaard, C. M. (1997). *The Sources of Normativity*. Cambridge: Cambridge Univ. Press.

Kotler, P., and Roberto, N. (1989). *Social marketing: Strategies for changing public behavior*. New York: Free Press.

Krasner, S. (1999). *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press.

Kroon, J. (1995). *General management*. Pearson South Africa.

Kuhn, T. S. (1970). Logic of discovery or psychology of research. *Criticism and the Growth of Knowledge*, 1-23.

Kuran, T. (2003). "The Islamic commercial crisis: institutional roots of economic underdevelopment in the Middle East". *The Journal of Economic History*, 63(02), 414-446.

Kuran, T. (2004). "Why the Middle East is economically underdeveloped: historical mechanisms of institutional stagnation". *Journal of economic perspectives*, 71-90.

Kuran, T. (2012). *The long divergence: how Islamic law held back the Middle East.* Princeton University Press.

Kuran, Timur (1996). "The Discontents of Islamic Economic Mortality". *American Economic Review*, 86(2), 438-442.

Laclau, E. (2003). Philosophical roots of discourse theory. online paper, Centre for Theoretical Studies in the Humanities and Social Sciences, University of Essex. Available online at: <URL:https://www.sx.ac.uk/centres/TheoStud/documents_and_files/pdf/Laclau%20-%20philosophical%20roots%20of%20discourse%20theory.pdf. Access Date: 7th April, 2014.

Laclau, E., and Mouffe, C. (1987). "Post-Marxism without apologies". *New left review*, 166(11-12), 79-106.

Laclau, E., and Mouffe, C. (2001). *Hegemony and socialist strategy: Towards a radical democratic politics*. Verso.

Laiou, Angeliki E. and Morrison, Cecile. (2007). *The Byzantine Economy*. UK:Cambridge University Press.

Lam, David (2005). "How the World Survivd the Population Bomb:An Economic Perspective", in A. Sisay (Ed.). *The economics of sustainable development* (pp.99-132), Mich: W.E. Upjohn Institute for Employment Research.

Lannaccone, L. R. (1998). "Introduction to the Economics of Religion". *Journal of Economic Literature*, XXXVI(September), 1465-1496.

Lapidus, I. M. (1988). *A history of Islamic societies (Vol. 2).* Cambridge: Cambridge University Press.

Lapidus, Ira M. (1996). "State and Religion in Islamic Societies". *Present and Past.* 151(1), 3-27.

Lapidus, Ira Marvin (1967). *Muslim Cities in the Later Middle Ages*. Harvard University Press.

Lauwers, L. (1997). "Continuity and equity with infinite horizons", *Social Choice Welfare*,14, 345-356.

Lees-Marshment, J. (2009). *Political marketing: Principles and applications*. London: Routledge.

Legal Week (2009, July 30th). *French reform to bring Islamic Finance at the heart of Europe*. Available at: <URL:http://www.allbusiness.com/company-activities-management/company-structures/12596126-1.html> Access Date: 20th August, 2009.

Leiter, M. S. *Jewish Law Research Guide.* US: University of Miami. Available at: <URL:http://library.law.miami.edu/judaicguide.php#secondary> Access Date: 2nd September, 2009.

Lendering, Jona. *Aedile*. Available at: <URL:http://www.livius.org/ad-af/aedile/aedile.html> Access Date: 9th September, 2009.

Leopold, A. (1949). *A Sand County Almanac*. Oxford: Oxford University Press.

Lewis, M.K. (2006). *Accountability and Islam*. Paper presented at Fourth International Conference on Accounting and Finance in Transition, at Adelaide.

Lindeman, R.L.(1942). "The trophic-dynamic aspect of ecology". *Ecology*, 23, 399-418.

Linstone, H. A., and Turoff, M. (Eds.) (1975). *The Delphi method: Techniques and applications*. Addison Wesley, Massachusetts.

Lloyd, S. A. (2013). " Hobbes", in G. F. Gaus, (Ed.). *The Routledge companion to social and political philosophy* (pp: 59-70). New York: Routledge.

Locke, J., and Laslett, P. (1988). *Two treatises of government*. Cambridge University Press.

Lowry, Joseph Edmund (2007). Early Islamic legal theory: the Risāla of Muḥammad ibn Idrīs al-Shāfiʿī. Netherlands: Koninklijke Brill.

MacIntyre, A. C. (1988). *Whose justice? Which rationality?*. London: Duckworth.

MacIntyre, Alisdair (1977). "Epistemological crises, dramatic narrative and the philosophy of science. *The Monist: Historicism and Epistemology*, 60(October 4), 453- 472.

Maeder, A. (1987). "Evidences for a bifurcation in massive star evolution. The ON-blue stragglers". *Astronomy and Astrophysics*, 178(1-2), 159-169.

Maharal: *Chapter 1: Mishna 1: Part 3*. Available at: <URL:http://www.torah.org/learning/maharal/p1m1part3.html> Access Date: 23rd January, 2010.

Mahdi, Muhsin (1987). "Alfarabi", in Leo Strauss (Ed.) and Joseph Cropsey (Ed.), *History of Political Philosophy: Third Edition* (pp.206-227). The University of Chicago Press.

Malik, Maszlee (2011). "Constructing the Architectonics and Formulating the Articulation of Islamic Governance: A Discursive Attempt in Islamic Epistemology", PhD thesis, School of Governance and International Affairs, Durham University.

Mallat, C. (2004). *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International (Vol. 29).* Cambridge University Press.

Manasian, D. (1998). "Survey: Human-rights law: The power of publicity". *The Economist, London, 349*(8097), 13-15.

Mander, W. J. (2005). "Life and Finite Individuality: The Bosanquet/Pringle-Pattison Debate". *British Journal for the History of Philosophy*, 13(1), 111 – 130.

Marenbon, John and Luscombe D. E. (2003). “Two medieval ideas: eternity and hierarchy”, in A. S. McGrade (Ed.). *The Cambridge Companion to Medieval Philosophy* (pp.51-72). Cambridge, UK: Cambridge University Press.

Marmon, Shaun Elizabeth (1995). Eunuchs and Sacred Boundaries in Islamic Society. Oxford University Press.

Marmor, A. (2001). *Positive law and objective values*. Oxford: Clarendon Press.

Marmor, Andrei, "The Nature of Law*", The Stanford Encyclopedia of Philosophy (Winter 2011 Edition)*, Edward N. Zalta (Ed.), Available at: <URL:http://plato.stanford.edu/archives/win2011/entries/lawphil-nature/> Access Date: 20th January, 2013.

Mawňsililĺi, A. (1999). *Moderate and Radical Islamic Fundamentalism: The Quest for Modernity, Legitimacy, and the Islamic State*. University Press of Florida.

Maxwell, B., and Narvaez, D. (2013). “Moral foundations theory and moral development and education”. *Journal of Moral Education*, 42(3), 271-280.

Mayer, Ann Elizabeth (2007). *Islam and Human Rights: Fourth Edition*. Boulder, Colorado:Westview Press.

McCarthy, C. (2006). *The Road*. New York: Alfred A. Knopf.

McClelland, J. S. (1998). *A History of Western Political Thought*. Hoboken: Routledge.

McCloskey, D. N. (2006). *The Bourgeois Virtues: Ethics for an Age of Commerce.* Chicago: University of Chicago Press.

McCombs, R. P. (2013). *The paradoxical rationality of Søren Kierkegaard*. Bloomington: Indiana University Press.

McDowell, J. (1995). “Two Sorts of Naturalism,” in Hursthouse, R. (Ed.) , Lawrence, G. (Ed.), and Quinn, W. (Ed.), *Virtues and Reasons* (pp.149-180). Oxford: Oxford University Press.

McGill, B.J. (2003). “A test of the unified neutral theory of biodiversity”. *Nature*, 422, 881–885.

McGrath, A. E. (2006). *Christianity: An introduction. Malden.* MA: Blackwell Pub.

McKenzie-Mohr, D. and Smith, W. A. (1999). *Fostering sustainable behavior. Gabriola Island*. BC: New Society Publishers.

Mead, George H. (1912). “The Mechanism of Social Consciousness”. *The Journal of Philosophy, Psychology and Scientific Methods*, 9 (15), 401-406.

Meadows, D. H., Club of Rome., and Potomac Associates. (1974). *The Limits to*

growth: A report for the Club of Rome's Project on the Predicament of Mankind. New York: Universe Books.

Menzies, P. and Price, H. (1993): "Causation as a Secondary Quality", *British Journal for the Philosophy of Science*, 44, 187–203.

Milbrath, L.W. (1984). "A proposed value structure for a sustainable society". *Environmentalist*, 4, 113-124.

Mill, J. S. (1990). *Utilitarianism*. Raleigh, N.C: Alex Catalogue.

Mingers, J. (2001). "Combining IS research methods: towards a pluralist methodology". *Information systems research*, 12(3), 240-259.

Mises, L. Von (1977). *A critique of interventionism.* New Rochelle, N.Y: Arlington House.

Mises, L. Von, and Greaves, B. B. (1998). *Interventionism: An economic analysis. Irvington-on-Hudson*. N.Y: Foundation for Economic Education.

Miskawayh, Ahmad ibn- Muhammad (1968). *Tahdhib al-Akhlaq: The Refinement of Character*. Lebanon: American University of Beirut.

Mitchell, B. (1979). *Geography and resource analysis*. Longman, London.

Mohr, D. P. (2012). *Fostering sustainable behavior: An introduction to community-based social marketing.* Gabriola, B.C: New Society Publishers.

Moore, G. E. (2005). *Principia Ethica.* Barnes & Noble Publishing.

Moten, A. R. (2013). The Islamization of Science: Four Muslim Positions Developing an Islamic Modernity. By Leif Stenber. *Intellectual Discourse*, *6*(1).

Moussalli, Ahmad S. (2003). *The Islamic Quest for Democracy, Pluralism and Human Rights.* University Press of Florida.

Muir, William (1883). *Annals of the Early Caliphate: From Original Sources.* London: Smith, Elder, & Co.

Munby, D. L. (1956). *Christianity and Economic Problems.* London, UK: Macmillan & Co Ltd.

Mundy, John H. and Riesenberg, Peter (1958). *The Medieval Town*. NY: Van Nostrand Reinhold.

Na'īm, A. A. A. (2008). *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge, MA: Harvard University Press.

Naqvi, S.N.H. (1981). *Ethics and Economics: An Islamic Synthesis*. Leicester: Islamic Foundation.

Naqvi, S.N.H. (1994). *Islam, Economics, and Society*. London and New York: Kegan Paul International.

Naqvi, S.N.H. (2003). *Perspectives on Morality and Human Well-Being: A Contribution to Islamic Economics.* Leicester: Islamic Foundation.

Naveh, Z. (2000). "The Total Human Ecosystem: Integrating Ecology and Economics", *BioScience*, 50(4), 357-361.

Naveh, Z. (2005). "Epilogue: towards a transdisciplinary science of ecological and cultural landscape restoration". *Restoration Ecology*,13(1), 228-234. Blackwell Publishing Inc.

Naveh, Z. and Lieberman, A.S. (1994). *Landscape Ecology: Theory and Application (2nd ed).* Springer-Verlag, New York.

Neuser, Jacob and Sonn, Tamara. (1999). *Comparing Religion Through Law: Judaism and Islam.* London: Routledge.

Neuser, Jacob. (1972). *A History of the Jews in Babylonia, Volume 4.* Netherlands, Leiden: E. J. Brill.

Norton, Bryan G. (1982). "Environmental Ethics and the Rights of Future Generations", *Environmental Ethics*, 4(4), 319-337.

Numbers, R. L. "Science without God: Natural Laws and Christian Beliefs", in David C. Lindberg and Ronald L. Numbers (Ed.), *When Science and Christianity Meet* (pp.265-287). US: The University of Chicago Press.

O'Neill, R., DeAngelis, D. L., Waide, J. B. and Allen, T.F. H. (1986). *A hierarchical concept of ecosystems.* Guildford, England: Princeton University Press.

O'brien, D. P. (1993). "Classical Economics", in Warren J. Samuels, Jeff E. Biddle and John B. Davis (Eds.), *A Companion to: The History of Economic Thought.* (pp.114-129). Blackwell Publishing Ltd.

O'Neill, R. V. and Kahn, J. R. (2000). "Homo economicus as a keystone species". *Bioscience*, 50, 333–337.

Oates, W. E., and Portney, P. R. (2003). "The political economy of environmental policy.", in K. G. Maaler (Ed.) and J. R. Vincent (Ed.), *Handbook of environmental economics* (325-354), 1, Amsterdam: Elsevier.

Odling-Smee, F. J., Laland, K. N., and Feldman, M. W. (2003). *Niche construction: The neglected process in evolution*. Princeton: Princeton University.

Odum, E.P. (1983). *Basic ecology.* New York:Saunders College Publishing.

Oeser, E. F. (2003). *Evolution and Constitution: The Evolutionary Selfconstruction of*

Law. Netherlands: Kluwer Academic Publishers.

Okoli, C., and Pawlowski, S. D. (2004). "The Delphi method as a research tool: an example, design considerations and applications". *Information & Management,* 42(1), 15-29.

Oladosu, Adejare (2004). "Choosing Legal Theory on Cultural Grounds: An African Case for Legal Positivim". K. E. Himma (Ed.) and A. Peczenik (Ed.) (2004). *Law, morality, and legal positivism: Lund, Sweden, 12 - 18 August 2003*. Stuttgart, Steiner.

Orwell, G. (1977). *1984: A novel*. New York, N.Y: Published by Signet Classic.

Otto, J. M. (2010). *Sharia Incorporated: A Comparative Overview Of The Legal Systems Of Twelve Muslim Countries In Past And Present*. Leiden University Press.

Paavola, J., and Lowe, I. (2004). *Environmental values in a globalising world: Nature, justice and governance*. New York: Routledge.

Parfit, Derek (2006). "Normativity", in R. Shafer-Landau (Ed.), *Oxford studies in Metaethics,* (pp. 325-380). Oxford: Clarendon Press.

Pasek, Joanna (1992). "Obligations to future generations: A philosophical note", *World Development*, 20(4), 513–521.
Peacock, A. T., and Raffaele Mattioli Foundation. (1992). *Public choice analysis in historical perspective.* Cambridge: Cambridge University Press.

Pearson, C. (1985). *Down to business: multinationals, the environment and development*. Washington D.C.:World Resources Institute.

Peng, G. C., and Nunes, M. B. (2007, July). "Using PEST analysis as a tool for refining and focusing contexts for information systems research", in Dan Remenyi (Ed.), *Proceedings of the 6th European Conference on Research Methodology for Business and Management Studies* (pp. 229-237). Academic Conferences Limited.

Philips, Abu Ameenah Bilaal (1990). *Evolution of Fiqh: Islamic Law & the madh-habs*. Islamic Book Service.

Phillis, Y. A., and Andriantiatsaholiniaina, L. A. (2001). Sustainability: an ill-defined concept and its assessment using fuzzy logic. *Ecological Economics*, 37(3), 435-456.

Pigou, A. C. (1952). *The Economics of Welfare.* London:Macmillan.

Pinker, S. (2011). *The better angels of our nature: The decline of violence in history and its causes*. London: Allen Lane.

Pinker, S. (2011). *The better angels of our nature: Why violence has declined*. New York: Viking.

Pirages, D. (1977). *The sustainable society: implications for limited growth*. New York:Praeger.

Postema, G. J. (2011*). A Treatise of Legal Philosophy and General Jurisprudence Volume 11: Legal Philosophy in the Twentieth Century: The Common Law World*. Dordrecht: Springer Science+Business Media B.V. Available at <URL: http://dx.doi.org/10.1007/978-90-481-8960-1> Access Date: 22nd January, 2013.

Potter, J. (1996). *Representing reality*. London: Sage.

Potter, D., Goldblatt, D., Kiloh, M., and Lewis, P. (Eds.) (1997). *Democratization*. Cambridge:Polity Press.

Prados-De-La-Escosura, L. (2000). "International comparisons of real product, 1820–1990: an alternative data set". *Explorations in Economic History*, 37(1), 1-41.

Presley, J. R., and Sessions, J. G. (1994). Islamic economics: the emergence of a new paradigm. *The Economic Journal*, 584-596.

Rafiq, Abdul-Karim (1991). " Craft Organisation, Work Ethics, and the Strains of Change in Ottoman Syria". *Journal of American Oriental Society,* 111(03), 495-511.

Rahman, F. (1986) "The Principle of Shura and the Role of the Ummah in Islam", in M. Ahmad (Ed.) *State Politics and Islam*. (pp.86-95). Indianopolis: American Trust Publications.

Ramsey, F. (1928). "A mathematical theory of saving", *The Economic Journal*, 38(152), 543-559.

Rand, Ayn (1964). "The Objectivist ethics", in Ayn Rand (Ed.), *The virtue of selfishness* (pp. 13–35). New York: Signet.

Rane, H. (2010). *Islam and contemporary civilisation: Evolving ideas, transforming relations*. Melbourne, Vic: Melbourne University Publishing.

Rawls, J. (2000). *A Theory of Justice.* Cambridge, Mass: Belknap Press of Harvard Univ. Press.

Rawls, J. (2003). *The law of peoples*. Cambridge: Harvard University Press.

Raysūnī, A., & International Institute of Islamic Thought. (2005). *Imam al-Shatibi's theory of the higher objectives and intents of Islamic law*. London: International Institute of Islamic Thought.

Raz, Joseph (1979). *The Authority of Law*. Oxford: Clarendon Press.

Razavi, M. A. (1997). *Suhrawardi and the school of illumination*. Richmond: Curzon.

Regulatory Law (2010). Available at<URL:http://www.accesstolaw.com/index.php?option=com_content&view=category&layout=blog&view2=listing&id=78> Access Date: 05th January, 2010.

Resnicoff, S. H. (2005). "Contemporary Issues in Halakhah", in N. De Lange and M. Freud-Kandel (Ed.), *Modern Judaism*. (pp. 363-374). UK: Oxford University Press.

Richard, Spencer (2013a, March 5). "Last-ditch plea to stop crucifixion of jewellery thief in Saudi Arabia", *The Telegraph*, p. 4. Available at<URL: http://www.telegraph.co.uk/news/worldnews/middleeast/saudiarabia/9909667/Last-ditch-plea-to-stop-crucifixion-of-jewellery-thief-in-Saudi-Arabia.html> Access Date: 04th July, 2013.

Richard, Spencer (2013b, March 5). "Last minute reprieve for Saudi due to be crucified", *The Telegraph*, p. 4. Available at<URL:http://www.telegraph.co.uk/news/worldnews/middleeast/saudiarabia/9910058/Last-minute-reprieve-for-Saudi-due-to-be-crucified.html> Access Date: 04th July, 2013.

Riedy, C. (2008). "An integral extension of causal layered analysis". Futures, 40(2), 150-159.

Rieff, P. (1992). *Freud: The Mind of the Moralist*. University of Chicago Press.

Riley, J. C. (2001). *Rising life expectancy: a global history*. Cambridge University Press.

Roo, G. . (2003). *Environmental planning in the Netherlands: Too good to be true : from command and control planning to shared governance*. Burlington, VT: Ashgate.
Rose, H., and Rose, S. P. R. (2000). *Alas, poor Darwin: Arguments against evolutionary psychology*. New York: Harmony Books.

Rosenthal, E. I. J. (2009). *Political Thoughts in Medieval Islam: An Introductory Outline.* Cambridge University Press.

Rudolph, S. H., and Piscatori, J. P. (1997). *Transnational religion and fading states*. Westview Press.

Runzo, Joseph (2001). *A short Introduction: Global Philosophy of Religion*. Newyork: One World Publication.

Ryan, P. M. Allis. (2003). *The History of the Market System.* Available at URL: < http://www.zeromillion.com/econ/history-of-the-market-system.html> Access Date: 23rd March, 2009.

Sabra, A. (2000). *Poverty and Charity in Medieval Islam: Mamluk Egypt, 1250-1517*. Cambridge University Press.

Sachedina, A. (1999). "The Ideal and Real in Islamic Law", in R. S. Khare (Ed.), *Perspectives on Islamic law, Justice, and Society* (pp. 15-32). Lanham: Rowman & Littlefield.

Safram, Janina M. (2000). *The Second Umayyad Caliphate: The Articulation of Caliphal Legitimacy in al-Andalus*. Harvard University Press.

Sajoo, Amyn B. (2002). *Civil Society in the Muslim World: Contemporary Perspectives*. Islamic Publications Ltd.

Salvatore, Armando (2007). *The Public Sphere: Liberal Modernity, Catholicism, Islam*. England: Palgrave Macmillan.

Sardar, Ziauddin (2011). *Reading the Qur'an: The Contemporary Relevance of the Sacred Text of Islam*. Oxford University Press.

Sayre-McCord, Geoff, "Metaethics", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), Available at: <URL:http://plato.stanford.edu/archives/fall2008/entries/metaethics/> Access Date: 2nd April, 2011.

Sayyid, B. S. (2003). *A fundamental fear: Eurocentrism and the emergence of Islamism*. Zed Books.

Schacht, J. (1960). "Problems of Modern Islamic Legislation". *Studia Islamica* , 12, 99-129.

Schacht, J. (1982). *An introduction to Islamic law*. Oxford: Clarendon Press.

Schacht, Richard. (1985). *Nietzsche*. London: Taylor & Francis Ltd.

Schaller, M., and J. H. Park. (2011). "The Behavioral Immune System (and Why It Matters)." *Current Directions in Psychological Science*, 20:99–103.

Schmidt, R. C. (1997). "Managing Delphi Surveys Using Nonparametric Statistical Techniques". *Decision Sciences*, 28(3), 763-774.

Schmidt, V. A. (2008). "Discursive institutionalism: The explanatory power of ideas and discourse". *Political Science*, 11(1), 303-326.

Schneider, Friedrich and Volkert, Juergen (1999). "No chance for incentive-oriented environmental policies in representative democracies?", *A Public Choice analysis, Ecological Economics*, 31(1), 123-138.

"*Scientific Revolution,"* Microsoft® Encarta® Online Encyclopedia. (2009). Available at: <URL: http://encarta.msn.com/encyclopedia_701509067/Scientific_Revolution.html > Access Date: 4th August, 2009.

Sen, Amartya (1992). *Inequality Reexamined*. Russell Sage Foundation.

Shatzmiller, Maya (1994). "Labour in the Medieval Islamic World", in Ulrich Haarmann, *Islamic History and Civilization (formerly Arab History and Civilization) Studies and Text* (Volume 4). E.J. BRILL.

Shepard, Jonathan. (2000). "Byzantium in Equilibrium", in T. Reuter (Ed.), *The New*

Cambridge Medieval History III: C.900-C.1024 (pp. 553-566). Cambridge University Press.

Siddiqi, M. N. (1996). *Role of the State in the Economy: An Islamic Perspective* (Vol. 20). Islamic Foundation.

Siddiqi, M. N. (1981). *Muslim Economic Thinking: A Survey of Contemporary Literature*. Leicester: The Islamic Foundation.

Siddiqi, M. Nejatullah (2004). "Economics of Tawarruq: How its Mafasid overwhelm the Masalih". *A Paper presented at theWorkshop on Tawarruq: A Methodological issue in Sharī`a- Compliant Finance.* 1st February, 2007. Available at:< http://www.siddiqi.com/mns/Economics_of_Tawarruq.pdf> Access Date: 27th July, 2013.

Siddiqi, M. Zamiruddin (1963). "The Muhtasib Under Aurangzeb". *Medieval India Quarterly*, 5, 113-119.

Sidgwick, H. (1907). *The Methods of Ethics*. London:Macmillan.

Simon, J. L. (1998). *The ultimate resource 2*. Princton: Princeton University Press.

Skinner, B. F. (1974). *Walden Two*. Hackett Publishing.

Slaughter, R. A. (1994). Why we should care for future generations now. *Futures*, 26(10), 1077-1085.

Solow, Robert M. (1974). "What Do We Owe to the Future?", *Nebraska Journal of Economics and Business*, 13(1), pp 3-16.

Sowell, Thomas. (1996). *From Marxism to the Market.* Available at: <URL:http://www.issues-views.com/index.php/sect/2003/article/2046> Access Date: 14th January, 2010.

Sowell, Thomas. (2006). *On Classical Economics*. London:Yale University Press.

Stabel, Peter. (2004). " Guilds in Late Medieval Flanders: Myths and Realities of Guild Life in an Export-Oriented Environment". *Journal of Medieval History*, 30(2004), 187-212.

Steffen, W., A. Sanderson, P. D. Tyson, J. Jager, P. M. Matson, B. Moore III, F. Oldfield, K. Richardson, H. J. Schnellnhuber, and B. L. Turner. "II, and R. J. Wasson (2004). *Global change and the Earth system: a planet under pressure*. Springer-Verlag.

Steffes, Harald (2009). "Kiekegaard's Germanophone Socrates Sources, in

Stewart, Jon (2013). *Lecture 4.2: Kiekergaard, Heilberg and History*. [Video]. University of Copenhagen: Soren Kiekergaard-Subjectivity, Irony and the Crisis of Modernity for Corusea.<URL: https://class.coursera.org/kierkegaard-001/lecture/29> Access Date: 7th November, 2013.

Stilt, K. (2012). *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*. Oxford University Press.

Stone, J. (1964). *Legal system and lawyers' reasonings*. London: Stevens.

Streeten, Paul (1998). "What Do We Owe the Future?", in C.K. Wilber (Ed.), *Economics, ethics, and public policy* (251-266). Lanham, MD: Rowman & Littlefield.
Sturgis, Amy H. (1994). *The Rise, Decline, and Reemergence of Classical Liberalism.* Available at:<URL:http://www.belmont.edu/lockesmith/liberalism_essay/the_rise2.html> Access Date: 22nd January, 2010.

Svensson, L. G. (1980). "Equity among generations". *Econometrica* 48, 1251-1256.

Tamimi, A. (2007). "Islam and democracy from Tahtawi to Ghannouchi". *Theory, culture & society,* 24(2), 39-58.

Tannenbaum, Julie (2010). "Categotizing Goods", in Russ Sahfer-Landau (Ed.), *Oxford Studies in Methaethics*: *Volume 5* (pp. 257-294). Oxford: Oxford University Press.

Tansley, A.G. (1935). "The use and abuse of vegetational terms and concepts". *Ecology*, 16, 284–307.

Taylor, S., & Littleton, K. (2006). :Biographies in talk: A narrative-discursive research approach". *Qualitative Sociology Review*, 2(1), 22-38.

The History of Economic Thoughts. Available at: <URL:http://homepage.newschool.edu/het//> Access Date: 21st July, 2009.

The List: The World's Fastest Growing Religions (May, 2009). Available at:<URL:http://www.foreignpolicy.com/story/cms.php?story_id=3835> Acces Date: 14th August, 2009.

The Rise of Classical Liberalism. Available at:<URL:http://orias.berkeley.edu/lessonplans/ClassicLiberalism.pdf> Access Date: 9th January, 2010.

Therese-anne, Druart (2003). "Philosophy in Islam", in A. S. McGrade (Ed.). *The Cambridge Companion to Medieval Philosophy* (pp.97-122). Cambridge, UK: Cambridge University Press.

Tholib, Udjang (2002). "The reign of the caliph al-Qādir billāh (381/991-422/1031)", *PhD thesis, Institute of Islamic Studies*, McGill University.

Thurow, L. (1980). *The zero-sum society.* New York: Basic Books.

Tibi, B. (1990). *Islam and the cultural accommodation of social change*. Boulder: Westview Press.

Tillich, P. (1951). *Systematic theology*: *Volume-1*. Chicago: University of Chicago Press.

Toman, M. A. (2006). "The difficulty in defining sustainability", in W. E. Oates (Ed.), *The RFF reader in environmental and resource policy* (pp.247-252). Washington D.C.: Resources for the future.

Tonn, Bruce E. (2007). "Futures sustainability", *Futures*, 39(9), 1097-1116.

Tonn, Bruce E. (2009). Obligations to future generations and acceptable risks of human extinction. *Futures*, 41(7), 427-435.

Torfing, J. (1999). *New Theories of Discourse: Laclau, Mouffe and Zizek*. Oxford: Blackwell.

Tripp, C. (2006). *Islam and the Moral Economy: The Challenge of Capitalism*. Cambridge: Cambridge Univ. Press.

Umar, M. S. (2006). *Islam and Colonialism: intellectual responses of Muslims of Northern Nigeria to British colonial rule (Vol. 5).* Brill.

United Nations (1988). *Human Rights: A Compilation of International Instruments*. New York: United Nations.

United Nations (1992). *Rio Declaration on Environment and Development.* United Nations, New York, NY.

Usmani, M. T. (2007). *An Approach To The Quranic Sciences: Uloom-ul-Quran.* Pakistan: Darul-Ishaat.

Van Thiel, S. (2004). "Trends in the Public Sector Why Politicians Prefer Quasi-Autonomous Organizations". *Journal of theoretical politics*, 16(2), 175-201.

Vandermeer, John H. (1972). "Niche Theory". *Annual Review of Ecology and Systematics*, 3, 107-132.

Vatn, A., and Bromley, D. W. (1994). "Choices without prices without apologies". *Journal of environmental economics and management*, 26(2), 129-148.

Vikør, Knut S. (2005). *Between God and the Sultan: A History of Islamic Law.* London, UK: C.Hurst & Co. Ltd.

Vinge, Vernor (1993). "The coming technological singularity". *Whole Earth Review*, 81, 88-95.

Vogel, Frank E. (2000). *Islamic Law and Legal System: Studies of Saudi Arabia.* Netherlands: Koninklijke Brill NV.

Wacks, R. (2012). *Understanding jurisprudence: an introduction to legal theory*.

Oxford: Oxford University Press.

Wade, H. W. R. (1949). "'Quasi-Judicial' and Its Background". *The Cambridge Law Journal*, 10(2), 216-240.

Wæver, O. (2007, 28th February). "World Conflict over Religion : Secularism as Flawed Solution". *Paper presented at the annual meeting of the International Studies Association 48th Annual Convention*, Hilton Chicago, CHICAGO, IL, USA. Available at: <URL:http:// www.allacademic.com/meta/p181388_index.html> Access Date: 18th August, 2009.

Wali-Allah, Shah (1996). *The Conclusive Argument from God: Shah Wali Allah of Delhi's Hujjat Allah al-Baligha.* Translated from Arabic by Marcia K. Hermansen. Netherlands: E.J.Brill, Leiden.

Watt, K. (1977). *The unsteady state*. University Press of Hawaii.

Wetherell, M. (1998). Positioning and interpretative repertoires: Conversation analysis and post-structuralism in dialogue. *Discourse & Society*, *9*(3), 387-412.

Wedgwood, Ralph (2006). "The Meaning of 'Ought'", in R. Shafer-Landau (Ed.), *Oxford studies in Metaethics,* (pp. 127-160). Oxford: Clarendon Press.

Weinberger, O. (1999). "Legal Validity, Acceptance of Law, Legitimacy. Some Critical Comments and Constructive Proposals". *Ratio Juris*, 12(4), 336-353.

Welngast, Barry R. (1995). "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development". *Journal of Law, Economics & Organisation,* 11(1), 1-31.

Westphal, M. (2014). *Kierkegaard's concept of faith*. Grand Rapids, Mich: Eerdmans.

Whitaker, C. W. A. (2002). *Aristotle's de interpretatione: Contradiction and dialectic*. Oxford: Oxford University Press.

White, L., (1967). "The Historical Roots of Our Ecological Crisis", *Science*, 155:1203-1207; reprinted in Schmidtz and Willott 2002.

Willetts, P. (Ed.). (1996). *The conscience of the world': the influence of non-governmental organisations in the UN system.* Brookings Institution Press.

Winch, P. (2008). *The idea of a social science and its relation to philosophy.* Routledge.

Wolff, Jonathan (2006). *An Introduction to Political Philosophy.* Oxford, UK: The Oxford University Press.

Wright, G., and Goodwin, P. (2009). "Decision making and planning under low levels of predictability: Enhancing the scenario method". *International Journal of*

Forecasting, 25(4), 813-825.

Yavuz, M. H., and Esposito, J. L. (2003). *Turkish Islam and the Secular State: The Gèulen Movement.* Syracuse University Press.

Zarsky, L. (2002). "Global reach: human rights and environment in the framework of corporate accountability" in L. Zarsky (Ed.), *Human Rights and the Environment: Conflicts and Norms in a Globalizing World* (pp.31-54). Earthscan publications Ltd.

Appendix I

Table 0.1

Faith	Soul	Asabiyyah	Social Consciousness	Health & Safety	
Intrinsic Good	5	54	32	32	8
Extrinsic Good	14	103	51	81	221
Total	19	157	83	113	229

Table 0.2

Faith	Soul	Asabiyyah	Social Consciousness	Health & Safety	
Frequency	19	157	83	113	229
Weight of variable 'a'	95	628	249	226	229

Table 0.3

Maqasids	Degree of Final Good

Faith	95
Soul	628
Asabiyyah	249
SC	226
H&S	229
Total	1427

Table 0.4

Value of 2nd Layer Goodness	Frequency of Regulations
1	150
2	29
3	23
4	39
5	67
6	39
7	33
8	0

9	17
10	2
11	1
12	1

Table 0.5

Interval	Value of 2nd Layer Goodness	Frequency	Relative Frequency	% Frequency	Cumulative Frequency	% Cumulative Frequency
2	0 up to 2	179	0.4464	44.64%	179	44.64%
4	2 up tp 4	62	0.1546	15.46%	241	60.10%
6	4 up to 6	106	0.2643	26.43%	347	86.53%
8	6 up to 8	33	0.0823	8.23%	380	94.76%
10	8 up to 10	19	0.0474	4.74%	399	99.50%
12	10 up to 12	2	0.0050	0.50%	401	100.00%

Appendix II

Entity	Regulation	First Layer Assessment	Faith	Soul	Asabiyyah	Social Consciousness	Health & Safety	Total (Xi)
Supervision of the Markets and Roads	Muhtasib should act according to what he knows	Intrinsic Good		4				4
Supervision of the Markets and Roads	Muhtasib must strive to meet God's design and to seek His pleasure with both words and deed.	Intrinsic Good	5	4				9
Supervision of the Markets and Roads	He must be of good intention, corrupted neither by hypocrisy nor insincerity.	Intrinsic Good			3	2		5
Supervision of the Markets and Roads	Muhtasib must diligently apply himself to all the norms and recommendations of Islamic law, as well as the hibitual practices of the Prophet.	Intrinsic Good	5			2		7
Supervision of the Markets and Roads	When the Muhtasib orders and forbids the people let him be gentle and softly spoken, cheerful and good-natured. In this way it is easier to win over the hearts and achieve the desired effect. God said to the Prophet: "It is part of the mercy of God that you should deal gently with them. If you were severe and harsh-hearted, they would have broken away from you". This is also necessary because to rebuke too severel will perhaps result in disobedience, and to exhort too harshly will be ignored.	Intrinsic Good			3	2		5
Supervision of the Markets and Roads	Muhtasib should acquire a whip, a dirr, a turtur and servants and assistants, for this is more awe-aspiring and intimidating to the general public. He must assign his helpers to the markets and road when he is absent, and employ some scouts who will keep him informed of what the people are doing.	Extrinsic Good				2		2
Supervision of the	Muhtasib should refrain from accepting people's money and	Extrinsic			3	2		5

Markets and Roads	receiving gifts from salesmen and trademen. Refraining from his safeguards his honour and is more appropiate to his dignity. The muhtasib must enjoin his servants and assistants to abide by these same conditions.	Good						
Supervision of the Markets and Roads	Nobody is permitted to bring s shop bench from the roofed passageway into the main thoroughfare as this obstructs passers-by. The muhtasib must remore and forbid this because of the haarm it may do to people.	Extrinsic Good			3		1	4
Supervision of the Markets and Roads	The people of every trade should be allotted a special marked for which their trade is known, as this is more economically sound for them and will bring them better business.	Extrinsic Good			3			3
Supervision of the Markets and Roads	The muhtasib should also segregate the shops of those whose trade requires the lighting of fires, like bakers and cooks, from the perfumers and cloth merchants due to their dissimilarity and the possibility of damage.	Extrinsic Good					1	1
Supervision of the Markets and Roads	When muhtasib is unable to understand the people's occupations, to each trade he may appoint an *Arif* who is a virtuous fellow tradesman, is experienced in their trade, aware of their swindles and frauds, is well known for his trustworthiness and reliability and who oversee their affairs and acquaint the Muhtasib with what they are doing.	Extrinsic Good				2		2
Supervision of the Markets and Roads	The Muhtasib is not permitted to set the prices of merchandise over the heads of its owners nor to oblige them to sell it at a fixed price. This because during the time of Prophet prices rose and the Prophet refused to fix them and considered the fixing of prices a transgression against person or value of money.	Intrinsic Good		4				4
Supervision of the Markets and Roads	It is not permitted to meet a caravan, that is, for people to go outside the town and meet it as it approaches, telling them that the market is sow and thus buying cheaply from them.	Intrinsic Good		4				4

	Prophet forbade such activities.							
Supervision of the Markets and Roads	It is also necessary to stop bundles of firewood, sacks of straw, water containers, baskets of dung, sand and so on being taken into the market because of the damage they cause to people's clothes. When those who bring in firewood, straw and such like stop with it in the open squares, the Muhtasib should order them to take the loads off their animals. This is because the loads injure and hurt the animals when they stop walking, and the Prophet forbade the harming of all animals apart from those that are eaten. The Muhtasib must also order the market people to sweep the markets and keep them clear of dirt, mud and other things which harm people. This because the Prophet said: "There should be no harm and no hurting".	Extrinsic Good					1	1
Supervision of the Markets and Roads	No one is allowed to extend the wall of his house or shop into the common thoroughfares. This likewise includes anything which is annoying or harmful to passers-by, such as waterspouts coming out of the walls in winter and drains coming out of the houses into the middle of the road in summer. Indeed, the Muhtaisb must order those who have waterspouts to replace them with chaneels excavated within the walls and plastered with lime in which water from the roof can flow. The Muhtasib must charge everyone who has in his house an outlet into the road for dirt to close it in summer and to dig himself a pit in his house into which the dirt can be put.	Extrinsic Good				2	1	3
Supervision of the Markets and Roads	It is not permissible to stare at the neighbours from roof tops and windows.	Extrinsic Good				2		2
Supervision of the Markets and Roads	It is not permissible for men to sit without a good cause in the roads which women take, or for women to sit by their doors in the road which men take. Muhtasib must chastise	Extrinsic Good				2		2

	whoever does these things							
Supervision of the Markets and Roads	Muhtasib must chastise,... if he sees a foreign man and woman talking together in a secluded place. For this is… suspicious. But God knows best.	Extrinsic Good			3			3
Qintars, Ratls, Mithqals	The muhtasib must be acquinted with... [weight, measures and scales] and verify their size so that transactions can take place without fraud and according to Islamic Law. (Whatever variation there mayhave been in the responsibilities of the market inspector, his concern with correct weights, measures and scales always continued to be the primary one.)	Extrinsic Good		4		2		6
Scales, Measure, Standard of Coins, Ratls and Mithqals	Muhtasib must order those who use scales to wipe and clean them hourly of any oil or dirt, as a drop of oil may congeal on them and affect the weight.	Extrinsic Good		4		2		6
Scales, Measure, Standard of Coins, Ratls and Mithqals	The merchant must settle the scales when he begins to weigh and should place the merchandise on them gently, not dropping it into the pan from his raised hand, nor moving the edge of the pan with his thumb, as all of this is fraudulent.	Extrinsic Good		4		2		6
Scales, Measure, Standard of Coins, Ratls and Mithqals	Hidden swindles used with scales for weighing gold is for the merchant to put his hand infront of his face and to blow gently onto the pan containing the merchandise this making it descend. The buyer will have his eyes on the sclaes and not on the mouth of their owner. The merchants also have ruses by which they give short weight when they hold the attachment for the scales. They also sometimes stick a piece of wax on the bottom of one of the pans and put the silver on it, then they put the weights on the other pan. In this wa they talke one or two habbas out of every dirham. The Muhtasib must always keep an eye open for this.	Extrinsic Good		4		2		6
Scales, Measure, Standard of Coins, Ratls	Merchants should acquire *ratls* and *waqiyas* (unit of measurement) made of iron and test their accuracy against	Extrinsic Good		4		2		6

and Mithqals	the standard weights.							
Scales, Measure, Standard of Coins, Ratls and Mithqals	Some merchants have ruse when they hold the measure which make it give less. The Muhtasib must therefore never cease to spy on them. But God knows best.	Extrinsic Good		4				4
Oven Keepers	Muhtasib should disperse them among the roads, quarters and outskirts of the town because of their utility and great importance for the people.	Extrinsic Good			3	2		5
Oven Keepers	He should order them to maintain the chimneys and to clean.	Extrinsic Good					1	1
Oven Keepers	The oven keeper must have two bakers working with him, one of them for bread and the other for fish. The fish should be kept apart.	Extrinsic Good					1	1
Oven Keepers	The oven keeper should not take more dough than has been given to him as a fee.	Extrinsic Good		4		2		6
Oven Keepers	The oven keeper's servants and hirelings should be immature boys because they enter the people's houses and meet their womenfolk. But God knows better.	Extrinsic Good		4		2		6
Makers of Zulabiyya	The frying pan for zulabiyya must be made of fine copper and [should]... be polished… [after it is] cleased of dirt and verdigris.	Intrinsic Good					1	1
Makers of Zulabiyya	Zulabiyya should be made from one third finely ground flour and two thirds coarsely ground semolina. This because if there is a lot of semoline, the zulabiyya will be too white, too light amd will not cook sufficiently. Semolina should be used, however, even though it needs more oil than fine flour and so is disliked by the zilabiyya makers. The best oil to fry with is sesame oul, and if this cannot be obtained then some other pure oil. The zulabiyya should not be fried until the dough has risen; the sign of this being that it floats to the surface of theoul, while when it has not risen it sinks to the bottom of the frying pan. Alo, risen zulabiyya becomes like tubes which stick together when	Extrinsic Good					1	1

	gathered in the hand, while unleavened zulabiyya becomes crushed and is not hollow in the middle. No salt should be put in the dough because zulabiyya is eaten with honey and it would make one nauseous if it contained salt. As for when zulabiyya turns black, this occurs due to the frying pan being dirty, or perhaps only fine flour being used and no semilina, or it being fired in old oil, or perhaps it was unleavened, or perhaps the fire was too hot. The Muhtasib must keep an eye on them regarding all these things. Some small delicate indentical pieces should be made, forty of which equal one ratl, and when dough if these becomes sour, he can use them to make other dough sour. But God knows best.							
Slaughterers and Butchers	It is desirable that the slaughterer be a Muslim, mature and sound of mind, inoking God's name and facing in the direction of Mecca when he slaughters. He should slaughter camels when they are hobbled and cows and sheep when they are lying on their side. All this is mentioned in the Sunna on the authority of Muhammad.	Intrinsic Good		4			1	5
Slaughterers and Butchers	He should not pull a sheep roughly by its leg nor slaughter with a blunt knife because this is cruel to the animal and the Prophet of God forbade cruelty to animals. It is permissible to slaughter with everything except teeth and nails because Prophet forbade these things.	Intrinsic Good		4	3			7
Slaughterers and Butchers	The Muhtasib should forbid the slarughtere from blowing onto the carcass of a sheep after it has been skinned, because the smell of a man's breath spoils and sullies the meat.	Extrinsic Good					1	1
Slaughterers and Butchers	Some of them cut the flest away from stomach and blow water in. They know places in the flesh in which to blow water. The Muhtasib must keep an eye on the slaughterers in the Arif's absence. There are others who parade fat cows in the markets then slaughter	Extrinsic Good		4		2		6

	other ones. This is fraud.							
Slaughterers and Butchers	The Muhtasib must prevent them from allowing rumps of the meat to hang over the edge of their shop benches. These must be put within the edge of the bench and the two corners so that they do not harm the people or touch their clothes.	Extrinsic Good			3		1	4
Slaughterers and Butchers	He should order the butchers to separate the goats meat from that of sheep, not to mix them together, and to spinkle goat meat with saffron so as to distinguish it from other kinds.	Extrinsic Good				2		2
Slaughterers and Butchers	When the butchers finish trade and wish to leave, he should take some ground salt and sprinkle it on the chopping block so that dogs do not lick it or any vermin crawl on it. If it can not obtain any salt, then he may use ground plant ash instead.	Extrinsic Good					1	1
Slaughterers and Butchers	It is common good that the butchers do not collaborate and thus do not agree together on one price.	Intrinsic Good		4	3	2		9
Slaughterers and Butchers	The Muhtasib must prevent the butcher from selling meat by the live animal. This is because the Prophet forbade it.	Intrinsic Good		4		2		6
Slaughterers and Butchers	If the Muhtasib has any doubts about an animal, wheather it died of natural causes or was slaughtered, he should put it in water, because if it sinks it was slaughtered but of it does not it died of natural causes. This is the same for eggs when they are placed in water: they float when rotten and sink when they are sound.	Extrinsic Good		4			1	5
Slaughterers and Butchers	Muhtasib must keep an eye on the hunters of sparrows and other birds regarding what we have mentioned, for most of them have no religion and do not pray.	Extrinsic Good		4				4
Slaughterers and Butchers	Muhtasib must therefore fear God regarding his duties. He must not take a bribe nor accept a gift from any	Intrinsic Good		4	3			7
Sellers of Roast Meat	The Muhtasib must weigh the carcasses of lamb for them before they are put in the tannur and record	Extrinsic Good				2	1	3

	the weights in his register. He must weigh them again when they come out of the oven, because they are only properly cooked when they weigh a third less than before and must be returned to the oven if the weigh more than that.							
Sellers of Roast Meat	He should examine the meat when it is beigh weighted to make sure that the meat roasters have not hidden any iron or lead weights in it.	Extrinsic Good		4		2		6
Sellers of Roast Meat	The roast meat must not be covered immediately upon remobal from the oven nor put in lead or copper containers while it is still hot, as the physicians say that this makes it poisonous.	Extrinsic Good					1	1
Sellers of Roast Meat	The Muhtasib must order them to coat their ovens with cleanclay which has been kneaded with clean water, because they somethimes take clay from the floors of their shops which is mixed with blood and dung and this is unclean. Perhapes some of this will fall onto the roast meat when the oven is opened and taint it.	Extrinsic Good					1	1
Sellers of Roast Meat	Sellers of roast minced meat, some of them put water and salt in a container they have and add a little lemon juice to it, then they pass this around while the meat is being minced and the customers sprinkle it over the meat. There may be some of this left overnight in summer which turns rancid die to the oil which is poured on it, so the meat roasters mix it with fresh lemon to conceal its smell and taste from the customer.	Extrinsic Good					1	1
Sellers of Roast Meat	Muhtasib must make sure that they are not doing… things [that] are swindles.	Intrinsic Good		4	3	2		9
Sellers of Roast Meat	When the butchers finish trade and wish to leave, he should take some ground salt and sprinkle it on the chopping block so that dogs do not lick it or any vermin crawl on it. If it can not obtain any salt, then he may use ground plant ash instead.	Extrinsic Good					1	1

Sellers of Sheep's Heads	The Muhtasib should order them to scald the heads and trotters clean with boiling water, to clean the hair and wool thoroughly, and after that to wash them in cold water other than that which was used to scald them. The seller of sheep's heads must put his fingers in the noses after curshing the bridhe, wash them and take out all the impurities, dirt and maggots if there are any.	Extrinsic Good					1	1
Sellers of Sheep's Heads	They should not sell goats heads alongside those of sheep and must put the goats' trotters in the goats' mouths to distinguish them from the sheep so that they do not confuse someone who cannot tell the difference between them.	Extrinsic Good				2		2
Sellers of Sheep's Heads	Perhaps one day they will not be able to sell all the heads and thus mix them with the fresh ones on the following day. The Muhtasib should keep an eye on them regarding all these things	Extrinsic Good				2	1	3
Cloth Merchants	No one should trade in cloth unless he knows the laws of selling, the contracts of business transactions, what is lawful for him and what unlawful. If he does not know , he will be unaware of what he is doing and and what is forbidden. Umar b. al Khattab said: " No one will trade in our market except he knows the laws of his religion. Otherwise, he will take usurious interest whether he intends to or not". During the present time I have seen most of the cloth merchants in the market acting unlawfully in their transactions. God willing, we shall mention these things.	Intrinsic Good	5	4	3			12
Cloth Merchants	One of them is collusion. This is for a man to offer a high price for a commodity while one wanting to buy it, in order to entice someone else to pay more. This is unlawful, because the prophet forbade collusion in selling. Abu hurayra related that the prophet said: " Do not bid against each other, nor hate each other, nor envy each other, nor collude against each other. Be brothers and servants	Intrinsic Good		4	3	2		9

	of God. Do not offer a higher price for a commodity than it is worth in order to deceive the people, for this is unlawful.							
Cloth Merchants	Another of these things is " sale against a brother's sale". This is when someone buys a commodity at a fixed price with the stipulation that he can annul the agreement, and then another man says to him: " Give it back and I will sell you a better onethan that for the same price". This practice is also unlawful, beacause the prophet said: A man may not sell against his brother's sale, nor ask for a girl's hand in marriage when she has already promised another". Some of them " offer a commodity for sale against their brother's offer". this is for someone to buy a commodity from a man and then for naother man to say to him: "I will give you a better one than that for the same price, or a similar one at a lower price". he then shows him the commodity and the buyer considers it. This is also unlawful, according to what the prophet said: " A man must not offer a commodity for sale against his brother's offer". some of the say to the buyer: " I,ll sell you this garment for the same price as such and such sold his" ,or I,ll sell you this commodity for the same price".	Intrinsic Good		4	3	2		9
Cloth Merchants	some say to the merchant: " I'll sell you this garments long as you sell me yours", or " I,ll sell you this gown for ten dirhams in cash or twenty dirhams on credit".	Extrinsic Good		4				4
Cloth Merchants	Others sell the commodity with payment after an unspecified period, or sell it with payment on the unspecified future event. That is , they say: " you don't have to pay for this until Meccan pilgrims come", or until the grain is threshed" or " until the sultan makes his gift" and such like.	Extrinsic Good		4				4
Cloth Merchants	some of them buy a commodity from a merchant like themselves, then sell it to another man before taking	Intrinsic Good		4	3	2		9

	possesstion of it. All these are unlawful , and they are not allowed to do them because the prophet forbade it.							
Cloth Merchants	selling by " touch" is also impermissible. That is for the seller to say to the buyer: " if you touch the garment with your hand, you are obliged to buy it whether you want to or not".	Extrinsic Good		4	3			7
Cloth Merchants	Nor is selling by " throwing at one another " permitted. That is, for the seller to say to the buyer: " I,ll sell you this garment I have for the one you have". Then when each of them throws his garmnet to the another the transaction is obligatory.	Intrinsic Good		4	3			7
Cloth Merchants	Selling by a " pebble is also impermissible. That is , for the seller to say to the buyer: " I,ll sell you whatever land or garment the pebble falls on". This is because of what Abu Sa'id al-Khudri related regarding the prophet forbidding selling "by touch" by " throwing at one another" and by a pebble", by which he intended what we have mentioned.	Intrinsic Good		4	3			7
Cloth Merchants	The Muhtasib must make sure that they are truthful in the terms of purchase and concerning the original price in a resale with a stated profit, for most of them do what is impermissible.	Intrinsic Good		4	3			7
Cloth Merchants	One of these things is for someone to buy a commodity for a definite price payable after a specified period, and then to bargain for an amount which will bring them a profit if paid in cash immediately. This is not allowed because the deferred period is allowed for by a portion of the price.	Extrinsic Good		4	3			7
Cloth Merchants	Some of them buy a commodity at a stated price, then when the contract is concluded and seller asks for the price, the buyer reduces it a little. This is not allowed once the contract has been concluded.	Intrinsic Good		4	3			7
Cloth	Others buy a commodity at a stated price, but if they find it has a defect	Extrinsic		4	3			7

Merchants	and then return to the seller asking for a discount, they firstly bargain about the original price which they paid for it without the discount.	Good						
Cloth Merchants	Some of them come to an agreement with their neighbour or servant to sell them a garment for ten dirhams, for example, then buy it back from him for fifteen dirhams so that they can say : " I bought it for fifteen dirhams". All of these thins are unlawful and impermissible.	Extrinsic Good		4	3	2		9
Cloth Merchants	If a merchant buys a piece of cloth for ten dirhams then has it bleached for one dirham, embroider for one dirham and repaired for one dirham, then he does not say that he bought it for thirteen dirhams because he would be a liar. Rather , he says that it cost him thirteen dirhams.	Intrinsic Good		4	3			7
Cloth Merchants	And if he himself is the one who who embroidered it, bleached and repaired it, then he can not say that it cost him thirteen dirhams because he has not paid for someone else to do it. Neither can he say that its price was thirteen dirhams because he would be a liar. Rather, he must say that he bought it for ten dirhams and worked on it to the value of three dirhams.	Intrinsic Good		4	3			7
Cloth Merchants	The Muhasib must watch them in all we have mentioned and forbid them from doing these things.	Extrinsic Good		4	3			7
Cloth Merchants	He must examine their scales and cubits, and prevent them from forming a partnership with bazaar criers and brokers.	Extrinsic Good			3			3
Cloth Merchants	He must make sure that they deal fairly with the customers and the importers of merchandise and they are truthful in all situations.	Intrinsic Good		4	3			7
Brokers and Bazaar Criers	They should be virtuous and trustworthy, from among the religious, those of integirity and the truthful. This is because they take responsibility for people's goods and are entrusted with selling them.	Intrinsic Good		4	3	2		9

Brokers and Bazaar Criers	None of them is allowed to raise the price of a commodity on his own account, to be the partner of a cloth merchant , to buy the commodity himself or to state the price of a commodity without its owner authorizing him to do so.	Intrinsic Good		4	3			7
Brokers and Bazaar Criers	Some of them approach the makers of clothes and weavers and lend them gold on condition that nobody sells their wares from them. This is unlawful as it is a loan for profit.	Extrinsic Good		4				4
Brokers and Bazaar Criers	Others buy a commodity for themselves and make its owner believe that some people have bought it from him. Then they agree with someone else to buy it.	Intrinsic Good		4	3			7
Brokers and Bazaar Criers	Some of them own the commodity themselves and advertise it, increasing the price on their own behalf and making the peaple believe that it belongs to one of the merchants.	Extrinsic Good			3			3
Brokers and Bazaar Criers	Others collude with a cloth merchant regarding a certain sum, then when another merchant comes to the cloth merchant with goods, the cloth merchnt recommends that the bazaar carier should sell them. When the goods are sold and money is taken the bazar carier gives the cloth merchant a sum agreed upon.The cloth merchant is acting unlawfully when he does this.	Extrinsic Good		4	3			7
Brokers and Bazaar Criers	Whenever the bazaar carier learns that a commodity is defective, it is his duty to inform the buyer and draw his attention to it.	Extrinsic Good		4	3	2		9
Brokers and Bazaar Criers	The Muhtasib must keep an eye on them regarding all the things we have said and examine their circumstances regarding these.	Extrinsic Good		4	3			7
Weavers	The Muhtasib must order them to weave a length of cloth well and closely-textured, make it to the full length and width agreed upon, to use fine yarn and to take the black crust off the cloth with a rough black stone.	Extrinsic Good			3			3

Weavers	He must prevent them from sprinking the cloth with flour and roasted gypsum while it is being woven, because this conceals its coarseness and makes it appear closly-textured. This is swindling the people.	Intrinsic Good		4	3			7
Weavers	When one of them weaves cloth from poor quality and knotted yarn he must sell it separate from the rest of the cloth. If not, this is swinding.	Intrinsic Good		4	3			7
Weavers	Some of them weave the surface of the cloth out of good and uniform yarn, then weave the rest of it from thick knotted yarn. The , Arif must therefore watch and keep an eye on them regarding this.	Extrinsic Good		4	3			7
Weavers	If one of them takes yarn from someone to weave them cloth, he must take it by weight. Then after weaving, he should wash the cloth and return it to owner by weight so as to remove any suspicion regarding him.	Extrinsic Good			3	2		5
Weavers	If the owner of yarn claims that the weaver has replaced his yarn for another, the Muhtasib should sendthe weaver before the Arif. If they submit to his decision then that is the end of it, but if not, the Muhtasib must have the issue judged according to Islamic law.	Extrinsic Good				2		2
Weavers	Some of them have a stone basin in front of their shops in which to rub the cloth. Then when they leave, the dogs come and lick it. The Muhtasib must therefore charge the weaver to put wooden covers over the cloth or to wash it seven times a day if necessary, once with dust.	Extrinsic Good					1	1
Weavers	He must prevent them from stretching out their cloth in the Muslims road because this harms passers-by.	Extrinsic Good					1	1
Weavers	He must also stop them throwing the flour and other edible matter which is in the cloth under the feet of the Muslims. But God knows best.	Extrinsic Good					1	1
Tailors	They must be ordered to cut the cloth out well, to make the neck opening	Extrinsic					1	1

	properly, to make the gussets wide, to make the sleeves and edges to the same length and to sew the hems evenly.	Good						
Tailors	It is best that the stiches are accurate, not loose not big, and that the needle is fine.	Extrinsic Good				2		2
Tailors	The thread in the needle should be short because if it is too long it will fray and weaken. It will also weaken when the tailor pulls it through the cloth.	Extrinsic Good			3	2		5
Tailors	The tailor must not cut out a valuable piece of cloth for anyone until he has measured it. He may cut it after that.	Extrinsic Good			3	2		5
Tailors	if it is an expensive material such as silk or brocade, he must weigh it before taking it. Then , he has sewn it, he must return it to its owner with the same weight.	Extrinsic Good		4		2		6
Tailors	The Muhtasib must keep an eye on them because of the peoples property which they steal. For when some of them sew a silk garment they fill the hems with sand and glue and steal a corresponding metarial.	Intrinsic Good		4	3			7
Tailors	He must stop them from keeping the people waiting for their clothes to be sewn, harming them by making themrepeatedly come back and by withholding their property.	Extrinsic Good			3	2		5
Tailors	They should not keep the people waiting for a job longer than one week unless they have stipulated to the customer that it will take longer. They must not break this agreement.	Extrinsic Good			3	2		5
Tailors	The Muhtasib must make the repairers swear that they will not repair a torn garmnet for the dyers and the cloth beaters unless its owner is present.	Extrinsic Good				2		2
Tailors	The embroiderers and the ornamental stitchers must not transfer embroidery from one garment to another which the bleachers or cloth-beaters have given them.Many of them do this with	Extrinsic Good		4				4

	the people's clothes.							
Tailors	As for the makers of qalansuwas, the Muhtasib should order them to make these out of new pieces of cloth, silk thread and dyed linen, not out of old dyed pieces of cloth stiffed with glue and starch. This is fradulent and the Muhtasib must stop them doing it.	Extrinsic Good		4		2		6
Cotton-Carders	They must not mix new cotton with old nor red cotton with white.	Extrinsic Good				2		2
Tailors	They must card the cotton many times until the black husks and the broken seeds are removed from it. This is because if any seeds remain it will show in the cotton's weight, and if they are left in a blanket, a jubba or a qaba the mice will nibble at them.	Extrinsic Good					1	1
Tailors	They must not mix the finest cotton at the bottom of the carding box nor the pure cotton at the sides of the walls with anything else. Some of them card bad red cotton, put it at the bottom of the pile and cover it with pure white cotton. This does not show until it is spun.	Extrinsic Good					1	1
Tailors	The Muhtasib must forbid them from allowing women to sit by their shop doors waiting for the carding to be completed, and from talking with them.	Extrinsic Good				2		2
Tailors	They must not put the cotton in a damp place after it has been carded because this makes it heavier and it becomes lighter when it dries. This is a fraud which they all practice, so the Muhtasib must stop them doing it.	Extrinsic Good					1	1
Flax-Spinners	The finest flex is from Giza in Egypt, and the best of this is the soft leafy variety, while the worst is the short rough variety which breaks without warning.	Extrinsic Good					1	1
Flax-Spinners	They must not mix good flax with bad, nor flax from Nablus with that from Egypt. Some of them mix unspun cotton with soft flax after it has been combed. All these things are fraudulent.	Extrinsic Good		4			1	5

Flax-Spinners	They must not allow women to sit by their shop doors, as we mentioned regarding the cotton corders.	Extrinsic Good				2		2
Silk-Makers	They must not dye raw silk before it has been bleached lest it should deteriorate lator. They sometimes do this to make it weight more.	Extrinsic Good		4			1	5
Silk-Makers	some of them make the silk heavier with starch while others make it heavier with clarified butter or oil. Some of them mix the silk with a quantity of other material. The Muhtasib must keep an eye on them concerning all these things.	Extrinsic Good		4	3			7
Dyers	Most dyers of red silk, and other kinds of thread and material, dye with henna instead of madder in their shops. The dye appears good and bright, but when it is exposed to the sun its colour changes and its brightness fades.	Extrinsic Good					1	1
Dyers	Some of them darken cloth with oak applesand vitriolwhen they want to dye in the colour of khol. They put it in large containers and it comes out a uniform jet-black. But the colour changes after only a short time and the dye wears off. All this is fraudulent and the Muhtasib must stop them from doing it.	Extrinsic Good		4	3			7
Dyers	They must write people's names on their clothes in ink so that none of them get confused.	Extrinsic Good					1	1
Dyers	During holidays, festivals and other celebrations, most dyers and marandajin alter the people's clothesand rent them out to those who want to wear them at that time and dress themselves up. This is a breach of trust and wrong and the Muhtasib must prevent them from doing it. He must keep an eyeon them regarding the way they make and adultrate the dye and show it to their Arif.	Intrinsic Good		4		2		6
Shoemakers	They should not use too many old pieces of cloth as padding between the inner and outer linings, nor between the inner sole and outer.	Extrinsic Good					1	1

Shoemakers	They may stitch the padding for the heels, but must not stitch a sole which has split during tanning nor new leather nor any leather which has not been tanned.	Extrinsic Good					1	1
Shoemakers	They must twice the thread well and make it no longer than cubit, because if it is longer than this it will fray and be too weak to pull through the leather.	Extrinsic Good					1	1
Shoemakers	They should not sew with pig's hair, but should rather use palm fibres or fox whiskers, as these are better.	Extrinsic Good		4		2		6
Shoemakers	They must not keep someone waiting for his shoes except when they have stipulated a certain day. This is because the people suffer by repeatedly having to return to them and by the withholding of their property.	Extrinsic Good			3			3
Shoemakers	They should not use paper, felt and such like to make women's slippers so that these squeak when the women walk, as the women of Baghdad like to have them. This is shameful, and is a disgrace which does not befit free-born people. The Muhtasib must therefore stop them being made and worn.	Intrinsic Good		4		2		6
Money-Changers	To make a living out of money changing is dangerous to the religion of those engaged in it. Indeed, the moneychanger will transgress against his religion if he is ignorant of Islamic law and unaware of the rules concernig usury. Thus a person should not engage in it until he has acquinted himself with the law, so as to avoid committing any of the various categories of prohibitions.	Intrinsic Good	5	4		2		11
Money-Changers	The Muhtasib must inspect their market and spy on them. If he comes across practising usury, or doing anything while changing money which is not permitted in Islamic law, he should chastise him and evict him from the market. He should do this after acquinting him with the basic principles of usury.	Extrinsic Good				2		2

Money-Changers	It is not permitted for anyone to sell gold coins for gold, nor silver for silver, except in the same quantities and by taking immediate possession. For if the money-changer makes a profit when he is changing the same metal, or if he and the customer part before possession is taken, this is unlawful.	Intrinsic Good		4		2		6
Money-Changers	As for selling gold for silver, profit is permitted here, but credit and concluding the sale before delivery is made are unlawful.	Extrinsic Good				2	1	3
Money-Changers	It is not permitted to sell pure coinage for that which is adultrated, nor to sell adultrated gold and silver coins for other adultrated ones, such as selling Egyptian dinars for those from Tyre, or those from Tyre for the same, or Ahadi dirhams for those from Qairoun, because of ignorance as to their value and the lack of similarity between them.	Extrinsic Good					1	1
Money-Changers	It is likewise not permitted to sell whole dinars for cut pieces of a dinar because of their difference in value. Nor is it permitted to sell dinars from Qashan for those from Sabur due to the difference in their composition.	Intrinsic Good		4				4
Money-Changers	It is also not permitted to sell a dinar and a garment for two dinars. Some money-changers and cloth merchants occasionally practise this usury in another way. They give the buyer a dinar as a loan and then sell the garment for two dinars, so that he owes them three dinars for a specified period when they will ask him for it all back. This is unlawful and it is not permitted to do it with this condition because it is a loan bringing profit. If they had not loaned him the dinar, he would have not bought the garment for two dinars.	Intrinsic Good		4		2		6
Money-Changers	Some of them buy dinars with silver dirhams or with the qaratis of the Franc. Then they say to the seller : " pay your creditor with these so that you can get rid of them or take them from me a few at a time" 'and the man	Extrinsic Good		4		2		6

	will agree with him in this due to his great ignorance. All these things are unlawful and may not be done. The Muhtasib must therefore keep an eye on them concerning all we have mentioned and not mentioned of this sort.							
Money-Changers	Some people have said that when a four mithqal piece is divided its weight is clearly reduced. Because of this many money-changers hate to take them. If one of the money-changers has to pay someone more than four dinars they pay him four and promise him the rest at a later date. As for the examination of their scales and weights, this has been mentioned previously.	Extrinsic Good					1	1
Goldsmiths	They must not sell vessels and trinkets of gold and silver except for what is different in kind, so that the increment is lawful. But if the goldsmith sells them for their like, then increment, credit and concluding the sale before delivery is made are unlawful, as we mentioned in the chapter on money-changer.	Extrinsic Good		4		2		6
Goldsmiths	If the goldsmith sells any trinkets which have non-precious metals in them, he must tell the buyer the extent of the adultration so that he is aware of it. And if he wants to make a trinket for someone, he must only smelt it in the furnace in the presence of the customer and after ascertaining its weight. When it has been smelt it should be weighted again. If it needs to be soldered, the goldsmith must weigh the solder before putting it on.	Intrinsic Good		4			1	5
Goldsmiths	He must not set any stones or jewels in a ring or trinket except after weighing them in the presence of their owner.	Extrinsic Good					1	1
Goldsmiths	In general, the frauds and adultrations of goldsmiths are secret and are difficult to know. Nothing deters them from this apart from their honesty and piety, for they know tinctures and pigments which no one else does. Some of them colour silver	Extrinsic Good					1	1

	in a way which does not leave the metal except after it has been smelted a long time in a smelting pot. for two parts of thisthey then mix in one part of gold.							
Goldsmiths	One of their fraud is the way they make silver yellow. They take sadhanj which has been roasted and oiled seperately, hematite which has been roasted with prepared maranj sap seven times and vitriol and cinnabar roasted with eagle water solution in a retort. Then they grind them all togather, roast two cups of it seven times with the aforementioned maranj water, then seven times with the eagle water solution. After this it will solidify into a red stone the colour of blood. They mix one dirham of this with ten dirhams of silver and it becomes gold with a standard of sixteen. If this hard red amalgam of precious metal and adultrants is dissolved then allowed to harden again the silver acquires a standard of twenty from which dinars and jwellery may made.	Extrinsic Good		4		2	1	7
Goldsmiths	Some of them take hematite and roast it seven times with an ox's gall bladder. They then add a similar quantity of gold coated with sulphur which has been extracted from quicklime and alkaline ashes. After this, it is all roasted with eagle water solution seven times and oiled with wild saffron oil seven times. It hardens into a stone like the precious one. If it is dissolved then allowed to harden again it becomes stronger than the previous one, similar to metal. They mix one qirat of this with one dirham of silver.	Extrinsic Good		4		2	1	7
Goldsmiths	They can produce so many things from alchemy and tinctures that it would take a long time to describe them, and if I was not afraid that the irreligious might learn of these secrets I could explain many of them which a lot of goldsmiths have not discovered.	Extrinsic Good		4				4
Goldsmiths	Every Muslim must fear God and not swindle the Muslims in any way	Intrinsic		4	3	2		9

	whatsoever. If the muhtasib comes across anyone doing this he must chastise and publicly condemn him, as has been explained previously.	Good						
Goldsmiths	As for the dust and sand from the goldsmith's shops, it should only be sold for copper coinage or a similar equivalent, for it has gold and silver in it and may thus lead to unlawful profit.	Intrinsic Good		4		2		6
Coppersmiths and Blacksmiths	They are not allowed to mix copper with habaqwhich the goldsmith and smeltersof silver extract when they smelt, for this hardens the copper and makes it less maleable. Then if a drinking vessel or a morter is molded from it, it will break easily like glass.	Extrinsic Good					1	1
Coppersmiths and Blacksmiths	They must not mix pieces of broken copper containers and such like with unused copper, rather, each must be smelt seperately and orked seperately.	Extrinsic Good					1	1
Coppersmiths and Blacksmiths	As for the blacksmith, they must not hammer out knives, scissors, pincers and the like from soft iron and sell it as steel.This is fraudulent.	Extrinsic Good		4	3	2		9
Coppersmiths and Blacksmiths	They must not mix straightened out nails with those which are newly forged, and must not use pure steel for knives, scissors and razors.	Intrinsic Good		4	3	2		9
Veterinarians	Veterinary science is an honourable one which philosophers have written about in their books and on which they have composed numerous treatises. It is more difficult to treat the illness of animals than it is those of men, because an animal can not speak and tell of its sickness and pain. It is only possible to get information about their ailments by touching and looking. The veterinarian thus needs skill and understanding of the illness of animals and their treatment.	Extrinsic Good					1	1
Veterinarians	No one should practice veterinary science unless he has a religion to stop him harming the animal with inexperienced blood letting, cutting or cauterization and such like, thus leading to the death or injury of the	Intrinsic Good		4	3	2	1	10

	animal.							
Veterinarians	The veterinarian must examine the animal's ankle and inspect its hoof before paring it. If it is distorted or crooked, he should pare the opposite side of the hoof so that he makes it even.	Extrinsic Good					1	1
Veterinarians	If the animal's foot is straight, he should use small nails at the back and large nails at the front.	Extrinsic Good					1	1
Veterinarians	But if it stands in the opposite way, he should use small nails at the front and large nails at the back.	Extrinsic Good					1	1
Veterinarians	The veterinarian must not pare the hoof too much and thus go into the animal's flesh.	Extrinsic Good			3		1	4
Veterinarians	He should not put the nails in too loosely so that the shoe moves letting in small stones and sand hurting the animal.	Extrinsic Good			3		1	4
Veterinarians	Nor should he put the shoe in the hoof too tightly and thus cause terrible suffering to the animal.	Extrinsic Good			3		1	4
Veterinarians	Know that the hammered shoe stick better to the hoof, that soft shoes take hard nails better and that thin nails are better than thick ones.	Extrinsic Good			3		1	4
Veterinarians	If the animal is in need of having a vein opened, the veterinarian should hold the scalpel between his fingers with the handle in his palm, leaving half a finger nail length of the scalpel exposed. He should then delicately and gently cut the vein on its upper side.	Extrinsic Good			3		1	4
Veterinarians	The veterinarian must not cut the vein until he has stoped it with his finger, particularly the jugular veins for these are potentially dangerous as they are next to the escophagus. If he wants to open any of the jugular veins he must firmly bind the animal's neck so that they stand out, then he may do as he intends.	Extrinsic Good					1	1
Veterinarians	The veterinarian must be experienced in the illness of animals, be aware of	Extrinsic Good					1	1

	what animals require and defects which occur in them.The people must resort to him when they cannot agree on what the illness is.							
Veterinarians	Some learned people have stated in the books on veterinary science that there are 320 illness which animals may have. These include tightness in the esophagus, disease of the nostrils with a discharge, disease of the nostrils without a discharge, madness, weakness of the brain, headache, al-hamir, nafakha, tumours, violent fits, al-diba,al-khushsham, pain in the liver, pain in the heart, worms in the stomach, al-maghal, cholic, rih-al-sawas, gripes, al-sidam, a cold cough, a hot cough, an eruption of blood joints, stones caught in hooves, swelling of the foot, whitlows, splithooves, al-nakab, al-khalad, facial paralysis, watering eyes, limp ears, toothache, and other things which would takea long time to explain.	Extrinsic Good					1	1
Veterinarians	The veterinarian needs to know how to treat the animal and the reason behind these illness, for some of them cause permanent damage to the animal which contracts them, while others do no cause permanent damage. If it did not take so long I would give a detailed account.	Extrinsic Good			3		1	4
Veterinarians	The Muhtasib must not neglect to test the veterinarian concerning what we have mentioned and to observe what he does with the people's animals.	Extrinsic Good					1	1
Traders in Slaves and Animals	The slave-trader must be trustworthy, reliable and honest, well-known for his integrity and respectability. This is because he is responsible for the people's male and female slaves and is occasionally alone with them in his house.	Extrinsic Good			3	2		5
Traders in Slaves and Animals	The trader must not sell a female or male slave to someone unless he knows the seller or can find someone who knows him.	Extrinsic Good			3			3
Traders in Slaves and	He must write the seller's name and description in his register in case the	Extrinsic					1	1

Animals	person sold is a freeman or has been stolen.	Good						
Traders in Slaves and Animals	Any one who wants to buy a female slave may look at her face and palm, but if he asks to examine her in his house and bealone with her the trader must not allow it unless there are other women present. Then he may see her whole body.	Extrinsic Good					1	1
Traders in Slaves and Animals	whoever wants to buy a male slave may look at what is above the navel and below the knees. All these may be done before the contract of the sale. After the contract, the man may look at all the body of a female slave.	Extrinsic Good		4			1	5
Traders in Slaves and Animals	It is not permitted to separate a female slave and her child before seven years have elapsed.	Intrinsic Good		4	3			7
Traders in Slaves and Animals	Nor is permitted to sell to a dimmi a female or male slave who might be a Muslim. The trader must be absolutely certain that the slave is not a Muslim.	Intrinsic Good		4	3			7
Traders in Slaves and Animals	Whenever the trader knows that a person for sale has a defect, he must reveal this to the buyer, as we mentioned at the beginning of the book.	Intrinsic Good		4			1	5
Traders in Slaves and Animals	The slave-trader must be well-acquinted with defects and experienced in the incipient illnesses and diseases. If he wants to sell a male slave, he must firstly examine all his body except for his genitals. He does this so that if the slave has a defect or an illness he can inform the buyer of it. The first thing he should look at is his face, for if it is somewhat yellow or ashen this indicates a disease or illness in the liver, the spleen or haemorrhoids.	Extrinsic Good					1	1
Traders in Slaves and Animals	A broker must not sell an animal unless he knows the seller or can find someone who knows him. He must write the seller's name in his register, as we have already said, in case the animal is defectiveor stolen.	Extrinsic Good				2	1	3

Baths and their Attendants	Some wise man said that the best kind of bath is that which has been built a long time, is roomy and has sweet water.	Extrinsic Good					1	1
Baths and their Attendants	The one who heats the water for the bath assesses the amount of fuel needed according to the temprament of the one who wants to use it.	Extrinsic Good					1	1
Baths and their Attendants	Know that the physical effect of the bath is to warm with its air and to moisten with its water. The first room cools and moistens, the second room warms and relaxes, while the third room warms and dries.	Extrinsic Good					1	1
Baths and their Attendants	The bath has both advantages and disadvantages. As for the advantages, these are to open the pores and remove extraneous matter, to dissipate odours, to restrainthe body when it is loosened with dynastery, to clean away the dirt and sweat, removing itching, scabies and weariness, refresh the body, improve the digestion, bring colds and catarrh to a head, and be useful against fevers which last for only one day, hectic fever and quarten fever after they have matured.	Extrinsic Good					1	1
Baths and their Attendants	As for the disadvantages, the bath saps the body's energy, weaken enthusiasm when too long is spent in it, spoils the appetite for food and debilitates sexsual potency. The gratest danger is to pour hot water on weak limbs.	Extrinsic Good					1	1
Baths and their Attendants	Some times people use the bath before breakfast or while they are fasting and this causes serious dehydaration and emaciates and weakens the body.	Extrinsic Good					1	1
Baths and their Attendants	Sometimes people use the bath just after eating their fill and this fattens the body. It does cause poor circulation however.	Extrinsic Good					1	1
Baths and their Attendants	The best time to use the bath is after the first digestion having eaten one's fill. This refreshes the body, fattens it and improves the complexion.	Extrinsic Good					1	1

Baths and their Attendants	The Muhtasib must order to attendants to wash, sweap and clean the bath a few times each day with fresh water, not water that has been for bathing.	Extrinsic Good					1	1
Baths and their Attendants	They should scrub the tiles with a rough metarial so that no soap, leaves of the lotus tree or marsh mallow stick to them causing people to slip.	Extrinsic Good					1	1
Baths and their Attendants	Once a month they should wash the supply tank of the dirt which has collected in its channels and the sediment settled at the bottom. This is because if it is left for more than a month the water in it will both taste and smell unpleasant.	Extrinsic Good					1	1
Baths and their Attendants	If the caretaker wants to climb up to the supply tank to let the water flow in to the baths he must do so only after firstly washing his legs in case he has been in water used fro bathing.	Extrinsic Good			3		1	4
Baths and their Attendants	The pipes must not be closed with the hair from combings, rather , they should be closedwith palm fibresand clean ragsso that there is no controversy.	Extrinsic Good			3		1	4
Baths and their Attendants	Incense should be burnt in the baht twice a day, especially when the attendants start to wash and sweep them.	Extrinsic Good			3		1	4
Baths and their Attendants	When the baths are cold the caretaker should fumigate them with levender as its fumes make the air circulate and the bath smell pleasant.	Extrinsic Good			3		1	4
Baths and their Attendants	The water used for bathing must not be allowed to remain in the baths lest it should smell.	Extrinsic Good					1	1
Baths and their Attendants	The shoemakers and others must not be allowed to wash any leather in the bath, for people are harmed by the smell of the tanning. Lepers and those afflictedwith elephantiasis are not permitted to enter the bath.	Extrinsic Good					1	1
Baths and their Attendants	The owner of the bath must have some bath robes to hire out or lend the people, because strangers and	Extrinsic Good			3	2	1	6

	poor people need this.							
Baths and their Attendants	The Muhtasib must order them to open the bath at dawn becausepeople requires it for the ritual ablutions before prayer.	Extrinsic Good			3			3
Baths and their Attendants	The attendant must look after the people's clothes and is responsible if any of them are lost, according to what the Shafi'I school of law correctly says.	Extrinsic Good				2		2
Baths and their Attendants	The barber, that is, the bathhouse attendant, should have a light touch, be nimble and proficient in shaving, and his razor should be wet and sharp.	Extrinsic Good					1	1
Baths and their Attendants	He should not stand directly in front of the head and the places where the hair is, nor should he eat anything which makes his breath smell, such as onions, garlic, leeks and such like, lest he offend the people when he shaving them.	Extrinsic Good			3		1	4
Baths and their Attendants	He must cut hair on the forehead and the templesas is required, not cut a young boy's hair without his guardian's permission and not cut the first growths of a beard nor the fully-grown beard of an effiminate man.	Extrinsic Good				2		2
Baths and their Attendants	The muhtasib must order the messeur to rub his hand with pomegranate skin to make it rough, remove the dirt and thus please the people.	Extrinsic Good			3			3
Baths and their Attendants	The use of beans and lentils to rub with in the bath must not be permitted, because these are food stuffs and should not be treated with contempt.	Extrinsic Good					1	1
Baths and their Attendants	The Muhtasib should inspect the bath a few times each day and take into account what we have mentioned. He should chastise anyone he sees who reveals his nakedness, because it is unlawful and the prophet cursed both those who see it and those who are seen.	Intrinsic Good		4		2		6
Phlebotomosts and	No one should practice phlebotomy unless he has an attested knowledge of the anatomy of limbs, veins,	Intrinsic Good		4		2	1	7

Cuppers	muscles and arteries, and fully understands their locations and nature. This is so that the scalpel does not hit the wrong vein, muscle or artery and thus lead to injury of the limb or destruction of the part bled, for many limbs have been destroyed due to this.							
Phlebotomosts and Cuppers	Whoever wants to learn phlebotomy must practise on chard leaves, that is, the veins which are on the leaf, until his hand is steady.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	The phlebotomist must not allow himself to do any mutual work which causes the ends of his fingers to become calloused and insensitive and hence renders the examination of veins difficult.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	He must also take care of his eyes with invogorating eye salve and compound ointments if he is one of those who needs such things.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	He should not bleed a slave without the permission of the owner, a child without the permission of the guardian, nor a woman who is pregnant or menstrauting.	Extrinsic Good				2	1	3
Phlebotomosts and Cuppers	The phlebotomist should only bleed someone in a well lit place and using a sharp instrument, and not when he is feeling uneasy.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	The Muhtasib must generally exact a pledge and a covenant from them that they will not bleed anyone under ten physical conditions, that they will be very cautious in these cases and only bleed after consultation with the physians. These ten conditions are: when the patient is under fourteen years old, is very old, emaciated, obese, shaking, white and flabby, pale with anaemia, has chronic diseases, has an extremely cold temprament and is in great pain.The phlebotomist must recognise these conditions when they are present.	Extrinsic Good					1	1
Phlebotomosts and	The physians have forbidden the bleeding of someone under a further five conditions, but these are not as	Extrinsic Good					1	1

Cuppers	harmful as the previous ten. These are bleeding someone immediately after sexual intercourse, after a bath for ritual ablution, when they are full of food, when their stomach and bowels are heavy, and when they are either extremely hot or extremely cold. The phlebotomist must be very careful in these circumstances as well.							
Phlebotomosts and Cuppers	Know there are two situations regarding bleeding: when it is optional, and when it is obligatory. As for when it is optional, this is done in the morning after digestion and emptying of the bowels. As for when it is obligatory, this is done at the time of need, when there is no room for delay and when no obstacle is allowed to stand in the way.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	The person bled must not fill himself with food afterwards, rather he should eat slowly and lightly. He should not exert himself afterwards, but should lie down. He must be careful not to sleep immediately after being bled, as this causes the limbs to weaken.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	If someone' hand swells after being bled, they should have the other hand bled if possible.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	The phlebotomist must have a number of scalpels, those for capillaries and others.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	He must also have a ball of silk or wool and silk or something to cause vomitting made of wood or feather.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	He must have rabbit fur and the medicament from the aloe plant and storax. He takes one part of storex, aloe, myrrh and dragon's blood, and half a part of burnt vitriol and ordinary vitriol and mixes them altogather into a cream. The phlebotomist then keeps this next to him for when he needs it.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	He must also have a musk bag and musk pastilles and equip himself with all we have mentioned in case the patient has a fainting fit. In this case the phlebotomist should immediately	Extrinsic Good					1	1

	make the patient swallowthe ball of silk and the emetic, make him smell the musk bag and eat some of the pastilles. This will revive him. If any haemorrhaging of a vein or artery occurs, the phlebotomist should stem it with the rabbit fur and the storax medicament mentioned previously.							
Phlebotomosts and Cuppers	The phlebotomist must not make an incision with a blunt scalpel. This is very harmful because it errs and does not follow the vein, thus causing swelling and pain. He should rub the point of the scalpel with oil so that it does not hurt when an incision is being made, even though this stops the incision from healing quickly.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	He should hold the scalpel between the thumb and middle finger and leave the forefinger to feel with. The scalpel should be held no further than half way down its length so that it is not insufficiently controlled. He should not use the scalpel in a suddent movement, but rather carefully so that he puts its tip into the veins.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	I have never witnessed anyone more more proficient in the phlebotomy than two men I came across in Aleppo, each of them boasting that he was more skillful than his colleague. One of them wore a thin undershirtand bound his hand outside of this. Then he immersed himself in a pool and bled his hand on the bottom of the pool. As for the other, he held the scalpel in his left foot, between the big toe and the next, and then bled his hand.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Know that the phlebotomist must make the insicion wider in winter so that the blood does not congeal, and must make it narrower in summer so that the petient does not faint easily.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Repeated bleeding keeps the one bled strong.	Extrinsic Good					1	1
Phlebotomosts and	Whoevere wants to be bled again on the same day must have the vein cut obliquely so that it does not heal	Extrinsic Good					1	1

Cuppers	quickly.							
Phlebotomosts and Cuppers	The best practice for repeated bleeding is to do it only every two or three days.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Whenever, the colour of the blood changes or the petient faints and has a weak pulse, the phlebotomist should immediately press on the vein and pinch it.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Know that there are many veins which are bled. Among these are those in the head, in the hands, in the body, in the legs and the arteries.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	The Mohtasib must test the phlebotomist's knowledge of these as they are sometimes next to muscles and arteries. I will mention those ones which are most well known.	Extrinsic Good				2	1	3
Phlebotomosts and Cuppers	As for the veins in the head which are bled, there is that of the forehead which goes up between the eyebrows, the bleeding of which is good for heavy eyes and chronic headache. There is the vein which lies in top of the head, the bleeding of which is good for migraine and head wounds.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	There are the two mendering veins on the temples, the bleeding of which is good for opthalmia, watery eyes and itches and pimples on the eyelids.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	There are the two veins behind the ears, which are bled to stop the begetting of children.						1	1
Phlebotomosts and Cuppers	The Muhtasib must make them swear that they will not bleed either of these veins because it stops the begetting of children and this is unlawful.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	There are veins in the lip , the bleeding of which is good for sores and canker in the mouth and pains and tumors of the gums. Finally there are the veins under the tongue, the bleeding of which is good for quincy and tumours on the tonsils.	Extrinsic Good					1	1
Phlebotomosts and	There are six veins of the hands and arm. These are the vena cephalica, the	Extrinsic Good					1	1

Cuppers	medical, the vena beSilica, the exterior cubital, the vena salvatella and the axillary. When the phlebotomist is working , he must push the end of the muscleonto a soft place and make his incision wide if he wants to repeat it.							
Phlebotomosts and Cuppers	As for the medical vein, it is very dangerous to bleed this because of the muscle which lies beneath it. Sometimes this vein lies between two nerves , and sometimes there is a delicate round nerve like a string above it. The phlebotomist must theefore be acquinted with this, avoid it when he does his bleeding and be careful that his incision does not hit it and cause chronic numbness. As for the vena basilica, this is also extremely dangerous due to the artery under it. The phlebotomist must be careful of this , for if the artery is cut the blood will not cease to flow. As for the vena salvatella, the correct way to bleed it is lengthwise, while the exterior cubital should be bled obliquely. The more the phlebotomist inclines towards the arm in bleeding the vena basilica, the safer it is.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	As for the veins of the body, tow of them are on the stomach. One of these is situated over the liver and the other is situated over the spleen. The bleeding of the one on the right is good for dropsy, while one on the left is good for the spleen.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	As for the veins of the legs, there are four of them. Among these is the vein of the scietic nerve, which is bled on the outer part of the ankle. If it is hidden, then the branch between the little toe and the next is bled. The benefit of this is great, especially for gout, varicose veins and elephantiasis. Then there is the vena saphena which is situated on the left side of the leg and is more obvious than the sciatic nerve. Bleeding it is good for haemorrhoids, causes menstrausion to occur and benifits the organs below the liver. Also among them is the vein situated behind the Achilles tendon	Extrinsic Good					1	1

	like a branch of the vena saphena, and the benifits of bleeding it are the same as with this latter vein.							
Phlebotomosts and Cuppers	As for the veins and arteries which are generally bled and which it is permitted to bleed, these are the small ones and those situated far from the heart, because blood from these will stop flowing when they are bled. As for the large arteries situated near the heart, blood from them will not stop flowing when they are bled.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Among those which it is permitted to bleed are mostly the arteries of the temples and those between the thumb and the index finger. Galen instructed that they should be bled during sleep.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Cupping is of great benefit and is less dangerous than phlebotomy. The cupper must be delicate, nimble and experienced in the work, for his hand must be gentle and quick in making incisions and attaching the cupping glass. The first cupping shold be light and the cup quickly removed. Then it should be gradually slowed down and prolonged.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	The Muhtasib must test the cupper by asking him to make an incision in a leaf stuck to a backed brick. If the cut goes through the leaf then the cupper has a heavy hand and is not proficient. The sign of the cupper,s skill is a light touch and his not hurting the petient.	Extrinsic Good			3		1	4
Phlebotomosts and Cuppers	The learned have mentioned that cupping is bad at the beginnig and the end of the month. This is because at the beginnig of the month the humours will neither be excited nor roused, while at the end of the month they will be without vigour and cupping will be of no benifit. it is best to cup in the middle of the month when the moon is full, because the humours will be excited and brain growing in the cranium. The best time of day for cupping is the second and third hours after day-break.	Extrinsic Good					1	1

Phlebotomosts and Cuppers	As for the benefit of cupping, these ensue firstly from cupping the hollow at the back part of the neck, which is a subtitute for bleeding the medial arm vein. This is good for heaviness of the brows, itchy eyes and bad breath, although it does cause forgetfulness. As the prophet said: " the rear part of the brain is the seat of the memory, and cupping weakens it".	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Cupping of the medial vein is a subtitutefor bleeding the vena basilica and is good for pains in the shoulder and the throat, although it does weaken the opening of the stomach.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Cupping of the two occipital arteries is a subtitute for bleeding the vena cephalica, and is good for the face, the teeth, the eyes, the ears, the nose, the throat and trembling of the head, although it does cause trembling of the head for those who did not have it previously.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Cupping under the chin is good for the face, the teeth, the throat and for clearing the head.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Cupping the crown of the head is good for dizziness and slowing down the greying of hair, although it does impair the intellect and cause imbecility.	Extrinsic Good						0
Phlebotomosts and Cuppers	Cupping the front of the thighs is good for pain in the testicles and tumours on the thighs and legs. Cupping the back of the thighs id good for swelling and tumours erupting on the buttocks.	Extrinsic Good					1	1
Phlebotomosts and Cuppers	Cupping the legs is a subtitute for bleeding. It cleans the blood and induces menstraution.	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	medicine is both a theoritical and practicle science. Islamic law allows its study and practice because it maintains the health and remove illnesses and diseases form the noble frame of the body.	Extrinsic Good						0
Physicians, Eye Doctors,	The physician is the one who knows about the body's anatomy, the	Extrinsic				2	1	3

Bone-Setters and Surgeons	physical constitution of the organs and the diseases which afflict them, their causes, symptoms and characteristics and the medicine which benefit them. He knows the substitutes for medicines which are not available, the manner of extracting them and the way they act, so that he can give the correct kind and dosage of medicine for the disease.	Good						
Physicians, Eye Doctors, Bone-Setters and Surgeons	It is unlawful for anyone who does not have this knowledge to treat sick people, nor is such a person allowed to embark upon any treatment in which there is a risk, or to meddle in any of the things we have mentioned which he does not fully understand.	Intrinsic Good		4			1	5
Physicians, Eye Doctors, Bone-Setters and Surgeons	It is related that kings of Greece used to appoint to every city a phycisian famous for his wisdom. Then he would assemble all the other physicians before him so he could test them. He ordered any whose knowledge he found deficient to study and to read science and forbade them from practising.	Extrinsic Good		4			1	5
Physicians, Eye Doctors, Bone-Setters and Surgeons	When a physician visited a sick person he asked him the cause of his illness and what pain he was feeling. Then he prescribed some medicines and other things. After this, the physician made a note of what the petient had told him and what he had prescribed for him during the consultation, and submitted this to the petient's relatives, laong with the testimony of the petient and those who were with him. On the following day the physician returned , checked the progress of the illness and wrote another prescription according to the circumstances. He wrote another copy of this and once again submitted it to the peteint's relatives. He did likewise on the third day, the fourth day, and so on until the petienteither recovered or died. If he recovered from the illness, the physician received his fee and the petient's gratuity. If, however, the petient died, his relatives went before the head physician and gave	Intrinsic Good		4	3	2	1	10

	him the copies of the prescriptions which the original physician had written. If the head physician considered that they met the requirment of the wisdom and the practice of medicine, without negligence or carelessness on the part of the physician, he would tell them so. But if , on the other hand, he held the contrary opinion he used to tell the relatives: " take blood money for your relative from the physician, because he is the one who killed him with his malpractice and negligence.							
Physicians, Eye Doctors, Bone-Setters and Surgeons	In this distinguished manner, the Greek kings took precautions to such an extent that no one could practice medicine who was not a physician, and no physician could be negligent concerning any of it.	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	The Muhtasib must make them take the Hippocratic oath as he does with all as physicians, make them swear not to administer harmful medicine to anyone, not to prapare poison for them, not to describe amulets to nayone from general public, not to mention to women the medicine used for abortions and not to mention to men the medicine preventing the begetting of children.	Extrinsic Good		4			1	5
Physicians, Eye Doctors, Bone-Setters and Surgeons	They must avert their eyes from the women's quarters when they visit their patients, and they must not disclose secrets not lift up veils.	Intrinsic Good		4	3	2		9
Physicians, Eye Doctors, Bone-Setters and Surgeons	The physician should have a complete set of medical instruments to hand. These are pincers for extracting molar teeth, cauterizing irons for the spleen, tweezers for removing blod clots, syringes used to treat cholic and for the penis, a clamp for holding haemorrhoids prior to removal, an instrument for removing excess flesh from the nostrils, a probe for fistuals, an instrument for lifting up the eyelid, a piece of lead for weigting, a key for the womb, an instrument for detecting pregnancy, a poultice for the intestines, a vessel for removing air from the chest, and other things which	Extrinsic Good					1	1

	he needs to pratice medicine, apart from the instruments of the eye-doctor and the surgeon which will be mentioned in the appropriate place.							
Physicians, Eye Doctors, Bone-Setters and Surgeons	The Muhtasib must examine the physicians on what Hunayn b. Ishaq wrote in his known book *The trial of the physician.* As for the book the trial of the physician by Galen, no physician can hardly be expected to perform what he stipulated for them in it.	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	Regarding the eye-doctors, the Muhtasib must also test them on a book by Hunayn b. Ishaq, namely, *The Ten treatises of the Eye*.	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	The Muhtasib must allow these doctors to treat people's eyes who he finds in the test know about the seven layers of the eye, the three homours, the three diseases of the eye amd their ramifications, and those who are acquinted with the preparation of eye salves and the various drugs. The eye-doctor must not neglect any of the instruments of his frofession, such as hooks for removing films and pellicles on the eyes , a scour for removing scabs, scalpels for bleeding, a container for eye salves and so on.	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	As of the itinerant eye-doctors, most of them cannot be trusted as they have no religion preventing them from assailing people with incision and eye salves and with no experience of disease and defects. No one should depend on them to treat their eyes , nor trust their ointments and salves, for some of them make salves out of a base of starch and gum and dye it different colours. They dye the red one with red chalk.....the yellow one with saffron.	Extrinsic Good			3		1	4
Physicians, Eye Doctors, Bone-Setters and Surgeons	Some of them make salves from the horned poppy and make its base from the ben tree which they make into a paste with dissolved gum…….	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters	The Muhtasib must make them swear that they will not resort to them if he	Extrinsic Good					1	1

and Surgeons	is unable to stop them treating people.							
Physicians, Eye Doctors, Bone-Setters and Surgeons	As for bone-setters, no one may practice bone-setting except after they have mastered the sixth book of the Kunnash of the Paul on thissubject. They must know the number of bones in the human body, which is 248, the shape of every one of them, their kids and sizes..... The Muhtasib must test them on all these things.	Extrinsic Good				2	1	3
Physicians, Eye Doctors, Bone-Setters and Surgeons	As for the surgeon, they should know Gulen's book known as *Qatajanus*on wounds and ointments, and the book of al-Zahrawi on wounds. They must know human anatomy and the organs, the muscles, veins, arteries and nerves, so that the surgeon can avoid these when he opens abcesses and removes haemorrhoids.	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	The surgeon must have a set of scalpels with him……	Extrinsic Good					1	1
Physicians, Eye Doctors, Bone-Setters and Surgeons	Some times they deceive the people with a bone which they surreptitiously insert in a wound….. They claim that it was their cutting medicines which extracted it.	Extrinsic Good		4			1	5
Physicians, Eye Doctors, Bone-Setters and Surgeons	The Arif must keep an eye on them regarding these things.	Extrinsic Good				2		2
Educators of Boys	They must not teach the boys to write in the mosques, because the prophet ordered that mosques should be kept free of boys and the insane as they scribble on the walls and soil the floor, not bothering about urine and other kinds of dirt. Rather they should acquire teaching premises on the roads or on the outskirts of the markets.	Extrinsic Good	5				1	6
Educators of Boys	The first thing that the educators should teach the boys is the short chapters of the Quran…….. Then he ought to acquint him with the orthodox articles of faith, the basic of arthmetic and whatever letter writing and poetry is considered appropriate,	Extrinsic Good	5	4				9

	.....							
Educators of Boys	In the holydays, the educator should order the boys to improve their hand writings according to a prescribed model, and ask them to write down what he has dictated…..	Extrinsic Good				2		2
Educators of Boys	The educator should order any boy who is over seven years old to pray with the congregation, because the prophet said: " teach your children to pray when they reach seven, and when they are ten , beat them if they neglect it". The educator must also order the children to honour thire parents.....	Extrinsic Good		4				4
Educators of Boys	The educator should beat them when they are ill-mannered, use bad language, and other things out side the islamic law,……	Extrinsic Good		4				4
Educators of Boys	He should not beat a boy with a stick so thick that it will break a bone, nor…… that cause too much pain……	Extrinsic Good					1	1
Educators of Boys	The educator must not use any of the boys for his own needs and concerns nor for anything which will dishonour their parents, such as moving dung, stones and such like. Nor must he send them to his house when it is empty, lest they be open to accusations. Nor must he send a boy with a women to write a letter or anything else, for there is a group of godless people who deceive boys in this way.	Extrinsic Good			3	2		5
Educators of Boys	The one who escorts the boys to and from the place of learning should be reliable……..	Extrinsic Good					1	1
Educators of Boys	The educator must not teach a woman or a female slave how to write, because this makes a woman worse…..	Extrinsic Good		4				4
Educators of Boys	The educator must stop the boys from memorising or reading any poetry of Ibn-al-Hajjaj and should beat them if they do….. Rather he should teach them the poetry which eulogize the Companions so that he fixes this in	Extrinsic Good		4				4

	their heart.							
Ahl al-Dimma	The covenant of protection is only valid from the Imam, or from someone whom the Imam authorizes. No one should be given a covenant of protection unless he has a holy book or similar belongings to the unbelievers, such as the Jews, the Chiristians and the Magians.	Extrinsic Good					1	1
Ahl al-Dimma	As for anyone else who does not have a holy book or similar, like the polytheists, idol-worshipers, apostates from Islam or atheists and heretics, they are not permitted to have the covenant of protection nor to be confirmed in their beliefs. Nothing should be accepted from them apart from submission.	Extrinsic Good	5					5
Ahl al-Dimma	The dimmies must be made to observe the conditions laid down for them in the treatise on jizya written for them by , Umar.b.al-Khattab, and must be made to wear the ghiyar.	Extrinsic Good	5					5
Ahl al-Dimma	If he is a Jew, he should put a red or yellow cord on his shoulder; if a christian, he should tie a zunnar around his waist and hang a cross around his neck.; if a woman she should wear two slippers, one of which is white and the other black.	Extrinsic Good	5					5
Ahl al-Dimma	When a protected person goes to the baths, he must wear a steel, copper or lead neckband to distinguishe him from other people.	Extrinsic Good	5					5
Ahl al-Dimma	The Muhtasib should stop them from riding horses and carrying weapons and swords. When they ride mules, they should do so with side saddles.	Extrinsic Good	5					5
Ahl al-Dimma	Their building should not be higher than those of the muslims nor should they preside over meetings.	Extrinsic Good	5					5
Ahl al-Dimma	They should not jostle Muslims on the main roads, but should rather use the side streets.	Extrinsic Good	5					5
Ahl al-Dimma	They should not be tha first to give greeting, nor be welcomed in	Extrinsic Good	5					5

	meetings.							
Ahl al-Dimma	The Muhtasib should stipulate that they offer hospitality to any muslim who passes by and give him lodging in their houses and places of worship.	Extrinsic Good	5					5
Ahl al-Dimma	They must not be allowed to display any alcoholic drinks or pigs, to recite the Torah and the Bible openly, to ring the church bells, to celebrate their festivals or to hold funeral services in public.	Extrinsic Good		4				4
Ahl al-Dimma	All this was stipulated by Umar b. al-Khattab, in his treatise, so the Mohtasib must keep an eye on their affairs regarding these things……	Extrinsic Good	5					5
Ahl al-Dimma	The Muhtasib must take the jizya from them according to their social status…… Along with jizya , the Muhtasib should stipulate that they abide by the laws of islam…….	Extrinsic Good		4	3			7
Affairs of Hisba in General and Particular	As for the whip, the Muhtasib should choose one of the middle thickness…….This is so that it does not harm the body and there is no fear of injury.	Extrinsic Good		4	3			7
Affairs of Hisba in General and Particular	As for the Dirra, it should be made of ox or camel hide and filled with date stones.	Extrinsic Good					1	1
Affairs of Hisba in General and Particular	As for the turtur, this should be made of felt, …..adorned with onxy-and tails of cats.	Extrinsic Good					1	1
Affairs of Hisba in General and Particular	All these instruments should be hung on the Muhtasib's booth for the people to see. So that the heart of the wicked will tremble and swindlers are restrained.	Extrinsic Good		4				4
Affairs of Hisba in General and Particular	If the Muhtasib comes across anyone drinking alcohol he should give him forty lashes with the whip. If he thinks that public interest would be served by giving him eighty lashes, then he may od so. This is because Umar b. al-Khattab gave eighty lashes to someone drinking alcohol, in	Intrinsic Good		4		2		6

	accord with the formal legal opinion of Ali b. Abi Talib.							
Affairs of Hisba in General and Particular	The Muhtasib must strip off the man's clothes, lift the hand holding the whip until the white of his armpit can be seen and distribute the lashes on the man's shoulders, buttocks and thighs.	Extrinsic Good					1	1
Affairs of Hisba in General and Particular	If the man committed adultery while being a bikr, the Muhtasib should whip him in public, as God said: " and let a party of beleivers witness their punishment".	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	If it is a women, he should whip her while she is wearing her covering and clothes.	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	As for the adulterer who has consumated a marriage, the Muhtasib should gather the people around him outside the town and order them to stone him, as the prophet did with Ma,iz.	Intrinsic Good		4		2		6
Affairs of Hisba in General and Particular	If it is a woman….. The Muhtasib should dig a hole for her in ground, sit her in it upto her waist, and then order the people to stone her, as the prophet did with the woman from Ghamid.	Intrinsic Good		4		2		6
Affairs of Hisba in General and Particular	If the evildoer has committed sodomy with a boy, the Muhtasib should throw him off the highest point in the town.	Intrinsic Good		4		2		6
Affairs of Hisba in General and Particular	This should all be done when the crimes have been proved by the Imam, after which the Muhtasib take charge of him.	Extrinsic Good		4				4
Affairs of Hisba in General and Particular	As for the ta'zir, this should be in proportion to the people's circumstances and commensurate with the crime. Forthere are people who can be chastised verbally and reprimanded……..	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	If the Muhtsib sees anyone carrying alcohol or playing a musical instrument…… he should chastise him…..after pouring the alcohol out and breaking the instrument.	Extrinsic Good		4		2		6

Affairs of Hisba in General and Particular	The Muhtasib must do likewise, if he sees a foreign man and woman togather, either alone or on the road.	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	The Muhtasib must inspect the places where the women gather, such as yarn and flax market, on the banks of rivers, at the doors of women's baths and other places.	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	If he sees a young man alone with a woman or speaking to her about something other than a commercial transaction, and looking at her, The Muhtasib should chastise him….	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	The Muhtasib must also inspect the preachers gatherings. He must not let the men mix with women……	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	He must inspect the funeral ceremonies and graveyards and if he hears any woman wailing or lamenting he should chastise her… because the prophet said: " The lamenting woman and all around her are in hell.	Extrinsic Good		4				4
Affairs of Hisba in General and Particular	The Muhtasib must stop women from visiting the graves,because the prophet said: " May God curse women who visit graves……..	Intrinsic Good		4		2		6
Affairs of Hisba in General and Particular	Whenever the Muhtasib hears of a woman who is a harlot or a singer he should call her to repent of her sin. But if she returns it to again, he must chastise her and banish her from the town.	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	He must do likewisewith effiminate men and those who have no beared, well-known for their perversions with other men.	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	The Muhtasib should forbid an effiminate man from shaving off or plucking out his beard and from going amongst women…..	Extrinsic Good		4				4
Affairs of Hisba in General and	The Muhtasib should superintend the Friday prayer mosques and the ordinary mosques and order the	Extrinsic Good					1	1

Particular	attendants to sweep and clean….							
Affairs of Hisba in General and Particular	The Muhtasibmust direct all those who live in the neighbourhood of a mosque diligently to pray the Friday prayer when they hear the call to it…..	Extrinsic Good	5	4				9
Affairs of Hisba in General and Particular	No one should call to prayer from the minaret unless they are honest, and reliable and aware of the times of the prayers. This is because the prophet said: " The Muezzines are to relied upon and the Imams are responsible……..	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	The Muhtasib must test their knowledge of the times of prayers……	Extrinsic Good		4				4
Affairs of Hisba in General and Particular	The Muazzine should preferably be a youth with a good voice.	Extrinsic Good	5					5
Affairs of Hisba in General and Particular	The Muhtasib should prohibit wailing in the call for prayer, that is singing and straching out the sounds.	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	The Muhtasib must order the muazzin not to look at the people's houses when he climbs up the minarate……	Intrinsic Good				2		2
Affairs of Hisba in General and Particular	The Muazzine must be acquinted with the mantions of the moon and shape of the constellations in these mantions so that he knows the times of the night and the passing of the hours……	Extrinsic Good					1	1
Affairs of Hisba in General and Particular	The Muazzin may receive payment for calling to prayer, but the Imams may not be paid for prayers and their function as prayer leaders…..	Extrinsic Good			3			3
Affairs of Hisba in General and Particular	If However, something is presented to the Imam without any preconditions, he may accept it as a donation or a charitable gift.	Extrinsic Good				2		2
Affairs of Hisba in General and	The Muhtasib must instruct the Quran reciters to recite it in proper manner…….	Intrinsic Good	5					5

Particular								
Affairs of Hisba in General and Particular	The reciters should not attend a funeral service without the next of kin sending for him……	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	No one should wash corpses unless they are trustworthy and honourable…..	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	The Muhtasib must forbid the blind and the beggers …..from reciting the quran in the markets to beg….	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	The Muhtasib must frequent the sessions of the judges and arbiters and forbid them from sitting in the Friday prayer mosques …to judge between people. This is because a man in the state of ritual impurity, a menstruating woman……. Sometimes appear before judges.....	Extrinsic Good		4		2		6
Affairs of Hisba in General and Particular	Whenever the Muhtasib sees a man acting insolently in a court session, contesting the judge's verdict or not complying with the judgement, he should chastise him for it……	Extrinsic Good				2		2
Affairs of Hisba in General and Particular	The Muhtasib must visit the audiences of the governars and princes, order them to od good and forbid them from evil…	Intrinsic Good		4	3	2		9
Affairs of Hisba in General and Particular	When the Muhtasib admonishes them and prevent them from being unjust he should be courtous and polite……	Intrinsic Good		4	3	2		9
Affairs of Hisba in General and Particular	The Muhtasib is fully aware of the particulars of Hisba over all that resembles the above mentioned tradesmen and the well-known crafts in this book of mine, and he knows how to arrive at uncovering their swindles……..	Extrinsic Good					1	1
Makers of *Harisa*	The usual recipe for *harisa*, without dictating to its makers and without making it difficult for the people, is one *sa* of wheat for eight *waqiyyas* of mutton and one *ratl* of beef.	Extrinsic Good			3		1	4

Makers of *Harisa*	The meat used for *harisa* should be lean and young, free of dirt and tubercles, veins and muscles. It should be tender, not scrawny, and its smell should not be tainted.	Extrinsic Good					1	1
Makers of *Harisa*	It must be soaked in salt water for an hour until all the blood has come out of it	Extrinsic Good					1	1
Makers of *Harisa*	it is then taken out and washed in some other water, out in the cooking pot in the presence of the *arif* and stamped with the *muhtasib*'s seal.	Extrinsic Good					1	1
Makers of *Harisa*	In the early morning the *arif* will come and break the seal and they will make the *harisa* in his presence.	Extrinsic Good				2		2
Makers of *Harisa*	This is in case they remove some of the meat and put it back the following day, for most of them do this if the cooking pot is not stamped.	Extrinsic Good					1	1
Makers of *Harisa*	others boil the meat of cows or camels, dry it and store it away, then when they have the opportunity they soak it in hot water for an hour and put it in the harisa.	Extrinsic Good					1	1
Makers of *Harisa*	Others boil the meat of cows or camels, dry it and store it away, then when they have the opportunity they soak it in hot water for an hour and put it in the *harisa.*	Extrinsic Good					1	1
Makers of *Harisa*	Sometimes they may have some meat left over in the cooking pots, so they mix it in with *harisa* on the following day. The *muhtasib* should control all these things with his seal.	Extrinsic Good					1	1
Makers of *Harisa*	The oil used for the *harisa* should be pure and with a pleasant smell, and should have mastic and cinnamon added to it.	Extrinsic Good					1	1
Makers of *Harisa*	Some of them take the bones and skulls of cows and camels and boil them thoroughly in water until a lot of oil comes out of them, then they mix this with the oil used for the *harisa*.	Extrinsic Good					1	1
Makers of *Harisa*	The way to identify this is to drop a little of it onto a tile; if this does not congeal or is transparent, then it has	Extrinsic Good					1	1

	been adulterated with things we have mentioned.							
Makers of *Harisa*	The *muhtasib* must order them to wash, clean and salt the oil containers so that their smell and taste are not affected, for maggots multiply in them, and if the oil is returned to the dirty containers, it becomes stale in both smell and taste. But God knows best.	Extrinsic Good					1	1
Sausage Makers	The most important thing is that the premises in which they make the sausages should be near to the *muhtasib*s booth so that he can keep a special watch on them, for their frauds are so many they can hardly all be known.	Extrinsic Good		4		2		6
Sausage Makers	The *muhtasib* must order them to use only pure, good, lean meat and to mince it finely on clean chopping blocks.	Extrinsic Good					1	1
Sausage Makers	When they mince the meat there should be someone with them with a fly-whisk to keep flies away.	Extrinsic Good					1	1
Sausage Makers	They should only mix the meat with onions, spices or seasonings in the presence of the *arif* so that he may know their quantities by weight. After this, they stuff it into clean intestines.	Extrinsic Good					1	1
Sausage Makers	They must be watched for their methods of adulterating the sausages. Some of them adulterate the sausages with the meat of cooked heads, some with liver, kidneys and hearts.	Extrinsic Good					1	1
Sausage Makers	Others adulterate the sausages with tough and scrawny meat or mix in the tough camels and cow.	Extrinsic Good				2	1	3
Sausage Makers	Some sprinkle water over the meat when they are mincing it and the *muhtasib must forbid them from this.*	Extrinsic Good					1	1
Sausage Makers	Others fill *sanbusak* with grilled fish and seasonings, while some adulterate it with shelled beansprouts and onion.	Extrinsic Good					1	1
Sausage Makers	The *muhtasib* learns of all these frauds by looking into the sausages	Extrinsic Good		4		2	1	7

	and seeing what they contain before they are fried.							
Sausage Makers	It is difficult to know once they are in the frying pan because the makers skewer them when they are almost ready and the adulterants come out and are cooked over the fire.	Extrinsic Good					1	1
Sausage Makers	The oil on which the sausages are fried should not be old or rancid and should have a wholesome flavour and smell	Extrinsic Good					1	1
Sausage Makers	After they have fried the sausages, they should sprinkle wholesome and appropriate ground spices and seasonings over them. But God knows best.	Extrinsic Good					1	1
Confectioners	There are many kinds and different varieties of confectionery and it is impossible to understand all the characteristics and measures of the ingredients, such as cornstarch, almonds, poppy seeds and so on.	Extrinsic Good					1	1
Confectioners	Sometimes there may be much of one thing in one kind of confection, and little another. Knowledge of all this falls under the '*arif*s jurisdiction.	Extrinsic Good		4	3			7
Confectioners	The confection should be well cooked,neither raw nor burnt, and the maker should always have a fly-whisk in his hand to keep the files away.	Extrinsic Good					1	1
Confectioners	The muhtasib must watch out for the ways they adulterate the confection, for there are many.	Extrinsic Good		4			1	5
Confectioners	One of them is for the makers to mix the honey of bess with grape pulp. The signs of this is that when it is cooked it fives off the smells of grapes. Some of them mix the juice from sugar cane, which they call *qattara*, with syrup. The sign of this is that it settles at the bottom of the vessel.	Extrinsic Good					1	1
Confectioners	There are varieties of confectionery which are adulterated with flour and constrach, rice flour, lentil flour and the husks of seasame seeds.	Extrinsic Good					1	1

Confectioners	The sign of this is that when put in water it floats on the surface. They adulterate the poppy seeds *natif* with semolina, the sign of this being that it floats on the surface of the water and also that it becomes hard.	Extrinsic Good					1	1
Confectioners	Sometimes they adulterate the hiyaji natif with semolina fried with kishk. At other times they might adulterate the yellow *natif* with breadcrumbs.	Extrinsic Good					1	1
Confectioners	The signs of all these frauds is that the confectionery floats on the surface of water. Some of them adulterate *basandud* with breadcrumbs or perhaps make is with lentil flour.	Extrinsic Good		4		2		6
Confectioners	Some confectioners adulterate gazelle's ankle and *mashash* with crystallised suagr cane juice. The sign of this is that the colour tends to be brown or black. Some of them adulterate *zulabiyya* with dissolved sugar cane crystals instead of honey.	Extrinsic Good		4			1	5
Confectioners	Similarly, they might adulterate soft and juicy *khabisa* and *sabuniyya* with more cornstarch than is necessary. The sign of this is that it crumbles, and rises if left overnight	Extrinsic Good					1	1
Confectioners	Some adulterate *nubiyya* with flour, while others adulterate *kishkananij* which is baked in the *tannur*. If it is so adulterated it falls off the side of the oven.	Extrinsic Good					1	1
Confectioners	All the adulterations of confectionary can be seen in its appearance and taste and the *muhtasib* must keep an eye on the makers regarding all these things. But God knows best.	Extrinsic Good		4			1	5
Apothecaries	The swindles contained in this and the flowing chapter are so numerous that it is impossible to know all of them. So may god have compassion for the one who inspects the apothecaries and must learn how to uncover their frauds.	Extrinsic Good		4				4
Apothecaries	The *muhtasib* should make a note of them in the margins of his register and rely on the favour of God, for they are more harmful to the people	Extrinsic Good				2	1	3

	than anything else; drugs and potions being of various natures, mixtures and purposes depending on their ingredients.							
Apothecaries	Some of them are suitable for an illness or physical condition but when other ingredients are added to them the drugs change their nature and inevitably harm the sick person. It is the duty if apothecaries to have fear God in his matter.	Extrinsic Good		4			1	5
Apothecaries	The *muhtasib* must intimidate them, exhort them and warn them or punishment and chastisement.	Extrinsic Good				2	1	3
Apothecaries	He must inspect their drugs every week, for one of their well-known frauds is to adulterate Egyptian opium with horned poppy.	Extrinsic Good					1	1
Apothecaries	There also adulterated it with the sap of wild lettuce leaves and with gum.	Extrinsic Good					1	1
Apothecaries	When it has been adulterated with the horned poppy, if dissolved in water it gives off a smell like that of saffron. If it has been adulterated with wild lettuce sap, it is coarse and its smell is faint.	Extrinsic Good		4			1	5
Apothecaries	When it tastes bitter, has a pure colour and is without strength, it has been adulterated with gum	Extrinsic Good		4			1	5
Apothecaries	Sometimes they adulterate Chinese rhubarb with a plant called *rawand al -dawabbI* which grows inn Syria.	Extrinsic Good		4			1	5
Apothecaries	The signs of this is that good rhubarb is red, has no smell, is light in weight and the superior type of it is free of worms	Extrinsic Good		4			1	5
Apothecaries	When it is soaked in water it turns slightly yellow. Whatever does not have these characteristics is adulterated with what we have mentioned	Extrinsic Good		4			1	5
Apothecaries	Sometimes they adulterated bamboo concrete with bones brunt in a furnace.	Extrinsic Good		4			1	5
Apothecaries	The signs of this fraud is that when it	Extrinsic		4			1	5

	is put in water bone sinks while bamboo concrete floats. At other times they adulterate frankincense with rosin and gum.	Good						
Apothecaries	The sign of this is that when thrown into a fire the rosin burns, emits smoke and a smell. They sometimes adulterate tamarind with flesh of plums or adulterate juice of lycium with dregs of oil and the gall bladders of oxen when they cook it.	Extrinsic Good		4			1	5
Apothecaries	The sign of this latter fraud is that when some of it is thrown on a fire the pure lycium juice flares up, then when it is extinguished its cinders are the colour of blood. Also, the genuine substance us black with green inside. That which neither sets on fire nor turns into cinders is adulterated with the things we have mentioned.	Extrinsic Good		4			1	5
Apothecaries	Sometimes they adulterate costus with elecampane roots. The way to know this is that the costus smells and has tastes when out on the tongue, whereas elecampane is otherwise.	Extrinsic Good		4			1	5
Apothecaries	They adulterate the down of nard with that of taro. The sign of this is that when put in the month it makes one feel nauseous and burns. They also adulterate euphorbia resin with dry ground beans, and mastic with resin from the savin juniper bush.]	Extrinsic Good		4			1	5
Apothecaries	The way to recognise this adulteration is that the Indian variety gives off a smell when burnt and it not bitter.	Extrinsic Good		4			1	5
Apothecaries	They adulterate Cretan bindweed with that from Syria, but there is no harm in this. They also adulterate it with the down of common polypody.	Extrinsic Good					1	1
Apothecaries	Some of them adulterate scammony with the hardened sap of latex plants.	Extrinsic Good		4			1	5
Apothecaries	The way to know this is to put it on the tongue and if its stings then it is fraudulent. Some of them also adulterate it with ground horn which is kneaded with resin water into the shape of scammony. Yet others adulterate it with bean and chick pea	Extrinsic Good		4			1	5

	flour.							
Apothecaries	The way to recognise all these is that the genuine is pure in colour like *ghari*, whereas the adulterated is not. They sometimes adulterate myrrh with resin soaked in water. The indication of this is that myrrh is light in weight and has a uniform colour.	Extrinsic Good		4			1	5
Apothecaries	When it breaks, some things the shape of smooth finger nails can be seen in it similar to pebbles and it has an agreeable smell. If the myrrh is heavy and has the colour of pitch it is no good. Some of them adulterate the bark of frankincense with that of pine.	Extrinsic Good		4			1	5
Apothecaries	An indication of this is to throw it in a fire and if it burns and gives off a pleasant small then it is pure , but if does the opposite it is adulterated. Some adulterate marjoram with melilot seeds.	Extrinsic Good		4			1	5
Apothecaries	They adulterate wax with goat's tallow and with rosin and sometimes when it is being shaped they sprinkle bean flour, soft sand or ground kohl in it.	Extrinsic Good		4			1	5
Apothecaries	This is then put inside the candle and covered with pure wax. The way to discover this is to light the candle and see the inside of it. They adulterate verdigris with marble and green vitriol.	Extrinsic Good		4			1	5
Apothecaries	The way to recognise this fraud is to wet your thumb and put it in it, then rub it between the thumb and index finger. If it is soft and becomes creamy, it is pure. But if it turns white and granular, it is fraudulent.	Extrinsic Good		4			1	5
Apothecaries	It is possible to put some between your teeth and if you find it like sand then it is adulterated with marble. One can also heat a plate of metal in the fire and sprinkle some of it on. If it turns red it is adulterated with green vitriol, but if it turns black it is pure.	Extrinsic Good		4			1	5
Apothecaries	They also mix choice yellow myrobalan with different kinds of myrobalan from Kabul and sell it	Extrinsic Good		4			1	5

	along with Kabuli.							
Apothecaries	They sprinkle water on the pods of the cassia tree while they are wrapped in cloth when being sold and the weight increases from one *ratl* to one and half.	Extrinsic Good		4			1	5
Apothecaries	Some of them take lac, melt in over the fire and mix it with powdered bake brick and red clay. Then they let it congeal and flatten it out into disks. When it is dry they break it into pieces and sell it as a dragon's blood.	Extrinsic Good		4			1	5
Apothecaries	Some of them coarsely grind mastic then put some opopanax in it and cook it with some bees' honey and saffron. When it boils and froths they add some more mastic and stir it until it congeals. Then when it has cooled they make it into tablets, break it, mix it with opopnanax and it cannot be detected.	Extrinsic Good		4			1	5
Apothecaries	As for all the medicinal oils and others, they adulterate them with vinegar after it has been boiled on the fire and ground walnuts and almonds have been added to remove its smell and taste. Then they mix it with the oils.	Extrinsic Good		4			1	5
Apothecaries	Some of them take apricot stones and sesame seeds, grind them, knead and press them, and sell the oil as almond oil. Others adulterate the oil of the balm of Gilead tree with that of the lily.	Extrinsic Good		4			1	5
Apothecaries	They way to identify this is to put a few drops of it onto a piece of wool and wash it. If the oil disappears without a trace then it is pure, if not, it is adulterated.	Extrinsic Good		4			1	5
Apothecaries	Similarly, when the pure oil is dropped in water it dissolves and assumes the consistency of milk, while the adulterated oil floats like ordinary oil and remains in drops on the surface.	Extrinsic Good		4			1	5
Apothecaries	There are many things we have avoided mentioning in this chapter because the way they are adulterated	Extrinsic Good				2	1	3

	and blended with other ingredients is secret, and we are afraid that someone with no religion will learn them and swindle the Muslims with them.							
Apothecaries	In this chapter and others we have only mentioned the well-known and popular frauds, and have said nothing about those which are not well known.	Intrinsic Good		4		2		6
Apothecaries	Most of these have been mentioned by the writer of *The Alchemy of Perfume*. May God have mercy on anyone who gets hold of this book, and may they tear it up and burn it seeking the favors of God.	Extrinsic Good		4				4
		Total	95	628	249	226	229	1427

Appendix III: Terminologies

Terms	Meanings	Rationale of Use
Tradition	Sociological Tradition through which people actively create a rule bound world.	The term grounded in the work of Jorgensen and Phillips (2002) and Fairclough's (1992)
Islamic Tradition	Uncodified religious law, and customary traditions of the Islamic society, along with socio-political-historical context and meaning.	The term grounded in the work of Hallaq (2009: 500- 542).
Islamic Thoughts	Corpse of discourse and literature that jointly define the Islamic perspective	This expression was chosen to combine the entirety of Islamic discourse under one expression. The rationale is to capture the dialectic relationship among different dimensions of social practice in the Islamic world of past and present
Episteme	The discourse that contributes to the construction of identity, social relations, rationality and ideational functions of the tradition.	The generic expression used in the discourse on ethics, philosophy and economics.
Worldview	Historically and culturally specific and contingent understanding of the world and reality, with its independent standard of rationality	The term grounded in the work of Jorgensen and Phillips (2002:5).
Epistemological Crisis	The condition of a tradition, when its methods of enquiry cease to make progress by its own standards of rationality	The term grounded by MacIntyre (1998)
Value	Morals describe right and wrong, while value is the degree of importance of something based on the belief and guided by the virtues	This is in accordance with the meaning of value used by the discourse on ethics, economics and philosophy.
Modernity	The concept of dignity, morality, justice, and fairness from the reference point of legal, political, economic, and social guidance of current epoch.	The term grounded in the work of Hallaq (2009: 500- 542).
Value Judgement of Modernity	The degree of importance of an activity/behaviour based on the belief that are guided by the virtues, which are constructed on the concept of dignity, morality, justice, and fairness, as reflected in the legal, political, economic, and social guidance of current epoch.	There is a general consensus in the discourse, as to what the modern values are, and any judgment or importance assigned to anything, by using these values is the 'value judgement of modernity'. The use of value judgement of Modernity, as a point of orientation for examining the Islamic thoughts is also grounded in the work of Hallaq

		(2009: 500- 542). Schacht (1960) (1982), Cook (2000) and others.
Transcendental	A specific understanding of reality that is divinely inspired and divinely approved.	An extraction from Aristotle and Kant's work on ethics.
Religious Nihilism	The practice of a religious custom, when the metaphysical meanings in the practice of that custom are absent from the conscious minds of followers of that religion	The term grounded in the work of Heiberg and Stewart (2005:90)
Internal Realm	The Individual and individual's identity, worldview, rationality and ideational functions. See Page 211 for details.	The term is used for conceptualising the ideas unique to the research.
External Realm	Everything outside 'internal realm', belongs to the external realm. See Page 211 for details.	The term is used for conceptualising the ideas unique to the research.
Higher form of subjectivity	A subjectivity's subjectivity" See Kierkegaard et al., (1989:242) for details.	The term grounded in the work of Kierkegaard et al., (1989:242).
Juristic Subjectivism	Approach to the notion of good from the standpoint of personal reflective morality of a Jurist.	The term grounded in the work of Jorgensen and Phillips (2002:5).
Islamic Values	The Islamic values are understood as the collection of values constructed by Islamic scholarship or deduced from theological sources of Islam. See Page 7 for details.	The term grounded in the work of Hallaq (2009) and Cook (2000).
Moral Judgement	To judge the moral conduct of an activity according to one's worldview.	The term grounded in the work of Hallaq (2009: 500- 542).