Ribā Reconstructed

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Submitted in accordance with the requirements for the degree of

Doctor of Philosophy

The University of Leeds

School of Languages, Cultures and Societies

March 2022

The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

Acknowledgements

I started thinking about *ribā* during my undergraduate studies more than two decades ago. In this long intellectual engagement, my ideas and passion have been supported and sustained by subject experts, colleagues and family members.

Professor Shahid Ebrahim (University of Durham) gave feedback on the draft proposal. Dr Fozia Bora (University of Leeds) examined my transfer document and gave constructive comments about managing the challenge of lack of archival material pertaining to commercial transactions from the earliest days of Islam. Dr Samar Al-Afandi (Lifelong Learning Centre [LLC], University of Leeds) appointed me to teach the Introduction to Islamic Finance module in 2009-10 where I exchanged my ideas with an engaged group of undergraduate students. Postgraduate students attending my lectures on the Politics of Islamic Finance brought clarity to my research with their thoughtful questions and engaged discussions. Karen Priestley (School of Languages, Cultures and Societies) offered invaluable advice and support in navigating university systems and procedures. My heartfelt thanks to them all.

When I was hesitantly mulling over the idea of undertaking doctoral research, I had the good fortune of having a chat over lunch with my then colleague Paul Sturtevant. He had just finished doctoral research and gave me important insight about the self-doubt that inevitably accompanies the research journey. I will always remember that conversation because it enabled me to take the next step. My colleague Mohammed Hussain (LLC), an expert careers advisor, encouraged me to apply for doctoral study and helped me through the admissions process. Dr Tony Ellis, then Director of the LLC, wrote my reference and accommodated my interest in teaching and research, which was in addition to my substantive role as a senior manager in the department. I especially want to mention Dr Nadine Cavigioli at the LLC who trained me in using referencing software and offered support during those inevitable dips in motivation.

At an early stage in my research, I read the excellent thesis on *ribā* (usury) by Dr Azeemuddin Subhani. We also exchanged a few emails and discovered that we were both alumni of the Institute of Business Administration in Karachi,

Pakistan. Sadly, Dr Subhani passed away last year. His thesis gave me an initial insight into the breadth of scholastic literature on usury in the Abrahamic faiths and set me on my journey of wider reading around the question of *ribā*.

This thesis would not have reached completion without the outstanding support and guidance from my supervisor, Dr Mustapha Sheikh, Associate Professor of Islamic Intellectual Thought. His questioning of my understanding of *ribā*, grasp of Islamic *fiqh* and history, expertise in Arabic language, meticulous attention to detail, use of a coaching style to encourage reflection, and constructive criticism have been instrumental in this work. As I progressed with the writing, Dr Sheikh challenged some premises and early conclusions, thus enhancing the quality of this research. Throughout this journey he recognised the pressures I was under, juggling doctoral study with full-time work that involved leadership and management responsibility, raising a young family, and holding carer responsibility for an elderly person. He recognised too the challenges Muslim women can face in interpretive communities and encouraged me to have belief in my voice. He has been very generous in accommodating my erratic pace of work and always responded quickly to feedback requests so I could continue to make progress. I cannot thank him enough for his commitment, empathy, and mentorship.

To my family I owe a debt of gratitude. My mother-in-law, Jalila, generous and compassionate, who helped raise my twin sons and cooked delicious dinners every evening. My sons, Sharjeel and Shehryar, who have always respected my space and supplied both good humour and snacks in the intense phase of writing. They are ready to start their own journey, joining university soon. And my husband, Adeem Fayyaz. I lose count of all the household chores he picks up alongside his busy full-time job and the thousands of miles he has walked with me listening patiently to evolving theories, gently prodding my train of thought, and always bringing an astute perspective from his own study of Islam. His companionship and encouragement have kept me going in challenging times.

I dedicate this thesis to Adeem for his commitment to feminism. I also dedicate it to my father, Muhammad Akram, who raised me to stand tall in a patriarchal world and never said ‘no’ to buying books.

Abstract

Interest-free Islamic banking is the implementation of the established juridical opinion that any increase on a loan (Arabic: *ribā al-nasī'a*) or excess in barter-like transactions (*ribā al-faḍl*) is forbidden in Islam. This opinion is based on methodological preferences of Muslim jurists of the classical period who understood *ribā* as the opposite of sale (*bay'*), categorising it as an ambiguous (*mujmal*) Qur'ānic term that was explicated using Ḥadīth reports. Modern reformist scholars critique this opinion as reductionist, resulting in Islamic banks' use of stratagems (*ḥiyāl*) to avoid loan interest and inhibiting their potential to improve economic conditions in Muslim countries. This thesis has developed a historicised interpretation of *ribā* to settle this long-running controversy.

Review of Islamic finance literature identified the absence of the sociohistorical reality of *ribā,* prior to and synchronous with the revelation of the Qur'ān, as the main lacuna. Employing a historical methodology, this thesis charts the economic history of lending from antiquity, dovetailing with the socioeconomic milieu of pre-Islamic Mecca, thus providing an anchor for the exegesis of *ribā* verses. Occasions-of-revelation reports shed light on the synchronous practice of *ribā*. Contextual and linguistic analysis of Ḥadīth reports casts doubt on the established view of *ribā*. This triangulation of evidence overcomes the methodological challenge created by the lack of contemporaneous archival material. The historical sketch of *ribā* emerging from this evidence enables theory development.

This thesis posits that *ribā* is a *mufassar* (unambiguous) Qur'ānic term and is the opposite of charity (*ṣadaqah*), not sale. The *ribā* verse in *sūrat l-rūm* holds definitional value. *Ribā* is an increase in loans / debts that harms the borrower. This definition precludes mutually beneficial interest-bearing loans. The original remit of *ribā* is consumption loans to the poor but can be extended to productive loans using textual indicants from the Qur'ān. The rationale of the law is to prevent *ẓulm* (oppression), the necessary condition for the prohibition. *Ribā al-faḍl* is an error in legal reasoning. This new theory is tested for application across personal, business, and sovereign loans.

The theory posited here will rejuvenate innovative ethical banking. It will shift policy priorities to eliminating egregious cases of *ribā* and reducing financial exclusion to facilitate economic development.

This thesis is unique in creating an antecedental historical context to *ribā* in the Qur'ān. The dynamic interdisciplinary methodology has the potential for application in other fields of Islamic law such as women's rights.

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Note on Writing Conventions

Dates

Where two different dates are used with a forward slash, the first refers to the Hijri year in the Islamic calendar while the second refers to the year in the Gregorian calendar, for example, 10 / 632. This combined date format is mostly used for events and individuals chronologically close to the early period of Islam.

The prefix ‘d.’ refers to date of death.

The Qur’ān

The translation of the Qur’ān by Abdullah Yusuf Ali has been used throughout this thesis, unless specified otherwise. Translation and transliteration of Qur’ānic terms and grammatical notes have been taken from the online database corpus.quran.com. Citation format used **Q Chapter: Verse**

The Ḥadīth

Translations from the online database sunnah.com have been used throughout this thesis, unless specified otherwise.

The Bible

All references have been taken from the Authorised King James Version found on the website biblegateway.com, unless specified otherwise.

Transliteration of Arabic Words

The Library of Congress ALA-LC system of romanisation of Arabic has been used for transliteration.

Letter	Name	ALA-LC symbol
ء	hamzah	’
ا	alif	ā

Letter	Name	ALA-LC symbol
ب	bāʾ	b
ت	tāʾ	t
ث	thāʾ	th
ج	jīm	j
ح	ḥāʾ	ḥ
خ	khāʾ	kh
د	dāl	d
ذ	dhāl	dh
ر	rāʾ	r
ز	zāy	z
س	sīn	s
ش	shīn	sh
ص	ṣād	ṣ
ض	ḍād	ḍ
ط	ṭāʾ	ṭ
ظ	ẓāʾ	ẓ
ع	ʻayn	ʻ
غ	ghayn	gh
ف	fāʾ	f
ق	qāf	q
ك	kāf	k
ل	lām	l
م	mīm	m
ن	nūn	n
ه	hāʾ	h
و	wāw	ū
ي	yāʾ	ī
آ	alif maddah	ʾā

Letter	**Name**	**ALA-LC symbol**
ة	tā’ marbūṭah (in *iḍāfa*)	h at
ال	alif lām	al-
ى	alif maqṣūrah	Á
اي (diptthong)	ay	ay
ا و	aw	aw

Chapter 1
Introduction

> In view of the sharp contradictions and insoluble complexities found in the large number of Traditions concerning *ribā* it would be a courageous act to attempt an inclusive and exclusive definition of *ribā* i.e. a definition which would cover all cases of *ribā* and exclude transactions which do not fall within this category.[1]

1.1 The Controversy of *Ribā*

The prohibition of *ribā* (generally translated as 'usury' or 'interest') in the Qur'ān is one of the most emphatically worded of divine laws:

> O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.[2]

Muslim jurists over the ages have grappled with the concept of *ribā*, which has resulted in the development of a detailed and complex legal tradition about this divine law. Over the last 150 years, the Islamic world has seen seismic changes including 'the displacement of Islamic law by European codes.'[3] A self-conscious turning to divine law and articulation of Muslim identity was already taking place before the retreat of the colonialists and the emergence of new nation-states after the first World War.[4] Muslim revivalist movements and scholarship of the time focused on stopping the onslaught of 'Westernisation'.[5]

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[1] Fazlur Rahman, 'Ribā and Interest', *Islamic Studies*, 3.1 (1964), 1–43, 21.
[2] Q2:278-9.
[3] Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999), 211.
[4] Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*, 2nd edn (Leiden: Koninklijke Brill NV, 1999), 7. Saeed notes: 'Neo-Revivalism, which began as an influential movement in the first half of the twentieth century, is in part a continuation of the revivalism of the nineteenth and early twentieth century, as well as a reaction to the excesses of secularism in the Muslim World.'
[5] Saeed, ibid., 7.

Sir Sayyed Ahmed Khan (d. 1898) engaged with the question of *ribā* and modern banking in his *Tafsīr ul-Qur'ān*, a seven-volume work of exegesis he started to write in the late 19th century during the turbulent height of colonial rule in pre-partition India. A progressive reformist scholar, Khan did not consider bank interest to be the forbidden *ribā*.[6] A few decades later, Egyptian scholars Muḥammad 'Abduh (d. 1905) and Rashīd Ridā (d.1935) predicated their opinion of allowing interest on savings deposits on the concept of *maṣlaḥah* (public welfare).[7] Maulana Maudūdī (d.1979), one of the most influential Muslim scholars of the modern era, published *Sūd* in 1960, a compilation of his detailed essays on usury written between 1936 to 1960.[8] Maudūdī emphatically concluded that bank interest came under the remit of the forbidden (*ḥarām*) Qur'ānic *ribā*. He placed *ribā* in opposition to the Qur'ānic term *bay'*[9] (translated as a general term referring to trade, commerce or sale and considered permissible *[ḥalāl]*), resting his argument on the *ḥalāl-ḥarām* binary found in Q2:275:

> That is because they say: Trade is just like usury; whereas Allah permitteth trading and forbiddeth usury.

Maudūdī cites the opinions of eminent authorities in Islamic knowledge, including a report from Mujāhid which records that in the days of *jāhiliyya* (pre-Islam), the typical *ribā* transaction involved the borrower taking out a loan and promising to pay a bigger increase on the principal amount if he was given more time to repay.[10] Maudūdī's position on *ribā* reflects the view of most jurists across all schools of law who defined *ribā* as stipulated[11] excess in a loan.[12] In

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[6] Sayyed Ahmed Khan, 'Tafsir Ul-Qur'ān', 1904 <https://archive.org/stream/TafseerSirSayedAhmadKhan/Tafseer Sir Sayed Ahmad Khan#page/n1/mode/2up> [accessed 30 December 2015]. Full discussion of Khan's view follows in the next chapter.

[7] See section 2.7.

[8] Maulana Maududi, 'Sud (Interest)', 2000 <http://www.scribd.com/doc/15492367/Sood-Interest-By-Maulana-Maududi-in-Urdu#scribd> [accessed 31 December 2015]. *Sūd* or *sood* is the Urdu word for usury or interest. The Urdu word *sūd khor* is a derogatory term referring to 'the one who eats usury.'

[9] Maududi, ibid., 110.

[10] Maududi, ibid., 109.

[11] Farooq argues that the condition of 'stipulation of excess' is based on Al-Jaṣṣās's opinion (d. 370 / 981); the earlier opinions on *ribā* did not mention 'stipulation.' See Mohammad Omar Farooq, 'Stipulation of Excess in Understanding and Misunderstanding Riba: The Al-Jassas Link', *Arab Law Quarterly*, 21.4 (2007), 285–316 <https://doi.org/10.2307/27650597>.

[12] Specifically, Maudūdī cites the legal opinions of two scholars. One, the Ḥanafī jurist Abu Bakr Al-Jaṣṣāṣ who defined *ribā* as stipulated increase above the principal

other words, any increase on a loan was *ribā* and hence forbidden. This definition of *ribā* forms the basis of the modern established juridical position which considers bank interest to be the forbidden *ribā* and provides the religious-legal foundation for the nascent phenomenon of Islamic banking, which identifies itself as interest-free and Sharī'ah-compliant, in contrast with 'western' conventional banking which is considered usurious.

The critique of this established position emerging during the 20th and early 21st century was also robust. Rahman noted the 'sharp contradictions and insoluble complexities' in the concept of *ribā* in his seminal paper,[13] challenging the equivalency of *ribā* and bank interest, an idea vociferously argued by traditionalist scholars. Half a century later, Abdullah Saeed, Mahmoud A. El-Gamal and M.O. Farooq, among others, have challenged the established theory of *ribā* as well as the practice of Islamic banking and finance.[14] Using a historically contextualised approach, they argued against a reductionist interpretation of *ribā*, creating space for more nuanced debate on the relationship between *ribā*, charity and exploitation, three concepts featuring heavily in the Qur'ānic narrative on *ribā*. Scholars on both sides of the debate were, and are, concerned about the economic malaise plaguing Muslim countries: low incomes, low skills base, lack of education opportunities, low value-added industries, subsistence farming and lack of infrastructure. But, in the field of Islamic banking, it is the traditional opinion that holds sway even though it has been labelled as 'reductionist'[15] and 'an exercise in semantics'[16] to hide interest. The socioeconomic impact of this banking sector has been disappointing so far,[17] with critics pointing to the 'retrograde outlook of the jurists

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amount of the loan (*ra'as ul māl*). Two, Imām Al-Rāzī's opinion that *ribā* took the form of monthly payments of interest; if the borrower was unable to return the principal amount at the time of settlement, more interest would be added in return for granting delay. See Maududi, ibid., 110.

[13] Rahman, op cit.

[14] See discussion in the next chapter.

[15] Mohammad Omar Farooq, 'Exploitation, Profit and the Ribā-Interest Reductionism', *International Journal of Islamic and Middle Eastern Finance and Management*, 5.4 (2012), 292–320 <https://ssrn.com/abstract=1995142>.

[16] Ibrahim Warde, 'Global Politics, Islamic Finance And Islamist Politics Before and After 11 September 2001', in *The Politics of Islamic Finance*, ed. by Clement M. Henry and Rodney Wilson (Edinburgh: Edinburgh University Press Ltd, 2004), pp. 37–62, 48. Warde, 'Global Politics,' op cit., 48.

[17] Mehmet Asutay, 'Conceptualising and Locating the Social Failure of Islamic Finance: Aspirations of Islamic Moral Economy vs the Realities of Islamic Finance', *Asian and African Studies*, 11.2 (2012), 93–113.

(*fuqahā'*)'[18] whose static legal reasoning has hampered efforts to develop robust institutions and markets that would energise uplift at grassroots level.

'Islamic finance' (IF) is a catch-all term used for the conceptual framework as well as the practice of interest-free banking and its associated institutions. It is a fast-growing phenomenon both in terms of sector-size and impact on Muslim political identity. Islamic banking started in the early 1960s; by 2015, Islamic banks held almost one trillion US dollars in assets,[19] projected to grow to $2.5 trillion by 2019.[20] In Muslim countries and the diaspora, the *'ulema* (religious scholars) face frequent questions from concerned Muslims about decisions pertaining to business loans, home loans and car leasing.[21] The sector, however, is surrounded by controversy over its religious and ethical claims. Most of the contemporary critique of Islamic banking revolves around disagreements about the exact nature of *ribā* itself. Moreover, the simplistic *ribā* - interest equivalence creates a contradiction whereby Islamic banks, although aiming to be interest free, are increasingly involved in credit sales that mimic interest-bearing transactions.[22] In this consequential financial and political milieu, the question of *ribā* is extremely significant: getting the answer right could mean opening up possibilities of healing the economic malaise in the Muslim world; equally important though, is that it would rectify a faulty interpretation of scripture (and accrue various attendant benefits).

A close observation of degradations of poverty in Pakistan, my country of origin, led me to mull over the question of *ribā* and the possibility of economic growth catalysed by ethical institutions including banks. Pakistani scholars have played a significant role in the development of IF literature as well as Islamic banking (IB). Studying business in a leading university in Karachi in the late 1990s, I was

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[18] Muhammed Shahid Ebrahim and Mustapha Sheikh, 'The Political Economy and Underdevelopment of the Muslim World: A Juridico-Philosophical Perspective', *Arab Law Quarterly*, 32.4 (2018), 385–412 <https://doi.org/10.1163/15730255-12324051>, 385.

[19] *World Islamic Banking Competitiveness Report 2016*, 2015 <https://ceif.iba.edu.pk/pdf/EY-WorldIslamicBankingCompetitivenessReport2016.pdf>. See Foreword.

[20] Harry Quilter-Pinner and Lin Yan, *Islamic Finance: Foreign Policy Opportunities* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/211254/Islamic_finance_note_final.pdf>. More recent data is not yet available.

[21] '…the idea of Islamic finance struck a chord in the context of rising pietism.' See Warde, 'Global Politics', op cit., 48.

[22] Mahmoud A El-Gamal, '"Interest" and the Paradox of Contemporary Islamic Law and Finance', *Fordham Int'l L.J.*, 27.1 (2003), 1–33.

well-aware of the phenomenon of Islamic banking. In 1999, Mufti Taqi Usmani, a leading Deoband scholar, worked with the justices of the Supreme Court of Pakistan to categorically declare bank interest as the forbidden *ribā*, dismissing appeals from numerous financial institutions.[23] This historical moment was the culmination of efforts to 'Islamise' the banking sector in Pakistan. Discussions about the 'Islamic-ness' of IB were a routine feature of student life and my engagement with the theory of *ribā* started at that point, firmly situated within the established traditional conceptual framework.

Delving into the plethora of IF literature, I became aware of some lacunae. First, there was an almost complete absence of the history of *ribā*, that is, the actual Arab practice of *ribā* immediately prior to and synchronic with the revelation of the Qur'ān in 7th century Hejaz (610 – 632 AD). Second, there was overt emphasis on the *'illah* (causative factor) of the prohibition but scant discussion or silence on the rationale of the prohibition: why did the Qur'ān consider the demand for *ribā* to be unjust (*ẓulm*)? Third, Islamic finance scholars did not explain why Islam required an investor / lender to lend money *gratis* to a business enterprise, ignoring opportunity cost and risk for the lender, and only allowed investment on the basis of 'profit and loss sharing' when there is no basis for these conclusions in the Qur'ānic narrative. Fourth, the superficiality of predicating Shari'āh-compliance on 'equity, not loans' and the relegation of the spirit of the law in favour of compliance with the form of the transaction felt ahistoric and jarring. Fifth, Islamic finance literature rarely engaged with the egregious cases of exploitation through debt, an omission difficult to justify given that debt bondage still affects millions of labourers living in abject slavery in low-income countries. Lastly, the sub-categories of *ribā* seemed confusing, particularly the concept of *ribā al-faḍl* (*ribā* of excess) which did not seem to align either with the Qur'ānic narrative or what is known about barter transactions, and yet the explication of this *ribā* had consumed so much energy from classical scholars. Together, these lacunae made it difficult to understand the original concern and intent of the Qur'ānic prohibition, reducing the debate to a narrow focus on presence or absence of loan interest. This research endeavour emerged from asking a simple question: 'What is *ribā*: what practice were the Arabs engaged in that drew such strong condemnation from God?'

[23] His contribution to the Supreme Court Judgement is an important text and has been considered representative of traditionalist thought for the purpose of this thesis. Muhammad Taqi Usmani, 'The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan', 1999 <https://www.albalagh.net/Islamic_economics/ribā_judgement.pdf> [accessed 29 May 2018].

The lacunae and confusions in the discourse were an impediment to finding the answer, hence necessitating a fresh engagement with this divine law to develop a workable definition - true to the spirit of the law - that would in turn facilitate *application* in the modern world of finance.

A brief note on terminology is in order. Throughout this research, the term *ribā* is used to refer to the Qur'ānic term *al-ribā. Ribā* is distinct from the concept of 'usury' which refers to high rates of interest on loans. This distinction is important because the modern understanding of usury is based on the post-Reformation view of usury as 'excessive interest.'[24] The term 'usury' carries the connotation of exploitation or oppression resulting from high interest rates. In comparison, *ribā* is a broader concept referring to the increase accrued by the lender or creditor, regardless of the percentage rate or amount of increase demanded. Modern exegetes of the Qur'ān have used the terms 'usury' or 'interest' in English translations when referring to *ribā*.[25]

1.2 Research Aim and Objectives

The aim of this thesis is to arrive at a Qur'ān-centric,[26] historically anchored and legally concrete[27] definition of ribā, from which transcendental principles can be extrapolated to aid application of theory in modern times. Several subordinate objectives emerge from this overarching aim.

Ribā is a Qur'ānic term, often translated as interest, bank interest or loan interest. In Islamic finance literature, *ribā* is broadly categorised as *ribā al-nasī'a (ribā* of delay) and *ribā al-faḍl* (*ribā* of excess). The former applies to loans

[24] Wayne Visser and Alastair Macintosh, 'A Short Review of the Historical Critique of Usury', *Accounting, Business and Financial History*, 8 (1998), 175–89 <https://doi.org/10.1080/095852098330503>. See section titled 'Usury in Christianity'.

[25] For example: Muhammad Asad, *The Message of the Quran* <http://www.muhammad-asad.com/Message-of-Quran.pdf>, 849; "…every successive Muslim generation is faced with the challenge of giving new dimensions and a fresh economic meaning to this term, which, for want of a better word, may be rendered as 'usury.'"

[26] This research is committed to the primacy of the Qur'ān as an epistemological source in legal reasoning. Thus, it questions the jurisprudential stance that allows Ḥadīth traditions to particularise the meaning of Qur'ānic terms; see 3.3.2.

[27] In the present endeavour, 'concrete' refers to a workable definition that aids in identifying *ribā* and enables legal reasoning and application to meet modern financial needs for social and economic development.

(deferment) while the latter applies to sales of similar commodities with unequal exchange values[28] (e.g., exchanging a larger quantity of inferior quality dates for a smaller quantity of superior quality ones). The type of *ribā* mentioned in the Qur'ān is considered a special case of *ribā* of delay and is known as *ribā al-jāhiliyyah* (the *ribā* of the era of ignorance) which often took the transactional form of doubling the principal amount of the loan in exchange for delaying the loan repayment date, a common practice at the time of the revelation of the Qur'ān.[29]

The definition of *ribā* has been a matter of controversy from the earliest days of Islamic legal development.[30] This thesis sets out to demonstrate that the modern theory of *ribā* is neoclassical, a product of methodological fidelity to an idealised understanding of classical Islamic law,[31] albeit couched in modern financial terminology. For instance: 'One of the most important characteristics of Islamic financing is that it is an *asset-backed* financing.'[32] While the challenge and complexity of the task taken up by modern jurists cannot be trivialised, the established definition neither aligns with the Qur'ānic discourse on *ribā* - mainly concerned with justice and charity - nor is it sufficiently self-aware of the influence of European thought on modern banking and the provenance of terms such as equity and debt financing of assets.[33] A critical reading of Islamic finance literature thus demands a clarification: is *ribā* the same as bank interest? Does Islam offer an alternative investment model, as asserted by IF, or is it simply concerned with the abuse of economic power? Finally, what is it that makes banking 'Islamic': is it the fact that it is interest-free or is it because it is just and fair?

Considering the above, one of the objectives of this study is to remove reductionism from the definition of *ribā,* apparent in the jurists' emphasis on forms of transactions and removal of interest charges. The neoclassical categorisation and definition of *ribā* was problematised to shift focus from the

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[28] Sh. Wahba Al Zuhayli, 'The Juridical Meaning of Ribā', trans. by Iman Abdul Rahim and Abdulkader Thomas, in *Interest in Islamic Economics : Understanding Ribā*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 26–54, 27.

[29] Rahman, 'Ribā and Interest', 5.

[30] A survey and critique of classical thought on *ribā* follows in Chapter 5.

[31] My thanks to my supervisor for drawing attention to the idealisation and ideologisation of classical law by contemporary traditionalist scholars.

[32] Muhammad Taqi. Usmani, *An Introduction to Islamic Finance* (Karachi: Maktaba Ma'ariful Qur'ān, 2007), 18. My emphasis.

[33] Reading the Qur'ān as guiding investment decisions based on risk-sharing and financing of assets (via debt or equity) is ahistorical.

mere presence of interest charges to the function of the loan, the use of interest, and the financial impact on the lender and the borrower (exploitative or beneficial nature of a loan).

The second objective of this study is to employ methodological rigour. Modernist (or reformist)[34] scholars often face criticism for not giving sufficient weight to jurisprudential principles such as concreteness of the language of the Qur'ān or for being unsystematic in their methods.[35] Modernists prefer to focus on the concepts of *ẓulm* (oppression or exploitation), *'adl* (justice) and *ṣadaqa* (charity) - terms that are central to the Qur'ānic narrative on *ribā* – and give weight to *maṣlahah* (public welfare) as the basis for their reasoning. The modernist's conclusions lack the methodological rigour of the traditionalist and seem to swerve away from the literal meaning of the *ribā* verses in the Qur'ān: the modernist does not explain how or why one can abandon the linguistic indicant in the *ribā* verse[36] and is thus unable to counter the traditionalist's argument that *ribā* manifests itself as an increase on the *principal amount* of a loan. As a result, the modernist's opinion seems expedient and nebulous despite being historically contextualised. This study leans towards a modernist contextualist[37] approach to legal reasoning: it develops an emergent methodology which maintains a historical perspective while situated within the Islamic jurisprudential framework, giving full importance to the language of the Qur'ān and Ḥadīth, but taking a critical approach to the normativity of the latter source.

As noted earlier, the modern neoclassical (traditionalist) theory of *ribā* is expansive, creating a blanket ban on all interest-bearing debt including bank loans. The third objective of this thesis is to delimit the original Qur'ānic remit of *ribā* and then explore the possibility of extending this remit on the basis of inference.

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[34] The categorisation of research works on *ribā* as modernist or traditionalist is explained fully in 2.4, infra.

[35] This has been a general criticism of 'reform' in Muslim countries over the last hundred years. Hallaq uses the term 'quasi-*ijtihād*' to refer to the absence of 'any type of cohesive legal methodology'; see Hallaq, op cit., 211. Any pragmatic or utilitarian argument in favour of bank interest will not hold credibility for traditional scholars and the Muslim community.

[36] 'But if ye turn back [from *ribā*], ye shall have your **capital sums**…" (Q2:279). My emphases in footnote.

[37] Abdullah Saeed, 'Some Reflections on the Contextualist Approach to Ethico-Legal Texts of the Quran', *Bulletin of the School of Oriental and African Studies*, 71.2 (2008), 221–37 <https://doi.org/10.1017/S0041977X08000517>.

The fourth and final objective of this study is valid and appropriate application of the reconstructed theory of *ribā*, with the success of the meaning-making enterprise tested through this application.

1.3 Research Questions

The following research questions emerged from the lacunae identified above:

1. **Sociohistorical:** What was the Arab *practice* of ribā? Was the Qur'ān referring to any increase or a specific type of increase? Why were the loans of 'Abbās bin 'Abdul Muṭṭalib annulled by the Prophet at the Ḥajj Sermon in 10AH?[38]
2. **Linguistic:** What is the lexical meaning of *ribā*? Is *ribā* the opposite of *bay'* (trade) or *ṣadaqah* (charity)?
3. **Epistemological and normative:** What is the role of Ḥadīth reports in explaining the *ribā* verses?
4. **Legal reasoning:** What is the *'illah* (*ratio legis)* of the *ribā* prohibition? What is the *ḥikmah* (rationale) of this prohibition?
5. **Ontology:** What is *ribā al-nasī'a*? What is *ribā al-faḍl?* Does the latter have basis in the Qur'ān?
6. **Remit of the prohibition:** Is the prohibition only applicable to personal loans to the needy or does it apply to trade loans?

The answers to the above questions will yield a holistic picture of *ribā* at the time of the revelation of the Qur'ān.

1.4 Method and Methodology

This interdisciplinary study offers a reconstructed hermeneutic of *ribā* using an emergent dynamic[39] methodology developed in response to research needs. *Ribā* is a multi-faceted concept: a durable historical phenomenon, a concern of divine law and its interpreters, an economic concept with profound implications for the most vulnerable in society. This study's commitment to interpreting

[38] Various Ḥadīth reports provide detail about the historical event of the last (and only) ḥajj (pilgrimage) performed by the Prophet. After the pilgrimage, he gave a sermon covering the key tenets and law of the religion of Islam; see 6.4.4, infra.

[39] As opposed to a 'static' regurgitative approach mimicking the methods and conclusions of classical jurists.

Qur'ānic *ribā* in its fullness immediately encountered a methodological challenge: the lack of archival material pertaining to *ribā* transactions or trade contracts at the time of the revelation of the Qur'ān. As Udovitch perceptively notes:

> From the point of view of economic history, the ideal way to study any institution of commercial law would be to compare the information contained in legal codes and treatises with the material relating to its application in economic life as manifested by actual contracts, letters, and business records found in archives and other repositories. In the case of the early centuries of the Islamic period, available sources unfortunately preclude such a procedure.[40]

For the purposes of the present study, the challenge was overcome by triangulating information from numerous reliable sources. At the centre stands the Qur'ān as *al-muhaīminan* (guardian and preserver of revelation)[41] and *al-fur'qān* (the criterion distinguishing between truth and falsehood).[42] The second source are Ḥadīth compilations that record the words and actions of the Prophet Muhammad (d.10 / 632), whom Muslims believe to be the final messenger of God.[43] This thesis historicises and reinterprets the Ḥadīth reports (traditions) that form the foundation of the classical and neoclassical theory of *ribā.* The key aspects of this reinterpretation are as follows. First, the reinterpretation focuses primarily on the *matn* (content) of the reports. Second, a cautious approach is taken when assigning normativity to Ḥadīth traditions in the process of legal reasoning. Third, close attention is paid to linguistic nuance in the traditions, treating the term *ribā* as distinct from *qard* (*mutuum* loans for consumption) and *salaf* loans, often advanced on gratuitous basis.

Historical contextualisation is achieved through a long lens review of the economic history of lending. The synchronous context of the Qur'ānic verses on *ribā* is developed on the basis of historical evidence and *asbāb ul nuzūl* (occasions of revelation) reports pertaining to these verses. A brief review of classical legal methodology underpinning the established opinion on *ribā*

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[40] Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 3.

[41] 'To thee We sent the Scripture in truth, confirming the scripture that came before it, and guarding it in safety…' Excerpt from Q5:48.

[42] 'Blessed is He who sent down the criterion to His servant, that it may be an admonition to all creatures;' Q25:1.

[43] Henceforth, use of the term 'the Prophet' will refer to Muhammad, the prophet of Islam.

provides insight into the weakness of the classical and neoclassical theorisation, paving the way to a more dynamic methodology that carefully navigates the challenge of historicising the Qur'ānic view of *ribā* while simultaneously drawing out transcendental principles to aid application in the 'present'. Overall, this thesis takes a contextualist approach grounded in the Islamic legal tradition.

The conceptual framework of this research is an adapted Rahmanian-Gadamerian model: a double movement to understand *ribā*, with the spirit of justice achieved through valid application in the 'present'. In Rahman's hermeneutic, the sojourn into the past – the history of *ribā* – represents the first movement to understand the Qur'ānic law in its immediate sociohistorical context. General principles are derived at this point. The second movement takes place from the past to the present, where 'the general has to be embodied in the present concrete sociohistorical context.'[44] Rahman was sceptical of Gadamer's approach, noting that it did not permit 'the objective ascertaining of the past…'[45] because of Gadamer's philosophical view of 'effective history', the shaping of the active agent by tradition itself, which would lead to predetermined conclusions.[46] In comparison, this study interprets the Gadamerian position as one that encourages the historian and the jurist[47] to commit to self-reflexivity in the hermeneutical endeavour. Further, Gadamer emphasises 'vigilance and application'[48] as central to securing the spirit of justice in the realm of moral knowledge.[49] In his hermeneutic philosophy, true understanding is embodied within appropriate application of the law to a particular case, the site of the fusion of horizons between the past and the present.[50] The methodology of this research emerges within this conceptual framework. The reconstructed theory of *ribā* is tested in five different scenarios to assess its validity[51] and ensure that the theory meets the spirit of justice palpably present in the Qur'ānic prohibition of *ribā*.

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[44] Fazlur Rahman, *Islam & Modernity* (Chicago: The University of Chicago Press, 1982), 7.
[45] Rahman, ibid., 10.
[46] Rahman, ibid.
[47] For Gadamer, the 'hermeneutical situation' of the historian and the jurist is the same. See Jean Grondin, *The Philosophy of Gadamer* (Bucks: Acumen Publishing Ltd., 2003), 107.
[48] Grondin, ibid., 106.
[49] Grondin, 106-8.
[50] Grondin, 102-3.
[51] See 6.6.5, infra.

A brief comment is needed regarding engagement with the canonical epistemological sources of the Islamic tradition: the Qur'ān and Ḥadīth. The Qur'ān is approached as a book of moral guidance central to this hermeneutical enterprise. Commandments and rules in the Qur'ān are understood as *moral-legal,*[52] guiding believers to purify themselves (*tazakkā*) from moral corruption.[53] Within this Qur'ānic framework, *ribā* is approached as a *moral* problem with implications in the economic milieu. Contextual factors surrounding the Qur'ān and Ḥadīth are delineated fully. Dynamic historicisation[54] of the Qur'ānic law of *ribā* distils the transcendental from the contingent, enabling the second hermeneutical movement to 'the present.'

As Skinner points out, context alone does not provide sufficient information about an author's intent; rather, the recovery of intention needs to take place in the 'wider *linguistic* context.'[55] Whilst it is impossible for an interpreter - susceptible to her human subjectivities - to fully recover divine 'authorial intent',[56] the concreteness of the language of the Qur'ān enables suitable and robust interpretation.[57] It follows from this that the rationale of legal rules can also be recovered. In comparison to the Qur'ān, protected and preserved by God Himself, the Ḥadīth corpus is the result of human initiative in preserving the memory of the Prophet and the earliest community. Islamic jurists have always accepted that Ḥadīth can only provide speculative or probable knowledge (*'ilm al-ẓannī*). Ḥadīth traditions can be critiqued for their authenticity on the bases of the chain of narration (*sanad*) and the content (*matn*).[58] In this research, Ḥadīth traditions on *ribā* are also contextualised in the light of historical findings. A

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[52] See discussion on the purpose of divine law (*Sharʿīah*) in 6.1.

[53] 'But those will prosper who purify themselves,' (Q87:14)

[54] Any effort at historicism that fossilises the Qur'ānic message is detrimental to reconstruction. For example, consigning the Qur'ānic *ribā* to the period of the *jāhiliyyah* (pre-Islamic Hejaz) creates the false impression that such forms of *ribā* do not exist in modern times. On the other hand, dynamic historicism would facilitate an understanding of the Qur'ān as God's teachings and concerns that address the immediacy of its surrounding reality whilst also transcending that immediate context to provide inspiration to every generation of Muslims engaging in fresh interpretation.

[55] Quentin Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory*, 8.1 (1969), 3–53 <http://www.jstor.org/stable/2504188>, 49.

[56] Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 121. I have used this phrase on later occasions without speech marks.

[57] The Qur'ān claims to be a clear text (*mubīn*) [Q26:2] and invites reflection and engagement: 'Do they not consider the Qur'ān (with care)?' (*afalā yatadabbarūna l-qur'āna*) [Q4:82].

[58] The analysis of a tradition's *matn* includes examination of its meaning, language, sociohistorical and political context and chronology.

cautious approach is taken in assigning normativity: a Ḥadīth tradition is considered normative only if it is competent.[59] As a point of departure from traditionalism, the normative authority of Ḥadīth reports to specify (particularise – *takhṣīṣ*) the meaning of a Qur'ānic term like *ribā* has been disputed using the *uṣūl* (principle) from the earliest period of Islamic legal development: a *ẓanni* epistemological source (like a Ḥadīth tradition) cannot modify the meaning of the Qur'ān, a source of certain (*qat'aī*) knowledge.[60] This methodological approach assigns primacy to the Qur'ānic narrative of ribā anchored in the sociohistorical milieu in which the original addresses of the Qur'ān lived and breathed. Contrary to the traditionalist's apprehension – that a historicised Qur'ān will become an outdated Qur'ān – the approach used in this research enables the development of general principles and transcendental moral teachings. When placed within the context of the history of Islamic jurisprudence, the present research is pre-Shāfi'ite in its approach to the epistemological sources of Islamic knowledge.

Lastly, while traditionalists use modern financial terminology - risk-sharing, asset-backed[61] and equity investments - to explain the original *ribā* prohibition, this research avoids the use of an ahistorical framework of analysis in the first movement to the past. The Qur'ānic teachings predate the development of debt and equity as forms of financing by more than a millennium. The distinction between debt and equity can be pinpointed to legal developments to regulate the creditors' rush to seize the assets of an insolvent business. Andrew Keay charts the origins of the law of preferences to 16th century England, although '…the first legislation which provided for the setting aside of preferences was the *Joint Stock Companies Act* 1844 (UK).'[62] This development in law also created different risk profiles for debt and equity because it assigned first preference to those who had supplied secured credit. Differing tax treatment of debt and equity has created further distinction between them, making the former a cheaper source of finance.[63] These legislative and economic developments

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[59] Abou El Fadl, op cit., 110..

[60] The normative authority of Ḥadīth in modifying the meaning of the Qur'ān as well as its use as a source of law is an important argument in Islamic legal theory development. For a summary of arguments from the proponents and opponents of this view, see Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999), 72-4.

[61] For example, see Usmani, op cit., 18-9.

[62] Andrew Keay, *Avoidance Provisions in Insolvency Law 1997* (Law Book Co), 119 and n8.

[63] Interest payments are tax deductible whereas 'equity' is often taxed twice, once as dividend income and then as capital gain.

are modern and become relevant in the second movement to the present, including application of theory.

In Gadamer's philosophy, a jurist and a historian encounter the same task of interpretation when they read a text. The interpretation derives its meaning from the application of the text to the present situation.

> To be faithful to the spirit of justice intended by the law itself is to adapt its application to the particular circumstances of a present case. The person who has not understood this has not understood the law itself…[64]

It is precisely at this point that Islamic finance encounters difficulties. Its proponents have understood the task of interpretation and application as one of imposing modern categories of knowledge on to Qur'ānic verses rather than seeking historical fusion with the past. If we follow Gadamer's opinion that meaning is found in application, then a thorough testing of a reconstructed conceptualisation of *ribā* becomes imperative, otherwise the deep delving into the past will turn out to be a futile exercise. Chapter 6 of this thesis takes up this task of application to give meaning to the word *ribā* in the present.

The use of modern financial concepts to explain the prohibition of *ribā* also alludes to a lack of awareness of the Eurocentric foundations of modern finance, with its emphasis on econometric reasoning devoid of any moral concern. Skinner refers to this as a historian's unawareness of the 'priority of paradigms.'

> My procedure will be to uncover the extent to which the current historical study of ethical, political, religious, and other such ideas is contaminated by the unconscious application of paradigms whose familiarity to the historian disguises an essential inapplicability to the past.[65]

The two paradigms within which Islamic finance thought has developed are Greek ethics and classical Islamic law. The former surfaces in the shape of the

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64 Grondin, *Gadamer,* 108.

65 See Skinner, *Meaning and Understanding,* op cit., 7. Although this statement pertains to the work of a historian, according to Gadamer the historian and the jurist face the same task of interpretation of a text; further discussion in 3.1.

argument that money is sterile, a view accepted and explicated by Christian scholastics.[66] The latter takes the shape of an implicit premise that the methods and conclusions of the classical theory of *ribā* are still relevant and appropriate and do not require a thorough review. In comparison, the Qur'ān does not make any technical comment on the role of money or differences in the transactional forms of *ribā* and sale. The Qur'ānic paradigm is shaped by the concepts of charity, exploitation, injustice and harm. This paradigmatic shift opens the possibility of understanding the past (of *ribā*) *almost* on its own terms.[67]

1.5 The Argument

The main argument of this study is that the Qur'ānic term *ribā* has not been sufficiently understood to unleash the transformative potential of Islamic ethics in the modern field of finance. This is primarily due to an imperfect, or often absent, understanding of the sociohistorical reality of *ribā*; adopting the methodological preference in classical law that categorised *ribā* as a *mujmal* (ambiguous) term that required explication through Ḥadīth traditions; and modern traditionalists' reluctance to critique the methods and conclusions of classical scholars. The reliance of modern traditionalists on a narrow view of *ribā* has resulted in the development of a reductionist theory, focussed entirely on the idea of bank interest. In the last 60 years, substantial political and financial impetus, and strong Muslim sentiment have driven the growth of Islamic banking based on a theory that has resulted in the development of *ḥiyāl* (legal stratagems) to avoid interest.[68] Enhancing justice and grassroots development while reducing exploitation and financial exclusion have been relegated as priorities. A reconstructed definition of *ribā* will mitigate for this serious weakness, paving the way towards developing ethical financial institutions and practices that will re-energise Muslim economies.

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[66] Subhani's theory of *ribā* in his doctoral thesis is based on a merging of these two paradigms, see discussion in Chapter 2, and n166-168 in Azeemuddin Subhani, 'Divine Law of Riba and Bay': New Critical Theory' (McGill University, 2006).. Usmani also noted that 'Money has no intrinsic utility…'; cf.,Muhammad Taqi Usmani, *An Introduction to Islamic Finance,* 19. For Thomas Aquinas's contribution to canonical debates on usury, particularly the opinion '…usury is against the natural law', see Susan L. Buckley, *Teachings on Usury in Judaism, Christianity and Islam* (Lampeter: The Edwin Mellen Press, 2000), 111.

[67] While a perfect reconstruction is not possible, a robust reconstruction is sufficient.

[68] El-Gamal, *Paradox*, 124.

1.6 The Scope of the Thesis

This thesis engages with the law of *ribā* in its fullness: the socioeconomic history within which this law was revealed and understood, the chronology of the revelation and the implementation of the law at state level. This is an ambitious research project albeit one with a simple quest at its core: to find the reality of the historical *ribā* to understand the transcendental moral concerns and aims of this Qur'ānic prohibition and develop a new theory. This simple quest is not simplistic but thoroughly nuanced, resting on a rich historic evidence base and multi-layered analysis of the canonical sources of Islamic knowledge. Uniquely, this thesis views *ribā* in gestalt rather than the technical increase on the principal amount of a loan. It walks the historical path of *ribā*, records its shifting manifestations across time, interacts with key actors on the stage, senses the helplessness of borrowers shackled with debt, and rejoices in the freedom accorded by the prophets of God declaring debt jubilees. It is this holistic picture of *ribā* that offers the crucial insights for robust legal reasoning and application of this Islamic prohibition.

Interest and usury are ancient precepts with historical sources documenting interest rates of 20% in Mesopotamia (c3000 BC).[69] The Code of Hammurabi (c1750 BC) regulated lending to remove exploitation, suspending debt repayments for borrowers experiencing misfortune.[70] Usury (interest taking from the poor) has been condemned by prophets, holy books and learned scholars of the three monotheistic traditions - Judaism, Christianity and Islam. A brief sojourn into the Old Testament law of *ribā* throws light onto the divine concern with usury and the actions of the prophets of Israel in response to the laments of the destitute and the enslaved. In pre-Islamic Arabia, *ribā* took the form of redoubling of the debt if the borrower asked for delay in repayment. Non-payment resulted in rapine or enslavement of the borrower and his family. Exploitation was rife because the powerful lender could change the terms of the loan, looking for opportunistic gain from a struggling borrower. Debt bondage is

[69] Elena Holodny, 'The 5,000-Year History of Interest Rates Shows Just How Historically Low US Rates Still Are Right Now', 2017 <https://www.businessinsider.com.au/interest-rates-5000-year-history-2017-9> [accessed 2 June 2018]. Hammurabi had set the interest rate at 20%.

[70] 'The Code of Hammurabi', trans. by L.W. King, 2008, code of law 48 <http://avalon.law.yale.edu/ancient/hamframe.asp> [accessed 2 June 2018]. 'If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year.'

still extant in modern times, affecting millions of low wage labourers particularly in South Asia.[71] This thesis posits that the Qur'ān primarily speaks to this reality.

The *perspective* of the research is reconstructive,[72] accepting the established epistemology of the Islamic legal tradition and its jurisprudential principles but approaching it critically and cautiously. The emphasis is on the robustness of the process and honesty of intention. Whilst a sincere effort has been made to develop a self-aware and conscientious analysis, the impact of pre-judgement cannot be completely eradicated.

> The anticipation of an answer itself presumes that the person asking is part of the tradition and regards himself as addressed by it. This is the truth of the effective-historical consciousness.[73]

As a female Muslim born and raised in Pakistan, my beliefs and politics have shaped the ontology of my concerns in this thesis. Observing the humiliation of poverty, lack of opportunity and prevalence of injustice in struggling Muslim countries while simultaneously witnessing the frustrated potential of Islamic finance caused dissonance at a personal level. This dissonance provided the impetus to write this thesis and influenced my reflections in the application of theory section.

1.7 Thesis Structure

The thesis is organised into seven chapters. Chapter 1 introduces the research with brief notes on the *raison d'etre* of this study, research questions, aims, methodology and scope. Chapter 2 critically evaluates the extensive literature on Islamic finance using representative works, taking an overall chronological approach. Traditionalist and modernist opinions of *ribā* are delineated along with a full exploration of the methods of reasoning to identify the lacunae requiring further examination. Research questions are also developed in this chapter. Chapter 3 explains the adapted Rahmanian-Gadamerian conceptual framework of this thesis and the emergent methodology developed in response to the needs of this research. Chapter 4 delves into the history of usury from

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[71] See 6.6.5.1, which highlights the plight of those in bonded labour.
[72] See 3.2 for discussion on reconstruction.
[73] Hans-Georg Gadamer, *Truth and Method*, 2nd edn (London: Sheed and Ward Ltd., 1979), 340.

antiquity to the point at which the Qur'ān was revealed, covering a long span of time and highlighting the various manifestations of usurious lending. This chapter acts as the historical antecedent and provides context to the Qur'ānic prohibition of ribā. In IF literature, this is the first time a detailed sketch of the immediate socioeconomic reality of the Qur'ān has been drawn. Chapter 5 delves into the interpretation of *ribā* in classical Islamic law and addresses the question of how *ribā* was understood by the early juristic authorities and what role methodological preference played in developing this understanding (meaning). The jurists' categorisation of ribā as a *mujmal* term is problematised. Chapter 6 undertakes a thorough reconstruction of *ribā* based on the findings from antecedental and synchronic economic history, the Qur'ānic verses on *ribā*, the *asbāb ul nuzūl* (occasions of revelation reports) pertaining to these verses, and foundational Ḥadīth traditions. In effect, this chapter triangulates information from these sources to yield deep insight into the divine concern with *ribā* and how it was understood by the merchants of Mecca, shifting *ribā* to the category of *mufassar* (clear or unambiguous). This insight provides the basis for legal reasoning regarding the definition, remit, *'illah* and *ḥikmah* of ribā. Transcendental meaning and general principles are articulated at this point, completing the first movement to the past in the Rahmanian model. Application of the reconstructed theory in five specific scenarios completes the second movement to the present.[74] This faithful application meets the requirements of the Gadamerian postulate that meaning lies in application. Chapter 7 concludes the project with reflections on the research journey, a summary of key discoveries and unique contributions, acknowledgement of weaknesses in the research, outlining of further research questions and the impact of this research in the areas of Islamic finance theory and banking practices. Lastly, broad priorities are set at policy level, noting the urgent priority of eliminating egregious cases of *ribā* in modern times.

[74] Rahman, 'Islam & Modernity', 7.

Chapter 2
Literature Review

2.1 Aims of the Literature Review

The preceding chapter briefly set out the *raison d'etre* of this study and alluded to the controversies surrounding the concept of *ribā*. The current chapter undertakes a critical reflection on Islamic finance - emergence and development, the assumptions and paradigmatic frameworks within which the theory of *ribā* has been propounded by eminent scholars, and the controversies which continue to surround this theory – with the aim to identify the questions that must be asked in the search for *ribā* of the Qur'ān.

The approach to the literature review is set out first, followed by a discussion on the different perspectives on *ribā* (traditional and modernist). A brief note on selection of representative literature precedes a detailed discussion on the terms *tradition, traditionalist* and *modernist*. The review brings to light a number of lacunae that inform the development of research questions. The chapter concludes with a list of research questions and a brief note on methodology.

The review itself unfolds within a multi-dimensional context: the reality of economic underdevelopment in Muslim states, globalised finance, and the challenges of re-interpreting revealed guidance in the post-colonial Muslim experience of modernity. As posited by Moosa:

> Modern Muslims face a Herculean task. Those who seek to embed their religious tradition, especially their ethical and ritual practices within a framework of their lived experience, face numerous challenges. The very idea of crafting a new interpretive framework commensurable with their lived experience while simultaneously sustaining continuity with the past is an unenviable task and some would way borders on the arrogant.[75]

Arguably, Islamic finance is a site of this 'Herculean task', an area in which theoretical and practical institutional development can have a profound impact

[75] Ebrahim Moosa, 'Foreword', in *The Imperatives of Progressive Islam* (New York: Routledge, 2017) <http://www.ebrary.com>, xi.

on the socioeconomic life of Muslims. The literature review also throws into relief the immense complexity and multi-disciplinary nature of the discourse: history, society, revelation, morality, ethics of modern banking practices and macroeconomic policy appear on the stage the moment the idea of *ribā* is opened to scrutiny. The critique that follows has been undertaken in cognisance of and with humility towards the immense intellectual effort represented by the body of work known as 'Islamic finance.'

2.2 Approach to Literature Review

Islamic finance (IF) is a dynamic field of study. Almost all prominent Muslim scholars of the last 150 years have written about the law of *ribā*. The early historical context of these works is constituted of a rupture from familiar institutions and laws of the past caused by the onslaught of colonialism and its institutions. The later context is that of political and economic liberation after the retreat of colonialism when Muslims confronted the idea of rebuilding society along Islamic lines, however they defined 'Islamic.'

Ibrahim Warde uses three time periods to chart the development of Islamic finance within a political context:

> …the later stages of the cold war (1973-89), during which the first aggiornamento of Islamic finance took place, the 'New World Order' that followed the end of the cold war (1990 – 2001) and the 'New New World Order' ushered in by the events of 11 September 2001.[76]

According to Warde, the literature in each period is different, influenced by the global and Islamic politics of the time. In the first period, the literature mainly engaged with classical Islamic law with the aim to reconceptualise the idea of *ribā* and the rules of commerce and trade to make them suitable for the needs of 20th century finance and banking. This initial period was also the time when Islamic banks were first emerging within the backdrop of quadrupling of oil prices and aspirations for wholesale 'Islamisation' of banking and finance structures in countries like Pakistan, Iran and Sudan. Scholars were developing the idea of profit-and-loss-sharing partnerships as the ideal model of financing, forbidding the use of interest in credit dealings. By the late 1980s / early 1990s, Islamic finance became more engaged with the idea of ethical finance in a world

[76] Warde, 'Global Politics', op cit., 37.

characterised by financial liberation, deregulation, and subsequently, hyper-financialisation. The Islamic banking and finance (IB) sector benefited from this liberalisation, becoming more specialised and sophisticated in its product offering.

Whilst this study broadly agrees with Warde's categorisation above, there are three points of departure to note. First, the periodisation adopted in the present literature review is broader than Warde's. The importance of availability of credit in boosting trade and economic development and the inadequacy of indigenous credit institutions in Muslim lands was noted by Sir Sayyed Ahmed Khan, who offered a detailed exposition of *ribā* in his exegesis (*tafsīr*) of the Qur'ān, which he started writing in the late 19th century.[77] Khan considered *ribā* to be different from bank interest. Coincidentally, the historical moment of this *tafsīr* is situated within the re-emergence of intense tension between rationalism and traditionalism in the late 19th century,[78] characterised by Brown as 'clinging to the canon in a ruptured world.'[79]

Secondly, the earlier literature engaged with the idea of *ribā* more comprehensively as it grappled with tradition whilst facing the onslaught of modernity. Traditional exegesis, Ḥadīth, *fiqh* (legal reasoning), morality and modernity were all intertwined in these works as scholars aimed to imagine and implement a Sharī'ah-focused way of life in an emergent Muslim political consciousness that was demanding an end to colonial rule. The influential legal opinions and works of scholars like Muhammad 'Abduh and Rashīd Riḍā in Egypt,[80] and Maulana Maudūdī in India[81] provided the building blocks for what

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[77] Sayyed Ahmed Khan, op cit.

[78] Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005). See Hallaq's view of the shift in the long-held status quo in the late 19th century, 125. A more detailed discussion follows in section 2.7 below.

[79] Jonathan A.C. Brown, *Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy* (London: Oneworld Publications, 2014), 114-6, chapter heading. Here, Brown is referring to the response of traditional Sunni scholars to the modernists' critique of the Ḥadīth corpus and its use in law.

[80] Emad H. Khalil and Abdulkader Thomas, 'The Modern Debate over Riba in Egypt', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 69–95. Khalil notes that 'Abduh's views on ribā can only be inferred from Riḍā's *fatāwa* (legal opinions) on the matter and it is not always clear what 'Abduh's personal views were. Mallat contends that 'Abduh's views were very similar to those of Ibn Qayyim who considered only *ribā al-jāhiliyyah* to have been clearly forbidden by the Qur'ān, pp.70-1.

[81] Maudūdī wrote a detailed treatise on interest (ribā) titled *Sūd*; his methods and conclusions as well as the first appendix to the book are reviewed in this chapter.

eventually became known as ‘Islamic finance.’ This early literature is holistic and moral in its approach, conceived within a charged political atmosphere with palpable yearning for returning to a tradition that was familiar and comforting.

Thirdly, the literature in the later period (1990s onwards) is highly technical and narrower in focus, couched within the framework of conventional or ‘Western’ finance. After Islamic banking and related regulatory structures became more embedded within the paradigmatic framework of conventional finance, the adoption of the analytical tools and nomenclature of Western finance was a deliberate strategy employed by Muslim scholars to demonstrate the superiority and efficiency of Islamic finance from an ethical and economic perspective. Eminent scholars like Mohammed Obaidullah wrote research papers on the complexities of ‘Islamisation of currency markets’.[82] The *Handbook of Islamic Banking*, published in 2007, pulled together two types of research articles: one, papers that explained the basis of Islamic finance in the Islamic tradition; and two, studies that employed econometric tools to analyse the problems of moral hazard, operational efficiency and risk management of banks.[83] A co-authored working paper on the efficiency of interest-free credit is another example of this type of literature.[84] However contemporary the nomenclature in these works, the theoretical underpinning is traditional: the classical juridical definition of *ribā* (any increase on a loan or barter credit sale) sits at the heart of this sub-genre.

As Islamic finance has become more established even in diaspora,[85] it is also witnessing the emergence of sophisticated critique. For instance, Ebrahim’s paper notes “the errors of a static *ijtihād*’ that explain why ‘Islamic’ banking as practiced today is not truly Islamic.”[86] El-Gamal notes the use of Special Purpose Vehicles (SPV) which enable ‘Shari‘ah arbitrage profits [that] can be

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[82] Mohammed Obaidullah, ‘Financial Options in Islamic Contracts: Potential Tools for Risk Management’, *Journal of King Abdulaziz University-Islamic Economics*, 11.1 (1999), 3–28 <https://doi.org/10.4197/islec.11-1.1>, 3.

[83] *Handbook of Islamic Banking*, ed. by M. Kabir Hassan and Mervyn K. Lewis (Cheltenham: Edward Elgar Publishing Limited, 2007)

[84] Murizah Osman Salleh, Aziz Jaafar, and Muhammed Shahid Ebrahim, *Can an Interest-Free Credit Facility Be More Efficient than Usurious Payday Loan?*, 2013.

[85] Conventional ‘Western’ banks have been offering Islamic finance options for decades e.g., HSBC Amanah Home Finance, Citibank Malaysia Islamic credit cards and savings accounts.

[86] Muhammed Shahid Ebrahim and Mustapha Sheikh, *The Political Economy and the Perennial Underdevelopment of the Muslim World*, 2012. The quote has been cited from the draft dated 13 June 2012, 37.

collected in various forms by banks, lawyers and jurists.'[87] Yousef points out the reliance of Islamic banks on the *murabaḥah* as a form of financing,[88] very similar to a conventional interest-bearing loan, whilst Asutay 'explores the social failure of Islamic and financial institutions…'[89] Such critique is primarily focussed on two issues: firstly IF and its institutions have lost sight of their goal of spurring economic development in Muslim countries; secondly, the conceptualisation of *ribā* by IF theoreticians and practitioners is being problematised. Whilst the latter issue is the main concern of the present study, it would inevitably guide the scholar to engage with the question of overarching goals of Islamic financial institutions. Both issues demand individual attention and are intimately linked.

2.3 Selection of Representative Literature

The vastness of IF literature precludes an exhaustive survey, therefore only a select number of relevant works that engage with the main concerns of this study have been reviewed in this chapter. For the present purpose, relevant works are those which explicitly set out to define *ribā*, attempt to explain the rationale for its prohibition, aim to connect with the modern and show awareness of the history of classical Islamic legal thought on *ribā*, whether in the form of insistence on eternal application of tradition or as engagement in critical discussion. Some of these works include a rendezvous with the Judeo-Christian thought on *ribā* although this is rare.

The literature review is broadly chronological, covering roughly the last 150 years, the period in which colonialism reached its heyday and eventually receded from Muslim lands. In this turbulent period, Muslim scholars have produced traditionalist, utilitarian and liberal works to address the 'crises of modernity'.[90] Islamic finance literature stands at the cusp, benefiting from these

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[87] Mahmoud A El-Gamal, '"Interest" and the Paradox of Contemporary Islamic Law and Finance', *Fordham Int'l L.J.*, 27.1 (2003), 108–49, 131 <https://ir.lawnet.fordham.edu/ilj/vol27/iss1/6/>. My addition in square brackets.

[88] Tarik M. Yousef, 'The Murabaha Syndrome in Islamic Finance: Laws, Institutions and Politics', in *The Politics of Islamic Finance*, ed. by Clement M. Henry and Rodney Wilson (Edinburgh: Edinburgh University Press Ltd, 2004).

[89] Mehmet Asutay, 'Conceptualising and Locating the Social Failure of Islamic Finance: Aspirations of Islamic Moral Economy vs the Realities of Islamic Finance', *Asian and African Studies*, 11.2 (2012), 93–113, Abstract.

[90] Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh*. See chapter titled 'Crises of Modernity'. Hallaq uses the terms 'utilitarianism' and

approaches to the Qur'ān and religious tradition. These are nuanced scholarly works that represent the complexity and critique of Islamic finance and open up space for conceptualising a more compassionate and ethical financial sector. A few of the representative texts chosen here note the practice of Islamic banking as a disappointing exercise, one that has not met the social welfare or development goals that were at the heart of the experiment at the time of inception.

The literature employing econometric tools to make an *economic* case for the desirability of Islamic financial instruments, in terms of efficiency and risk management, is outside the remit of this review. It is the main contention in this thesis that if *ribā* is not understood properly or a different conceptualisation is adopted, the econometric analysis will shift accordingly. As such, the econometric analysis is a matter of *furū'* (branch or application of the established opinion on *ribā*) and requires a separate study. The same rationale explains the exclusion of papers that focus on financial engineering and the emergence of institutions aiming to standardise the practices of Islamic banking and finance.

One of the striking themes that emerges from the review is that scholars writing about *ribā* adopt either a traditionalist or a modernist stance. These categories are useful in delineating not just the conformity of conclusions but also the boundaries of discourse. Stated bluntly at this point, traditionalists uphold the '*ribā* – interest' equivalence whilst modernists do not. A detailed discussion on the traditionalist and modernist approaches to understanding *ribā* precedes the literature review.[91]

The evaluation of literature has brought awareness of a number of lacunae, which have generated the research questions listed at the end of this chapter.

'religious liberalism' in this chapter encapsulating the trends in modern Muslim intellectual thought.

[91] My understanding of these approaches developed *post-hoc* i.e. after extensive reading and reflection on the literature and the history of development of the Islamic tradition. However, a review of the two approaches is being presented here prior to the review itself simply to facilitate the reader.

2.4 Traditionalist and Modernist Perspectives and Approaches

The question of reform invokes much controversy and debate amongst Muslim scholars. On one hand, it is recognised that the legal tradition of Islam needs to be refreshed if it is to engage with modernity. Moosa contends that Muslim modernists like Sayyed Ahmed Khan, Muhammad Iqbal and Muhammad 'Abduh held modernity 'synonymous with innovation and openness to knowledge.'[92] However, Muslims have overwhelmingly found modernity to be an experience that creates dissonance. Orthodox tradition, according to Moosa, 'continues its passage through the modern period largely by resisting modernity or grudgingly adjusting to modernity, on its own terms.'[93] In Esack's opinion, recent Muslim scholarship has mostly opted for 'greater theological rigidity and defensive apologetics,'[94] consequentially leaving Muslims unable to deal with complex modern issues.[95] It shall become apparent during the course of this literature review that Islamic Finance is an example of how an apologetic traditional discourse made a grudging adjustment under pressure from pragmatic considerations in a highly sophisticated financial sector catering to modern investor behaviour. It comes as no surprise that much of the neoclassical jurisprudential literature on *ribā* is archaic and casuistic, still using examples of redundant (or rarely occurring) commodity exchanges (dates, salt, barley and wheat) to explain ethics of lending in sophisticated economies.[96]

Before delving into the perspectives and approaches adopted by scholars of Islam, a brief note is needed to clarify the term 'tradition.' In modern literature on Islamic thought, 'tradition' and 'Tradition' refer to two different concepts. The generic 'tradition' refers to the broad intellectual heritage of Islam. Whilst explaining the 'intellectual experience of the Muslim community,' Calder offers a list of literary work that together form the interpretive experience of the Sunni community: the stories of the prophets (*qiṣaṣ al-'anbiyā*), biographies of Prophet Muhammad (*sīrat al-nabī*), the Qur'ān, reports from the Prophet (Ḥadīth), works of legal theory (*fiqh*), theology (*kalām*), exegeses (*tafsīr*) and commentaries on

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[92] Ebrahim Moosa, 'The Debts and Burdens of Critical Islam', *Progressive Muslims: On Justice, Gender, and Pluralism*, 2003, 111–27, 117.

[93] Moosa, 'Debts and Burdens', ibid., 112.

[94] Farid Esack, 'Qur'anic Hermeneutics: Problems and Prospects', *The Muslim World*, 83.2 (1993), 118–41, 120.

[95] Esack, *ibid*, 120. Esack provides a list of complex issues of which 'structural poverty and the environmental crisis' are the most pertinent to the present study.

[96] The neoclassical discussions on *ribā al-faḍl* are an example where scholars still work within the paradigm of barter transactions, which are rarely seen in real life; see discussion on *ribā al-faḍl* in 6.4.3.

Ḥadīth (*sharḥ al-ḥadīth*).[97] In Calder's conceptualisation, Sunni Islam is reduced to its body of literature. Compared to Calder, Talal Asad's conceptualisation of tradition is more nuanced: it not only recognises the intellectual endeavour and its end products but also elaborates on the dialectic between discourse and practice. In a highly influential paper that theorised the concept of Islam as 'discursive tradition,' Asad states that:

> If one wants to write an anthropology of Islam one should begin, as Muslims do, from the concept of a discursive tradition that includes and relates itself to the founding texts of the Qur'an and the Hadith. Islam is neither a distinctive social structure nor a heterogeneous collection of beliefs, artifacts, customs, and morals. It is a tradition… What is a tradition? A tradition consists essentially of discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, has a history.*[98]*

As Asad rightly points out, when 'tradition' gains the power to regulate practices, it becomes orthodoxy. In a discursive tradition, therefore, conflicting views will emerge which will reinforce, threaten or subvert orthodoxy, defined by Asad as 'a relationship of power to truth.'[99] Brown's conceptualisation is quite similar to Asad's whereby he notes:

> Tradition is the scholarly structure built on scripture through interpretation, both systematizing its teachings and controlling its authority, deciding its meaning and making it plain while limiting those who can access scripture directly.*[100]*

Building on the conceptualisations developed by Asad and Brown, it is posited here that 'tradition' includes all intellectual engagement – traditional, secular, utilitarian etc. - at the heart of which lies an interpretative relationship with the Qur'ān and canonical Ḥadīth in a community's search for meaning and truth in the present moment. 'tradition' also possesses a history and lends itself to the discovery of shared horizons (fusion) as understood within the Gadamerian

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[97] Norman Calder, 'The Limits of Islamic Orthodoxy', in *Interpretation and Jurisprudence in Medieval Islam*, ed. by Andrew Rippin and Jawid Mojaddedi (Hampshire: Ashgate Publishing Ltd, 2006), section II, 74.

[98] Talal Asad, 'The Idea of an Anthropology of Islam', *Qui Parle*, 17.2 (2009), 1–30 <http://www.jstor.org/stable/20685738>, 20.

[99] Asad, ibid., 22.

[100] Brown, op cit., 162.

hermeneutical framework.[101] Whether an interpretation is traditional or modernist, it remains within the broad umbrella of tradition although it may be seen as distancing itself from orthodoxy. As such, it is inappropriate to conceptualise *traditionalist* and *modernist* approaches as binaries, or to view one as 'inside' Islam and the other 'outside' it; rather, they are distinct positions on a spectrum called 'tradition.'

'Tradition', on the other hand, is a narrower concept: it refers to Ḥadīth literature which occupies a central place in the epistemology of Islamic tradition.[102] Imām Bukhārī (d. 256/870) and Imām Aḥmad bin Ḥanbal (d.241/855) were eminent traditionists (experts in the science of Ḥadīth).[103] Distinct from the Ḥadīth traditionists are the jurists (***fuqahā;*** singular ***faqīh***) who develop theories of law (jurisprudence) and its methods (*fiqh*), and exegetes, who concern themselves with explaining the meaning of the Qur'ān. Historically, both jurists and exegetes held different views about the use of Ḥadīth in yielding legal opinion. It is a fact, however, that in the early history of legal development Imām Shāfi'ī (d. 204/820) argued persuasively for the Qur'ān and Ḥadīth reports to 'represents [sic] the ultimate source of law…', rejecting the use of reason / rational opinion in legal reasoning.[104] Later, with the efforts of Imām Aḥmad bin Ḥanbal and Dawūd ibn Khalaf al-Zāhirī (d. 270/883), the shift to the Shāfi'ite approach became entrenched: the 'pendulum of the religious movement shifted farther toward anti-rationalism.'[105] In the fields of both *fiqh* and *tafsīr*, the traditionalists were able to argue convincingly that the use of revelation was superior to the use of human reason in developing law. In the very early days of the development of the discursive tradition that is Islam, the Qur'ān and Ḥadīth were given the ultimate authority. This methodological premise eventually formed the orthodoxy, with Ḥadīth taking on a highly influential role in both legal reasoning and exegetical activity.[106] It is true to say that the Islamic intellectual

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[101] Grondin, op cit., 102-3.

[102] This study employs the term 'Ḥadīth' or 'Ḥadīth tradition / report' throughout to maintain clarity. The term 'tradition' is used to refer to the established juridical tradition of Islam (classical). The term 'neoclassical' refers to modern intellectual work which is faithful to classical law.

[103] Often the word 'traditionalists' is also used for Ḥadīth scholars e.g. Hallaq's discussion on the tensions between rationalists and traditionalists in the formative period of development of Islamic legal thought; see Hallaq, *History of Islamic Legal Theories,* 32.

[104] Hallaq, ibid, 32.

[105] Hallaq, ibid.

[106] The authority attributed to *tafsīr bi'l ma'thūr* – exegesis that relies on prophetic reports to explain the meaning of the Qur'ān – is a manifestation of the influence of this method.

heritage is traditionalist and Islamic finance is situated within a traditionalist, neoclassical discourse, faithful to the methods and conclusions of classical scholars. Any new approach in this field that questions the epistemology or methodology of traditional thought and opinion would automatically be labelled as 'modernist.'

For the purpose of the present study, the use of the terms 'traditional' and 'traditionalists' refers to scholars who give significant weight to the text of Ḥadīth in explaining the Qur'ān and as basis of legal reasoning. A modernist, on the other hand, takes a more critical view of Ḥadīth and its role in legal reasoning. The modernist's approach to Ḥadīth is reminiscent of early Ḥanafites whose methodology involved an assessment of the *matn* (content) of a report based on 'the Qur'an, the consensus of the Muslims and reason as criteria…'[107] regardless of the soundness of the *sanad* (chain of narrators). As will be noted presently, scholars like Fazlur Rahman and Abdullah Saeed approach Ḥadīth more critically. In comparison, traditionalists like Mufti Taqi Usmani and Umar Chapra insist on the ontological parity of the Ḥadīth-based *ribā al-faḍl* with the Qur'ānic *ribā*, as well as on the traditional method of legal reasoning that became established post-Shāfiʿī in the third century of Islam. Islamic finance literature offers an illuminating insight into how the definition of *ribā* and associated legal opinions can differ depending on whether a scholar uses the neoclassical traditionalist approach or the modern critical approach.

Whilst there have been some promising developments in the genre of Qur'ānic exegesis,[108] much more is to be done in the arena of Islamic law. According to Calder, the term *Islamic law* did not have a 'corresponding phrase in pre-modern Muslim discourse.'[109] Instead, the two terms referring to the community's engagement with divine law were *fiqh* and *Sharīʿah*. The former alluded to the human endeavour of interpreting divine law; the latter 'is a word whose connotations are divine' and which broadly referred to revealed law. The

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[107] Brown, op cit., 42-3.

[108] See, for instance, the more accessible and coherent approaches adopted by Maulana Maudūdī *(Tafhīm ul-Qur'ān),* Amin Ahsan Islahi *(Tadabbur-i-Qur'ān)* and Javed Ahmed Ghamidi *(Al-Bayān).* In the same vein, Rahman *(Major Themes of the Qur'an)* and Ziauddin Sardar *(Reading the Qur'an)* have outlined overall themes and moral concerns of the Qur'ān, which then affect the interpretation of its various rules.

[109] Norman Calder, 'Law', in *Interpretation and Jurisprudence in Medieval Islam*, ed. by Andrew Rippin and Jawid Mojaddedi (Hampshire: Ashgate Publishing Ltd, 2006), section III, 980.

fiqh literature itself was divided into the *uṣūl-al-fiqh* (jurisprudential principles and methodology) and the *furū`-al-fiqh* (the branches or applications of the law).[110] Hallaq defines *uṣūl-al-fiqh* as 'the theoretical and philosophical foundation of Islamic law…'[111] concerned with principles and methods:

> In treating the theoretical works, I have, quite expectedly, taken full note of their declared purpose, namely, to set forth a methodology by means of which a highly qualified jurist can discover God's law. This approach clearly implies that the chief task of the jurist, who masters the apparatus of *uṣūl al-fiqh*, is represented in a confrontation with the primary sources of the law, a confrontation whose purpose is to discover rulings for unprecedented cases.*[112]*

At this crossroads with modernity, what is required is a thorough reflection on jurisprudential principles as well as the methods of reasoning that yield legal opinions. Islamic legal theory constitutes a dynamic space, an arena in which the discourse on *ribā* emerges as a rich case study for charting the tensions, promises and disappointments in the intellectual engagement with the primary texts.

The poet and philosopher Muhammad Iqbal passionately argued for reform of the intellectual tradition of Islam in his book *Reconstruction of Religious Thought in Islam*.[113] He claimed that there is sufficient dynamism within the traditional sciences to enable a fresh and robust engagement with the source texts. He further argued that the Islamic legal tradition offered the principles and tools – for instance, *qiyās* (analogical reasoning) - that could be modified and enhanced to enable full intellectual engagement with the message of the Qur'ān and yield a body of law that was relevant to the modern Muslim community.[114] Similarly, Rahman was of the view that *qiyās* was not developed sufficiently because the 'atomistic'[115] approach to the Qur'ān - essentially the lack of understanding of the book's overall aims and values - prevented such a development.[116]

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[110] Calder, ibid., 981.
[111] Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh*.Hallaq, *A History of Islamic Legal Theories*, vii.
[112] Hallaq, ibid., ix.
[113] Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam* (London: Oxford University Press, 1934). See Chapter VI, The Principle of Movement in the Structure of Islam.
[114] Iqbal, ibid.
[115] Rahman, *Islam & Modernity*.Rahman, *Islam & Modernity,* 2.
[116] Rahman, ibid.

The tension between traditionalist and modernist approaches to *ribā* becomes evident in three distinct ways: firstly, in *how* scholars engage with the Qur'ān; secondly, *what* issues scholars concern themselves with,[117] and thirdly, the *extent* to which they distance or align themselves to tradition and / or the so-called 'Western' values and ways of thinking. The first indicator pertains to history and revelation; the second pertains to the ontology of priorities whilst the third pertains to *maqāṣid* (overall aims of law.)[118]

In terms of engagement with the Qur'ān, the traditionalist is reluctant to accommodate historicism, to conceive of the Qur'ān as addressing 'a living and dynamic context'[119] whilst also transcending it. The ontology of priorities is significantly different between the two camps of scholars: the traditionalist is concerned with usury, the rights of women, redistributive taxation through *zakāt*[120] and the political establishment of the Islamic way of life.[121] The modernists, on the other hand, tend to give emphasis to the historical context of the revelation of the Qur'ān and are, in general, more accommodating of modern democratic forms of government. The traditionalists rely more on the text of Ḥadīth for legal reasoning whilst modernists take a critical approach to Ḥadīth.[122]

In *Islamic Banking and Interest,* Abdullah Saeed offers a detailed treatment of the modernist and neo-revivalist approaches to reform.[123] According to Saeed, modernists approached the Qur'ān as a holistic text, criticising the approach of traditional scholars who usually rely on verse-by-verse exegesis. If Muslims were to understand the overarching aims and goals of the holy text, they

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[117] Rahman suggests that modernists and 'neorevivalists' concern themselves with different problems. Usury is primarily a concern of neorevivalists. Rahman, ibid.,136.

[118] It is acknowledged at this juncture that the categorisation is blunt; whilst nuance would be a desideratum for a research paper on 'critical Islam', the blunt categorisation offered here is sufficiently beneficial for the present study.

[119] Esack, op cit., 119.

[120] Rahman, *Islam & Modernity,* 136.

[121] The most influential proponent of the political establishment of Sharī'ah is the 20th century scholar, Maulana Maudūdī, who wrote prolifically on this matter.

[122] Dr Khaled Abou El Fadl's excellent analysis of authoritarian discourses pertaining to women highlights the crisis created by the conservative traditionalist approach that does not take a critical view of Ḥadīth reports. See Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*.

[123] Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*.Saeed, *Islamic Banking and Interest,* 6-8.

needed to situate the Qur'ān in its historical context. Hence, the modernists argued for a non-literal and historically situated understanding of the Qur'ān. They also adopted a more critical view of Ḥadīth, accepted the jurisprudential principles but advocated the use of classical methods to approach the law with a fresh perspective. In other words, they recognised that legal opinions issued by classical scholars were bound to the realities of their times and a fresh engagement with canonical texts and jurisprudence were needed to create a body of substantive law cognisant of modern contemporary reality.

On the other hand, the 'neo-revivalists', in Saeed's view, were concerned with the encroachment of Western liberal and secular ideas. They insisted on the richness of the Islamic tradition and its *completeness:* the established tradition (exegesis, Ḥadīth, *fiqh*) was sufficient in answering all the problems Muslims were facing. Independent and fresh legal reasoning (*ijtihād)* 'would be [required] to arrive at solutions to problems not explicitly covered by the Qur'ān and the *sunna.*'[124] A logical corollary of this approach was that in the matter of *ribā*, bank interest was identified as the forbidden *ribā,* in line with the established *fiqh* position that views any increase on a loan as *ribā*. It is not a coincidence therefore that neo-revivalist political movements such as Jamā'at-i-Islāmī and the Muslim Brotherhood made the ban on bank interest central to their call to implement Sharī'ah law.

Saeed further notes that traditional scholars following the classical legal methodology tend to focus on the *ratio legis* of the prohibition.[125] They consider *ribā* to be distinct from trade and, given the traditional atomistic view of the Qur'ān, do not give the same importance to the rationale of the prohibition as the modernist does. The immutability of Sharī'ah law, as explicated in *fiqh* literature, is a key consideration for the traditionalist. On the other hand, the modernists emphasise the context of the Qur'ānic verses prohibiting *ribā*, and juxtapose *ribā* with *ṣadaqah* (charity). The notion of public interest (*maṣlaḥah*) and the rationale of the prohibition – exploitation - hold prominence in the modernists' argument. Moreover, the modernists question the broadening of the remit of the prohibition based on Ḥadīth reports. One can deduce, therefore, that the traditionalist scholar's view of *ribā* is epistemologically and hermeneutically distinct from the modernist's view, mainly due to

[124] Saeed, ibid., 8.
[125] Saeed, 6-7.

methodological differences arising from the *uṣūl* (principles) of legal reasoning underpinning the analyses.

It must be stressed at this juncture that both traditionalist and modernist scholars of Islam are sincere in their endeavours. It is an established tenet in Islamic law that only God can judge motivations. As long as the effort to seek guidance is sincere it would be accepted and rewarded by the Creator. Scholars can never claim to have found the truth, only that they have made sincere effort in developing an interpretation that they believe is close to the truth. The process of legal reasoning is thus a continuous one, yielding new insights after each systematic and thorough engagement with the source texts of Islam. It is therefore important to acknowledge that both traditionalist and modernist works enrich future efforts.

The next section provides a snapshot of the global context in which IF is situated, followed by a detailed review of representative IF literature relevant to the present study.

2.5 Islamic finance in the Global Context

To state that we live in turbulent times is to understate. The 2008 'credit crunch' led to the near-collapse of globalised finance and the demise of long-established financial institutions like Lehman Brothers. There was plenty of talk of radical change but none has been forthcoming. The old problems of fragility in the financial system remain. The year 2015 was particularly unsettled: economic and financial crises in Greece occupied policymakers and creditors in Europe while prominent economists raised questions about the rise of global finance and its influence on democracy in the West. Stiglitz wrote about the crisis of capitalism: '…these policy debates are really about ideology and power. We all know that.'[126]

The pursuit of growth based on reckless use of finite natural resources has created a climate emergency yet politicians and financial institutions have not

[126] Joseph Stiglitz, 'Greece, the Sacrificial Lamb', *The New York Times*, 25 July 2015. The policy debates about Greece's unsustainable debt were taking place amongst the so-called troika: the IMF, the European Commission and the European Central Bank. None of these is a democratically accountable body. The Greek crisis also forms a case study in this thesis; see 6.6.5.5.

committed to reversing this change. An established trend of wage stagnation in developed economies since the 1990s, imploding asset bubbles and deep recessions in the last 100 years have led to the emergence of resounding critique of capitalism in the academy, calling for the search for an alternative. In *Postcapitalism: A Guide to Our Future,* economist Paul Mason sees the 2008 financial crisis as an opportunity to build a better alternative.[127] Much earlier than that, E.F. Schumacher (d. 1977), author of the influential *Small is Beautiful: Economics as if People Mattered* had called for an alternative economic system that focused on human development, ecology and spiritual values.[128] James Robertson, one of the founders of the New Economics Foundation,[129] wrote in the first Schumacher Briefing:

> Today's money and finance system is unfair, ecologically destructive, and economically inefficient. It systematically transfers resources from poor to rich. The money-must-grow imperative drives production (and thus consumption) to higher than necessary levels. It skews economic effort towards making money out of money, and against providing real goods and services.[130]

There are other systemic problems of urgency, particularly the inability of globalised capitalist economies to withstand periods of negative growth or mitigate rising inequality, which has been proven to impede economic growth in the long run.[131] Taken together, these systemic problems have raised serious challenges to the 'wisdom' of traditional economics: the assumption of beneficial *perpetual* growth is coming undone in the face of the simple fact that the planet has finite resources which are distributed unequally. Robertson continues:

> This money-must-grow compulsion drives economic activity – production and therefore consumption – to higher levels than would otherwise be needed. For example, **interest and the discount rate**

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[127] Chris Mullin, 'Postcapitalism: A Guide to Our Future by Paul Mason Review - Engagingly Written but Confused', *The Guardian*, 3 August 2015. Mullin notes thought that Mason does not offer clear and specific measures for the postcapitalist age.

[128] 'Schumacher Society: History and Mission' <https://schumachersociety.net/governance/history-and-mission/> [accessed 6 February 2022].

[129] 'New Economics Foundation' <http://neweconomics.org/about-us/> [accessed 20 May 2018].

[130] James Robertson, *Transforming Economic Life: A Millennial Challenge* (Devon: Green Books Ltd, 1998), 51.

[131] 'Inequality Hurts Economic Growth, Finds OECD Research', 9 December 2014 <https://www.oecd.org/newsroom/inequality-hurts-economic-growth.htm>.

> encourage rapid exploitation of resources…The money-must-grow imperative also results in a massive worldwide diversion of effort away from providing useful goods and services, into making money out of money.[132]

Furthermore:

> Would it be desirable and possible to limit the role of interest more drastically than that, for example by converting debt into equity throughout the economy? This would be in line with Islamic teachings, and with earlier Christian teaching, that usury is a sin.[133]

The aforementioned concerns highlight the importance of creating a more ethical, compassionate and safer financial system that reduces inequalities and cares for the environment and the finite resources of this plant. In this milieu, a rejuvenated Islamic finance can make important contributions.

2.6 Islamic Finance – History and Critique

The theory and practice of Islamic finance can *potentially*[134] make a ground-breaking contribution to an urgent challenge faced by humanity. My research is timely - not only because it is aware of the increasing momentum in the critique of capitalism, or that it has the luxury of retrospect covering 60 years of Islamic finance from 'ideal' theory to pragmatic application - but also because of the *situatedness* of its vocabulary in a field of study which is mathematical and complex and allegedly devoid of value judgments.[135] It is of note that there has

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[132] Robertson, op cit, 53. My emphasis.

[133] Robertson, 57.

[134] My use of the qualifier is deliberate: Islamic finance is facing strong criticism, as we shall see presently. However, it has immense potential to change the discourse and practice of finance at a global level; see Conclusion 7.3.

[135] Economics is usually defined as a study of production, distribution and consumption of sources. It positions itself as a science, a premise proving fragile under sustained attack from economists, think tanks and journalists critical of the economic orthodoxy. Economists rarely touch the distribution question because it is precisely in this domain that value judgments come into play, which cannot be accommodated in a world of *rational* mathematical modelling. '"Of the tendencies that are harmful to sound economics, the most seductive, and…the most poisonous, is to focus on questions of distribution"' wrote James Surowiecki in *Why the Rich are So Much Richer* the New York Times book review of Joseph Stiglitz's latest publication titled *Rewriting the Rules of the American Economy: An Agenda for Growth and Shared Prosperity* James Surowiecki, 'Why the Rich Are So Much Richer', 2015 <http://www.nybooks.com/articles/2015/09/24/stiglitz-why-rich-are-so-much-richer/> [accessed 3 January 2016].. It is worth noting that

been a rise in the use of religious ideas in the post-recession world. Banks were blamed for their profligacy and speculative risk taking while bankers were called greedy and sinful.[136] Jesus overturning the moneylenders' tables in the Temple and the rejuvenation of debt jubilee campaigns became oft-repeated themes. In his post-secular work, Wael Hallaq compared the metaphysic of the modern secular nation-state with the Islamic form of governance in a chapter covering the economic effects of globalisation and how the Sharī'ah would deal with the challenge of 'a massive liberal-capitalist world market'.[137] Perhaps it is time to return to religious ideas to explore the possibility that ancient wisdom can come to our rescue. In this global context, Islamic finance offers fertile ground for exploring the question of ethicality of debt and investment in the 21st century.

Islamic financial institutions emerged nearly 60 years ago. The practice of Islamic finance is primarily based on the traditionalists' thesis that interest in all its forms, including bank interest, is the forbidden *ribā* and is not permissible to Muslims. The political influence of Islamic revivalist movements in the middle of the 20th century, particularly the Muslim Brotherhood in Egypt and Jamā'at-e-Islāmi in the Indian subcontinent, convinced many Muslims politicians and leaders of nascent nation-states to commit to the idea of developing Islamic institutions which would 'show the superiority of Islam over Western institutions and thought.'[138]

The first rather short-lived experiment at establishing an Islamic financial institution took the form of savings houses set up by Aḥmed al Najjār in Egypt in 1963, which came to be known by the name Mit Ghamr Bank.[139] According to Kahf, the bank suffered from political interference and was closed in 1967 'probably because Islamic revivalists and former Muslim Brotherhood members infiltrated [the savings houses] as clients, depositors and probably

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fairness and equity in distribution is a key concern of the Abrahamic tradition in which the poor and the needy feature prominently.

136 Howard Davies, 'The Political Effects of Financial Crises' <http://www.theguardian.com/business/2015/dec/24/the-political-effects-of-financial-crises> [accessed 3 January 2016]. '…the bankers and financiers who are widely blamed for the crisis will remain in the sin bin for a while yet…'

137 Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013). See concluding remarks in the chapter titled *Beleaguering Globalization and Moral Economy.*

138 Saeed, *Islamic Banking and Interest,* op cit.*,* 7.

139 Monzer Kahf, 'Islamic Banks: The Rise of a New Power Alliance of Wealth and Shari'a Scholarship', in *The Politics of Islamic Finance*, ed. by Clement M. Henry and Rodney Wilson (Edinburgh: Edinburgh University Press Ltd, 2004), 19.

employees'.[140] Mit Ghamr bank was 'based on the moral economy understanding of Islam…' because of its focus on social development in rural areas in Egypt.[141] Since that initiative, Islamic financial institutions have grown at impressive speed, especially after the quadrupling of oil prices in 1973, and were estimated to reach $2.5 trillion in assets by 2019.[142] However, according to Warde, this growth has taken place at the expense of the spirit of Islamic law:

> To many, Islamic finance appeared as an exercise in semantics: Islamic banks were really no different from conventional banks, except in their use of euphemisms to disguise interest.[143]

Theoretical literature in the 1970s put forward a profit and loss sharing concept which would underpin Islamic banking;[144] however, this was quickly overtaken by the exigencies of modern markets where investors demanded steady and predictable returns. Islamic banks responded by increasing their reliance on *ḥiyāl* (legal stratagems), of which *murabaḥah* or the cost-plus-profit contract is the most prominent. Empirical data collected in the mid-1990s showed that between 56% and 92% of Islamic banking sector's financing was being done through *murabaḥah* contracts, which simply mimic conventional loans.[145] Elsewhere, El-Gamal has scathingly denounced the use of ruses in Islamic finance:

> And the legal abitrageurs [sic] will still come around quoting "God permitted trade and forbade usury" (deceptively, twisting the meaning) to justify their trade!![146]

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[140] Kahf, ibid., n6. The official explanation of the closure referred to non-compliance to bureaucratic procedures.

[141] Asutay, op cit., 97.

[142] Quilter-Pinner and Yan, op cit.

[143] Ibrahim Warde, *Islamic Finance in a Global Economy* (Edinburgh: Edinburgh University Press Ltd, 2000), 48.

[144] Saeed, *Islamic Banking,* 2. Although, there is earlier evidence of the use of such contracts in the Ottoman era so profit and loss sharing contracts were not novel or unknown; see Linda T Darling, 'Murat Çizakça, A Comparative Evolution of Business Partnerships: The Islamic World and Europe, with Special Reference to the Ottoman Archives, The Ottoman Empire and Its Heritage, 8 (Leiden: E. J. Brill, 1996). Pp. 232. $80.75 Cloth.', *International Journal of Middle East Studies*, 31.2 (1999), 298–300 <https://doi.org/DOI: 10.1017/S0020743800054209>.

[145] Yousef, op cit., 65; see Table 3.1 for data. See also more recent empirical studies cited by Asutay that corroborate Yousef's view; Asutay, op cit., 102.

[146] Mahmoud A. El-Gamal, 'Islam and Economics: Ibn Qayyim on Riba and More Expensive Riba: Which Should We Choose?', 2007

A key factor underpinning the mismatch between theory and practice is the performance of Islamic banks as morally oriented institutions. In Asutay's view, Islamic banks do not meet the spirit of the law and their 'social failure' can be corrected by emphasising the concept of an Islamic moral economy which has a developmental focus.[147] El-Gamal criticises the inefficient 'special purpose vehicles' employed in Islamic banks to overcome the prohibition on interest [148] and devotes a full chapter to 'Sharī'ah arbitrage'.[149] There is criticism too in academic circles that the discourse on Islamic banking is repetitive, legalistic and technical[150] and the plethora of literature rarely offers new insight or plausible responses to the major critique that Islamic banks often mimics their conventional counterparts with heavy reliance on fixed income securities. [151] The legalistic bent of the theory developed in the classical paradigm has created a situation where contractual forms of financial instruments are only superficially Sharī'ah compliant. This is resulting in Islamic banks falling short of meeting the rationale (*ḥikmah*) of the prohibition of *ribā*.

Lastly, Islamic banks face a crisis of credibility amongst the lay Muslim population. According to Yousef, there is 'perceived disparity' between the theory and application of Islamic finance.[152] It appears that whilst Islamic finance has re-empowered the *'ulema* and jurists by providing them with the opportunity to legitimise Islamic banking operations,[153] it has failed to impress the lay public in accepting the model as truly Islamic.

If it is asserted that Islamic finance can potentially mitigate for some of the problems of modern capitalism and reverse the long-term economic decline in

<http://elgamal.blogspot.co.uk/2007/05/riba-and-more-expensive-riba-which.html> [accessed 6 February 2022].

147 Asutay, op cit., 107.

148 Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (New York: Cambridge University Press, 2006) <https://doi.org/10.1093/jis/etm054>, 6.

149 El-Gamal, ibid., Chapter 2 – *Jurisprudence and Arbitrage*. El-Gamal employs the term 'arbitrage' to criticise the use of legal stratagems by Islamic banks to circumvent the *ribā* prohibition.

150 Warde, 'Global Politics, Islamic Finance And Islamist Politics Before and After 11 September 2001'.Warde, 'Global Politics', 48.

151 Zubair Hasan, 'Islamic Banking at the Crossroads: Theory versus Practice', in *Islamic Perspectives on Wealth Creation*, ed. by Munawar Iqbal and Rodney Wilson (Edinburgh: Edinburgh University Press Ltd, 2005), 294.

152 Yousef, op cit., 63.

153 Kahf, supra.

Muslim countries, then this crisis of credibility must be addressed. At the heart of the crisis is the controversy on the definition of *ribā*. There is hardly any consensus on the ideas of usury and bank interest or their equivalence in contemporary discourse, which is traditional in tenor and tends to idealise and ideologise classical *fiqh* (Islamic law and legal theory) and medieval forms of contracts.[154] The enormity and complexity of the problem cannot be underestimated given the chronic underdevelopment of the Muslim world, allegedly due to the lack of innovation in contractual forms and absence of robust financial institutions protecting property rights.[155] In Kuran's view, Islamic law is to blame for the economic problems in the Muslim world: he squarely attributes the economic failure to the divine injunctions in Islam pertaining to the prohibition of *ribā*, which resulted in the jurists' insistence on using the medieval *muḍarabah* contract as the main mode of commerce, and the Qur'ānic law of inheritance.[156] In contrast, Ebrahim et al. and Saeed point to a flawed *ijtihād,* raising questions about the weaknesses in the methodology of classical legal theories and their implementation in a modern world. Islamic finance, therefore, sits within a context laden with nostalgia about the golden age of Islam, a need for reform in the interpretation and understanding of the divine law of *ribā*, and the general malaise of economic hardship in the Muslim world.[157]

In a nutshell, the debate on *ribā* centres round 'bank interest' and its permissibility in Sharī'ah. Emad Khalil provides a succinct survey of the debate.[158]

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[154] Note, for instance, Mufti Taqi Usmani's view that 'The real and ideal instruments of financing in the Shari'ah are *mushārakah* and *mudarabah.'* Usmani, *An Introduction to Islamic Finance,* 19. This statement needs justification, yet traditional theorists of Islamic finance often refer to these ideals without providing any explanation of why these medieval forms of contracts are 'ideal.' My supervisor drew my attention to this tendency to idealise.

[155] Muhammed Shahid Ebrahim and others, *Islam and Economic Development*, 2013.

[156] Timur Kuran, 'The Islamic Commercial Crisis: Institutional Roots of Economic Underdevelopment in the Middle East', *The Journal of Economic History*, 63.2 (2003), 414–46. According to Kuran, the insistence on using unstable *muḍarabah* partnerships thwarted financial innovation. The law of inheritance divided property into economically unviable units, which explains the weakness of financial institutions and their inability to compete with European economic advancement.

[157] See, for instance, the idealisation of medieval forms of contract in contemporary Islamic financial theory, particularly the *muḍarabah* partnership 'as a sacrosanct commercial arrangement…' Muhammed Shahid Ebrahim and Mustapha Sheikh, 'The Mudaraba Facility: Evolution, Stasis and Contemporary Revival', *Arab Law Quarterly*, 29.3 (2015), 246–60.

[158] Emad H. Khalil, 'An Overview of the Sharia'a Prohibition of Riba', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (London: Routledge, 2006), pp. 55–68.

The divine law on *ribā* is fully expounded in *sūrat l-baqarah* (Chapter 2 - The Cow) verses 2:275-280;[159] however, the Qur'ān refers to *ribā* in three other places reminding the believers of God's dislike of *ribā* and its prohibition to earlier nations. In particular, the Qur'ān mentions the iniquity of the Jews who took *ribā* even though it was prohibited to them.[160] The Arabs of the pre-Islamic era used to demand interest in addition to the principal if the borrower asked for more time to repay due to constrained financial circumstances. This type of interest-bearing loan is usually known as *ribā al- jāhiliyyah* and understood as the most exploitative form of *ribā* because it carried a high rate of interest. The Qur'ānic *ribā* is the *ribā al-nasī'a* (the *ribā* of delay) that, according to classical scholars, included any return on a loan, small or large. Their view was based on a textual indicant in verse Q2:279: 'you shall have your capital sums…'.[161] *Ribā al- jāhiliyyah*, therefore, is a highly exploitative form of *ribā* of delay.

Classical jurists held *ribā* to be the opposite of sale or trade (*bay'*) and explained the prohibition using the six-commodity Ḥadīth tradition, which prohibited barter trade in currency and some food items. This type of *ribā* in sales was termed as *ribā al-faḍl*.[162] Nomani notes that the Qur'ānic ruling of *ribā* was extended to include sales because classical jurists disagreed on the methodology of interpretation of primary sources and chose the *ribā* of Ḥadīth as an explanation for the term *al-ribā* used in the Qur'ān.

> …this article concludes that the focus of classical jurists on sales was due to the fact that they considered ribā in the Qur'an as an ambiguous and/or speculative general term that had to be

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159 Traditional and modernist scholars have used this range of verses. This thesis will include verses 281-283 in the discussion.

160 Q4:160-1.

161 Umar Chapra and Taqi Usmani, for instance, are well-known proponents of this view. See M. Umer Chapra, 'The Nature of Riba in Islam', *The Journal of Islamic Economics and Finance (Bangladesh)*, 2.1 (2006), 7–25. Usmani's detailed exposition of *ribā,* which formed the basis of the Supreme Court judgement in Pakistan to abolish bank interest, is seen as representative of this established juridical view. There are extensive references to the Judgement in Chapter 6 of this thesis. Usmani, 'The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan'.

162 There are a few versions of this tradition. I quote from Rahman's 1964 paper on *ribā*, which cites the representative report from Abu Sai'd Al-Khudri in Sahih Muslim, *Kitab ul buyu'*: "Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt like for like, payment being made 'hand to hand'. If anyone gives more or asks for more he has dealt in *ribā*. The receiver and the giver are equally guilty"; see Rahman, 'Ribā and Interest', 13.

> particularized by the authentic hadith…it is only in modern times that Muslim scholars, and to a lesser extent, contemporary jurists, have explicitly recognized ribā in both sales and debt on an equal footing.[163]

Rahman, on the other hand, identifies a process of development in the emergence of Ḥadīth reports on *ribā* as well as the definition of *ribā* itself, arguing persuasively that the classical view of *ribā* became increasingly rigid as its remit was broadened from the original Qur'ānic term which only referred to exploitative loans extended to the poor. For Rahman, 'This process of development is at the bottom of the contradictions found in the *ḥadīth*-material.'[164]

Modern intellectual engagement with the law of *ribā* has resurrected the old scuffles between the proponents of 'reason (*'aql*)' and 'tradition', the differences of opinions regarding the use of Ḥadīth reports to particularise or generalise the text of the Qur'ān as well as the use of historicism to contextualise these canonical sources of Islamic knowledge (*'ilm*). As we shall see presently, a survey of contemporary scholars' views on *ribā* will highlight continuity with the classical, not just in terms of methodology but also in terms of the relationship of power emerging between '*ulema* and Islamic financial institutions, reminiscent of the legitimising influence the *'ulema* held in the early says of Islam as the learned interpreters of law. Islamic finance represents a dynamic space for revival and reform and, as a consequence, there is a large body of literature on the subject. Most of it, however, regurgitates classical views in a superficial manner. Due to this reason, my choice of literature is deliberately small and focused. The works chosen for analysis are representative of the discourse on *ribā* in terms of methods of engagement with the primary sources and the evolution of the concept over the last 150 years.

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[163] Farhad Nomani, 'The Interpretative Debate of the Classical Islamic Jurists on Riba (Usury)', *Topics in Middle Eastern and North African Economies*, 4 (2002) <https://ecommons.luc.edu/meea/39/> [accessed 24 August 2021].

[164] Rahman, 'Riba and Interest', 20. Rahman charts the controversy surrounding the report from Ibn 'Abbas *innamā ar ribā fi nasī'a: ribā* is only in delay or credit. It is alleged that Ibn 'Abbas later changed his view to include *ribā al-faḍl* in the category of the forbidden *ribā.* Farooq argues that the Hanafi jurist Al-Jaṣṣāṣ played an instrumental role in defining *ribā* as pre-stipulated excess on a loan and reported that Ibn Abbas 'later retracted from [the] above statement.' See Farooq, 'Stipulation of Excess', op cit., 304.

2.7 Discourse in a World of Epistemological Ruptures[165]

Modern literature on *ribā* emerged roughly in the middle of the 19th century with Sayyed Ahmed Khan vocalising his approval of bank interest,[166] a phenomenon Muslims encountered at the height of the colonial epoch in Hindustan. By this point, Muslims in the Indian subcontinent and the Middle East had witnessed first-hand the fruits of material progress in the West: after all the colonisation of Muslims lands had taken place at the hands of a business empire. The traditional legal structures in Islamic lands lay in tatters after systematic dismantling of Islamic courts of law and, more significantly, the seismic shift in legal authority from the *ulema* to the state. Hallaq views this as 'the eternal loss of epistemic authority'.[167] Quite apart from the external impetus for change that resulted from the shock of colonialism, the Muslim world was experiencing an internal impetus to modernise the economy, as evidenced in the case of the *Tanẓimāt* reforms in Turkey from 1839 – 1876. In a rapidly evolving world, Muslim intellectuals were beginning to identify a major challenge: tradition was no longer able to provide answers to the problems of modern society. The changing role of women in industrialised economies, the emergence of the nation-state and its intrusion into all aspects of life, the organisation of society and politics on secular basis and the post-Enlightenment belief in the power of human reason were radically altering the old paradigms. After a long hiatus, tradition stood under scrutiny again.

> The middle point between rationalism and traditionalism was thus the happy synthesis that emerged [in the 9th century AD] and continued, for centuries thereafter, to represent the normative position. The end of the Mihna was the take-off point of this synthesis. By the middle of the fourth/tenth century, the synthesis was fully in place, not to be questioned again until the second half of the nineteenth century.*[168]*

It is at this juncture that Sayyed Ahmed Khan, a moderniser, discussed *ribā* at length in his exegesis of the Qur'ān. In the foreword to the exegesis, Ahmed

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165 'Rupture' is an apt word; I have borrowed this from Brown; see n79, supra.

166 Khan, supra.

167 Wael B Hallaq, 'Juristic Authority vs. State Power: The Legal Crises of Modern Islam', *Journal of Law and Religion*, 19.2 (2003), 243–58 <https://doi.org/10.2307/3649176>, 258.

168 Wael B. Hallaq, *The Origins and Evolution of Islamic Law,* 125. The *Mihna* (inquisition) was undertaken by caliphs and rationalists in the middle of the 9th century to resolve the controversy about the *createdness* of the Qur'ān. At the heart of the controversy was a hermeneutical question: what is the role of human reason in the interpretation of revelation? My addition in square brackets.

Khan addressed the issue of reform. He was not satisfied with the intellectuals who had set aside the tenets of Islamic belief and wholeheartedly accepted the assumptions and methods of the modern sciences. Neither was he in favour of the approach adopted by Muslim thinkers in the past, when Greek philosophy 'became popular amongst Muslims and created chaos in religious principles and beliefs.'[169] Ahmed Khan wanted to convince Muslims to turn to the modern sciences and was faced with the question of whether these clashed with the principles established in the Qur'ān. Traditional exegetical literature only offered lengthy discussions on linguistics, rhetoric and grammar, categorisation of chapters into Meccan and Medinan and the use of *mauḍū* (fabricated) Ḥadīth reports. Khan decided to search for the principles of interpretation in the Qur'ān itself, as he was skeptical of the use of weak Ḥadīth reports in the occasions of revelation literature, which were often used to explain the Qur'ān. He focused instead on finding the meaning of verses from their contextual relationships to other verses, uses of pronouns, and elaborating the meaning of *mujmal* (ambiguous) words.[170] Khan considered the order and setting of the chapters in the Qur'ān as divinely revealed. The place of a verse in a chapter was important, a view also posited by Shah Wali Ullah in the 18th century.[171]

Khan interpreted the famous report from Caliph 'Umar - which stated that the Prophet died before explaining *ribā* fully - to justify adding his own opinion to a debate that had been raging for centuries.[172] After outlining the classical view of the two types of *ribā*, *al-faḍl* and *al-nasī'a*, he declares his disagreement with the classical view and dismisses the category of *ribā al-faḍl*:[173]

> What I have learned is that the type of exchange [barter] which has been included in the type of ribā mentioned in this verse [2:275] is an outright error. The verse has no relation with the excess accrued in such types of barter. No doubt Ḥadīth reports have declared such types of barter to be ribā but this has no link with the ribā mentioned in this verse. Ribā can be found in cases where a person benefits

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[169] Khan, op cit., 1. My translation from Urdu.

[170] The term *mujmal* (ambiguous) refers to a word for which further study is needed before its meaning can be identified. *Mujmal* words often have more than one meaning.

[171] Khan, op cit., 52.

[172] Khan, op cit., 369. Fazlur Rahman questions the authenticity of this tradition by providing historical evidence regarding the revelation of the *ribā* verses and contradictions with other Ḥadīth reports. See Rahman, 'Riba and Interest', 8-10. Further discussion on this report follows in 6.4.1.

[173] I have queried if *ribā al-faḍl* is an error in juristic understanding; see research questions in 2.9 below.

> from a *fāsid* [invalid] sale such as the one mentioned in the report *'man ajbī faqad arba.' Ijba* means selling the fruits of a tree that hasn't yet borne fruit; for example, in Hindustan the sale of mangoes when the trees have just flowered, whereby the seller benefits even when he hasn't sold anything, and the buyer benefits when he hasn't paid anything. One can consider this sale to contain ribā but in reality this is a problem of fāsid sale and cannot be included in the explanation of the ribā mentioned in the verse.[174]

As a way of historicising the Qur'ānic narrative and identifying similarities with usurious transactions common in India, Khan refers to the practices of the Arabs at the time of the revelation of the Qur'ān and brings contemporary examples of *ribā*-based lending in Hindustan, keeping these separate from beneficial business, trade and government loans.[175] His hermeneutic makes some important distinctions which will surface consistently in the modernist view of *ribā*: i) between sale and debt; ii) between types of loans, personal or business; iii) and between exploitative lending by loan sharks and loans needed for oiling the wheels of commerce. Khan is unique in interpreting the various Ḥadīth reports on *ribā* (usually mentioning exchange of inferior commodities for superior commodities of the same type) as referring to *fasid* sales rather than the Qur'ānic *ribā*.[176] Here he cites the authority of Imām Mālik who categorised transactions of this type as 'sale' rather than *ribā* in his collection of Ḥadīth reports.[177]

Khan also identifies the rationale of the prohibition. The professional lender earning *ribā* diverted funds from productive investment to expropriating wealth from fellow citizens. It induced him to a lazy way of acquiring wealth by taking advantage of the hard work and toil of those poorer than him. Another form of *ribā*, more corrupt in Khan's view, was the interest-bearing loan given to those experiencing poverty and hardship. According to Khan, it was this type of *ribā* that warranted the notice of war from Allah and His Prophet. He acknowledged the *takhṣīṣ* (specification) he had brought to the verse and justified this on the basis of the context of the preceding verses which exhort the importance of charitable giving to the poor. Therefore, in Khan's view, the particularisation to

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[174] Khan, op cit., 371. My translation and additions in square brackets.
[175] Khan, 371-82.
[176] Khan, 371-3.
[177] Khan, 372.

exploitative lending is inherent in the verses themselves[178] and the prohibition does not extend to trade and business loans.[179]

Ahmed Khan's views are important for two reasons. One, his methodological approach consciously diverges from the classical legal as well as exegetical methodology. For Khan, *ribā* is not the opposite of trade; rather it is contra-distinct from charity. This makes *ribā* a *moral* prohibition and not an economic one. Secondly, Ahmed Khan's view is focused on the *use* of credit rather than the idea of literal increase. He refutes the classical argument that any increase on sums advanced is *ribā* because he can clearly see the implication for economic development, highly dependent on the availability of credit. His 'Qur'ān-only' methodology attracted criticism from traditional circles, but his use of sociohistorical circumstances set the scene for future modernists.

Just as Muslim intellectuals were engaging with modern challenges in British India, Egypt in the late 19th and early 20th century was also fertile ground for serious reformist thinkers. According to Jonathan Brown:

> …Egypt of the early twentieth century was at a historical nadir of confidence in Islamic scriptures. It was an era of intense colonial influence and intellectual liberalization…The one man to whom the Islamic modernist cause owed the most was the visionary scholar who inspired both Sidqi and Abu Rayya. Muhammad 'Abduh (d.1905) was a classically trained Maliki jurist, but one who had spent time in Europe and possessed a peerless and creative reformist bent.*[180]*

It was in this political and intellectual terrain that Muhammad 'Abduh and his disciple Rashīd Riḍā put forward the idea of legislating on the basis of *maṣlaḥah* (public welfare) on issues where the Qur'ān and Ḥadīth were silent. The two reformers were, in Hallaq's words, the early 'religious utilitarianists'.[181] 'Abduh's views reached a wider audience through the writings of Riḍā via *Al-Manar*, a publication of the Salafiyyah Party that Jamāl al-Dīn Afghāni and 'Abduh had set up in Egypt in 1883. From 1899 to 1905, when 'Abduh was rector of the prestigious Al-Azhar institution, he published various legal opinions including those on usury. He disapproved of the interest paid on postal savings

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178 Khan, 374.
179 Khan, 378.
180 Brown, op cit., 111.
181 Hallaq, *A History of Islamic Legal Theories,* 214.

accounts created by the Egyptian government and recommended instead that the profits should be shared through a *muḍaraba* contract (silent partnership). ‘Abduh viewed money to be a store of value and not an object of trade itself. If it became an object of trade, it would reduce the value of labour with the result that profits would accumulate with the capitalist. Riḍā (and we may assume ‘Abduh)[182] considered only *ribā al-jāhiliyyah* to have been prohibited by the Qur’ān and classed it as ‘manifest *ribā*’.[183] *Ribā al-faḍl* and *ribā al-nasī’a* were the hidden ribā which were prohibited,[184] as Maudūdī would also assert later, because these could lead to *ribā*.[185] Thus, the prohibition against *ribā al-faḍl* was meant to prevent any dubious transactions from turning into the exploitative, expressly prohibited *ribā*. According to Mallat, as cited by Khalil, these views essentially present the same argument that the revivalist scholar Ibn Qayyim (d. 1350) had put forward in his writings and ‘would continually be used against interest in the modern debate.’[186]

The Egyptian intellectual and scholar of modern jurisprudence, ‘Abd al-Razzāq Aḥmad Al-Sanhūrī (d. 1974), who wrote the civil code of Egypt, Syria and Iraq and the commercial code of Kuwait, was of the view that only compound interest could be seen to be prohibited by the Qur’ān because it resembled the *ribā al- jāhiliyyah* in form, while the other two types of *ribā* ‘are regarded merely with aversion and not as under a direct prohibition.’[187] Interestingly, Al-Sanhūrī considered sales with unjustified excess or *ribā al-faḍl* to be under the *direct* prohibition of the Qur’ān and extended this to loans by analogy. He was of the view that the Qur’ān considered loans as essentially gratuitous; a loan became *ribāwi* only when the lender asked for a return on what was originally a helpful loan. Interest, therefore, was the same as the other categories of *ribā*: a potential *means* to exploitation but not exploitative in itself.

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[182] Khalil and Thomas, op cit., 69. Khalil and Thomas note that it is difficult to disentangle the view of ‘Abduh and Riḍā, as the latter ‘has been suspected of attributing his own opinions to ‘Abduh.’ They cite the controversy about the permissibility of interest paid on postal savings accounts in Egypt (the *Sunduq al-Tawfir* affair). However, ‘Abduh is widely recognised as a modernist and Riḍā’s articulation of his views need not be suspect. According to Mallat, ‘Abduh allowed the profits of the savings scheme; see Chibli Mallat, ‘Tantawi on Banking Operations in Egypt’, 1996 <https://studylib.net/doc/7519424/tantawi-on-banking-operations-in-egypt> [accessed 6 February 2022].

[183] Khalil and Thomas, 71.

[184] Khalil and Thomas, ibid.

[185] The concept of prohibiting something because it can lead to an impermissible act, *sadd al dharā’i*, is not considered to be a sound basis of legal reasoning; see further discussion in 3.2.

[186] Khalil and Thomas, op cit., 71.

[187] Khalil and Thomas, 73.

Al-Sanhūrī views were informed by the detailed research on *ribā* undertaken by Ibrahim Zaki Badawi (d. 2006) in 1939. Central to Badawi's thesis was the famous Ḥadīth from Ibn 'Abbās that stated that *ribā* was in delay only, where a lender demanded an increase when the borrower couldn't repay on time. Loans with interest were not similar to the *jāhiliyyah* loans, which imposed an increase when a borrower admitted that he couldn't repay on time. Bank loans were mainly allocated to productive business ventures and were outside the remit of the prohibition. However, as noted by Khalil, Badawi radically revised his original thesis in 1964 and, in conformance with the traditional definition of the concept, chose to include all forms of *ribā* in the prohibition. Badawi criticised Riḍā and Al-Sanhūrī for their views on interest-bearing loans and considered Al-Sanhūrī's definition of *ribā* as 'compound interest only' to be too narrow.[188]

At this juncture, it would be fair to note a certain hesitation among modernist scholars to veer from the methodologies or outcomes of the traditional approach to legal reasoning. Badawi's unease with his earlier conclusion manifests itself in the form of a thoroughly revised thesis. The modernist reformer Fazlur Rahman exhibited the same unease in his seminal paper on *ribā*.

In British India, eminent scholars were asking difficult questions about reconstructing religious thought while movements for political revival were gaining momentum. Maulana Abu al-A'la Maudūdī had established the Jamā'at-e-Islāmi in 1941, a political party that aimed to revive the Muslim identity and Sharī'ah law in an unfamiliar world. Maudūdī wrote prolifically at a time of rapid political change in the Indian subcontinent. His remarkable contribution to traditional thought, according to the reformer Javed Ahmad Ghamidi, was that he managed to create a holistic *ta'bīr* (vision) of Islam in which politics was situated at the core of the religion.[189] In Maudūdī's view the Qur'ān did not simply provide basic guidelines for commercial behaviour; rather it presented a *system* of economics.[190] His definition of *ribā* is based on the Ḥanafī juristic view as articulated by the classical scholars Al-Jaṣṣāṣ and Al-Rāzi[191] and adopts the broad prohibition of all types of *ribā*. As Rahman notes, Maudūdī

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[188] Khalil and Thomas, 76.

[189] Javed A. Ghamidi, 'Khutabaat Ey Dallas - Traditional Narrative Part 3', 2015 <https://www.youtube.com/watch?v=kGBTUgLscgk> [accessed 31 December 2015].

[190] Maududi, *Sud*, 26.

[191] Maudūdī, ibid.,110.

considered *ribā al-faḍl* to be prohibited because it provided a means to indulging in *ribā al- jāhiliyyah* and placed it in the chapter titled *The Adjuncts of Sūd*.[192] For Maudūdī, this type of *ribā* (*al-faḍl*) allowed avaricious behaviour to take root, culminating in indulgence in *ribā* proper. Since Maudūdī's main concern is the political revival of Shari'āh, he brings numerous arguments about the problems of 'western' banking. In the first appendix to his book, he records an exchange of letters with Sayyed Yaqub Shah,[193] the former auditor general of the Government of Pakistan, who raises two important questions: the first pertaining to lack of historical evidence about the use of interest-bearing loans in trade and commerce, and the second pertaining to the chronology of the six-commodity report which pre-dates the *ribā* verses in *sūrat l-baqarah*. In response to the first question, Maudūdī concedes that there is no recorded historical evidence to prove that interest-bearing trade loans were extant in the 7th century Hejaz; however, there is 'mention' of the use of interest-bearing loans by the farmers of Medina who borrowed from Jewish money lenders, and the trade loans used by the Quraysh to fund long distance trade. These loans transaction were usually made between individuals rather than pooled at institutional level, as is the practice of modern banks. In responding to this important question about trade loans, Maudūdī does not provide any historical references to support his opinion. In response to the second question, Maudūdī states that the six-commodity report from the Prophet can be dated to after the revelation of the *ribā* verse in *sūrat āl 'im'rān* (Chapter 3 – The Family of 'Imrān), by which time the Qur'ān had established that *ribā* was an evil to be eradicated. Maudūdī notes again that although *ribā al-faḍl* is not the *ribā* (of loans) prohibited in the Qur'ān, it is a means to *ribā* proper. Maudūdī's thought has been incredibly influential on the *ribā* debate in Pakistan, generating a pedigree of eminent scholars who have shaped theory, practice and research in Islamic economics across the Muslim world.[194]

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[192] Maudūdī, ibid., 118. The phrase in Urdu is *sood ke muta'alliqāt.* Rahman seizes on this categorisation to cement his argument that the initial prohibition in the Qur'ān, which pertained to loans, was extended by *fuqahā* to include certain types of sales, an evidence of increasing rigidity in *fiqh;* see Rahman, 'Riba and Interest', 14.

[193] Maudūdī, ibid., 171-97.

[194] See, for instance, the efforts of Professor Khurshid Ahmad, a member of Jamā'at-e-Islāmi, who gathered 83 experts to discuss *ribā* and its elimination from the banking sector in Pakistan; Murad Hofmann, 'Review of Elimination of "Ribā" from the Economy', *Islamic Studies*, 34.4 (1995), 463–65 <http://www.jstor.org/stable/20836919>. Other prominent scholars who have aligned their theory with Maudūdī's are Umar Chapra and Nejatullah Siddiqui; see Mehboob ul Hassan, 'Meeting with History: A Conversation with Prof. Khurshid Ahmad', *Kyoto Bulletin of Islamic Area Studies*, 2.March (2011), 74–123 <https://kias.asafas.kyoto-u.ac.jp/kyodo/pdf/kb4_1and2/09mehboob.pdf>.

One of the most important contributions to the debate on *ribā* has been made by the modernist Fazlur Rahman.[195] Rahman's short paper, published in 1964, is of critical importance from multiple perspectives: his methodology of historicising the canonical sources of Islam, the insistence on reading the Qur'ān as a coherent text and giving due consideration to the exegetical context of the *ribā* verses, and identifying an 'evolutionary trend'[196] in the *fiqh* discourse on *ribā*. The contours of the paper are classical: the Qur'ānic verses and their chronology are discussed first, followed by a review of well-known Ḥadīth reports on *ribā*. The paper then diverges from classical methodology by historicising the Qur'ānic verses and Ḥadīth reports, which results in a more nuanced understanding of *ribā* than the usual definition focusing on delay or excess. The chronological order of revelation suggested by Rahman casts doubt on the chronology of *ribā* traditionally established through Ḥadīth reports which suggested that the *ribā* verses in chapter 2 of the Qur'ān were part of the last few revelations before the Prophet's death.[197] According to Rahman, *ribā* was prohibited in the Prophet's lifetime and the immediate audience of the Qur'ān understood the concept perfectly. The *ribā* verse in the third chapter, *sūrat āl 'im'rān* (Q3:130)*,* act as a pivot in Rahman's hermeneutic: the words *aḍ'āfan muḍā'afatan* (doubled multiplied) provide the *ratio legis* or *'illah* (operative cause / reason for the law) of the prohibition.[198] This characteristic of exorbitant increase makes *ribā* exploitative. Accordingly, Rahman's definition of the *legal* ribā prohibited in the Qur'ān is as follows:

> '*Ribā* is an exorbitant increment whereby the capital sum is doubled several-fold, against a fixed extension of the term of payment of the debt.'*[199]*

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[195] Rahman, 'Riba and Interest'.

[196] Rahman, ibid., 40.

[197] The chronological order of the verses is often cited to justify the content of the famous tradition from 'Umar, the second caliph, who said that the Prophet passed away before fully explaining the *ribā* verses and a Muslim should therefore adopt a cautious attitude towards all transactions involving doubtful profit or *ribāh.* This report is discussed in 6.4.1.

[198] Traditional jurists posit 'increase over a loaned amount' as the *ratio legis* of *ribā.* based on the Qur'ānic term *ru'ūsu amwālikum* - the principal amount of the loan (Q 2:279).

[199] Rahman, 'Riba and Interest', 40. Note here the absence of any reference to barter or unequal sale, a concept traditionally used by classical jurists to explain *ribā.*

However, Rahman accepts that historically, *ribā*-based loans could carry small or exorbitant interest rates (not exactly double) and the Prophet forbade *all* of *ribā* because it was a systemic problem. For Rahman, the overall usurious nature of the system provided the rationale behind the particular approach to the implementation of the law, whereby the Prophet declared null and void *all ribā* due to lenders. Rahman states that:

> It cannot, therefore, be argued that since the Qur'ān abolished even the milder cases, it must be concluded that the bank-interest of today also stands condemned. This is because the bank-interest of today is a separate kind of system.[200]

Rahman, like Sayyed Ahmed Khan, gives weight to the context of the Qur'ānic verses and positions *ribā* as the antonym of *ṣadaqah* (charity). In Rahman's view, the *ribā - bay'* contradistinction was the cause of the 'juristic hair-splitting [which] was substituted for the *moral* importance attaching to the prohibition of *ribā.'*[201]

Rahman's research brings out the importance of historicising the Qur'ān and Ḥadīth. In his paper, we see the traces of the 'double movement theory' he later articulated in *Islam & Modernity.* There is rich potential in the theoretical framework he proposes. Unlike traditional jurists, Rahman placed *ribā* in contradistinction with charity and this married well with his concern for the plight of the poor in Muslim lands. Rahman's legal opinion did not veer towards a blanket ban on bank interest. His approach was cautious yet uneasy: as we saw in the case of Badawi's revision, Rahman did not issue an opinion openly *in favour of* bank interest. True to the modernist approach, he differentiated between personal and commercial loans and put emphasis on the *ḥikmah* of the prohibition. Rahman also perceived an 'ever-increasing rigidity' in the *fiqh* of *ribā*, based as it was on Ḥadīth reports which were often incomplete, contradictory or unreliable, eventually damaging the 'authenticity and authority' of this *moral* prohibition.[202] Rahman concluded that the economic system could only be reformed gradually and bank interest eradicated at systemic level once the pre-requisite of establishing fair property rights had been met.

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[200] Rahman, ibid., 7.
[201] Rahman, ibid., 31. My addition in square brackets.
[202] Rahman, ibid., 40, both quotations.

By the 1990s, numerous Islamic banks had been established in the Muslim world and Islamic finance had passed the test of survival. Reflective literature started to emerge on the scene, confidently articulating the theory and practice of Islamic banking. Mufti Taqi Usmani, arguably one of the founders of Islamic banking, wrote a short book introducing the theory and practice of Islamic finance. According to Usmani, Islamic banking is based on 'asset-backed' financing.[203] In an echo of Aristotle's view that usury was the unnatural offspring of money, Usmani notes that 'money has no intrinsic value.'[204] In the detailed text of the Supreme Court Judgement, Usmani gives the classical definition of *ribā* and its categorisation into *ribā al-nasī'a* and *ribā al-faḍl*.[205] Umer Chapra's understanding of *ribā* is identical to Usmani's; however, unlike Maudūdī's non-evidenced assertion that interest-bearing trade loans were common at the time of the revelation of the *ribā* verses,[206] Chapra supports a similar assertion by citing Udovitch's view:

> Any assertion that medieval credit was for consumption only and not for production, is just untenable with reference to the medieval Near East.[207]

As shall be seen in Chapter 6 of this thesis, Udovitch's reference is to availability of *credit* for productive purposes, not to the form of the transaction (loan or partnership). In fact, the *muḍaraba*, a form of silent partnership, was the most prominent method of trade investment and served the same purpose as an interest-bearing loan while offering a safer risk profile.[208] In other words, Udovitch's statement does not lend credence to Chapra's assertion that

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[203] Usmani, *An Introduction to Islamic Finance,* 18-9.

[204] Usmani, ibid., 19. Saeed notes that just like the ancient Greeks regarded money as a 'physical object' or 'concrete' item, classical Muslim jurists also saw money as a physical object – coins – and not as an abstract legal idea (the modern form of money). Christian scholastics, like Thomas Aquinas, also used the Aristotelian idea of money and understood usury as the unnatural offspring of money. With the advent of the Roman law concept of 'Money in the abstract', the scholastic theory of usury was upended. Yet, this archaic idea resurfaces in Islamic finance literature; see Saeed, *Islamic Banking and Interest,* 122.

[205] Usmani, 'The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan', para 58-61.

[206] Maudūdī, op cit., 172.

[207] Chapra, 'The Nature of Riba in Islam', 3. The page number refers to the PDF document, which uses a different pagination range from the journal article.

[208] Abraham L. Udovitch, 'Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East', *Studia Islamica*, 41, 1975, 5–21, <https://doi.org/10.2307/1595397>, 10. Further discussion in 5.4.

interest-bearing loans were a norm for funding long-distance trade ventures during the time of the Prophet.

Umar Chapra's view of the rationale of prohibition is the same as Rahman's, yet their conclusions and recommendations are remarkably divergent.[209] Chapra is of the view that bank interest is the same as usury, forbidden in all three Abrahamic religions. *Ribā* is a matter of economic justice, equitable distribution and economic stability; it therefore introduces the 'moral dimension' in economic discourse.[210][211] Unlike Rahman, he advocates complete abolition of bank interest and the move to an asset-backed system.

I note here the shift in the vocabulary of Islamic finance literature at the turn of the last century. Islamic finance was beginning to engage in a self-conscious dialectic with conventional financial theory, adopting its assumptions, jargon and methods of analysis. Traditional scholars in particular were becoming increasingly comfortable with the constructs of 'western' or secular financial theory. For instance, Chapra employs detailed macroeconomic analysis when discussing the rationale behind the prohibition of *ribā.*[212] It is precisely in this space that the modernists' arguments reveal weaknesses and the traditionalists gain the upper hand: the traditionalist comfortably offers concrete examples of macro-level exploitation created by debt-based capitalism and uses these to present an argument in favour of interest-free banking. The modernist, on the other hand, relies on nebulous ideas of exploitation, creating the impression that his analysis of scripture may not yield the concreteness that economic reform will require.

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[209] Classical legal theory and its contemporary manifestation is not bereft of discussions of rationale. On the contrary, legal theory offers ample room for discussion on the rationale of Qur'ānic prohibitions and theological schools have differed on whether human beings can determine the wisdom behind divine injunctions. It is often a scholar's theological stance that can affect his engagement or non-engagement with discussions of rationale. Rahman blames the dominance of Ash'arite theology in Sunni orthodoxy 'which, in its cardinal tenets of the inefficacy of the human will and purposelessness of the divine law, was in conflict with the Qur'ān…' Rahman, *Islam & Modernity,* 3.

[210] M. Umer Chapra, 'Why Has Islam Prohibited Interest? Rationale behind the Prohibition of Interest', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 96–111, 98.

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[212] Chapra, ibid. 'Why Has Islam Prohibited Interest? Rationale behind the Prohibition of Interest'.

Abdul Kader Thomas's view of *ribā* is broader than that of Rahman's and Chapra's because of his introduction of a theological dimension to this discourse, based on the tradition that *ribā* is *shirk* (polytheism).[213] Thomas's linguistic analysis of the triliteral root *r-b-w* of the word *ribā* leads him to conclude that the meaning of *rbw* as self-generated increase has a theological implication:

> Curiously, we modern Muslims have chosen to limit the translation of *riba* to a one to one correspondence with the English word interest. Yet, the forbidden *riba* is so much more than interest, that it even borders on shirk or the association of a partner with God.*[214]*

Ribā, according to Thomas, includes both simple and compound interest and is found in debt and certain types of sales. He is critical of dismissing the traditional definition:

> Moreover, those modern scholars who define riba simply as excessive interest ignore two factors. The first is the opinion of the classical jurists, an opinion which was not shaped in a vacuum…*[215]*

With this theological concern at the forefront, Thomas asserts that combating *ribā* is a religious obligation born of faith in one God. He is disappointed that 'Muslims and Westerners have ignored the root meaning of the word *usury,* which was simply the Latin term for *interest.*'[216]

Azeemuddin Subhani's (d. 2021) doctoral thesis undertakes a detailed study of *ribā* from a similar theological perspective as Thomas, juxtaposing *ribā* and *shirk* in the spiritual sphere and *ribā* and *bay'* in the temporal.[217] He develops the notion of theological boundaries of *ribā* as a way of explaining the emphatic

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[213] The tradition is well known; however, contemporary scholars rarely refer to it in the analysis of *ribā*. An exception is Subhani's thesis, discussed below.

[214] Abdulkader Thomas, 'What Is Riba?', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 125–34, 125.

[215] Thomas, ibid., 132.

[216] Thomas, 132.

[217] Subhani, op cit.

nature of the prohibition.[218] Taking a long view of history, he includes a detailed survey of the idea of usury in Judaism, Christianity and Islam.[219] Using the semiotic theory of language, Subhani sets *ribā* and *bay'* (sale) in contradistinction, employing linguistic, philosophical, theological and jurisprudential analysis within the traditional *uṣūli* framework. His decision to hold *ribā* contra-distinct to sale situates his research within the traditionalist interpretation of *ribā*. According to Subhani, *ribā* is the same as the Hebraic *marbit*. It is an act of idolatry representing "self-emanation, self-subsistence and *ex nihilo* creation…" and therefore deserves severe punishment in the Hereafter.[220] *Ribā* contrasts with sale because the latter represents growth through '*inter-action'* and not '*intra-action'*[221] as in the case of *ribā*. The rationale for the prohibition is injustice or exploitation in the temporal world. *Ribā* has been declared a type of *shirk* according to a Ḥadīth report, because of its ability to self-emanate and grow, self-emanation being a divine characteristic. From a theological perspective, therefore, *ribā* is a sin in the *ḥima* (pasture or domain) of God.[222]

Subhani's thesis is complex, however its broad contours are reminiscent of Aristotle's argument, effectively employed by St. Thomas Aquinas, that usury is an unnatural offspring of money.[223] Situated at the heart of Subhani's argument is the contradistinction between *ribā* and sale, a premise adopted by traditionalists but contested by modernists who point out that the exegetical contrast is between *ribā* and *ṣadaqah*. Therefore, the foundational premise of

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[218] Verse 2:279 uses the emphatic words 'take a notice of war from Allah and His Prophet.'

[219] His research is unique in this regard. Muslims scholars have traditionally included only perfunctory references to the 'iniquity of the Jews in taking usury' when explaining Q4:160-1.

[220] Subhani, op cit., Abstract.

[221] Subhani, Abstract.

[222] The Arabic word *ḥima* refers to private pasture. Prophet Muhammad forbade shepherds from letting their flock graze in someone else's private pasture; see Imam Al-Nawawi, 'Forty Hadith of An-Nawawi' <https://sunnah.com/nawawi40:6> [accessed 7 February 2022]. According to Subhani, sins such as *shirk* are committed against God, and *ribā*, through its ability to grow on its own, strays into the *ḥima* of God; see section IV.2. of Subhani's thesis for his theory of *ribā* and *bay'*, op cit. It is of note that Maudūdī also employed the metaphor of *ḥimā*, which in his view, are the *ḥudūd* or limits that God has specified in the Qur'ān. The Ḥadīth report that extends complicity in *ribā* to the lender, the borrower, the scribe and the witnesses is an example of erecting barriers around the *ḥima* of God; see Maudūdī, supra, 119. Maudūdī adopted this explanation for broadening the remit of *ribā* both in its definition and the complicity of the parties to the transaction.

[223] Susan L. Buckley, *Teachings on Usury in Judaism, Christianity and Islam* (Lampeter: The Edwin Mellen Press, 2000), 111.

Subhani's argument is in dispute. Secondly, Subhani is of the view that the rationale for the prohibition has not been clarified by the Qur'ān or Ḥadīth.[224] This proposition is loyal to the 'Ash'arite doctrine that '…denied that divine commandments in the Qur'ān had any purpose...';[225] yet, it is untenable in the light of the Qur'ān's own claim of being a manifest book.[226] Thirdly, while Subhani's definition sheds light on the seriousness of indulging in *ribā*, such as its equation with shirk or incest in Ḥadīth traditions, it is not suitable for building a fair economic model in the temporal world. Subhani uses *kalām* methodology (or *falsafah,* meaning the use of reasoning inspired by Greek philosophical thought). The weakness of this methodology is that it imposes an alien structure on the Qur'ān. For instance, Q4:161 chastises Jews for taking *ribā* and devouring wealth wrongfully, showing that the Qur'ānic view of *ribā* is not of an otherworldly crime but an act that damages the sanctity of person and property in this world. Lastly, the Ḥadīth reports equating *ribā* with *shirk* and incest are of dubious authenticity.[227] Therefore, it is fair to conclude that Subhani's thesis brings the force of Islamic theology to cement the traditional *ribā* and *bay*' contradistinction and the *fiqh* definition of *ribā,* but it leaves an unresolved confusion regarding the hermeneutic space, temporal or otherworldly, in which the *ribā* prohibition is situated. In other words, if *ribā* is exploitative and harmful to other people, then measures have to be taken to address its harms through legislation and policymaking, but if *ribā* is a sin against God, then accountability shifts to the metaphysical realm of the Hereafter.[228] As a result of this confusion, Subhani's definition does not provide an adequate legal basis for application of theory or policymaking.

Abdullah Saeed's contribution to the debate on *ribā* is exceptional in its succinctness, clarity of argument and analysis. He is openly critical of the "neo-Revivalists'" theory of *ribā* and their dominance in the Islamic finance and

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[224] 'The Qur'ān and the *Ḥadīth*…are explicitly and completely silent on the rationale (*ḥikma*) underlying the prohibition and the punishment.'; Subhani, op cit., 214.

[225] Rahman, *Islam & Modernity,* 27.

[226] The methodology adopted in this thesis challenges Ash'arism. See 3.3.2. One of the most competent Ḥadīth traditions on *ribā*, the report of the Hajj sermon, makes the rationale explicit; 6.4.4.

[227] See Brown, op cit., 219. 'The Hadith equating the slightest form of *Riba* with incest has been widely considered unreliable or even a blatant forgery by Muslim Hadith scholars.' The Ḥadīth report equating *ribā* with *shirk* creates dissonance with the Qur'ānic view of *shirk*, therefore, the *matn* (content) of the report is suspect; see Tariq Mahmood Hashmi, *Fundamentals of Hadith Interpretation by Amin Ahsan Islahi*, Trans. (Lahore: Al-Mawrid, 2009), section 1.3.3.

[228] This is agreed upon Islamic theology. If a believer realises that they have sinned against God, they can offer sincere repentance. Yet, repentance alone is not sufficient when harm is perpetrated on another person.

banking sector, which benefited from a supportive political mood and the oil price boom in the 1970s.[229] As a scholar of the Qur'ān, Saeed brings sound evidence to clarify the meaning of the Qur'ānic term *ribā* and interprets it in the context of the historical setting of the Qur'ān and the views of the earliest exegetes such as Al-Ṭabarī. Like Rahman, Saeed holds *ribā* contradistinct with *ṣadaqah* (charity) and differentiates between lending to the needy and 'the case of lending and borrowing among the affluent for trade or commercial purposes…'. [230] As a modernist, his concern with the rationale of the ruling is crucial to his argument. His survey of the classical methods of *fiqh* is incisive in highlighting the jurists' prioritisation of the *ratio legis* ('*illah)* over the rationale for the twin advantages it offered: the correct identification of *'illah* provided more objectivity to the jurists and, second, it allowed them to make a case for the immutability of Sharī'ah law, an issue of prime concern even amongst the contemporary traditional jurists.[231]

For Saeed, the rationale of the prohibition is to prevent injustice. Various factors can play a part in determining if a financial practice is exploitative or not. Saeed asks scholars to give up the narrow focus on 'increase on a loan' definition of *ribā* and instead develop innovative practices based on cultural 'diffusion'.[232] Saeed concludes that not all bank interest is *ribā* and the implicitness or explicitness of its presence is immaterial. Any interest-based transaction involving exploitation should be identified as *ribā*:

> From this [moral] perspective [of the Sharī'ah], within the context of banking and financial transactions, it would be the injustice factor which would ultimately determine what is *riba* and what is not.*[233]*

Saeed notes that the Ḥadīth tradition is almost silent on the matter of *ribā al-jāhiliyyah*.[234] He also provides a historicised re-interpretation of *ribā al-faḍl*, explaining it as a type of *ribā* of delay (the Qur'ānic *ribā*) which occurred in

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[229] Saeed, *Islamic Banking*, see chapter 1.
[230] Saeed, ibid., 20.
[231] Saeed, ibid., 36.
[232] 'Diffusion means transfer of cultural elements from one society to another…By utilizing the concept of diffusion, institutions and methods of resource mobilization and allocation developed in the Western capitalist tradition, can be 'islamised' and assimilated.' Saeed, ibid., 140.
[233] Saeed, ibid., 145. My additions in square brackets.
[234] Saeed, ibid., 30. This research yields a similar conclusion i.e., the concept of Qur'ānic *al-ribā* was well-known amongst the Arabs; see 6.2.1.2.

deferred sales of certain commodities. Often, the buyer would be someone unable to pay on time and would ask for payment to be deferred, paving the way for the seller (lender) to charge an extra amount for granting delay. Saeed gives further credence to his theory by citing the opinion of Ibn Qayyim, who posited that sales of certain commodities with deferred payment would have led the 'seller' to demand a higher profit from the buyer, creating financial stress for the poor and needy who often exchanged food items in barter. This would pave the way to extracting *ribā al-nasī'a* (*ribā* of delay).[235]

A minor weakness in Saeed's approach is its nebulousness, which our classical jurists were aware of and which precisely explains their insistence on identifying the *'illah* behind the ruling. Saeed does not provide examples to allow us to assess the validity of his theory, neither does he give us any tools to identify exploitation.[236] Moreover, Saeed's accumulation of historical evidence, which mainly consists of reports from early scholars including Al-Ṭabarī, Suddī and Zamakhsharī, is selective. Saeed brings to our attention historical evidence pointing to *ribā* being added to a loan *after* borrowers had asked for deferment. In contrast, Rahman brings evidence that suggests that loans were made for a fixed term at an explicitly stated rate of interest; lenders would demand a higher return if there was delay in repayment.[237] Talmudic reports dating from 500 BC refer to explicitly stated rates of interest being agreed at the time the original loan was made, often paid through the use of *antichresis,*[238] and there is no reason to suggest that the Arabs were not familiar with these practices. While Saeed's analysis stands firm at the level of personal loans, a traditionalist such as Umer Chapra would point out, eloquently and consistently, that bank interest is exploitative at *macro* level. If it is conceded that bank interest is not *ribā*, then the question of fairness of profit allocation between borrower and lender immediately becomes pertinent. Saeed, unfortunately, does not address systemic problems relating to bank interest perhaps because his focus is on highlighting the weaknesses in the traditionalist model of *ribā* and the resulting Islamic banking practices, a task he achieves admirably well. Overall, Saeed's

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[235] Saeed, ibid., 33.

[236] For instance, would payday loans be classed as usurious but home purchases with mortgage be Sharʿīah-compliant?

[237] Rahman, 'Riba and Interest', 6.

[238] H S Linfield, 'The Relation of Jewish to Babylonian Law', *The American Journal of Semitic Languages and Literatures*, 36.1 (1919), 40–66, 53 <https://doi.org/10.2307/528222>. *Antichresis* could take the form whereby a lender would live rent-free in the borrower's house.

conceptualisation of *ribā* is aligned to the Qur'ān, fully cognisant of the context of revelation and the history of its interpretation by the earliest jurists of Islam.

Shahid Ebrahim has contributed to the field of Islamic finance through the development of econometric analysis of Islamic financial instruments and critique of the legal reasoning underpinning the established view of *ribā*.[239] Ebrahim and Sheikh have also pointed to the damaging consequences of adherence to Ash'arism in legal reasoning:

> …the most serious implication to the Muslim world is that its theologians and jurists have not worked out a system of ethics that can serve as a foundation for natural law or human positive law.*[240]*

Ebrahim and Sheikh are critical of the flawed legal reasoning in the case of *ribā*. In their view, the prohibition of *ribā* is aimed at protecting the rights of the parties engaged in the transaction. They accept the traditionalist definition of *ribā*: *ribā al-nasī'a* is the 'evident *ribā*' while *ribā al-faḍl* is the hidden *ribā*, which is prohibited because it 'is the means to evident *ribā*'[241] and makes trade inefficient.[242] This argument of 'means to *ribā*' echoes Maūdūdī's opinion, originally based on the views of Ibn Qayyim.[243] A unique contribution of this paper is the attempt to apply the concept of *ribā al-faḍl* (originally pertaining to barter transactions) to modern phenomena like 'market manipulations, seigniorage, etc.'[244] However, this application is perfunctory and does not challenge the root cause of the confusion in the case of *ribā al-faḍl*: who would engage in spot barter of similar goods?[245] Despite their critique, Ebrahim and Sheikh do not shift the debate any further from the traditionalist conceptualisation of *ribā*, nor do they remove the confusion and complexity surrounding the category of *ribā al-faḍl*.

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[239] See, for example, the paper that suggests modifications to typical debt instruments used in Islamic finance based on an argument from economic efficiency: Muhammed Shahid Ebrahim and Mustapha Sheikh, 'Debt Instruments in Islamic Finance: A Critique', *Arab Law Quarterly*, 30.2 (2016), 185–98 <http://www.jstor.org/stable/24811044>.

[240] Ebrahim and Sheikh, 'The Political Economy and Underdevelopment of the Muslim World', op cit., 401.

[241] Ebrahim and Sheikh, ibid., 398.

[242] Ebrahim and Sheikh, ibid., 400.

[243] See Khalil and Thomas, op cit., 71.

[244] Ebrahim and Sheikh, op cit., 400.

[245] The problems with using present barter to explain this type of *ribā* are discussed 6.4.3.

Viewed from the perspective of inequity or inefficiency in trade, *ribā al-faḍl* leads to another conundrum. I will quote El-Gamal's view at length to highlight the problem:

> Jurists listed two reasons for the prohibition of ribā al-fadl, which does not include a time factor: (1) spot trading of the same commodity for different quantities can be easily combined with credit sales to bring about the same effect as deferment ribā (hence ribā al-fadl is forbidden to prevent circumvention of the law – *saddan lil-dharā' i'*), and (2) such trading includes excessive gharar (avoidable risk and uncertainty), since neither party knows whether the trade is beneficial or harmful to them. Ibn Rushd based his central analysis of ribā, on which we shall elaborate below, on the latter explanation of the prohibition (uncertainty regarding equity in exchange).[246]

The first reason cited above is a restatement of Maudūdī's argument regarding *ribā al-faḍl*, which the latter considered an *adjunct* of *ribā* and not *ribā* proper. The second reason restates this prohibition as one of *gharar*, which is the second main prohibition in Islamic law governing commercial trade[247] and begs the question of whether *ribā al-faḍl* should be categorised under *gharar* rather than *ribā*. Ebrahim and El-Gamal's opinion precipitates what is becoming apparent as an ontological crisis for *ribā al-faḍl.* El-Gamal, however, is insistent that jurists must not declare *ribā al-faḍl* invalid because its existence proves that *ribā* has multiple manifestations and helps avoid the reductionism that bank interest is *ribā*:

> The inclusion of *ribā al-fadl* under the general heading of forbidden ribā is very important for understanding the economic substance of the prohibitions. However, most contemporary jurists and scholars of Islamic finance wish to exclude discussions of this topic, precisely to continue the mistaken one-to-one rhetorical association of *"ribā"* with *"interest."* In fact, equivalence of the two terms is far from appropriate.[248]

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246 El-Gamal, *Islamic Finance: Law, Economics, and Practice,* 51.

247 It is important to note that *gharar* is not prohibited in the Qur'ān in a direct commandment, as in the case of *ribā.* The Qur'ān prohibits devouring property wrongfully (*bi'il bāṭili)* in Q2:188 and Q4:29; this includes a range of measures to ensure that trade is fair, examples of which are found in Ḥadīth*. Gharar* therefore represents a prohibition which is epistemologically distinct from *ribā*, both in provenance and categorisation. See also 6.4.3 regarding the problem of categorisation of *ribā al-faḍl*.

248 El-Gamal, op cit., 52. This is a nostalgic view. The Antecedent shows the various manifestations of *ribā* in antiquity; in addition, the analysis of *asbāb ul nuzūl*

Even though El-Gamal is currently leading the charge on severely criticising Islamic finance, he chooses to ignore the conundrum and exercises effort instead to maintain the classical categorisation of *ribā*. In comparison, Omar Farooq explicitly criticises the traditional understanding and the exclusion of profits from equity investments (capital gains and dividends), thereby including exploitative profits in the definition of *ribā*. In Farooq's opinion, Islamic finance scholars have paid little attention to the link between *ribā* and exploitation[249] or even offered a conceptualisation of exploitation.[250] This omission is possible mainly due to the traditionalists' focus on the causative factor of 'increase' on a loan and the interpretative stance that equates *ribā* with bank interest, thus focussing all energy and financial resources on creating interest-free debt instruments. Yet, it is the shocking reality of contemporary debt slavery that most closely resembles the *ribā* of *jāhiliyyah* and the humiliation and degradation it inflicted on needy borrowers.

Using the conceptual framework of exploitation developed by Alan Wertheimer, Farooq proposes that *ribā* sits under the scenario where the transaction is both unfair and harmful to the borrower.[251] Further, he debunks the traditionalists' view - 'stipulated excess' is unfair – by pointing out that a clear stipulation actually improves the fairness of a transaction because the borrower knows exactly what her liability would be.[252] Moreover, it is simplistic to assume that all interest-bearing loans are unfair and disadvantageous to the borrower or that profits on investments are always fair. Investment as an option is mainly available to the already wealthy (asset owners) and profits *from* investments (rent and dividends) also mainly accrue to them.[253] In an era of ultra-low interest

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reports in 6.3 shows the forms of *ribā* transactions in 7th century Mecca and Medina. These transactions have no resemblance with *ribā al-faḍl*. It is not the retention of this legal category that would bring nuance to a reductionist discourse; rather, it is the weight of historical evidence.

[249] Mohammad Omar Farooq, 'Exploitation, Profit and the *Ribā*-Interest Reductionism', 304.

[250] Farooq, ibid., 305.

[251] Farooq, ibid., 299. Wertheimer's model is useful in explaining the outcome for the borrower. However, the Qur'ān also explains the nature of the exploitation and how it comes about; see 6.5.2 where the *'illah* (causative factor or operative cause) of *ribā* is identified.

[252] Farooq, ibid., 301.

[253] Farooq, ibid., 309. See also research in the US context about increase in wealth inequality since the credit crunch, noting particularly that 'Stock market booms primarily boost the wealth at the top of the wealth distribution where portfolios are dominated by listed and unlisted business equity, thereby, increasing wealth inequality;' Moritz Kuhn, Moritz Schularic, and Steins Ulrike, 'Research: How the Financial Crisis Drastically Increased Wealth Inequality in the U.S.', *Harvard*

rates that was ushered in after the credit crunch of 2008, the wealth of asset-owning classes and the number of billionaires across the world has increased substantially.[254] This rent-seeking behaviour of the rich, during a time when businesses and governments have kept wages depressed, is one of the key drivers of inequality, reliance on debt and financial exploitation. Interest rates have certainly played a role in this, but it is primarily private equity owned by wealthy individuals through which exorbitant profits are being realised. Yet, Islamic finance jurists consider equity to be a fairer way of financing trade and business ventures and promote profit-and-loss sharing as the Islamically mandated way of financing. In contrast with this legalistic reasoning, the Qur'ān's concern is with the misuse of spare wealth to exploit those in need, as noted by Hathout et al:

> We argue that the Quran does not mandate equity over debt financing, and allows transactions that are mutually beneficial... Debt financing, when done in accord with this principle [honesty, fairness] is permissible. When the lender gets more than he is entitled to, he commits the sin of usury. When he gets less, he is engaging in charity. But charity is a voluntary act, and not one required in business transactions (Hathout et al., 2006).[255]

2.8 Brief Reflections on the Development of Theory and Practice of Islamic Finance

This analysis of representative Islamic finance literature highlights the dynamism and complexity of the debate surrounding *ribā*. The dominant literature on Islamic finance is traditionalist. It rehashes the classical taxonomy of *ribā* and implicitly preserves the notion of immutability of Sharīʿah law *as understood by* classical scholars. It is the classical episteme, revived by contemporary traditionalists, that provides the foundation for the theory and practice of Islamic finance. '…it is the neo-Revivalist movement which has been the most influential in the development of Islamic banking theory.'[256] Modernist scholarship has attempted to tilt the power relationship between the jurists (*fuqahā*), bankers and the lay public by insisting on the immutability and eternal

Business Review, 2018 <https://hbr.org/2018/09/research-how-the-financial-crisis-drastically-increased-wealth-inequality-in-the-u-s> [accessed 15 October 2021].

254 'World's Billionaires Have More Wealth than 4.6 Billion People' <https://www.oxfam.org/en/press-releases/worlds-billionaires-have-more-wealth-46-billion-people> [accessed 15 October 2021].

255 Farooq, op cit., 304. My addition in square brackets.

256 Saeed, *Islamic Banking*, 8.

nature of the principles and moral values of the Qur'ān. However, their emphasis on the rationale of the prohibition of *ribā* has left them in possession of a nebulous idea called 'exploitation', which they have not elaborated upon sufficiently to bring any concreteness to the term. Admittedly, the modernist discourse has been helped by the epistemic break that occurred in the twentieth century, when the traditional approach to the use of Ḥadīth in deriving law came under increased attack from both Western and Muslim scholars.[257] The modernists brought a much-needed nuance to the *ribā* discourse that merits further exploration, but their arguments failed to address the methodological and macroeconomic concerns the traditional reformers were voicing eloquently and engaging with effectively. If the modernists intended an epistemic shift in the theory of *ribā*, it has not been forthcoming.

The debate on *ribā* has taken place in a space called 'reform' that opened up within intellectual Islam at the height of the colonial rule in Muslim lands. It has enabled a new power relationship to establish itself firmly: the re-empowerment of the *'ulemā* in the late 20th century. The influence of religious scholars in the Islamic banking sector cannot be underestimated. All Islamic financial institutions employ Islamic scholars on advisory boards whose main responsibility is to advise practitioners and issue legal opinions approving or disapproving financial instruments. The influence of the traditionalist *'ulemā* was aptly demonstrated in 2007-8 when the international *ṣukūk* (Islamic bonds) market slowed down after Mufti Taqi Usmani issued a *fatwā* (legal opinion) stating that 85% of these bonds were not Sharī'ah-compliant,[258] prompting the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) to review its guidelines. In Kahf's view, Islamic finance represents a 'new power alliance' between *'ulemā*, the custodians of Sharī'ah law, and the untapped wealth in the Islamic world, 'an alliance that came about as a result of the pressing needs of the new Islamic bankers for legitimacy and recognition.'[259] The *'ulemā's* influence has been boosted further by their employment on Sharī'ah boards of Western banks such as HSBC and Citigroup, who operate Islamic finance windows or retail banking operations in Europe and North America, home to significant Muslim populations. From a political perspective,

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[257] David Johnston, 'A Turn in the Epistemology and Hermeneutics of Twentieth Century Usul Al-Fiqh', *Islamic Law and Society*, 11.2 (2004), 233–82 <http://www.jstor.org/stable/3399305>.

[258] 'Most Sukuk "Not Islamic", Body Claims - Sukuk - ArabianBusiness.Com', *Arabianbusiness.Com* <http://www.arabianbusiness.com/most-sukuk-not-islamic-body-claims-197156.html#.VoftkDaq78E> [accessed 2 January 2016].

[259] Kahf, op cit., 32.

key developments in Islamic finance literature have been led by religious authorities trained in Islamic law, rather than bankers and economists trained in the ‘secular’ sciences.

The elaborative discourse on Islamic finance theory has shown marked shifts. Initially, it was revivalist in tenor, exhorting the superiority of Islamic law over Western law and its institutions. It has since become increasingly technical, engaged in a dialectic with conventional financial theory. The ideas of debt, equity, collateral, economic efficiency and public welfare are used to explain the rationale of the divine law. Over the last three decades, Islamic banks have been engaged in complex financial engineering with more sophisticated financial instruments being developed to meet the needs of investors. Governance structures are becoming more formal with a view to standardising accounting and investment practices across the sector. Overall, Islamic finance literature is a vibrant genre of contemporary ethical economic thought.

The ongoing controversy about the definition of *ribā* - the foundational concept in Islamic finance - offers a dynamic hermeneutical space for interdisciplinary research. A number of lacunae exist in this body of knowledge, providing fertile ground for further exploitation. These are listed below, followed by key research questions.

2.9 Research Questions

The controversy at the heart of Islamic finance is undermining the sector’s credibility and potential. This controversy can only be resolved by developing a coherent, exclusive and inclusive definition of the Qur’ānic injunction of *ribā*. There are various gaps in the theory of *ribā* emerging from the critical review of Islamic finance literature. First, there is an almost complete absence of the history of *ribā*, that is, the economic conditions prevalent in Mecca and Medina in the centuries preceding Islam, the influence of the region’s geography on trade and commerce, the absence or prevalence of barter and gift exchanges, the role of the ‘household’ as an institution and the social stratification. The Arab practices of lending would have been shaped by this history, yet, Islamic finance literature rarely gives even a perfunctory nod[260] to these sociohistorical

[260] The only exceptions are the works of Rahman and Saeed although they both rely on the opinions of early authorities to extract historical information. This thesis

circumstances. The actual Arab practice of *ribā* immediately prior to and synchronic with the revelation of the Qur'ān in 7th century Hejaz (610 – 632 AD) needs to be located in this context. Second, there is extensive discussion on the *'illah* (causative factor) of the prohibition in the established juridical view of *ribā* but scant discussion or silence on the *ḥikmah* (rationale) of the prohibition, mainly due to the traditionalists' commitment to the Ash'arite doctrine, albeit not stated explicitly. Third, Islamic finance scholars do not explain why Islam would require an investor / lender to lend money *gratis* to a business enterprise - ignoring opportunity cost, damages and risk - and only allow investment on the basis of 'profit and loss sharing' when there is no basis for these conclusions in the Qur'ānic narrative. Fourth, the superficiality of predicating Sharī'ah-compliance on 'equity, not loans' and the relegation of the spirit of the law in favour of compliance with the form of the transaction feels ahistoric and jarring, given the overall moral-legal tenor of Qur'ānic teachings. Fifth, the sub-categories of *ribā* create confusion, particularly the concept of *ribā al-faḍl* (*ribā* of excess) which does not seem to align either with the Qur'ānic narrative or what is known about barter transactions, and yet the explication of this *ribā* has consumed so much energy from classical scholars. Lastly, Islamic financial literature rarely engages with the egregious cases of exploitation through debt, an omission difficult to justify given that debt bondage still affects millions of labourers living in conditions of abject slavery in low-income countries.[261] Moreover, the literature does not articulate its priorities, whether this is to eliminate debt slavery, reduce financial exclusion or to improve access to agricultural or business inputs to enable grassroots development. Together, these lacunae make it difficult to understand the original concern and intent of the Qur'ānic prohibition, reducing the debate to a narrow focus on presence or absence of interest in banking.

The most important question for the present research pertains to the sociohistorical reality of *ribā* but there are also related questions which must be answered to successfully re-interpret *ribā.* These are listed below, with the central question first in the list:

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delves into economic and anthropological history before analysing the opinions of early authorities like Ibn 'Abbās and Zayd bin Aslam.

[261] Faras Ghani, 'The Spiralling Debt Trapping Pakistan's Brick Kiln Workers', 2019 <https://www.aljazeera.com/features/2019/10/21/the-spiralling-debt-trapping-pakistans-brick-kiln-workers> [accessed 15 October 2021]. In 2018, there were 3.1 million individuals existing in conditions of forced labour in Pakistan (25 million globally in 2016).

1. **Sociohistorical:** What was the Arab *practice* of *ribā*? Did the Qur'ānic word *ribā* refer to any increase or a specific form of increase / transaction? Why did the Prophet refer to the *ribā al-jāhiliyya* and cancel the loans of 'Abbas bin 'Abdul Muṭṭalib at the Ḥajj Sermon in 10AH?
2. **Linguistic:** What is the lexical meaning of *ribā*? Is *ribā* the opposite of *bay'* (trade) or *ṣadaqah* (charity)?
3. **Epistemological and normative:** What is the role of Ḥadīth reports in explaining the *ribā* verses?
4. **Legal reasoning:** What is the *'illah* (*ratio legis)* of the *ribā* prohibition? What is the *ḥikmah* (rationale) of this prohibition?
5. **Ontology:** What is *ribā al-nasī'a*? What is *ribā al-faḍl?* Does the latter have basis in the Qur'ān?
6. **Remit of the prohibition:** Is the prohibition only applicable to personal loans to the needy or does it apply to trade loans? Does the prohibition include or exclude high interest and zero interest loans?

The answers to the above questions will yield a holistic picture of *ribā* at the time of the revelation of the Qur'ān. The research methodology proposed in response to these questions is cross-disciplinary and contextualist: *ribā* sits in the field of political economy but its abode is religion and its permutations stretch over a long period of time. The next chapter turns to the task of developing an appropriate methodology to develop a Qur'ān-centric, historically anchored and legally concrete definition of *ribā.*

Chapter 3

Conceptual Framework and Methodology

> As for sociology or sociohistorical studies, these are extremely necessary for the most central disciplines of Islam – the Qur'ān and Ḥadīth and Islamic law. For unless the student knows the background of the Qur'ānic pronouncements, for example, it is impossible to understand their real import.[262]

The current chapter explains and justifies the conceptual framework and methodology employed in this study - the historical hermeneutic approach - to develop a reconstructed definition of *ribā* that gives primacy to the Qur'ān. The critical review of the literature on Islamic Finance in the preceding chapter demonstrated convincingly how an ahistorical understanding of *ribā* has led to a simplistic and reductionist discourse that offers very little space for engagement with the big picture: the values and goals at stake.

The hermeneutic endeavour sits under an adapted form of the Rahmanian double movement theory. This theory refers to two hermeneutical movements: first to the past to understand the Qur'ān's message to its original addresses in the immediate social setting; second to the present to apply this understanding in addressing contemporary challenges. While Rahman rejected the Gadamerian hermeneutic philosophy as one that did not allow for objective truth to be reachable,[263] the present study has instead modified the double-movement theory by using Gadamer's concept of controlled fusion of horizons where true understanding takes place. This study also adopts Gadamer's principle of 'vigilance' which not only cautions the interpreter against idealist views of the past[264] but also guides the process of application. This Rahmanian-Gadamerian hermeneutic model holds the promise to view *ribā* in gestalt and overcome the reductionist and legalistic conceptualisations encountered earlier in the literature review.

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[262] Rahman, *Islam & Modernity*, 97.
[263] Rahman, ibid, 9. For Rahman, Gadamer's phenomenological approach made any search for truth futile; see a detailed exposition of this point in 3.2.
[264] Grondin, op cit., 95.

This chapter is divided into five sections overall. After explicating the conceptual framework in the first section, the second section provides a summary restatement of the research questions that emerged in response to the lacunae identified in the literature review. The third section describes the present study's methods, design and desiderata, followed by a discussion on background and rationale for selecting these methods and approach. The last section reflects on the possibility of finding objective truth and the cross-disciplinary nature of the current endeavour, and suggests the criteria for success.

Prior to delving into the discussion on methodology, a brief note on the 'consciousness of the work of history'[265] is due. Before the start of this research journey, my aim was to construct a definitive argument *in favour of* the established theory of *ribā*.[266] Through the course of this research, the increased awareness of Muslim history – from Qur'ānic interpretive sciences to development of *fiqh* – reshaped my earlier views. An honest search for historical evidence to strengthen the traditionalists' case led instead to a realisation of the weaknesses in their argument. My engagement with the traditional opinion on *ribā* led to its reshaping. Gadamer captures this experience thus:

> Only if we are deeply formed by a tradition are we capable of modifying those traditions in meaningful ways.[267]

The journey of this research, therefore, was one of open-minded enquiry, preceded by a long-gestated intellectual engagement with the idea of *ribā*, fuelled by deep unease with extreme inequality in society, culminating eventually in a systematic attempt to develop a reconstructed[268] interpretation.

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[265] Grondin, 68.

[266] See 2.6, supra, for discussion on the established theory of *ribā*.

[267] Brice Wachterhauser, 'Getting It Right: Relativism, Realism and Truth', in *The Cambridge Companion to Gadamer*, ed. by Robert J. Dostal (Cambridge University Press, 2002), pp. 52–78, 63.

[268] This term has not been used in the postmodern sense, where history is critiqued and eventually consigned to the category of 'fiction'. Rather, the term has been used in the Iqbalian sense of engaging with the Islamic tradition, reviewing and evaluating its principles and methods afresh, to build capacity for dealing with modern challenges. See 3.2 below for a discussion on 'reconstruction' as theorised by the poet and philosopher Mohammad Iqbal. For a rebuttal of postmodern criticism of history, see Richard J. Evans, *In Defense of History* (London: Granta Publications, 2018); in particular the chapter titled 'Historians and Their Facts'.

The end point of the journey was a raising of my historic consciousness, an awareness of my own history and tradition:

> Gadamer always speaks of a consciousness (*Bewusstsein*) of the work of history. And that consciousness is accompanied not by a loss, but if all well and good by a reflexive gain. It not only allows us to understand ourselves better, but more modestly it also allows us to understand better how historical consciousness is itself the daughter of its time, by applying historical consciousness to itself.[269]

This reflexive gain is the sculpturing of this thesis on *ribā*, a reconstruction that is conscious and respectful of the richness of Islamic tradition.

The main argument of this research is that the Qur'ānic term *ribā* has not been sufficiently understood to unleash the transformative potential of Islamic ethics in the modern field of finance. This is primarily due to an imperfect, or often absent, understanding of the sociohistorical reality of *ribā*; adopting the methodological preference in classical law that categorised *ribā* as a *mujmal* (ambiguous) term that required explication through Ḥadīth traditions; and modern traditionalists' reluctance to critique the methods and conclusions of classical scholars. A methodology that can overcome these challenges can provide a workable definition of *ribā* for purposes of law and policymaking.

3.1 The Conceptual Framework

Developing an understanding of the Qur'ānic view of *ribā* is an exercise in finding moral knowledge that can be *applied* in the field of finance. As a revealed text, the Qur'ān's overarching concern is moral guidance of human beings.[270] The reason for seeking such knowledge, and its relevance, lies in the possibility of application, in the hope of enacting change for the better. If morals and ethics do not guide the behaviour of individuals and societies, they are meaningless as purely intellectual concepts. One could compose a tome on the concept of justice, but it would remain a purely abstract exercise if the said tome could not be converted into a code of conduct that ensured justice. Application of such knowledge, therefore, is central to creating meaningful understanding. In the Qur'ānic paradigm of salvation, it is application - acts and deeds (*a'māl*) -

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[269] Grondin, op cit., 68.

[270] Q2:2 (*hudan lil'muttaqīna*: guidance for those who fear Allah); Q2:185 (*hudan lilnnāsi*: a guidance for mankind)

that God will weigh on the day of judgment. For Rahman too, Islam is ‘piety in action’. As Sonn explains his view:

> …central to Fazlur Rahman's approach was the conviction that Islam distinguished itself from its monotheistic predecessors precisely in its insistence on implementation, rather than mere advocacy, of divinely revealed commands…For Fazlur Rahman, this was equivalent to saying that the essential feature of Islamic revelation was that it was contextualized; revelation consisted primarily of examples of application of divine principles, not in mere intellectual formulations of the principles themselves. Fazlur Rahman believed that this contextualization of Islamic principles is reflected in the two basic sources of Islamic law - the Qur'ān and the Sunna, both sources being, primarily, examples of piety in action.[271]

Quite strikingly, a similar proposition emerges in Gadamer’s philosophy. His view of moral knowledge was based on Aristotelian ethics in which attainment of moral knowledge was not just an intellectual exercise, but one that demanded the seeker of knowledge to engage with the situation at hand.[272] It required vigilance and application. In Gadamerian hermeneutic, ‘understanding is always application.’[273] Furthermore, Gadamer problematised the idea of application whereby application was viewed as a successful attempt by an interpreter to apply ‘the meaning of the past to the present.’[274] When Islamic finance and banking are put through the test of *application,* it becomes manifest that the application takes the form of a stratagem (*ḥīla*) that meets only the letter of the law. Accepting the Gadamerian premise, the only possible conclusion is that the moral knowledge that forms the foundation of Islamic finance is unsound; consequently, the application of said moral knowledge is also deficient.

The central question in the present endeavour of attaining moral knowledge of *ribā* pertains to its understanding amongst the original addressees of these verses: the merchants of Mecca, of which the enterprising Quraysh tribe was dominant, and the Jewish moneylenders in Medina. Intuitively, this question implied a ‘movement’ from the present concern – an understanding of the Qur’ānic guidance on *ribā* for the modern Muslim – to the past. The question

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271 Tamara Sonn, ‘Fazlur Rahman’s Islamic Methodology’, *The Muslim World*, 81.3–4 (1991), 212–30, 228.
272 Grondin, op cit., 105.
273 Grondin, 102.
274 Grondin, 103.

was guided by 'feeling, instinct…and the sense of tradition [which] are more important factors than method alone' in Gadamer's philosophy.[275] That is not to assert that method is not important; however, an intuitive, common-sense engagement with the intellectual tradition of Islam did indeed yield such a question that concerned itself with understanding the past, the immediate locale of the revelation.

As soon as a scriptural reference to past practice becomes a point of investigation, history, meaning and the meaning-making process rear their heads. The asking of this question leads to the search for a theoretical framework that can comfortably accommodate an interpretive endeavour with the potential to learn fully from the past in yielding relevant understanding for the present. The intuitive moment noted above is best captured in the double-movement theory proposed by Fazlur Rahman:

> The process of interpretation proposed here consists of a double movement, from the present situation to Qur'ānic times, then back to the present…
>
> Whereas the first movement has been from the specifics of the Qur'ān to the eliciting and systematizing of its general principles, values and long-range objectives, the second is to be from the general view to the specific view that is to be formulated and realized *now*.[276]

In the process of interpretating, Gadamer points to a 'controlled exercise in the fusion of horizons'.[277] In his philosophy, the idea of a horizon contains within it the 'superior breadth of vision' as well as the ability to look 'beyond what is close at hand.'[278] Moreover, in the matter of tradition the horizon of the past is connected to the horizon of the present and it is at this site that true understanding is located:

> Hence the horizon of the present cannot be formed without the past. There is no more an isolated horizon of the present than there are historical horizons. Understanding, rather, is always the fusing of these horizons which we imagine to exist by themselves…In a tradition this process of fusion is continually going on, for there old

[275] Grondin, ibid, 102. My addition in square brackets.
[276] Rahman. 1982. *Islam & Modernity,* 6-7.
[277] Grondin, 95.
[278] Grondin, 100.

> and new continually grow together to make something of living value, without either being explicitly distinguished from the other.[279]

True understanding is located at this fused horizon, and true meaning lies in vigilant application of the theory developed through the hermeneutic endeavour.

3.1.1 Reflection on the Hermeneutic Process and Hermeneutical Space

In setting out his hermeneutic theory, Rahman challenges Gadamer's criticism of the 'objectivity' school. According to Rahman, Gadamer was of the view that every interpreter had an 'effective history' that shaped his views or consciousness. Whilst self-knowledge (*effective* historical consciousness) could mitigate for this, any quest for objective knowledge was futile due to this inherent subjectivity. As Gadamer notes:

> What so predetermines me as an understanding subject is what Gadamer called "the effective history," that is, not only the historical influence of the object of investigation but the totality of other influences that make up the very texture of my being.[280]

For Rahman, Gadamer's view of effective history made interpretive effort 'hopelessly subjective' because one could not transcend the historical *being*.[281] However, my reading of Gadamer concludes that what is required is self-reflexivity in the hermeneutical process, an open-mindedness and commitment to following the evidence trail. In other words, whilst human subjectivities cannot be eliminated completely from the interpretive endeavour, its whims can be tempered through commitment to objectivity. In Islamic law in particular, the language of the Qur'ān – the legal indicants (*dalīl*, pl. *adilla*) – have the effect of re-centering the hermeneutic to evidentiary standards, minimising the chance of whimsical readings.

The disagreement summarised above brings into relief the complexity of the hermeneutic endeavour. The present study agrees with Rahman's view that objective ascertaining of the past is possible thorough *ijtihād* (legal reasoning),

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279 Gadamer, *Truth and Method,* 273.
280 Rahman, *Islam & Modernity*, 9.
281 Rahman, ibid., 9

itself a process of engaging with a text or precedent.[282] It is also an imperative of humble effort to acknowledge that variant readings are possible. A postmodernist would hold variant interpretations to be equally valid; however, relativism is a fallacy because validity is tested against criteria of success in which the concreteness of human experience (lived reality) cannot be ignored. Some interpretations would always be more robust (truthful and meaningful) than others. It would always hold true that lying and theft are undesirable human behaviours. In Qur'ānic theology, the acceptance of all human souls to recognise God as the source of guidance[283] provides a starting point for theorising that morality can be understood through reason, but not through reason alone because of its fallibility. In the specific case of Qur'ānic interpretation, the linguistic concreteness of the Book itself as *mubīn* (clear) revelation in plain Arabic alludes to the criteria that must be met. In practice, it is the Muslim interpretive community that passes judgment on the validity of an interpretation and assigns normativity to it. The logical convergence point of the disagreements on the quest for objective knowledge is that the interpreter's search for meaning must be diligent, humble, self-aware and measured against explicit criteria of validity.

Despite Rahman's strong critique of Gadamer, there are two similarities in the hermeneutic methods proposed by Rahman and Gadamer. The first one pertains to *relevance* to the contemporary, that is, *application*, and the second pertains to treating the present as 'particular.'

For Gadamer, the legal and theological hermeneutical endeavour requires the interpreter to balance faithfulness to the text with developing its application in the present moment. As such, the interpreter needed to exercise vigilance in applying the meaning of a law or text to a specific situation. The 'rightness' of moral knowledge, for Gadamer, is 'a matter of vigilance and application',[284] with *application* defined as 'a successful mediation of the past and the present.'[285] Wisdom, therefore, rests in the correct and appropriate application of the law (from the past) to the present:

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[282] Rahman, 8.

[283] Q7:172 – 'When thy Lord drew forth from the Children of Adam - from their loins - their descendants, and made them testify concerning themselves, (saying): "Am I not your Lord (who cherishes and sustains you)?"- They said: "Yea! We do testify!" (This), lest ye should say on the Day of Judgment: "Of this we were never mindful"'

[284] Grondin, op cit., 106. According to Grondin, Gadamer always 'speaks of the two [legal and theological] at the same time…', 108.

[285] Grondin, ibid., 103.

> ‘To be faithful to the spirit of justice intended by the law itself is to adapt its application to the particular circumstances of a precise case…Not to realise this would be to misrepresent the law. Legal and theological understanding is thus divided into two headings: that of the law (of the past), and that of the present, and always special, case.’[286]

Whilst elucidating the second of the two movements in his theory, Rahman states:

> That is, the general has to be embodied in the present concrete sociohistorical context…so we can assess the current situation…and so we can determine priorities afresh in order to implement the Qur’ānic values afresh.[287]

The abovementioned viewpoints confirm the commonality of concern for both Gadamer and Rahman: meaningful understanding and relevance reside in the application of the law to a particular case. The second similarity arises here in the idea of the ‘special case’. The second movement in the Rahmanian framework is a *particularising* movement: ‘the second is to be from this general view [of systematised general principles of the Qur’ān] to the specific view that is to be formulated and realised *now*.’[288] Both Rahman and Gadamer, therefore, conceptualise the present as a specific case. Both demand a particularising movement of understanding and application from the past to the present.

Situating the law of *ribā* within the Gadamerian hermeneutical framework categorises it as a problem of ‘practical’ hermeneutics: the development of a legal theory with vigilant concern for application. The Qur’ānic law represents the law of the past whose meaning must be understood and applied in the present, viewed as a ‘special case.’ Quite immediately, the wonderful potential inherent in this framework becomes apparent: future generations of Muslims would – and should – continue the hermeneutical engagement with the Qur’ān in an iterative process that yields meaning and practical application for their temporal realities. This conclusion is similar to Rahman’s: the process is iterative and continuous. Rahman characterises this process as ‘intellectual endeavor or jihād’[289] and, situating this endeavour within Islamic legal thought,

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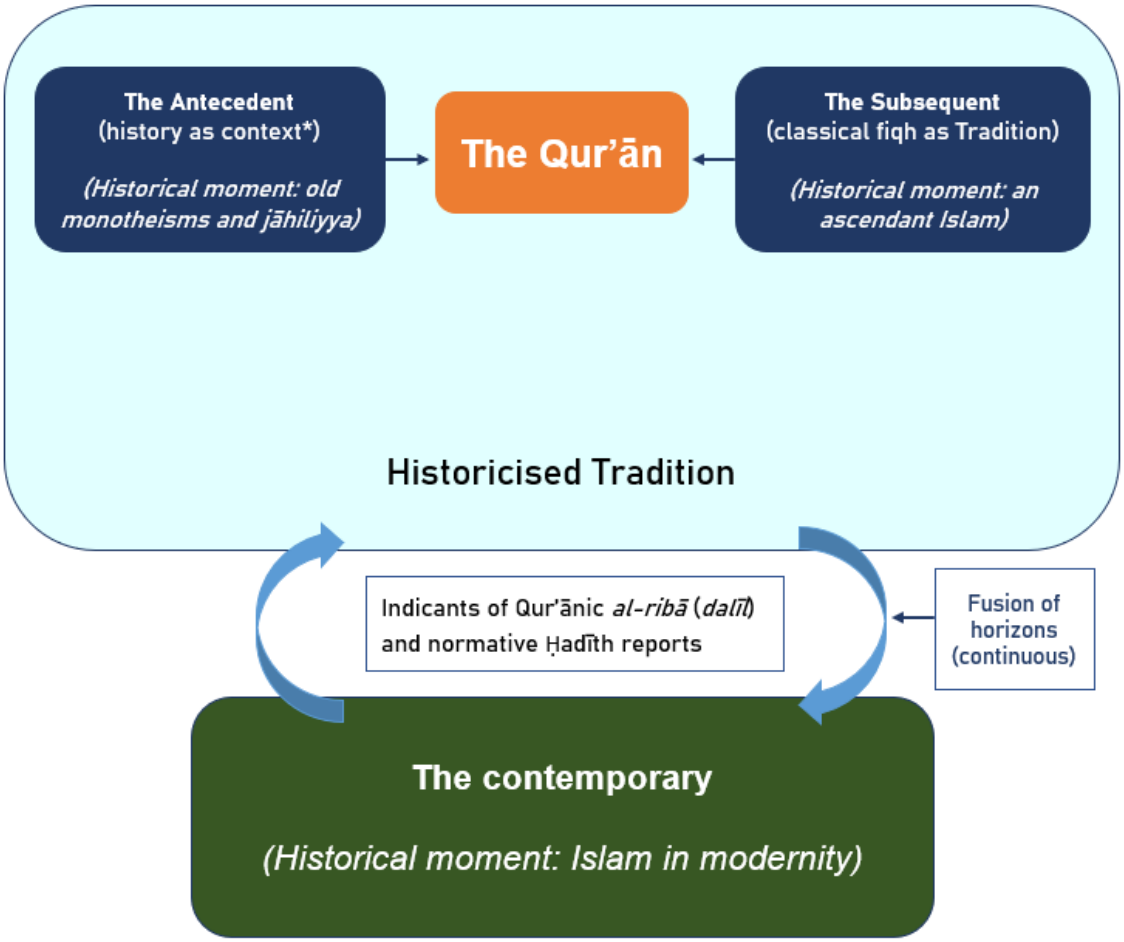
[286] Grondin, 108.
[287] Rahman, *Islam & Modernity,* 7.
[288] Rahman, ibid. My addition.
[289] Rahman, ibid.

the technical term for this interpretive effort is *ijtihād.* In the specific case of *ribā* in the Islamic legal tradition, this *ijtihād* takes the form of theory formulation (*usūl*) and application (*furū*). The diagram below illustrates the hermeneutic process:

Figure 3.1 The Hermeneutic Process



Key: The curved arrows indicate the continuous, iterative nature of the hermeneutical double-movement. The Antecedent and The Subsequent refer to chapter titles and their core concerns in this study. *Context informs the reading of the text.

At this juncture, it is important to explain the bases for staking a claim to hermeneutical space. First, it has been evidenced in the literature review that despite the traditionalists' claim of consensus (*ijmā'*) on the definition of *ribā*, the interpretation of *ribā* is far from settled. The review also identified lacunae in the established theory of *ribā*. Overcoming these gaps in knowledge will enhance the collective understanding of the Muslim community in this important matter of

law. Second, Islamic law itself is one of the 'most troubling' of intellectual issues facing modern Muslims.[290] This second point has important implications for the question of methodology: the process of returning to the canonical sources to develop new interpretations which incorporate the best principles of Islamic jurisprudence and constructively engage with the Muslim experience of modernity. Hence, methodology is one of the main concerns (and potential contribution) of the present study. Third, my expertise in economic theory, governance, risk management and organisational policy development has equipped me with a perspective that equally values the theoretical and the practical. This thesis will therefore propose not just a theory but practical application and suggestions for policy priorities that have the potential to positively impact the economic situation of the global Muslim community. Fourth, the Qur'ān itself authorises and exhorts believers to engage in deep pondering and reflection on its message.[291] This is a continuous process and jurists cannot call a halt to reflection by assigning perfection or absolutism to their legal opinions or the opinions of past jurists. The first full articulation of Islamic law happened during the time of political and economic ascendancy in the first five centuries of Islam. The doctrines, methods and conclusions of that classical tradition require thorough critique to re-energise the field of Islamic law. A fresh interpretive endeavour is now needed more than ever in a community beset with intellectual and economic crises. As a believing Muslim woman whose life experiences have been affected by patriarchal interpretations of divine law, I have the capacity and motivation to locate emancipatory and compassionate meaning[292] in Qur'ānic law, which will enrich the interpretation of *ribā* and reset the hierarchy of priorities in Islamic finance. Therefore, this thesis not only claims hermeneutical space, but it also resets the impetus and priorities of legal reasoning in the case of *ribā*.

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[290] Ebrahim Moosa, 'The Debts and Burdens of Critical Islam', *Progressive Muslims: On Justice, Gender, and Pluralism*, 2003, 111–27, 120. <ebrahimmoosa.files.wordpress.com/2010/09/ebrahimmoosapm.pdf> [accessed 02 November 2020].

[291] The Qur'ān exhorts reflection on dozens of occasions. For instance, '…Thus doth Allah Make clear to you His Signs: In order that ye may consider [*tatafakkarūna*]…' Q2:219.

[292] An ossified tradition will only embrace dynamism if its proponents show willingness to challenge their idealist and nostalgic views of a revered tradition. Muslim women are more prepared to question the methods and conclusions of this tradition because their lives are often adversely affected by legal opinions (*fatāwa*) of classical scholars. My speculative hypothesis, based on interaction with Muslim women in the community and online, is that female interpreters tend to gravitate towards compassion, egalitarianism and justice in the Qur'ānic message, which shapes their reading of Qur'ānic law.

3.2 Method, Design and Objectives

The questions taken up in this thesis are ambitious and multi-faceted for such is the case with *ribā*, a concept touching upon a multitude of concerns: charity, justice, financial dealing as an ethic *and* a process, and ultimately, God's *ḥikmāh* (wisdom) in revealing a text about *ribā*. In terms of methodological choice, the proverbial fork in the road showed two options. The first was to engage in a rational exercise adopting a utilitarian view of the Sharīʿah as articulated in the principle of *maṣlaḥah* (public interest) situated within the *maqāṣid al-Sharīʿah* (purposes of Sharīʿah) framework. The framework posits that the purpose of Sharīʿah law is to preserve life, lineage, property, honour, and freedom of belief.[293] *Maṣlaḥah* is a controversial principle and 'traditionally a principle of a rather limited application...'.[294] According to Hallaq, the idea of 'religious utilitarianism' emerged in Muḥammad 'Abduh's work.[295] The use of this modern approach is often accused of 'westernisation' by traditionalists.[296] There are three main problems with this approach. First, it sits within the *maqāṣid* framework which itself 'remained underdeveloped'.[297] Moosa notes that without appropriate historical contextualisation, the *maqāṣid* '…approach can lead to the bowdlerization of the text.'[298] Second, the principle of *maṣlaḥah* can be used to argue that 'whatever might be necessary to achieve a good might become lawful or obligatory.'[299] The liberal scholars use this principle to accommodate bank interest on business and investment loans. This reasoning seems expedient and undermines the argument. On the other hand, the traditionalist scholars use the principle of *sadd al-dharīʿah* (curtailing the means to a harm) to prohibit *ribā al-faḍl* which is understood as the means to *ribā* proper and harmful to public interest. Most Ḥanafī and Shāfiʿī jurists 'rejected the concept…[because] it was dangerously unprincipled.'[300] Abou El Fadl explains that the problem in using these principles is that they do not provide a systematic mechanism for balancing the public interest of various groups. In my view, the third, and arguably the main problem with the *maqāṣid* framework and the principle of *maṣlaḥah* is that it is at odds with the overall purpose of

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293 Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 154.
294 Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999), 214.
295 Hallaq, *Islamic Legal Theories,* ibid.
296 M. Akram Khan and Abdulkader Thomas, 'Appendix: The Challenges in Pakistan', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 135–38, 136-7.
297 Abou El Fadl, op cit., 154.
298 Moosa, Debts and Burdens, 123.
299 Abou El Fadl, ibid., 191.
300 Abou El Fadl, ibid.

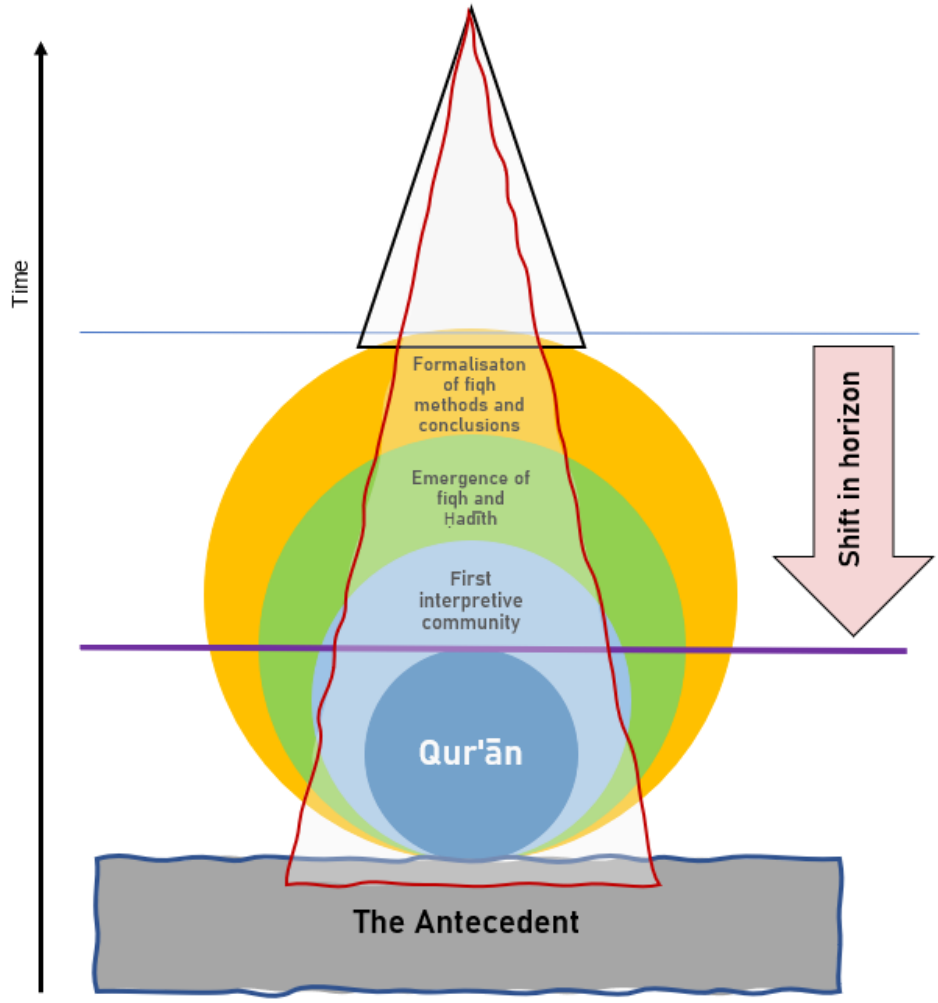
Sharī‘ah, which is ‘to purify.’[301] It is this moral thrust of the Sharī‘ah law that sets it apart from secular law, otherwise the latter type of law is also concerned with preserving life, property and freedom. Due to these weaknesses, the utilitarian approach was deemed unsuitable for the present endeavour.

The second choice was to view take a critical-traditional approach, respectfully cognisant of tradition and the role of interpretive communities, mainly in agreement with the basic premises of legal theory in its engagement with the key textual sources of Islam but acutely aware of the history of development of legal thought, and how different the modern contemporary is from that moment in the past. My intention, therefore, was to reach as close to the revelatory moment as possible (as illustrated below) whilst engaging the work of exegetes and jurists of the early and classical periods, without feeling the compulsion to be loyal to dogmatic or orthodox understandings of the Qur’ān. Throughout this study my feet were firmly planted in the contemporary even as I searched for historical clues along the path. The present study has interpreted the Qur’ānic prohibition of *ribā* informed by contemporary concerns – relating to the Qur’ān *from the vantage point of today* – whilst developing an interpretation through nurturing a deep and meaningful relationship with the history of the revealed guidance, in order to make it relevant to what Esack calls ‘the now moment.’[302] Overall, this thesis has interpreted *ribā* as a *moral-legal* matter, casting aside any expedient concerns. Figure 3.2 illustrates the research approach and objectives and is explained in the succeeding text.

[301] The idea that God has sent guidance (law and wisdom) to humans to purify or sanctify them is based on Ghamidi’s explanation of the objective of religion. He basis his views on Q87:14 and Q62:2. See Javed Ahmad Ghamidi, *Islam: A Comprehensive Introduction*, trans. Shehzad Saleem, 1st edn (Lahore: Al-Mawrid, 2010), 80. I have analysed the shortcoming of the *maqāṣid* framework within this paradigm. This paradigm guides theory development in Chapter 6.

[302] Farid Esack, ‘Qur’ānic Hermeneutics: Problems and Prospects’, *The Muslim World*, 83.2 (1993), 118–41, 119.

Figure 3.2 Research Approach and Objectives



Key to Figure 3.2:

Smaller cone: represents the traditionalist thought on Islamic finance (solid straight line represents certainty of methods and interpretations. The base of the cone represents the location of the horizon.)

Wavy cone: this cone of vision represents the research approach, breadth and location of the horizon. It incorporates the work of the early interpretive communities. Wavy edges represent possibilities of finding new historical evidence which can shape the concept of *ribā* whilst the fundamental integrity of Qur'ānic revelation remains. This fluidity accommodates the shifting manifestation of *ribā* over time.

Block arrow: represents the shift in horizon, a key aim of this research. This will enable the development of the historicised interpretation of *ribā*.

Thin blue line: the fusion of horizon in the established (traditional) concept of *ribā*.

Solid purple line: the fusion of horizon in the reconstructed concept of *ribā*.

The arrow of time: not to scale. The arrowhead represents the contemporary, where the apex of the cone of vision sits.

This study has developed a fresh interpretation of *ribā* based on two reconstructions: historical and epistemological. The historical reconstruction took the form of a sketch called The Antecedent, which situates *ribā* within the ancient history of lending, utilising the work of economic historians and anthropologists. One of the main challenges of piecing together a socioeconomic history of *ribā* at the time of the revelation of the Qur'ān was the absence of documentary evidence pertaining to debt contracts. This was despite the fact that the Arabs kept meticulous ledgers, as mentioned by Cragg when noting the Qur'ān's use of the language of trade and commerce, for instance, *ḥiṣāb* (accounting or adding up) and *kitāb* (book or register).[303]

> The strength of Quraishī business enterprise lay first in its rigorous book-keeping. Caravan power, both of men and beasts, was carefully noted in documents of hiring and lading. Sums and figures, meticulously registered by their officers, served an oversight not to be fooled or cheated.[304]

Unfortunately, there are no extant legal documents – letters, contracts, ledgers - that would shed light on commercial practices contemporaneous with or immediately following the revelation of the Qur'ān. As Udovitch notes, in the absence of documentary evidence, the only recourse available is to 'rely on legal treatises for most of our information…'[305] Udovitch's work is primarily concerned with the *commenda* (*muḍarabah*) and partnership (*musharakah*) contracts in early Islam; however, his methodological notes shed light on the complexity of the challenge. Based on the view of economic historians that 'legal techniques not only reflected but also influenced economic practices' in the West,[306] Udovitch extends the same assumption to the early Islamic economy; however, he is immediately confronted with another problem, that of the link between theory and practice.

It is not clear how much of Islamic legal theory reflected or influenced actual practice. Critiquing the views of C. S. Hurgronje and I. Golziher – who held that *fiqh* was primarily a theoretical enterprise with no bearing on actual practice – Udovitch prefers instead the view of I. Bergsträsser who considers commercial

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[303] Cragg, supra, 101.
[304] Cragg, ibid.
[305] Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 3.
[306] Udovitch, ibid., 4.

law as a category of law which did influence practices albeit not as strongly as in the arena of family and worship law.[307] Overall, Udovitch is of the view that *fiqh* literature was cognisant of actual practices and was highly accommodating towards trade and commerce, a point further cemented by *ḥiyāl* literature in which legal stratagems were devised to aid trade practices, for example, to circumvent the ban on interest (*ribā*).[308] For Udovitch's purposes of researching types of contracts, *ḥiyāl* literature offered a rich site of enquiry. For the purposes of the present study, however, *ḥiyāl* literature was not a promising site of enquiry because it developed in the mature *fiqh* tradition, roughly 4 centuries after Islam, whereas this study aimed to get as close to the revelatory moment as possible. The problem of lack of evidence was overcome by using textual sources that yielded clues to the sociohistorical reality of *ribā*: the opinions of Companions and Successors to the Prophet as captured in *asbāb ul nuzūl* reports, as well as Ḥadīth reports pertaining to *ribā*. Of these, the *asbāb* are the closest to the revelatory period of the Qur'ān.

The experience of delving into *ribā* from a sociohistorical perspective was reminiscent of the work of a *khojī*, the local detective in the quintessential Punjabi village tasked with tracking down elusive burglars. A hoof print, a broken twig, a trampled-upon blade of grass gave definitive clues to the means of getaway and the suspected location of the burglars' hideout. The village setting and local knowledge played a crucial part in the *khojī's* search, who knew the contours of the riverbank, the orchards, and the acacia trees lining the dirt roads. Throughout his search, the *khojī's* focus remained on the event itself: the burglary. He applied systematic forensic knowledge to solve the case. The triangulation of evidence to piece together the lived practice of *ribā* felt similar to the *khojī's* search.

In his excellent theoretical paper on the potential of sociohistorical research, John Hall has categorised sociohistorical methodologies as follows:

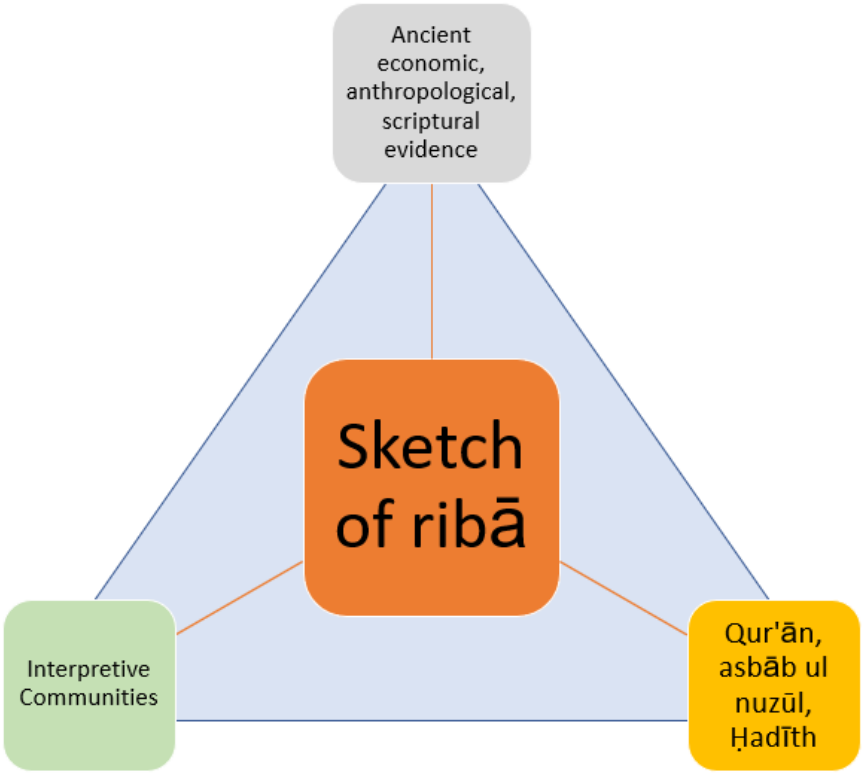
> I therefore differentiated four particularizing practices from the four generalizing practices of research, arguing that each of the eight alternative ideal-typical 'practices of enquiry' brings together four 'forms of discourse' – value discourse, narrative, social theory, and explanation / interpretation – in a distinctive way. This analysis suggests that any **methodology is inevitably a hybrid exercise** in

[307] Udovitch, ibid., 5-7.
[308] Udovitch, ibid, 10-11.

> 'impure reason'…the challenge for the researcher is to structure a research project in a way that aligns methodology, research problems and data, that can be brought to bear on the issue, in order to produce new and relevant knowledge.[309]

Using the above categorisation, the present research sits within the particularisation approach of 'situational history': the research questions have been developed 'explicitly to address moral or political issues.'[310] Intuitive reliance on triangulation was necessitated due to the different types of evidence that had to be utilised to create a sketch of *ribā*. Hall's paper lent further credence to this intuition, noting in the concluding section that 'the researcher may become engaged in triangulating information or constructing an analysis that attempts to do justice to contradictory accounts.'[311] The diagram below explains the type of evidence used to understand the sociohistorical reality of *ribā*.

Figure 3.3 Triangulation of Evidence to Create the Sketch of *Ribā*



[309] John R. Hall, 'Historicity and Sociohistorical Research', in *The SAGE Handbook of Social Science Methodology*, ed. by William Outhwaite and Stephen. P. Turner (SAGE Publications Ltd, 2007), pp. 82–101, 93-4. Downloaded from academia.edu.

[310] Both references Hall, ibid, 95.

[311] Hall, ibid, 97.

The second, epistemological, reconstruction pertained to Islamic intellectual thought in the Iqbalian sense of critical engagement with the Islamic tradition,[312] reviewing its principles and methods to revive the dynamism inherent in the tradition. Iqbal saw this as the best means of reversing the crisis in Islamic intellectual thought in the face of complex challenges of modernity. This reconstruction involved a contextualised reading of the Qur'ān, *asbāb ul nuzūl* (occasions of revelation reports) and Ḥadīth reports coupled with a cautious approach to assigning normative authority to reports about *ribā*. The disempowering influence of Ash'arism was challenged in view of the Qur'ānic paradigm.[313] A critical understanding of *ribā* as developed by classical Muslim jurists informed this second reconstruction because it continues to influence the debate today.

3.2.1 Approach to Periodisation

The overarching aim of this study is to develop an understanding of the Qur'ānic verses on *ribā* within their historical revelatory context. The *sitz im leben* of the Qur'ān is informed by the economic context of Mecca and Medina: forms of trade and economic institutions of the time. To understand this 'reality', and with reference to the Qur'ānic verse that mentions the iniquity of those Jews who were taking *ribā*, the timeline is extended backwards to include the ancient economy. This enables the development of a 'sketch' of the economy at the revelatory event, of crucial importance to this study, captured in the chapter titled 'The Antecedent'. The historical context features economic and anthropological evidence as well as the Jewish scriptural and juristic literature on the forbidden *marbit* (increase) in lending, which provides important clues to financial dealings at the time of the Qur'ānic revelation.[314]

With the Qur'ān remaining at the centre, the timeline is extended forwards to include the precedents and interpretive efforts of the Muslim community until the time when legal theory and Ḥadīth sciences become formalised. This is a span

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[312] Iqbal. Chapter VI, 'The Principle of Movement in the Structure of Islam' deals with this at length.

[313] See detailed discussion on Obstacles in 3.3.2 below.

[314] There is a parallel here with Barlas's idea of reading "'behind the text' to reconstruct the historical 'context from which the text emerged.' See Asma Barlas, *Believing Women in Islam - Unreading Patriarchal Interpretations of the Qur'ān* (London: Saqi Books, 2019), 23.

of roughly three to four centuries after Islam. There are very few legal works available from the third and fourth century; detailed extant works date to the fifth century of Islam.[315] However, canonical Ḥadīth collections and *tafsīr* works from the second, third and fourth centuries are available. For the purposes of the present study, this does not create a methodological challenge because the classical legal opinion on *ribā* is available through surviving works. The important concern for this study was to *include* the efforts of the interpretative community because, as Moosa correctly notes, '… what is a sacred scripture worth if it does not have a community of participants, listeners and readers?'[316] The diligent efforts of this community shed light on the development of legal discourse and its linkage with actual practice, crucial in our understanding of the perspective of contemporary traditionalists who implicitly assume that legal theory represented 'real' practice in the community. In addition, the past interpretive effort offered a cross-disciplinary framework of analysis that was adopted in this study. The chapter titled 'The Subsequent' details the historical and epistemological insights gathered from this period of intense interpretive activity and concludes with linking it to actual practice of interest-based lending.

This study views The Subsequent as a systematic attempt by early Muslim scholars to develop interpretations and applications relevant to *their* time. In other words, the classical theory (and its application) was situated in its own history and was valid for its own history. Similarly, the present interpretive effort has developed a theory of *ribā* relevant to contemporary concerns in the 21st century. Therefore, the vantage point of this study is necessarily contemporary. This approach to a legal matter also applies to constructing the sociohistorical that in turn informs the legal.

> Theory of whatever kind…derives from the historian's present, not from the historian's sources.[317]

Accepting the Gadamerian view that the 'hermeneutical situation' of a historian is similar to that of a jurist[318] - both are engaging with a text or a set of facts to find meaning – the theory of *ribā* proposed in this thesis has originated, and is situated, within the contemporary. This modern vantage point has been

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315 Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999), 36.
316 Moosa, *Debts and Burdens,* 123.
317 Richard J. Evans, *In Defense of History* (London: Granta Publications, 2018), 83.
318 Grondin, 107. Citation in the original from Gadamer's *Truth and Method.*

represented as the apex of the ‘cone of vision’ in Figure 3.2 above which visualises the periodisation, approach and aims of this study.

3.2.1.1 Writing The Antecedent

The Antecedent captures the context to the Qur’ānic law of *ribā* and provides the sociohistorical grounding to this study. This primarily takes the form of a sketch of economies in ancient times and the middle ages, enriched with Jewish scriptural and rabbinic literature on the idea of *marbit* (increase) forbidden in the Old Testament. This latter inclusion was made in conformance with the Qur’ānic verse that mentioned the iniquity of the Jews in taking *ribā*[319] and the Qur’ānic mention of the law of earlier nations that were sent scripture *(shar‘ man qablana)* – Jews and Christians.[320] This section explains the method employed to create The Antecedent.

When approaching history, two concerns rear their heads: the first is the concern with the problem of ‘priority of paradigms’[321] while the second pertains to the use of ‘text’ and ‘context’ as methodological tools in writing histories of ideas. According to Skinner:

> My procedure will be to uncover the extent to which the current historical study of ethical, political, religious, and other such ideas is contaminated by the unconscious application of paradigms whose familiarity to the historian disguises an essential inapplicability to the past.[322]

Skinner made this point when discussing literature and philosophical works especially in the field of politics. However, the present study has benefited from these words of caution when re-interpreting *ribā*. There are glaring cases of this priority of paradigms in Islamic finance literature, itself wholly unaware of their existence. The following statement illustrates this point: ‘It is evident from the above discussion [on *murabaḥah*] that every financing in an Islamic system

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[319] Q4:160-1. It is worth noting that the Qur’ānic word for Jewish lending practices was also *al-ribā*.

[320] See further discussion on this in section 4.2.4 and 6.2.1.4.

[321] Quentin Skinner, ‘Meaning and Understanding in the History of Ideas’, *History and Theory*, 8.1 (1969), 3–53, 6.

[322] Skinner, ibid, p.7.

creates real assets,'[323] or that the Quranic prohibition was meant 'to encourage investors and labourers to combine their resources in joint ventures such as *muḍarabah* partnerships.'[324] Skinner cautioned that such an engagement with the history of an idea could create a mythology. In Islamic finance, viewing the Quranic prohibition with a modern lens and creating the impression that the rationale of the divine message was to create a sophisticated financial system with specific contractual forms is one such example. Such a mythology detracts from the basic elan of the *ribā* revelation and shifts focus instead on *forms* of finance or commerce.

This study has consistently postulated that a contextual (historical) reading of the Qur'ān is essential for extrapolating general principles governing law and ethics. Whilst it is not possible to read without a paradigmatic lens, an awareness of its presence makes the researcher more effective in reshaping the lens in the search for objective truth. Such reshaping sometimes also requires abandonment of political commitments, such as the one made by Islamic revivalists[325] to the effect that 'Islamic institutions and legal codes were sufficient then and they will be sufficient now, with only minor modifications.'[326] The present study required the development of a *historically appropriate* paradigm – charity and trade in a precarious economy vulnerable to the vagaries of weather and harsh terrain, with high levels of destitution. It viewed money lent 'as a pot of money or other items' rather than considering it in its modern forms of debt, equity and their hybrids. Here, the language of the revelatory text itself set boundaries and shed light on what epistemological categories were the most historically appropriate for analysis.

The second concern was about faithfulness to text or context. In the matter of Qur'ānic hermeneutic, faithfulness to the revealed text (*naṣṣ*) is an established legal principle which the present study adopts. The textual indicators (*dalīl naṣṣi*) constituted one of the two types of proof in Islamic jurisprudence (the other being *dalīl 'aqlī* or rational proof). Islam, in Talal Asad's view, is a 'discursive tradition' at the heart of which sits a continuous engagement with

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[323] Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (Karachi: Maktaba Ma'ariful Qur'ān, 2007), 21.

[324] Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking*, 2nd edn (London: Graham & Trotman Ltd., 1992), 15.

[325] Sonn, supra, 227.

[326] Sonn, 227; excerpt taken from Tamara Sonn's summarisation of Rahman's critique of the neorevivalist approach to Islam.

primary texts and the community's acceptance of 'apt performance'.[327] Any interpretation that does not exhibit fidelity to the text would not be accepted by the Muslim community. The authoritative, therefore, cannot be constituted without recourse to the text. Skinner critiqued exclusive loyalty to one or the other of the two approaches. In his view the text-only approach, which presupposes the autonomy of the text, is more prone to the problem of priority of paradigms. This is because the historian 'must classify in order to understand, and we can only classify the unfamiliar in terms of the familiar.'[328] By bringing in context, it becomes possible to avoid anachronisms. According to Skinner, the method of 'contextual reading'[329] is often used 'In the histories of economic and even scientific thought;'[330] however, this method faces another problem: social context can help to explain a text, but it cannot help us understand the meaning of it.[331]

> …explanation and interpretation share a core enterprise that tends to blur the boundary between them: they both draw on the most diverse evidence to marshal arguments about how to make sense of phenomena. The account itself is the thing.[332]

> The "context" mistakenly gets treated as the determinant of what is said. It needs rather to be treated as an ultimate framework for helping to decide what conventionally recognizable meanings, in a society of that kind, it might in principle have been possible for someone to have intended to communicate.[333]

In order to overcome the weaknesses inherent in purely textual or purely contextual methods, Skinner recommends developing a 'linguistic enterprise' that covers all usages of text or 'utterances' within a social context.[334] In this way, the error of seeing context as 'determining meaning' can be avoided.[335] In

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[327] Talal Asad, 'The Idea of an Anthropology of Islam', *Qui Parle*, 17.2 (2009), 1–30, pp.20-1.
[328] Skinner, ibid.,6
[329] Skinner, ibid., 40
[330] Skinner, ibid., 40
[331] Skinner, ibid., 46
[332] See Hall, *Sociohistorical Research*, 91
[333] Skinner, op cit., 49.
[334] Skinner, ibid, 49.
[335] In the present study, the 'linguistic enterprise' has been developed in Chapter 6 when engaging with the Qur'ānic verses on *ribā*. The centrality of the canonical texts is an established principle in Islamic law. See also chapter titled 'The Text and Authority' in Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law,*

cognisance of this note of caution, the present study has used sociohistorical context as *informing* and not determining the meaning of the *ribā* verses. It must also be noted that the Qur'ān is a special type of text, considered to be of divine provenance, inimitable, and free of contradictions. The text of the Qur'ān, therefore, plays the most important role in this hermeneutic endeavour. The first reading of the Qur'ānic verses in chapter 5 is thus *informed* by the context in The Antecedent, not determined by it.

In terms of content, the Antecedent comprised of two elements: first, a sketch of the economy in antiquity and the middle ages where the institution of lending remained fairly stable, including an excurses on the Jewish concept of *ribā*; and second, the social and economic history of Mecca and Medina at the time of the revelation of the Qur'ān. Taken together, this formed the context of the *ribā* verses. As Cragg notes in the chapter titled 'The Point of Time':

> The contexts immediate to the incidence of the contents [of the Qur'ān] are inseparable from their interpretation and their import. This is freely and fully recognised as inescapable. Even the eternal cannot enter into time without a time when it enters.[336]

3.2.1.2 Writing The Subsequent

As Iqbal noted, the earliest jurists of Islam exerted immense effort in developing a body of law that could guide the Muslim community at a time of expansion of the Islamic world. As new territories and cultures became assimilated under the Islamic tradition, new problems of law arose, galvanising an extraordinary intellectual effort to develop legal theory and its applications for specific circumstances and locales.[337] By the fifth century of Islam, a large number of texts on legal theory emerged, in which 'major problems of legal theory were addressed.'[338] Islamic jurisprudence (legal theory) and its applications (*furū'*) represent a rich source for the present study, for it is in this space the theory of *ribā* has emerged and continues to shape the contemporary discourse.

Authority and Women. Abou El Fadl notes that texts have 'a degree of autonomy', 'a basic integrity' and 'their meaning is not endlessly subjective'; at 121-2.

336 Kenneth Cragg, *The Event of the Qur'ān* (Oxford: Oneworld Publications, 1994), 112. My additions in square brackets.

337 Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam* (London: Oxford University Press, 1934), 157.

338 Hallaq, op cit., 36.

The endeavour of Islamic law in the matter of *ribā* is captured in The Subsequent. The focus of this chapter is on the methodological process followed by classical jurists in explaining *ribā*, offering key insight into how the classical *ribā* schematic and the concept of *ribā al-faḍl* were developed. As noted earlier, the timeline to the present was stretched to allow a brief review of Islamic thought on *ribā* in the middle and later periods, primarily to highlight the controversies surrounding the idea of *ribā* and the difficulties posed by the Ḥadīth-based concept of *ribā al-faḍl*.

The latter section of the chapter focuses on the link between theory and practice to identify the prevalence of interest-based lending in Muslim communities of the early and classical period. The degree of alignment between legal theory and actual community practice has been a matter of contention in Islamic law. Asad was of the view that Islamic law did not closely regulate social life as the secular state does:

> A moment's reflection will show that it is not the literal scope of the shari'a that matters here but the degree to which it informs and regulates social practices, and it is clear that there has never been any Muslim society in which the religious law of Islam has governed more than a fragment of social life.[339]

This controversy necessitated a detailed comment on the alignment between the legal theory of *ribā* and the actual practice of Muslim communities. This was included in the discussion on The Subsequent.

It is important to point out at this juncture that both Ḥadīth and Islamic law stand in *retrospect to* the Qur'ān. Whilst Ḥadīth is an important archive for understanding the precedent of the Prophet, normative / binding or otherwise, Islamic law was an endeavour of the early interpretive communities in Islam. As such, classical Islamic law stands within its own history and socio-political reality as do the eponymous founders of the Ḥanafī, Shāfiʿī, Mālikī, Ḥanbalī and Jaʿfarī schools of law. Hence, the present study views the principles, methods and conclusions of the classical schools to have the most relevance and value for the communities of their time. This is not to assert invalidity or irrelevance to

339 Asad, op cit., 19.

the contemporary modern, but to recognise that the classical scholars were also beings *in* history, affected by and responding to their immediate circumstances.

3.2.2 Engaging with the Canonical Sources

Islamic knowledge (*'ilm*) sits on the epistemological foundation of two canonical sources: the Qur'ān and Ḥadīth. This section explains the approach to interpretating the teachings of these sources in the matter of *ribā*.

Islam as tradition and praxis situates the Qur'ān at the centre. The Book itself invites its readers to ponder over its meaning (*afalā yatadabbarūna*). It devotes about a tenth of its verses to legal matters – rules, prohibitions, allowances – as a response to the supplication of the believer in the Introductory chapter when she asks God to guide her to the straight path, the path of righteousness. It is only fitting that the Qur'ān should, and did, play a central and decisive role in the present study.

Situating the Qur'ān at the centre refers to the principles I have adopted in reading the Qur'ān. First, the overarching framework or paradigm governing the purpose of divine guidance has been informed by the Qur'ānic text. Second, the Qur'ān is read as a book of moral guidance within which the *ribā* verses are situated. Third, it is accepted that the language of the Qur'ān is literary Arabic of the Quraysh of Mecca spoken by its great orators and poets.[340] The Qur'ān uses the word *bayān* (clear, manifest, eloquent speech) for its language and its message on numerous occasions. Hence, the language of the *ribā* verses has played an influential role in the interpretation developed in this study. Fourth, any specification or generalisation has only been allowed if the language of the verses has alluded to it.[341] Fifth, as a point of departure from traditionalism's fidelity to the Ash'ari postulate that man cannot know the rationale (*ḥikmah*) of divine commands,[342] the Qur'ān was approached as a book of guidance in

[340] Amin Ahsan Islahi, *Tadabbur-i-Qur'ān*, Volume 1 (Lahore: Faran Foundation, 2012). See 14-7 in the *Muqaddima* (prologue) to his exegesis.

[341] See discussion below on Rationale which explains why Ḥadīth, without corroboration from Qur'ānic language, cannot introduce specification or generalisation of a Qur'ānic rule.

[342] See 6.5 on developing the *ḥikmah* of *ribā*.

which the author makes the rationale available to the reader. This theological view was based on the verses of the Qur'ān.[343]

The *asbāb ul nuzūl* (occasions of revelation) literature is primarily utilised in writing Qur'ānic exegesis. These reports, although technically a sub-genre of Ḥadīth, provide important clues about the chronology of some Qur'ānic verses and the specific situations or practices the Qur'ānic verses were *responding to*. These are not, however, *causes* of revelation; rather, *asbāb* reports provide information about the circumstances and experiences of the situations and individuals to whom the Qur'ān is responding.[344] To read them as causes would be to bind them only to that specific situation, which would challenge the well-established principle of transcendentalism of the Qur'ān. Instead, it is more appropriate to view *asbāb* reports as 'illustrations'.[345] As Muhammad Asad noted in the foreword to his exegesis:

> Hence, the consideration of the historical occasion on which a particular verse was revealed…must never be allowed to obscure the underlying purport of that verse and its inner relevance to the ethical teaching which the Qur'ān, taken as a whole, propounds.*[346]*

Hence, the *asbāb* pertaining to the *ribā* verses have been read both for the purpose of supplementing the knowledge about the chronology of the verses as well as for yielding clues about the actual practice of *ribā*. In Rahman's view, *asbāb ul nuzūl* literature provides 'anchoring points' to 'eliminate vagrant interpretations.'[347] Like Rahman, Esack particularly singled out *asbāb ul nuzūl* (and the doctrine of abrogation)[348] as potential sites for 'locating the meaning of various texts with their *Sitz im leben*'[349] to understand how the original text was heard by the earliest readers. In the case of *ribā*, the *asbāb* had the potential to provide useful context in understanding types of transactions the Qur'ān was

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[343] For detailed engagement with Ash'arism and its limiting influence on the meaning-making endeavour, see section below Obstacles.
[344] Amin Ahsan Islahi, op cit., 31.
[345] Muhammad Asad, *The Message of the Quran* <http://www.muhammad-asad.com/Message-of-Quran.pdf>, 18. Accessed 27/12/2020. PDF n.d.
[346] Muhammad Asad, ibid.
[347] Rahman, *Islam & Modernity,* 143.
[348] This study did not engage with this doctrine because there is no evidence of abrogation in the Qur'ānic prohibition of *ribā*.
[349] Esack, supra, 137.

referring to, which were treated as examples of *typical ribā* transactions in 7th century Hejaz.

The body of traditions from the Prophet, Ḥadīth, predates legal theory. Much scepticism has been levelled at the authenticity of Ḥadīth literature by Western scholars. Schacht and Goldziher have theorised that Ḥadīth reports originated about a hundred years after the Prophet's death. These are fabrications, later linked to the Prophet through carefully constructed chains of transmission (*isnād*). However, more recent research, notably by Juynboll and M.M. Azami, has shown that Ḥadīth reports circulated at the time of or just a few decades after the Prophet's death. Numerous traditions have sound chains which help to establish the authenticity of their provenance.[350] The point of note here is that Islamic law gives epistemological status to Ḥadīth, recognising it as the second main source of law. The importance of Ḥadīth for the Muslim community cannot be diminished or dismissed simply because of 'withering scholarly criticism from European orientalists.'[351] In Talal Asad's conceptualisation of Islam as a discursive tradition, the Qur'ān and Ḥadīth are noted as 'founding texts.'[352] Any development of legal theory must therefore take a cognisant approach to Ḥadīth and must engage with it fully for the purpose of quarrying historical information and assessing its role as a source of law. This study has therefore undertaken a multi-layered analysis of foundational Ḥadīth traditions cited in Islamic finance literature. There are some challenges to the use of Ḥadīth reports in legal reasoning; these have been discussed in detail in the next section.

3.2.3 New Theory Development and Application

The insights gathered from economic history and anthropological research, the canonical sources of Islam and the interpretations of the juristic community - embodying the first movement to the past –enable the development of a general interpretation of *ribā* at the revelatory event. From this, the second particularising movement becomes a possibility, treating the present as a special case, creating the imperative to also understand the present fully.

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350 Herbert Berg, *The Development of Exegesis in Early Islam - The Authenticity of Muslim Literature from the Formative Period* (New York: Routledge, 2000). See chapter on Ḥadīth Criticism.

351 Jonathan A.C. Brown, *Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy* (London: Oneworld Publications, 2014), 9.

352 Talal Asad, op cit., 20.

> That is, the general has to be embodied in the present concrete sociohistorical context.[353]

The context of 'the present' of Islamic finance was developed in chapter 2, situated within the realities of globalised finance, modern banking practices, extreme inequalities and long-term development issues in Muslim countries. The 'present' comes alive during the application stage which includes five separate scenarios, covering unregulated and regulated lending practices, where the new theory is tested.

3.3 Background and Rationale for Research Approach

3.3.1 The Controversy and Potential of Historicism

The adoption of a historicising methodology is not without controversy. Fazlur Rahman faced severe backlash for suggesting such a methodology, 'confined to the margins of Islamic thought…also persecuted for his views'[354] even though 'his historicist methodology has deep roots within Islamic tradition, which far predate Western historicism.'[355] One immediately confronts the presence of history when a simple but important question is posed: what was the *ribā* of the Arabs? What is known (or not known) about the *ribā* of 'Abbās bin 'Abdul Muṭṭalib that was annulled at the Hajj Sermon in 10AH?[356] Islamic finance literature reviewed for this study held scant information about the historical practice of *ribā* and there was complete silence about the *ribā* of 'Abbās. Instead, IF presents the conclusions of legal theory on *ribā* as *historical* evidence when in fact it is *legal opinion*. There is an astonishing paucity of historical evidence in IF literature, barring a few exceptions, even as repeated references are made to the *ribā al-faḍl* (six-commodity) report. On extremely rare occasions brief reference is made to the economic reality of Mecca. This is the major lacuna hindering the understanding of Qur'ānic *ribā* that traditional IF has not been able to fill nor does it seek to fill. Yet, the answer to the complex puzzle of *ribā* lies in understanding its reality at the time of the revelation of the Qur'ān.

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353 Rahman, *Islam & Modernity,* 7.
354 Esack, op cit., 135, n38.
355 Sonn, supra, 228.
356 Usmani, 'The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan'. See paragraph 28.

There are a multitude of reasons for proposing and adopting a historical approach in the present study. First and foremost, the revelation of the Qur'ān itself is situated in the macrohistory of human civilisation. As Cragg notes: 'Revelation to history cannot occur outside it.'[357] As divine revelation in the desert communities of 7th century Hejaz, the Qur'ān's immediate addresses were the polytheists of Mecca who possessed their own set of beliefs, customs, rules and ethical codes. In some cases, like the matter of fasting or the prayer, the Qur'ān has only made brief references to ancient Abrahamic rituals, cognisant of its addressees' knowledge of their own history. To detach the Qur'ān from this setting is to leave it bereft of context *and* meaning. As Cragg noted so eloquently:

> The invocations of the early Qur'ān return repeatedly to the immensities of nature and the mysteries of birth… The aim of this [The Landscape of the Ḥijāz] and the following chapter [Markets of the City] is to focus in turn on these two aspects of Qur'ānic locale, from which almost all its metaphors and parables are drawn.*[358]*

Second, the Qur'ān itself admits the historical. From its mention of lessons to be heeded from earlier nations who were destroyed[359] to its reference to the Jews who 'took usury, when they were forbidden…'[360], the Qur'ān on numerous occasions uses historical references to admonish or inspire. Third, contemporary Islamic tradition itself considers unlimited polygamy and slavery to have become obsolete even though the Qur'ān regulates both institutions. With these reasons in view, it is rather difficult to conceive of the Qur'ān as a text that completely, and in a detached fashion, transcends the exigencies of time and space.

Any interpretive effort recognises the Qur'ān as a book that was revealed over fourteen centuries ago. Any engagement with the Qur'ān automatically implies a connection with the past. Here again, Cragg captures the essence of this assertion:

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357 Cragg, op cit., 112.
358 Cragg, op. cit., 86. My additions in square brackets.
359 Q50:36-7
360 Q4:160-1

> The Qur'ān could not have been revelatory had it not been also 'eventful'. As itself a total event within events its study, like its quality, must live in history.[361]

Yet, the Islamic orthodoxy is deeply uneasy, even anxious about historicising approaches to the Qur'ān. In Moosa's view, this is due to the inevitable challenge to authority this would result in, for any reflection on the history of Islamic tradition will lead to the conclusion that there has never been conformity in Muslim opinion nor unquestioning compliance with authority.

> Surely, what threatens the inscrutable authority of authoritarians is history.[362]

Moosa uses the word 'false utopias'[363] when stating the above point about authority. The past is either idealised, as has been demonstrated by the traditionalists' fidelity to classical jurisprudence, or the past is imagined, for instance, when asserting that there is complete clarity on the idea of *ribā* and it is agreed upon that bank interest is *ribā*,[364] when the actual fact is that the traditional opinion of *ribā* is based on the jurists' choice to adopt Al-Jaṣṣāṣ's view (any pre-stipulated increase on a loan is *ribā*)[365] and *presented* as consensus.

The traditionalists' unease with historicism is often commented on by scholars of critical (or reformist) Islam. Javed Ahmad Ghamidi, who faced vehement opposition in Pakistan and has now moved to the USA, notes in his Meezan lectures that he is interested not just in the teachings of the of the Prophet but also the 'sai-baan' (the thatched palm roof) under which he used to sit.[366] The thatched roof is part of the sociohistorical context of the Prophet's mission. Esack notes that traditionalism forces Muslims to interpret the Qur'ān from the

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361 Cragg, op. cit., 17.
362 Moosa, *Debts and Burdens*, 117.
363 Moosa, ibid.
364 Mohammad Omar Farooq, 'The Riba-Interest Equivalence: Is There an Ijma (Consensus)?', *SSRN Electronic Journal*, 4.5 (2017) <https://doi.org/10.2139/ssrn.3036390>.
365 Farooq, 'Stipulation of Excess in Understanding and Misunderstanding Riba: The Al-Jassas Link'.
366 This reference is based on my recollection from memory. The lecture series is over 100 hours and I have not been able to locate the exact date / time of the relevant lecture.

vantage point of the interpretive community that lived centuries in the past. He states in his cogent essay on Qur'ānic hermeneutics:

> Muslim orthodoxy has long viewed the eternal relevance of the Qur'ān as Synonomous [sic] with a Qur'ān divested of time and space. However, the history of the Qur'ān and of interpretation prove otherwise as anyone concerned with the Qur'ān as a functional or contextual scripture soon discovers.[367]

Esack is of the view that the orthodox approach to the Qur'ān is based on the doctrines of 'the Qur'ān's preexistence *(Qadīm)* and its inimitability *(i'jāz),*' which, after the triumph of the traditionists after the *Miḥna*,[368] eventually resulted in the view that the Qur'ān was the uncreated and eternal speech of God and the genesis of the Qur'ān could not be opened to question.[369] On the basis of his analysis of the development of this doctrine and orthodoxy's continued insistence on this, Esack predicts that the hermeneutic of the Qur'ān – both as process and as meaning – will primarily pertain to context and interpretation; while exegesis can be open to critique because it is the result of human endeavour, the 'nature of the text' will always remain beyond question.[370] Nonetheless, it is not possible for any scholar attempting interpretation to ignore the Qur'ān's own accommodation of history and its own sense of the gradual: it is after all a revelation that unfolded over more than two decades. Quranic verses such as, 'It is for Us to collect it and to promulgate it'[371] and 'None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar: Knowest thou not that Allah Hath power over all things?',[372] point to the historical and the gradual. It is a fact of Islamic history that the orthodox view has held firm over centuries; equally, it is impossible to deny the relationship between history and revelation, even whilst acknowledging the twin doctrines of inimitability and eternality.

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367 Farid Esack, 'Qur'ānic Hermeneutics: Problems and Prospects', *The Muslim World*, 83.2 (1993), 118–41, 119.

368 Persecution of some religions scholars, notably the Mu'tazili (rationalist) school of thought under the 'Abbāsids (833 – 848 AD), which resulted in the acceptance of the doctrine that 'human reason could not stand on its own as a central – much less exclusive – method of interpretation and was, in the final analysis, subservient to revelation'; see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 124-5.

369 Esack, op cit.,133.

370 Esack, 136.

371 Q75:17

372 Q2:106

Cragg is of the view that orthodoxy's anxieties are misplaced and by delving into the historical, the Qur'ān becomes more meaningful and relevant:

> This quality of history in the Qur'ān, of the Qur'ān as history, would seem so obvious and incontrovertible as to be superfluous to emphasize, were it not for the sustained reluctance of classical theory to allow the contextuality its full implications. To insist that there were 'occasions' of, and for, the Qur'ān is not to mean or imply that these were also the 'causes' of it, which is what doctrine-makers have feared…In its anxiety to preclude an antiquarian Qur'ān it has fully failed to possess a historical one…For one cannot proceed to the abidingness of the Qur'ān, in word and meaning, unless one intelligently proceeds *from* its historical ground and circumstances.[373]

Not only have the traditionalists insisted on the doctrine of a 'timeless' Qur'ān – a Qur'ān detached from its sociohistorical setting – they have also insisted on adhering to the meaning-making enterprise of classical law, itself predicated on the precedent of the Prophet as captured in Ḥadīth. As seen in the case of *ribā*, this approach has resulted in a troubling calcification of the message of the Qur'ān, understood primarily though the *ribā al-faḍl* Ḥadīth reports, with little or no investigative venturing into the Qur'ānic use of the term *al- ribā*, implying familiarity to the Arabs. The Arabs' knowledge of *ribā*, the meaning they attributed to it, is crucial in extracting the timeless guiding principle of this Qur'ānic law.

On the one hand, as noted above, old and contemporary traditionalism has a long history of unease and opposition towards historical approaches to interpreting the primary texts of Islam. On the other, contemporary traditionalists have felt no qualms in summoning history to sustain their argument.[374] In the matter of IF, Muslims have been told that partnerships (*musharakah* and *muḍarabah*) practiced at the time of the Prophet are 'ideal' forms of investment in Islam. Continuing with its contradictions, traditionalism denies the contemporary sociohistorical and economic, creating a blanket ban on all lending for profit. In other words, traditionalism in the matter of *ribā* takes an unsystematic and opportunistic approach to ancient *and* contemporary history. In the case of the former, it exhibits an idealising attitude; in the case of the

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[373] Cragg, op. cit., 114.

[374] Asad, 22. '…orthodoxy is not a mere body of opinion but a distinctive relationship - a relationship of power to truth.' See also Kahf's view of the 'power alliance' between ulema and wealth in the field of Islamic finance; Kahf, *Power Alliance,* supra.

latter, it rejects the differences between ancient economic institutions and contemporary ones. As a result of this unsystematic approach to history and historicism, traditionalism has succeeded only in creating superficial semantic change in the field of finance, as the literature review noted earlier. Here Esack's recommendation is most relevant:

> It [Islamic scholarship] cannot merely repeat previous understandings dressed in contemporary jargon. Through a merging of distinct horizons it must produce new meaning.[375]

This research embraces historicism. Its methodology is based on contextualising the past and the present, desiring a fusion of horizons where true understanding will be found. In doing so, it is hoped that the transcendental meaning in the Qur'ān will come alive.

3.3.2 Obstacles in the Process of Finding Meaning

The final points of discussion in this section pertain to obstacles in the process of finding 'new meaning' and how these are overcome in the present study. There are two major factors that hinder the production of new meaning. One is the controversy over the epistemological status of Ḥadīth as a source of law; the other is traditionalism's faithfulness to the theological doctrine of Asha'arism that sits at the heart of Sunni orthodoxy. Both can be overcome without casting doubt on the totality and importance of Ḥadīth literature – as some sceptical western scholars and modernist Muslims have done – and through modifying the Asha'ri doctrine of inability of human beings to understand divine will.

It is a well-known historical fact in the field of Islamic jurisprudence that Imām Abu Ḥanīfa (d. 150/767), one of the earliest Muslim jurists (he was based in Kufa, Iraq), relied on *qiyās* (analogical reasoning) to solve legal problems. For Abu Ḥanīfa, 'The Qur'ān was the anchor of any true understanding of God's will.'[376] It represented certain knowledge; the interpretation of a Qur'ānic ruling could only be changed by the most trustworthy Ḥadīth report (the Imām was vigorous in sifting Ḥadīth for authenticity). He developed the method of reasoning called *qiyās*, where a causative factor ('*illah*) identified in the Qur'ān or Ḥadīth could be extended to a new case or scenario. His methodology gave

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[375] Esack, op cit., 137. My addition in square brackets.
[376] Brown, supra, 25.

plenty of space to the use of reason (*ray'*) in deriving legal rules. In Medina, in an almost synchronous development, Imām Mālik (d. 179/795) compiled the first collection of Ḥadīth and Islamic law, gathering reports from the Prophet and his companions. In Mālik's view, the practices of the people of Medina held normative authority: 'He believed that the customs and practices of Medina's scholars were the true vehicle of the Sunna and a peerless guide to how to live as a Muslim.'[377] It was roughly 50 years later that Imām Shāfi'ī vociferously argued in favour of using Ḥadīth which were '...the only way now to know his [the Prophet's] teachings…'[378] as concrete precedent in matters of law. Shāfi'ī's method eventually gained acceptability, especially after the victory of the Ḥadīth traditionists against the *ahl al-ray'* (people of reason) in the 9th century. It was also during this time, the *Miḥna*, that the doctrine of the eternal and uncreated nature of the Qur'ān became dominant. Rahman is of the view that Islamic law lost its early dynamism at the point Shāfi'ī's thesis was accepted:

> …indeed, this stagnation was inherent in the bases on which Islamic law was founded.[379]

The jurists' acceptance of Ḥadīth as 'primary source of law'[380] led to two far-reaching consequences. First, Ḥadīth eventually accumulated the power to modify the meaning of the Qur'ān itself.[381] Second, Ḥadīth also acquired the attribute of eternality as the Prophet's precedent took on a timeless character.[382] This development impacted Islamic law profoundly, ossifying it within the exigencies of 7th century Hejaz and its customs.

To uphold the epistemological status of Ḥadīth, traditionists developed the doctrinal position that solitary Ḥadīth of the highest authenticity as well as *mutawatur* (recurrent) reports yielded certitude. A further, rather astonishing, methodological view was propounded that sound solitary Ḥadīth could abrogate or particularise the Qur'ān.[383] The vast majority of Ḥadīth literature comprises of

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377 Brown, 29.
378 Brown, 37.
379 Rahman, op cit., 26.
380 Brown, 37.
381 Brown, 37.
382 Paradoxically, the specific application of Qur'ānic rulings in specific circumstances (as noted in Ḥadīth reports) became 'general' and eventually transcendental.
383 Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh,* 71-4..

solitary reports -[384] technically falling under the category of speculative knowledge – and only a few reports of non-legal nature reach *tawatur*.[385] In the matter of *ribā*, this epistemological doctrine and its influence on the process of legal reasoning has led to the concept of *ribā al-faḍl* (*ribā* of Ḥadīth) becoming the main concern of legal discussions amongst the major schools of law. In contrast to this classical approach, the methodological decision taken in the present study is to view Ḥadīth on *ribā* as providing historical information in the process of interpretation. At all times, Ḥadīth has been interpreted in the light of the Qur'ānic context, language, principles and values. In addition, Ḥadīth has been assigned a subordinate status to God's revelation i.e., Ḥadīth cannot particularise or generalise a legal rule in the Qur'ān. Ḥadīth can act as a source of law if its meaning aligns with that of the Qur'ānic rule under interpretation. This epistemological approach is a significant point of departure from the traditionalists' understanding of Ḥadīth as a source of law.

Whilst the above epistemological shift might seem radical, it is neither novel nor unfamiliar to classical or modern scholars of Islam. Imām Abu Ḥanīfa's approach to Ḥadīth as a source of law and his reliance on reason has already been outlined above. Shah Wali Ullah considered the Prophet's precedent to be grounded in the realities of the community to whom he was sent as a teacher and a warner (apostle of God). According to Iqbal's summation of Shah Wali Ullah's views:

> The prophet who aims at all-embracing principles, however, can neither reveal different principles for different peoples, nor leaves them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building up of a universal Shari'ah. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him.[386]

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[384] Hallaq, ibid., 62-3.

[385] Wael B. Hallaq, 'The Authenticity of Prophetic Ḥadîth: A Pseudo-Problem', *Studia Islamica*, 89, 1999, 75–90 <https://doi.org/10.2307/1596086>. The search for *tawatur* is a red herring.

[386] Iqbal, *Reconstruction,* 163. Already in the case of women's rights, the traditionalists use of Ḥadīth to curtail their freedom and opportunities has come under severe criticism. See, for example, Dr Khaled Abou El Fadl's dissection of authoritarian discourses on women in *Speaking in God's Name, 2001*. Jonathan Brown has discussed at length the modern epistemological crisis surrounding Ḥadīth in *Misquoting Muhammad, 2014*.

The interpretive task, in relation to Ḥadīth, is similar to that for the Qur'ān: to search for general principles informed by the sociohistorical context of these texts. As Abou El Fadl has stated: 'The scholars of tradition in Islamic history have largely ignored the issue of the context of the Prophet's voice.'[387] In this study, therefore, both the *matn* (content) and chain of the Ḥadīth have been opened to critique, a principle neither radical nor novel but espoused by one of the great historians of Islam, Ibn Khaldun, and situated within the tradition of Islam:

> When it comes to {Ḥadīth} reports, if one relies only on the [method] of transmission without evaluating [these reports] in light of the principles of human conduct, fundamentals of politics, the nature of civilization, and the conditions for social associations, and without comparing ancient sources to contemporary sources and the present to the past, he [or she] could fall into errors and mistakes and could deviate from the path of truth.[388]

This extensive discussion explains the methodological decisions taken regarding Ḥadīth. The solution to this complex issue is not to deny the importance of Ḥadīth or bypass it in the meaning-making enterprise. It would be a radical proposition indeed to categorise Ḥadīth as a historical archive *only* because the Muslim community will not accept the resulting loss of normativity and connection to the Prophet's person. Rather, the solution lies in approaching Ḥadīth first and foremost as a *historian,* and, in matters of law, to remain faithful to the epistemological categorisation of Ḥadīth as *ilm ul-zanni* (speculative or probable knowledge) which is open to criticism. The implication of assigning this epistemological status is that Ḥadīth cannot independently alter (specify) the meaning of a Qur'ānic law. Moreover, it needs to achieve a level of 'competence'[389] before any normative authority can be assigned to it. This approach has been used in writing the new theory in chapter 6 of this study.

The second matter of concern, which also limits the interpretive endeavour, is traditionalism's faithfulness to the Ash'ari theological doctrine, which postulated that man 'is incapable of knowing the rationale (*ḥikma*) behind God's

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[387] Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 109.

[388] Text from Ibn Khaldun's *Muqaddimah,* as cited in Khaled Abou El Fadl, ibid, 110. My addition in curly brackets.

[389] Abou El Fadl, op cit., 110.

commands…'[390] Ash'arism 'denied that divine commandments in the Qur'ān had any purpose…' and did not allow any agency to human reason (intellect) in the discernment of the rationale of divine laws.[391] This may explain why Islamic finance literature rarely expounds the rationale of the prohibition of *ribā*, opting instead to focus attention on the *ribā* of Ḥadīth and the various operative causes (*'ilal*) triggering the prohibition. Moreover, traditional Islamic legal theory places *ribā* in the category of indicative inference i.e., as a matter of law for which the rationale is not clear.

> In this example of a causative inference [prohibition of wine], the rationale is known. But in indicative inferences, it is not. We know, for instance, that the *ratio legis* behind the prohibition of usury is, according to the Shāfi'ites, the fact of edibility. Wherever the feature of edibility exists, no usury is allowed. But God did not care to make the rationale behind this prohibition clear.*[392]*

Ash'arism cast this centrifugal pull on exegesis as well, as is evident from the eminent exegete Al-Rāzī's opinion cited by Abdullah Saeed (as noted in the literature review earlier but behoves repeating):

> It is not necessary for mankind to know the rationale of duties. Therefore, the prohibition of *riba* must be regarded as definitely known even though we do not know the rationale for its prohibition.*[393]*

The Islamic legal theory - classical and neoclassical / revivalist – and the exegetical tradition, in its quest for concreteness and under the influence of Ash'ari doctrine, focussed almost exclusively on the *'illah* (operative cause) of the prohibition, relegating the *ḥikmah* to either the 'unknowable' category or the 'unnecessary', and directly contributed to the legalistic bent of the practice of Islamic finance and its eventual evolution into a stratagem, as outlined in the introduction to this paper.

To overcome the limitations created by traditionalism's long-held loyalty to Ash'arism, the doctrine of inefficacy of human reason was problematised and the search for the rationale of the law was predicated on the Qur'ān's own

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[390] Hallaq, *Islamic Legal Theories*, 136.
[391] Rahman, *Islam & Modernity*, 27.
[392] Hallaq, *Islamic Legal Theories*, 102. My additions in brackets.
[393] Saeed, supra, 27.

claims of being a manifest (*mubīn*) book of guidance sent to man 'to purify' him. This provided space for an empowered hermeneutic of the law of *ribā*.

3.4 Possibility, Cross-Disciplinarity and Measures of Success

3.4.1 The Possibility

As Rippin rightly observes about the 'historical quest for truth',[394] historical knowledge is always limited and, even at its best, it is 'speculative.' Thus, it can be accepted or rejected for its validity.[395] The idea of speculative non-binding knowledge, however, is not alien to Islamic tradition; in fact, legal theorists actively inculcated the notion that *ijtihād*, systematic and methodical legal reasoning based on the canonical texts of Islam[396] can only yield probable knowledge.[397] Whilst it is true that *ijtihād* is usually taken up in matters where further thinking is required to develop an interpretation of the textual sources, it is nonetheless a key axiom in Islamic law that legal opinions (*fatāwa*, sing. *fatwā*) are non-binding.[398] Noting again the Gadamerian view that a jurist and a historian share the same 'hermeneutical situation',[399] the concept of approximation is extended to the historical in this study. Hence, this study offers a careful historical interpretation that is open to challenge, question and improvement. It makes a claim to objective truth but recognises that there is always room for a fresh interpretation. Secondly, in the matter of moral knowledge in Islam, the 'linguistic enterprise' sets the boundaries and brings concreteness to the endeavour, injecting it with objectivity.

The question of positionality rears its head at this juncture. *Is the author of the present study positioning herself as a jurist?* Dr El Fadl recently called for humility for researchers trained in fields other than *fiqh* who delve into matters of Islamic law.[400] The present study keeps humility at the fore by consciously recognising both that the author is not a jurist in the formal sense of the term in Islamic legal tradition, and the outcomes of this research will be classed as

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394 Rippin, *Introduction*, supra, 4, both references.
395 Rippin, ibid.
396 Hallaq, *Islamic Legal Theories,* 19.
397 Hallaq, ibid., 119.
398 Abou El Fadl, supra, 300.
399 Grondin, op cit., 107.
400 Khaled Abou El Fadl, 'Usuli Excerpt: On Shariah and the Difference between a Jurist and Muslim Intellectual' (Usuli Institute YouTube Channel, 2020) <https://www.youtube.com/watch?v=jwRWVlKV6LM>.

'probabilistic knowledge' in the field of Islam law. This is why the present research does not posit a *fatwā* on *ribā*, rather it creates a new conceptualisation of *ribā* which may prove fruitful to the work of a jurist (*faqih)*.

3.4.2 On Cross-Disciplinarity

In a recent talk, Dr Khaled El Fadl noted that *fiqh* is a cross-disciplinary field:

> Fiqh is a very very serious matter because fiqh is the one field that is truly cross-disciplinary. A true faqih must understand history, must understand sociology, must understand [anthropology], must understand philosophy, must understand political science. A true faqih is obligated to study and to learn everything that impacts on the legal issue at hand.[401]

The origin of this cross-disciplinarity lies within the paradigmatic framework of the Qur'ān: the Qur'ān views humans as 'moral' creatures with a sense of right and wrong imbued into every soul at the point of creation. It addresses humans in their *totality*, their wholeness, as creatures of moral virtue, holding whims and desires, possessing altruism and selfishness, humility and ego.

> But He fashioned him in due proportion, and breathed into him something of His spirit. And He gave you (the faculties of) hearing and sight and feeling (and understanding): little thanks do ye give![402]

> I have only created Jinns and men, that they may serve Me.[403]

If religious law is to be understood within the Qur'ānic framework, then a human being cannot be conceived of in a compartmentalised fashion - a positivistic *homo economicus*; rather, the human must be viewed as a creature of morals, habits and emotions. A utilitarian conception of man, one of the foundational premises in Economics, is just as reductionist as the legalistic conception of man so often expressed in traditionalist Islamic circles as the *ḥalāl-ḥarām*

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401 El Fadl, ibid, *Usuli Excerpt.* The text in quotes is my transcription from 23:00 minutes.

402 Q32:9

403 Q51:56. Pickthall translates the Arabic *liya'budūn* as 'worship' i.e. that they might worship me.

binary. Islamic jurisprudence and its methods, whose starting point was always the Qur'ān and Ḥadīth - with all the attendant complexities of language, custom and precedent - offers ample space for accommodating a holistic conception of the human and the cross-disciplinary nature of moral-legal matters such as *ribā*.

The matter of *ribā* is cross-disciplinary: the language of the *ribā* verses inevitability lead to a path which requires engagement with the history of lending (and usury) in human society. Inevitably, history, anthropology, jurisprudence, linguistics and economics become entwined in this hermeneutical movement.

3.4.3 Measures of Success

This study proposes three criteria of success emerging from the preceding discussion on methodology and method. The first measure pertains to the use of appropriate categories of knowledge during the first movement to the past to avoid an ahistoric interpretation of the divine law of *ribā*. Skinner's note of caution is pertinent here:

> A knowledge of the social context of a given text seems at least to offer considerable help in avoiding the anachronistic mythologies. .[404]

Generally, I have avoided the use of modern financial concepts like debt and asset financing and profit-and-loss sharing in the first movement to the past. I have also avoided the use of the phrase 'economic system of Islam.' The exegesis of *ribā* is based primarily on the thematic ontology of the *ribā* verses. Similarly, the 'priority of paradigms'[405] implicit in IF literature has been avoided through maintaining a self-conscious engagement with the historical material. Specifically, I have avoided idealisation of classical Islamic law and maintained a critical distance throughout this research.

The second measure pertains to faithfulness to the Qur'ānic text, bound by the linguistic delimitation of the text and the overarching Qur'ānic paradigm itself. This is the measure of 'text and meaning' and is critical to achieving credibility and acceptability for the present study. This is the task of reception

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[404] Skinner, op cit., 40.
[405] Skinner, 7.

hermeneutics as theorised by Esack,[406] where the genesis of scripture is beyond question but its interpretation can be refreshed over time. The theory of *ribā* must be faithful to the language and the guiding principles of the Qur'ānic law of *ribā* for it to secure credibility amongst experts in Islamic finance.

The third measure of success pertains to *application*. In the Gadamerian framework, 'an understanding without application is no understanding at all.'[407] Hence, the reconstructed theory of *ribā* reaches the threshold of meaningful interpretation when application becomes a possibility. Further, it will reach the measure of wisdom and justice only when it becomes applicable to a generality of situations particular to our contemporary reality. This test of application was undertaken in the latter half of Chapter 6 of this thesis through the use of representative transactions including personal, business and sovereign loans. A sound understanding of the contemporary reality is a prerequisite of successful application. In this regard, the categories of regulated and unregulated finance were used to create a nuanced application model of *ribā*. My formal education in the field of finance at undergraduate and postgraduate level, and experience of research-led teaching contributed to robust validity testing of the theory of *ribā* in the contemporary. Further, I have brought valuable personal perspective to this study. Born, raised and educated in Pakistan - a country where almost half of the population lives below the poverty line and one of the few where Islamisation of finance has taken place - my observations of poverty, financial access and influence of religious narratives have brought nuance to the understanding of contemporary challenges.

The assessment of these measures of success is made in the concluding chapter to this thesis.

The next chapter turns to the task of creating a historical sketch of lending practices since antiquity and situates the Meccan socioeconomic conditions within that long-lens view. This provides the antecedental context to the Qur'ānic prohibition of *ribā*.

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[406] Esack, op cit., 123.
[407] Grondin, op cit., 102.

Chapter 4
The Antecedent

As outlined in the preceding chapter on methodology, this study approaches the Qur'ān in its own history. The sociohistorical reality of the Meccan economy provides the context to the verses on *ribā* to inform the interpretation of these verses. The present chapter sets out this context by creating a sketch of the economy in the Ancient and Middle Ages based on the research of anthropologists and economic historians, followed by reflection on the Jewish scriptural and rabbinical view of *marbit* (increase on a loan),[408] and concluding with a detailed description of the Meccan economy synchronous with the revelation of the Qur'ān. This historical context shows that interest-bearing loans / debts have been a stable institution over a long period of time. Such loans could provide benefit in terms of growth in trade or could be used to exploit. It is the latter type of loan that vexed monarchs, prophets and moralists throughout history.

The preceding chapter argued for employing a historically appropriate paradigm and appropriate categories of knowledge to build the sketch of ancient economies. The next section creates this paradigm.

4.1 Employing a Historically Appropriate Paradigm

Earlier in the literature review, 'priority of paradigms'[409] was noted as a key weakness in the established juridical opinion on *ribā*. Our understanding of modern financial and economic institutions cannot be applied directly to ancient economic institutions, of which lending is one. Neither can one use modern

[408] As noted in the Methodology chapter, the inclusion of Jewish scriptural teachings on *ribā* was necessitated due to the Qur'ānic verse that notes Jewish iniquity in taking *ribā*. This study's faithfulness to the Qur'ānic narrative of *ribā* means that an exclusion of the Jewish concept of *ribā* cannot be justified.

[409] Quentin Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory*, 8.1 (1969), 3–53. The phrase is used thrice in the paper; the most relevant use of the phrase for the present study is at p.22 where Skinner notes that prior paradigms can turn an explanation into a mythology.

financial categories of ‘debt’ and ‘equity’ to explain the Qur’ānic law because that renders the discourse ahistorical. The Qur’ān is only referring to an amount lent or a debt, not to forms of financing. Moreover, while traditional scholars insist that the *muḍarabah* (*commenda*) is the ideal form of contract, this contract cannot be termed as Islamic or Islamically-sanctioned because it was simply a well-known form of trade in *pre*-Islamic Arabia.[410]

The paradigm governing the discussion in this chapter suspends the modern conceptual categories pertaining to modes of financing or contractual forms and relies instead on the prevalent trade and lending practices in 7th century Hejaz, the line of horizon, just prior to the start of the revelation of the Qur’ān. To fully appreciate the significance of this time-horizon, prior understanding of familiar concepts - like debt and equity financing, loans and sales, households, consumers and producers - was suspended. This ensured that the details in the sketch represented ancient and medieval economic institutions as faithfully as possible until the historic point of revelation of the Qur’ān (610AD – 632AD).

4.2 Ancient Economies - a Sketch

4.2.1 Approach and Periodisation

This chapter creates a sketch[411] with bold contouring based on key economic practices and institutions in the ancient economies of Mesopotamia and Byzantium, with whom the Meccan Arabs engaged in trade. Further detail is added from insights gained from historical and anthropological research about pre-Islamic Meccan society. This creates a sufficiently detailed sketch to enable confident theorisation about credit and associated practices.

A brief literature review of this chapter is as follows. Graeber’s comprehensive work on the history of debt[412] provides rich insight into the concepts of debt, loans and interest rates. He notes that interest-bearing consumptive and

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[410] According to Udovitch, ‘It appears very likely that the *commenda* was an institution indigenous to the Arabian peninsula which developed in the context of the pre-Islamic Arabian trade’. See Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 172.

[411] The appropriateness of developing a sketch has been justified in the methodology chapter.

[412] David Graeber, *Debt: The First 5,000 Years* (London: Melville House Publishing, 2014).

commercial loans existed nearly three millennia[413] before the common era. The collection of edited essays titled 'Ancient Economic Thought'[414] provides wider coverage of institutions of debt and usury in Indian, Hebraic, Greek and Roman economic thought with brief coverage of the Islamic tradition, throwing into sharp relief the similarities in credit institutions across vast regions. The essays are based on religious writing, epigraphical evidence, literary works and legal documents. The understanding of concepts such as gifts, loans, credit and interest presented in these essays is echoed in Graeber's work, strengthening his thesis that credit has existed for millennia. The religious prohibition of usury - background of the Biblical and Qur'ānic law on usury, the ideas of charitable lending and brotherhood and their transformation in a changing socioeconomic milieu - is explored primarily through journal articles. For the present study, the most important time period is that of late antiquity to c600AD.[415] This study benefits from the works of Susan Buckley and Hillel Gamoran, with the former focusing on usury in the Abrahamic faiths and the latter covering in detail how Jewish law responded to socioeconomic exigencies.

The historical sketch created in this chapter relies heavily on the approach to periodisation adopted by Graeber, who divided his historical study spanning five millennia into three periods by categorising the history of debt into cycles of virtual (credit) money and real money:

> The cycle begins with the Age of the First Agrarian Empires (3500 – 800 BC), dominated by virtual credit money. This is followed by the Axial Age (800 BC – 600 AD)…which saw the rise of coinage and a general shift to metal bullion. The Middle Ages (600 – 1450 AD), which saw a return to virtual credit money…*[416]*

The advent of Islam sits at the juncture of the Axial and Middle Ages. Crucially, this is the point at which the economy is transitioning from bullion (coinage) to

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[413] Ibid, 64. Graeber utilises economic historian Michael Hudson's thesis of emergence of interest rates. In a footnote, he references other scholars who believe that interest rates came from the idea of rental fees. Regardless of which thesis is more credible, rabbinical discussions on usury indicate that the idea of gaining a profit from a loan or a rental existed at the time of the Talmud c500 BC; see Avinoam Cohen, 'The Development of the Prohibition against Usury in Jewish Law during the Mishnaic and Talmudic Periods' (Sir George Williams University - Montreal, Canada, 1974).

[414] *Ancient Economic Thought - Volume I*, ed. by B.B. Price (London: Routledge, 1997).

[415] Prophet Muhammad was born in 570AD.

[416] Graeber, op cit., 241.

credit (debts, loans, transfer of debts). This change is almost synchronous with the development of the political-economic-social status nexus emerging amongst the powerful tribes of Mecca and the opening of longer distance trade routes from Mecca to Syria and beyond.[417]

Methodologically, this reconstruction was crucial because it enabled a *historical* understanding of what credit, lending and trade meant as conceptual categories in ancient economies. Once a nuanced sketch was available - and this could only be a sketch because it is impossible to reconstruct forensic detail given methodological limitations[418] – the present study could situate within it the Torah and Qur'ānic law using the categories of knowledge and understanding that existed at the time of the revelation of these texts.[419]

4.2.2 Ancient Economic Institutions

If this chapter were an act in a theatrical production, it would feature clean slates, divine decrees, the anguish of prophets and laments of the enslaved. Graeber notes the 'the terrors of the Axial age'[420] with its empires, brutal wars and the humiliating practice of slavery. The institutions of debt and lending sit within this backdrop. It is important as this juncture to identify the key features of these institutions for they differ from contemporary economic institutions in important aspects. Some corrections are also necessary in the contemporary *understanding* of ancient economic institutions as presented by orthodox economic theory. These key features and corrections, discussed below, pertain to barter, consumer-producer household units, the personal and immediate nature of debt obligations and the role of the 'state' or governance regimes.

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[417] Mahmood Ibrahim, 'Social and Economic Conditions in Pre-Islamic Mecca', *International Journal of Middle East Studies*, 14.3 (1982), 343–58. Cf., Eric R. Wolf, 'The Social Organization of Mecca and the Origins of Islam', *Southwestern Journal of Anthropology*, 7.4 (1951), 329–56.

[418] Schefold points out, for example, the difficulty in producing a 'quantitative reconstruction' of an ancient economy like that of Athens. However, it is possible to develop an insight into the institutions that existed in those times through an analysis of 'literature, epigraphy and archaeological discoveries.' See Bertram Schefold, 'Reflections of Ancient Economic Thought in Greek Poetry', in *Ancient Economic Thought*, ed. by B. B. Price (London: Routledge, 1997), pp. 99–145, 110. The problem is compounded when studying the ancient economy of Mecca for which no documents / archives are available to offer exact details of loan transactions or how (and if) lending was regulated.

[419] This reconstruction of the historical sketch shaped my first engagement with the Qur'ānic verses in the next chapter - The Subsequent.

[420] Graeber, op cit., 251.

Discussing the origins of debt, Graeber maintains that money and debt are historically synchronous, while barter is an *imagined* scenario: 'money and debt appear on the scene at exactly the same time…A history of debt, then, is thus necessarily a history of money…'[421] Graeber questions the economic orthodoxy on the evolution of money, typically expressed as barter first, coinage later. Using anthropological evidence, he demonstrates that barter was not the characteristic form of exchange in ancient societies. Rather, it tended to emerge during periods of collapses in monetary systems, compelling people to turn to barter or credit to deal with the immediate crisis.[422] Caroline Humphrey's research in this area (pre-dating Graeber's work) notes a similar conclusion:

> No example of a barter economy, pure and simple, has ever been described, let alone the emergence from it of money; all available ethnography suggests that there never has been such a thing.[423]

Humphrey's anthropological research (in 1979) on barter in Lhomi villages on the Nepal-Tibet border further concludes that barter occurs in 'atomised'[424] societies where money itself can become an object of barter. Moreover, 'barter may actually preside over real economic desperation and instability.'[425] The economic theory on barter, posited by Adam Smith in The Wealth of Nations (1776AD), does not stand up to actual historical evidence based on Mesopotamian cuneiform documents and Egyptian hieroglyphs, both of which show the presence of elaborate credit systems in 3500BC. Often coins would be in short supply so traders could earn 'credits' for selling their wares and redeem those credits to buy goods for their use.[426] It is therefore historically inaccurate to posit that money emerged from barter, or that barter was ever a prevalent system of trade. The implications of this are outlined in relation to the *ribā al-faḍl* (six-commodities) Ḥadīth report in chapter 6 which, on first appearance, seems to be an example of barter and has been interpreted as such by traditional Islamic finance scholars.[427]

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421 Graeber, 21.
422 Graeber draws attention to the emergence of barter after the collapse of Roman and Carolingian empires; at 37.
423 Caroline Humphrey, 'Barter and Economic Disintegration', *Man*, 20.1 (1985), 48–72, 48.
424 Humphrey, ibid, 52.
425 Humphrey, ibid, 68.
426 Graeber, op cit., 38.
427 See 2.6.

The second feature of the economy of antiquity was that its institutions did not have neatly defined boundaries. 'Economics assumes a division between different spheres of human behaviour that, among people like the Gunwinngu and Nambikwara, simply does not exist.'[428] Buckley also notes that ancient economic institutions were markedly different from the ones in modern times. The household was not a net consumer as is conceived in modern economic theory; rather, the household could be a borrower as well as a producer selling surplus such as grain and dates.

> The predominant microeconomic institution in antiquity was the household, and this was not merely the modern organisation consisting of a group of consumers. At the same time it was 'the firm,' a group of producers. Hence, there was the most intimate relationship in institutional terms between production possibilities, consumption potential, and household capital. When a householder borrowed he was necessarily borrowing as consumer-producer. It is not surprising that it is difficult to discover unambiguous differentiation of business and consumption loans in the literature of antiquity. Certainly one finds lending to the poor distinguished from lending to others. However, 'poor loan' does not necessarily equate with 'consumer loans.'*[429]*

Therefore, not only did households borrow to meet consumption needs, they also borrowed to meet production needs e.g. buying wheat grain on credit to sow wheat (in this case, the 'wheat loan' becomes a production input).[430] Due to this reason, it is difficult to pinpoint exactly if loans in antiquity were purely for consumption or production or both, a vexatious question in the field of Islamic finance.[431] As Gordon points out, a 'poor loan' may not actually be for meeting

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[428] Graeber, op cit., 33. Gunwinngu and Nambikwara are Australian and Brazilian indigenous tribes.

[429] Susan L. Buckley, *Teachings on Usury in Judaism, Christianity and Islam* (Lampeter: The Edwin Mellen Press, 2000), 17. Buckley cites Barry Gordon, 'Lending at Interest: Some Jewish, Greek and Christian Approaches, 800BC – 100AD', in *History of Political Economy,* 14:3, (Duke University Press. 1982), 407-412, 411. Gordon's work is also referenced later in the section on Jewish thought on lending.

[430] Such households are extant even today, particularly in the small enterprise sector and subsistence farming sector.

[431] Amongst the traditionalists, see, for example, Maudūdī's attempt to prove the prevalence of 'trade loans' in the Hejaz in the appendix to his book *Sūd,* op cit. Usmani argues that it is immaterial whether the loan is for production or consumption; see *Historic Judgement*, op cit., para 66-89. Amongst the modernists see, for example, Rahman and Farooq who differentiate between business and consumption lending and argue for recognising the role of interest in business

immediate consumption need. Such a loan – for instance, wheat grain - could be used by a small farmer as means of obtaining agricultural input. In this latter scenario, the loan would become finance capital to enable the farmer to grow wheat and sell surplus harvest.

It is this *consumer loan to the poor* that Graeber considers to be 'usury in the classical sense of the term.'[432] The loans were given to poor people, often peasants, in return for a pledge (collateral). This provided opportunities to lenders to extract valuable assets like fertile land, orchards and surplus grain from borrowers. Debt bondage was common: the borrower and his family often became 'debt-peons'[433] if they were unable to settle debts in time, permanently bound to serve the lender's household or the Temple. For these loans, the important consideration from an economic perspective is whether the loan was a 'poor loan' or not – that is, given to someone with very little or no capital - and what consequences were endured by the borrower as a result of the lender's demands for payment. Historically, usurious loans were made to those experiencing financial precarity.

The third feature of the ancient economy was that debt obligations were predominantly personal and immediate in nature, with profound implications for communal values and social upheaval. In modern times, impersonal financial intermediation is the norm: lenders and borrowers rarely know each other as banks mediate between millions of households and thousands of businesses. In ancient times, borrowing and lending often involved personal relationships. In Mesopotamia, Temple officials used to lend goods to local trade caravans and other Temple workers.[434] Kirschenbaum explains the rationale behind the Deuteronomic law on usury – forbidding lending on interest between Jews – as that of *ḥesed* or an act of 'loving-kindness' towards other Jews, noting the importance of communal ties.[435] The lender was often someone local and well-known, who could immediately enforce the payment of debt or set penalties for non-repayment.

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loans (Rahman, 'Riba and Interest', 37-8) and opportunity cost for the lender (Farooq, 'Exploitation', 303).

[432] Graeber, op cit., 64.

[433] Graeber, 65.

[434] Graeber, 64.

[435] Aaron Kirschenbaum, 'Jewish and Christian Theories of Usury in the Middle Ages', *The Jewish Quarterly Review*, 75.3 (1985), 270–89, 271.

The fourth feature is the synchronous emergence of the market and 'the state', the latter a loose term alluding to a governance apparatus. Graeber asserts that the state and the market 'were born together and have always been intertwined.'[436] The 'state' could be a king like Hammurabi in Babylonia, a prophet like Nehemiah, or a temple-merchant infrastructure that held the power to regulate lending. There is historical evidence to indicate that the state attempted to limit the social damage caused by prevalence of exploitative debt (predatory lending or usury proper). In a world where bankruptcy laws did not exist and non-payment of debt could lead to slavery, these regulations were a way of curtailing the power of lenders in setting the terms and conditions of loans or enforcing debt contracts through violence. Examples abound.[437] As early as 2400 BC, Sumerians were declaring 'clean slates' which annulled consumer loans, returned pledged collateral to the original owners of the property and cancelled any enslavement resulting from debt; these annulments were in fact 'declarations of freedom' from slavery.[438] The Code of King Hammurabi (d. c1750BC) included a regulatory clause that cancelled interest (rent) profit on a loan if harvests were poor:

> If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year.[439]

In India, the Vedas regulated the rates of interest. A rate of 200% on loans of money and 500% on debts of commodities such as grain or animals was considered customary, while any interest above these rates was considered illegal and condemned as 'the path of money-lending.'[440]

Similarly, ancient Greek economic thought is replete with the ideas of debt, gifts and the moral framework governing these transactions. While discussing the

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436 Graeber, op cit., 19.

437 Later in the Middle East, Jewish prophets took up the mantle of resistance against predatory lending after the revelation of the Torah. See section 4.2.4 for further detail on Jewish legal thought on lending and its similarities with Babylonian laws.

438 Graeber, 65, both references. The term 'clean slate' is used by economic historian Michael Hudson.

439 L.W. King (tr.), 'The Code of Hammurabi' <http://avalon.law.yale.edu/ancient/hamframe.asp> [accessed 30 June 2020].

440 S. Ambirajan, 'The Concepts of Happiness, Ethics, and Economic Values in Ancient Economic Thought', in *Ancient Economic Thought*, ed. by B.B. Price (London: Routledge, 1997), pp. 19–42, 28-9.

classical roots of the idea of 'economic benevolence', Vivenza explores the concept of *euergesia* (good deed) to explain the Roman Seneca's statement in his essay *De beneficiis*: a merchant could save an entire city from hunger and not put the citizens in a situation of debt; by doing so, the benefactor only looked after his own interests through these actions.[441] This 'victualling' of a city was often done by landowners selling corn on credit, gathering in return the 'gratitude' of the city and strengthening their repute as good citizens.[442] Athenians considered it immoral to advance coldly calculated interest-based loans to their neighbours,[443] and it was common amongst small farming communities to lend items of daily use like farming equipment and 'seed corn.'[444] When commercial markets appeared in Greece c600BC, the problems of debt, so familiar in Mesopotamia and neighbouring regions, also started to appear in Greece.

> We also see the omnipresent danger of predatory violence that reduces human beings to commodities, and by doing so introduces the most cutthroat kinds of calculation into economic life – not just on the part of the pirates but even more so, perhaps, on those moneylenders lurking by the market offering stiff credit terms to anyone who came to ransom their relatives but found themselves caught short, and who then could appeal to the state to allow them to hire men with weapons to enforce the contract.*[445]*

It would come as no surprise that philosophers like Plato (d. 348BC) and his student Aristotle (d. 322BC) – both of whom would have seen first-hand this monetised and commodified society – decried interest as immoral. As Graeber further notes:

> Here [in Greece] as in the Middle East, from whence the custom spread (Hudson 1992), the dilemma was that **charging interest made obvious sense in the case of commercial loans, but easily became abusive in the case of consumer loans.***[446]*

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441 Gloria Vivenza, 'The Classical Routes of Benevolence in Economic Thought', in *Ancient Economic Thought*, ed. by B. B. Price (London: Routledge, 1997), pp. 191–210, 191.

442 Anthropological evidence of this has been found in inscriptions found in Athens and Rome mentioning 'euergetes.' See *ibid*, in *Ancient Economic Thought*, p.193.

443 Graeber, op cit., n81, 428.

444 Graeber, 192.

445 Graeber, 194.

446 Graeber, n81, 428. My additions in square brackets; my emphasis.

Therefore, moral and communal concerns – power, repute, benevolence, obligation – have always stood at the core of exchange relationships, whether they take the form of gifts to a city experiencing famine, loans to the poor, debts owed to a temple or money invested in caravan trade.

4.2.3 The Origins of Interest

Graeber notes that it is impossible to identify the exact provenance of interest-bearing loans because 'they appear to predate writing.'[447] however, he traces their origin to ancient Mesopotamia. His probabilistic theory is that 'interest' emerged in Mesopotamian temples and palaces: 'Temple administrators invented the idea as a way of financing the caravan trade.'[448] Hence, interest was a mechanism to distribute profits. This dates the origin of interest to 3500BC when clay tablets, *bullae*, were used by merchants to record credit transactions.[449] According to Graeber, the practice of charging interest on commercial loans *preceded* the emergence of levying interest on consumer loans. Historical evidence for the latter dates to 2400BC in the same region.[450] The temple officials and local merchants, holders of capital, were the lenders; the borrowers were peasants 'who were in financial trouble…and [through this, the lenders] begin to appropriate their possessions if they were unable to pay…'[451]

A lender's demand for interest, especially advance interest in the case of trade loans, was not arbitrary: 'it implies a fundamental lack of trust.'[452] Historical evidence indicates that borrowers who were profiting from borrowed capital but were reluctant to *share* profits after the conclusion of a venture could invent stories of travel disasters, stolen goods and other calamities to justify delay in repayment or non-repayment. Where profit and loss sharing partnerships were made, these involved parties of similar social standing who could fully trust each other.[453] Lending at interest was a more secure and prevalent form of capital

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[447] Graeber, 64.
[448] Graeber, 64-5.
[449] Graeber, 214-5.
[450] Greaber, op cit., nn. 47-8 and 57, pp.408-9. Graeber charts the later emergence of interest rates in Indian, Egyptian and Germanic regions. In n.55, he mentions an alternative hypothesis that he chose not to adopt for his study i.e., interest rates emerged in rent charges.
[451] Graeber, 65. My addition in square brackets.
[452] Graeber, 215.
[453] Graeber, 215. In n.9 to this text (p.432), Graeber refers in fact to the 'qirad' and 'Mudaraba' contracts that originated in the Middle East, likening them to the

investment (lending for trade purposes). The phenomena of compound interest as well as usury[454] were well-known by 2402 BC. Interest-bearing consumer loans had become common by 2350 BC when Uruinimgina, the king of Lagash and Girsu in Mesopotamia, cancelled consumer loans, debt bondage and all outstanding penalties, leaving only the obligations resulting from commercial lending.[455]

Meislin and Cohen's account of lending in the Mesopotamian economy is slightly different from Graeber's in that they note a long period of interest-free lending in that region. They point out the prevalence of short-term interest-free loans borrowed by farmers to 'meet the expenses incident to harvest…'[456] Evidence of these loan transactions has been discovered in the form of *šubati* tablets from Sumer, Assyria, and Babylonia. Loans were repaid in the form of corn (valuable commodity as well as legal tender)[457] with the lender receiving no interest on the principal lent. Farmers who worked as tenants were entitled to request interest-free loans from their landlords.[458] The temples, who owned most of the property in the cities,[459] also acted like 'national banks and mercantile establishments.'[460] Interest as *profit-sharing*[461] emerges on the scene synchronously with the merchant-agent international trade ventures. This finding agrees with Graeber's thesis that the phenomenon of charging interest on loans first arose in commercial lending practices as a mechanism for sharing profits.

European *commenda* that emerged later. The phenomenon of forming alliances with equals was a key feature of the Meccan *ḥilf* (alliance) and trade in the form of silent partnership or *muḍarabah* for long-distance ventures. See section 4.3.1 below.

454 Graeber defines usury as 'interest-bearing consumer loans'; see Graeber, 216.

455 Graeber, ibid.

456 Bernard J Meislin and Morris L Cohen, 'Backgrounds of the Biblical Law against Usury', *Comparative Studies in Society and History*, 6.3 (1964), 250–67, 255.

457 Meislin and Cohen, ibid, 255. The element of 'increase' may be inherent in the demand that the loan was repaid in the form of a commodity that retained a stable value, a necessary condition for it to be accepted as legal tender.

458 Meislin and Cohen, ibid, 256.

459 Meislin and Cohen, ibid, 257.

460 Benjamin Bromberg, 'The Origin of Banking: Religious Finance in Babylonia', *The Journal of Economic History*, 2.1 (1942), 77–88, 77, <http://www.jstor.org/stable/2113028>. Cf., Morris Silver, 'Karl Polanyi and Markets in the Ancient Near East: The Challenge of the Evidence', *The Journal of Economic History*, 43.4 (1983), 795–829 <http://www.jstor.org/stable/2121050>. Silver notes the presence of loan markets and state regulation of lending in ancient Mesopotamia.

461 The silent partnership or *mudarabah* (*commenda*) contract used extensively by Meccan merchants operated on a profit and loss sharing basis.

This brief history of emergence of lending on interest shows that lending is an ancient institution where handing over capital to another person was seen as a risky venture. Interest was used to mitigate for the potential losses a lender could experience and one of the contributing factors in such losses was the dishonesty of borrowers. Of note is the institution of consumer loans, or more precisely, poor loans advanced by merchants who happened to possess spare (uninvested) capital. They would act as moneylenders, giving loans to poor craftsmen or farmers in financial need and reaping huge rewards through appropriation of borrowers' assets or their persons. It was this practice of moneylending that earned such moral opprobrium from kings, prophets and moralists.

In concluding this section, the final points of note pertain to distinctive aspects of ancient economies. Firstly, money and credit were familiar institutions in ancient economies; barter, as a prevalent system of exchange, did not exist except in cases of economic crisis. Secondly, households could borrow for both consumption and production. Therefore, it is extremely difficult to identify the purpose of a loan for a consumer-producer household unit, although poor loans can be distinguished from commercial / trade loans. Thirdly, debt obligations tended to commodify social relationships with far-reaching consequences for communal life. Fourthly, kings and prophets intervened to restore balance when predatory lending created social crises.

The earliest evidence of the emergence of commercial and consumer loan interest (or interesse) is in Mesopotamia (modern day Iraq, Kuwait and eastern parts of Syria). This was a key market for the Meccan tradesmen, therefore it is entirely plausible that the Meccan establishment was intimately familiar with lending, both as trade investment *and* as a means of oppressing the poor. As shall be seen in the last section of this chapter, the economic institutions of Mecca were broadly similar to those encountered in Mesopotamia. The key difference, however, is the absence of regulation: there is no evidence that a debt jubilee was ever declared in Mecca. There was no Nehemiah in Mecca - a land that had not witnessed prophecy since the time of Ismāʿīl two and half millennia earlier - until the prophet of Islam announced the annulment of *ribā* at the Ḥajj Sermon in 622AD. On this horizon of understanding about ancient economies, it can be hypothesised that at the time of the revelation of the

Qur'ān, exploitative lending practices could have reached an egregious level in the absence of 'clean-slate' regulation in the Meccan economy.[462]

This subsection has provided a broad sketch of the ancient economy. The following subsection covers Judaic thought on lending, which, as would become apparent, was firmly situated within this ancient economy and its institutions.

4.2.4 Jewish Thought on Lending

It was noted in the preceding chapter that the Jewish thought on lending has been included in this thesis because the Qur'ān brings the practices of Jewish moneylenders in Medina into its narrative on *ribā*:

> For the iniquity of the Jews We made unlawful for them certain (foods) good and wholesome which had been lawful for them;- in that they hindered many from Allah's Way;- That they took usury, though they were forbidden; and that they devoured men's substance wrongfully;- we have prepared for those among them who reject faith a grievous punishment.*[463]*

It is an established jurisprudential principle (*uṣūl*) in Islamic law that *shar' man qablana* ('revealed laws from those before us')[464] can be considered as rational indicants or proofs (*adilla 'aqaliyya*) in the process of legal reasoning.[465] These indicants are a means to understanding earlier revelation which may have been abrogated or revised and re-implemented by the Qur'ān. These indicants give insight into the concern of the Divine in sending ethical and legal guidance to earlier nations. This *uṣūl* is predicated on the Qur'ānic verse which exhorts Prophet Muhammad to ask the men of knowledge about earlier messengers sent to the Ahl-e-Kitab[466] to warn them about wrongdoing and unbelief. In

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[462] Unfortunately, exploitative lending practices resulting in slavery still abound. Extant debt bondage is discussed in 6.6.5.1.

[463] Q4:160-1

[464] David Johnston, 'A Turn in the Epistemology and Hermeneutics of Twentieth Century Usul Al-Fiqh', *Islamic Law and Society*, 11.2 (2004), 233–82 <http://www.jstor.org/stable/3399305>, 244.

[465] David Johnston, ibid.

[466] Q21:7. The Arabic words in the verse are *fasalū ahla l-dhik'ri*, the People of the Reminder, meaning the followers of those to whom was revealed the Torah and the Gospels (see Mohsin Khan's translation at <https://corpus.quran.com/translation.jsp?chapter=21&verse=7> [accessed 10 March 2022].

consideration of this exegetical background, it is important to delve into the earlier prohibition of *ribā* in the Torah.

The Arabic word used in the above verse is *l-ribā*, also used in Q2:275 which is part of the legal verses (Q2:275-283) prohibiting *ribā* to Muslims. It can be inferred from the Qur'ān's use of the same term on both occasions that the referent – the practice of lending on *ribā* – shared some commonalities[467] and is forbidden by the divine as an abhorrent practice. This Qur'ānic reference to *ribā* of the Jews immediately brings the Jewish understanding of *ribā* into the sketch.

Whilst it was entirely possible to start the story of *ribā* from the revelation of the Qur'ān, as traditionalist Muslim scholars often do, this hermeneutical enterprise is made stronger by including what the Qur'ān itself has included in its references to *ribā*. Furthermore, the Qur'ānic word *ribā* (root: *r b w)*[468] shares the same triliteral root with the Hebrew word *marbah (R` B` H`)*.[469] By ignoring this reference to the prohibition of *ribā* to the Jews, the research on this matter would have remained bereft of the insights that can be gained from the teaching of an earlier monotheistic religion, part of the same Abrahamic tradition.

Jewish thought on *ribā* is highly developed. Jewish rabbis expended enormous energy in understanding the problem of *ribā*. The legal stratagems invented by Jewish businessmen and approved by rabbis are strikingly similar to the ones invented by Muslim merchants and jurists. For instance, Jewish merchants used the conditional sale to bypass the usury law[470] just as Muslim merchants used legal strategies to overcome the strict prohibition of interest in Islamic law.[471] The inclusion of a concise survey of Jewish halakhic discourse on *ribā* is of

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[467] The Jewish concept and practice of *ribā*, as explicated by rabbis, is *not identical* to the Qur'ānic concept and Arab practice, however, the use of the same term signifies the presence of similarities. This is explored below.

[468] Abdulkader Thomas, 'What Is Riba?', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 125–34, 127.

[469] Avinoam Cohen, 'The Development of the Prohibition against Usury in Jewish Law during the Mishnaic and Talmudic Periods' (Sir George Williams University - Montreal, Canada, 1974), 30. Cohen notes that *"'tarbit' and 'marbit' are apparently synonyms from the same root…They inform us that usury (tarbit or marbit) increases (marbah) the wealth of the lender."* See at 30.

[470] Hillel Gamoran, *Jewish Law in Transition: How Economic Forces Overcame the Prohibition against Lending on Interest* (Hebrew Union College Press, 2008), 2.

[471] Mir Siadat Ali Khan, 'The Mohammedan Laws against Usury and How They Are Evaded', *Journal of Comparative Legislation and International Law*, 11.4 (1929), 233–44 <https://doi.org/10.2307/754019>.

immense benefit to this study as it throws into relief how the Divine's concern with oppression becomes overwhelmed in the face of expediency of commerce through profitable credit.

In this attempt to build a sketch by triangulation, involving the Mesopotamian, Jewish and Meccan economies, the presence of numerous common features becomes apparent. The Jewish laws of commerce retained an imprint not just of Mesopotamian laws, but also subsumed some Babylonian practices like the use of *antichresis*: utilising the income from a pledged asset to reduce the loan liability or pay interest. Mesopotamian markets were frequented by Meccan traders who were familiar with the prevalent lending practices including enslavement due to non-payment of debt. In fact, Meccan merchant-moneylenders owned many debt slaves. Whilst the Meccans developed a distinct form of partnership – the *commenda* or merchant-agent contract – credit was indeed made available for both commercial ventures and poor loans. These ancient economies, although separated by millennia, share common practices and institutional characteristics. This is not surprising given that historical evidence discovered so far indicates that both commercial and consumer interest emerged in these ancient empires which depended on agriculture and long-distance international trade, the latter of immense importance to the barren desert region of Mecca.

4.2.5 *Ribā* in Jewish Scripture

The most succinct summarisation of Jewish thought on *ribā* is found in Barry Gordon's paper on approaches to lending between the period 800BC – 100AD.[472] A key contribution of the paper is its contextualisation of the evolution in Jewish Law on lending within the changing socioeconomic and political circumstances of the Jewish community. Gordon's chronology and periodisation has been adopted in this subsection, supplemented by the works of Hillel Gamoran and Susan Buckley's comparative work on understandings of usury in the three monotheistic religions. In addition, various academic papers on the biblical prohibition of usury have been consulted. A comprehensive selection of

[472] Barry Gordon, 'Lending at Interest: Some Jewish, Greek, and Christian Approaches, 800 BC-AD 100', *History of Political Economy*, 14.3 (1982), 406–26.

verses from Jewish scripture[473] is included in Appendix B, which also provides information on exegetical context and chronology.

Gordon notes that:

> The earliest edict in the Old Testament concerning interest is in the Elohistic Code of the Covenant. This Code is part of the Book of Exodus (chs. 21-23), and it dates from the ninth century BC or earlier. Certain clauses of the Code bear marked similarities to features of the Mesopotamian codes, the collection of Assyrian laws, and the Hittite code.[474]

According to Exodus:

> If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury. [Exodus 22:25]
>
> If thou at all take thy neighbour's raiment to pledge, thou shalt deliver it unto him by that the sun goeth down: for that is his covering only, it is his raiment for his skin: wherein shall he sleep? and it shall come to pass, when he crieth unto me, that I will hear; for I am gracious. [Exodus 22:26-7]

The exegetical context of these verses is concern for the most vulnerable in society. The preceding verses mention the widow and the orphan: 'Ye shall not afflict any widow, or fatherless child.'[475] The verses cited above add the poor to the category of the vulnerable who are deserving of kindness, forbidding Israelites from demanding profit on lending to the poor. Constraints are placed on taking possession of collateral, noting that a warm garment taken as pledge would harm the borrower who would feel cold during the night.

Based on the discussion on lending in antiquity in the preceding section, it has already been noted that interest-bearing loans were one of the key mechanisms for exploitation, resulting in debt bondage or extracting wealth from a borrower who was unable to meet such a demand due to financial destitution or sudden worsening of circumstances. Despite this clear commandment against advancing interest-bearing loans to the poor, within a 100 years or so interest-

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473 'The Bible - Authorised (King James) Version' <https://www.biblegateway.com/> [accessed 2 January 2020]. All verses listed in this section are part of the Old Testament.

474 Gordon, ibid, 407.

475 Exodus 22:22, AKJV.

bearing loans 'had become vehicles for a substantial degree of communal exploitation.'[476] It was the link between lending and slavery that was the main concern of moralists of that era, a socioeconomic reality that has been continuously resurfacing in this process of sketch making.

The Deuteronomic Code was developed in the 7th century BC in the reign of Josiah when Israelites wished to 'introduce the practices of the Northern Kingdom into Jerusalem after the former's collapse.'[477] Even up to this point in history, Israelites' were predominantly subsistence farmers and 'only foreigners [who] acted as traders and merchants.'[478] The key features of this code relate to dealing with the problem of non-repayment of debts which led to severe breakdown in social relations mainly due to debt bondage. Deuteronomy declared that all borrowers would be released from their debts every seven years:

> At the end of every seven years thou shalt make a release. And this is the manner of the release: Every creditor that lendeth ought unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the LORD's release.[479]

A jubilee was to be declared every fiftieth year when all slaves would be released from their bonds and 'everything was to be returned to its original owner.'[480] It is worth noting the parallel between the Jewish jubilee and the ancient practice in Sumer where debtors' assets, seized by lenders due to non-repayment of loans, were returned to the original owners. It can be inferred from these historical events that credit or debt in the form of an interest-bearing loan (often with a pledge attached as security to the loan) was a mechanism for capital owners to increase their wealth exploitatively, either through enslaving a poor debtor or by taking control of his assets in case of non-repayment of the loan. Ancient cultures, whether based on non-revealed law or divine revelation, made attempts to control the damaging consequences of this cruel practice. Gordon notes that Deuteronomy even regulated the use of a pledge to secure a loan:

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476 Gordon, op cit., 408. Gordon dates this to 'the reign of Jeroboam II (783-743 BC).'
477 Gordon, ibid, 409.
478 Gordon, ibid, 410, n13.
479 Deuteronomy 15: 1-2.
480 Buckley, op cit., 51.

> No man shall take the nether or the upper millstone to pledge: for he taketh a man's life to pledge.[481]

A millstone is an asset: it grinds wheat grain into flour used for making bread, a staple food item since ancient times. Any surplus wheat flour or bread loaves could be sold for profit. When a lender takes away a millstone, his intention to force the borrower into destitution becomes manifest. Losing a millstone would result in hunger and immediate loss of income for a family, depriving the debtor of the very means to settle the loan. The idea of inflicting harm on a borrower through exacting a pledge (as seen earlier in Exodus) is echoed in later verses in the same chapter of Deuteronomy, where a process of collecting a pledge has been outlined with emphasis on returning the pledge (raiment) and paying a debtor-labourer's wages before sunset (verses 10-13).

Deuteronomy, however, struck controversy when it legislated that Israelites could demand interest from foreigners:

> Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of any thing that is lent upon usury: unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury: that the Lord thy God may bless thee in all that thou settest thine hand to in the land whither thou goest to possess it.[482]

According to Kirschenbaum, the prohibition of demanding usury from a fellow Israelite was 'an example of the legislation of *ḥesed*',[483] the term defined as loving-kindness'.[484] In Kirschenbaum's view, Jewish rabbis had no difficulty in viewing usury as an act of kindness between fellow Israelites because they never interpreted the Torah law in terms of natural justice. In comparison, Christian scholastics condemned usury based on Aristotle's view that it was 'unnatural breeding of money from money.'[485] Buckley's conclusions about the verses in Deuteronomy are similar to Kirschenbaum's. She notes that

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481 Deuteronomy 24:6
482 Deuteronomy 23:19-20
483 Kirschenbaum, op cit., 271.
484 Kirschenbaum, ibid., 271.
485 Kirschenbaum, ibid., 272 and n8.

> The Deuteronomic teaching formed a cornerstone of the blood brotherhood morality of the Hebrew tribesmen…[486]

Buckley further writes:

> The Mosaic injunction against interest, between Jews, flows from a desire to place this action within the framework of righteousness – *chesed* – of wholeness, holiness, of purity.[487]

In Meislin and Cohen's view, Deuteronomy was in fact permitting business loans advanced to traders and merchants, most of whom were foreigners in transit, settling only temporarily. These merchants were not bound by the prohibition against interest and could charge such profits on commercial ventures. These loans were distinct from poor loans to the needy and destitute and would technically remain outside the remit of the prohibition.[488] For Gordon, Meislin and Cohen's view imposes 'too modern a construction'[489] on the Deuteronomic Code because it is not possible to distinguish between consumptive and productive loans taken by households who were engaged not only in consumption but also in selling surplus produce. Kirschenbaum draws a similar conclusion: 'Jewish law recognizes no substantive distinction between a charitable personal loan and a commercial one.'[490] Regarding the separate Deuteronomic treatment of the fellow Israeli and the foreigner, Gordon theorises that the legislation was an example of *lex talionis* in lending,[491] primarily because Babylonians used to charge interest on loans extended to Jews. If this provision had not been made, Jews would pay out interest but not receive any on the loans they advanced, which would disadvantage the Jewish community. For Buckley, Gordon's view is 'rather innovative' but does not diminish the importance of the idea of a brotherhood where interest-free lending existed as

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[486] Buckley, op cit., 38. She further notes that the Christian Church has 'wrestled' with the ethnocentric dimension of the Deuteronomic legislation 'for almost two thousand years.' (ibid). The idea of usury was re-shaped during the Reformation and the Deuteronomic law was abandoned. See Benjamin Nelson, *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood*, 2nd, Enlarge edn (Chicago: The University of Chicago Press, 1969). Contemporary exegetes or translators of the Qur'ān - cf., Yusuf Ali, Pickthall, Muhammad Asad and Mohsin Khan - have used the term 'usury' to connote its exploitative nature, rather than as a reference to the Western understanding of the concept as exorbitant interest rates.

[487] Buckley, ibid, 41.

[488] Meislin and Cohen, 264.

[489] Gordon, op cit., 411.

[490] Kirschenbaum, ibid, 276.

[491] Gordon, op cit., 411-2.

an act of kindness and commitment to the "covenantal and protective element in the relationship between God and his 'chosen' people."[492]

During the prophetic mission of Ezekiel (593BC)[493] the practice of debt bondage was still prevalent in Israel. At this point, a distinction emerged between usury and increase (Ezekiel 18:8, 18:13, 18:17, 22:12 and Leviticus 25:35-37). For instance:

> He that hath not loaned gelt on neshekh, neither hath taken any tarbit (interest, usury), that hath withdrawn his yad from iniquity, hath executed mishpat emes between ish and ish,*[494]*

> He that hath not given forth upon usury, neither hath taken any increase, that hath withdrawn his hand from iniquity, hath executed true judgment between man and man

In Rava's[495] opinion, however, usury and interest were considered to be synonymous: the Hebrew term *neshekh* (also *neshek*) means 'biting' which refers to the experience of the debtor who has to pay interest whilst *tarbit* (from *ribbit*[496] / increase) refers to the gain of the lender. As Buckley notes, Jewish law does not differentiate between usury and interest. In this aspect, Islamic law adopts a similar position. (As noted in the introduction to this thesis, the distinction between usury and interest emerges post-Reformation.) The above verse in Ezekiel seems to be referring to how 'increase' was experienced or perceived by the two parties to the contract.

By the time prophet Nehemiah took up the cause of exploitative debt (after the Second Temple had been rebuilt in Jerusalem in 515BC) it seemed that exploitative debt had precipitated a crisis threatening the wellbeing of the entire

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[492] Buckley, op cit., 18-9, both references.
[493] Gordon, op cit., 412.
[494] Ezekial 18:8; the first translation is from the Jewish Orthodox Bible, the second from AJKV, www.biblegateway.com, (accessed 04/01/2020).
[495] Rava was an amora from 4th century Babylonia, respected for his knowledge of the Oral Law; see Buckley, op cit., 21.
[496] Cohen, supra, 30. Cohen notes: '*"Tarbit" and "marbit" are apparently synonyms from the same root. These nouns were chosen because they inform us that usury (tarbit or marbit) increases (marbah) the wealth of the lender.'* The root for these words is R`. B`. H`. The root word for *neshek* is N`. SH`. K` *'because usury bites the borrower, reduces his principal, pains him, and eats away at his flesh.' Ribbit* is a word from later Hebrew; see 30 n5.

Jewish community. The people of Judah had accrued debts due to famine and the resulting inability to pay taxes, with widespread slavery taking away human freedom and dignity. In response to the lament of the borrowers, Nehemiah annulled debts and ordered pledges to be restored to the original owners (Nehemiah 5:11).

> And there was a great cry of the people and of their wives against their brethren the Jews. For there were that said, We, our sons, and our daughters, are many: therefore we take up corn for them, that we may eat, and live. Some also there were that said, We have mortgaged our lands, vineyards, and houses, that we might buy corn, because of the dearth. There were also that said, We have borrowed money for the king's tribute, and that upon our lands and vineyards. Yet now our flesh is as the flesh of our brethren, our children as their children: and, lo, we bring into bondage our sons and our daughters to be servants, and some of our daughters are brought unto bondage already: neither is it in our power to redeem them; for other men have our lands and vineyards.[497]

These verses offer important insights for the purpose of this study. First, the lament was against other Jews (fellow Israelites) who had acted unkindly, in stark opposition to God's teaching in Exodus and Deuteronomy. Second, the sons and daughters of the indebted had already been taken into bondage. Third, famine and inability to pay taxes led to people turning to loans, against which their lands and vineyards were kept as pledges. They had lost control of the very means through which they could earn a livelihood and repay their debts. There is a sense of inescapability and inevitability in this dire situation, of indifference within the brotherhood. The verses prove once again that interest-bearing debt was a key mechanism for exploitation in antiquity and provide context to the Qur'ānic reference to the iniquity of the Jews (in Q4:160-61): they continued to take *ribā* after they had been forbidden from it.

Based on Nehemiah's promulgation as well as the verses in the Book of Job,[498] Gordon theorises that by this point in Jewish history, the issue of loan collateral had taken on *more* urgency 'for the moralist' than the issue of interest (increase) because 'an effective ban on interest [may] have been achieved…'[499] Gordon's incisive comment brings to light another matter of concern for the present study:

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[497] Nehemiah, 15:1-5, AJKV. My emphasis.
[498] Gordon, op cit., 414; Gordon cites Job 24:2-3, 9, 11.
[499] Gordon, ibid., both references.

the lender's ability to seize valuable collateral if he is banned from charging interest.

> No ancient moralist appears to have identified this latter as a fundamental flaw in a successful prosecution of a policy of a total ban on interest. **Eliminate interest, and borrowers are more likely to be placed in a situation of being deprived of that very real capital which offers hope of their redeeming their debts**…None of the psalmists appear to perceive that an individual could be conforming perfectly to these guidelines but could still be amassing profitable assets at the expense of the destitution of his fellows.[500]

Total elimination of interest can lead to the complex problem of usurpation of the borrower's capital, making it impossible for the borrower to generate sufficient income to repay the loan. Taking away the borrower's millstone or ploughing ox would leave him immediately vulnerable to destitution. This phenomenon occurs because the lender always takes measures to reduce the risk of parting with his wealth and picking up the expenses of debt recovery. If the moral law makes it impossible for the lender to seek compensation for his risk, and if the socioeconomic mores or laws allow him to secure an asset as a pledge, he will immediately do so. Thus, Deuteronomy's regulation of pledge-taking was prescient: 'Take neither the nether nor the upper of a man's millstone.'[501]

Graeber views Nehemiah's task in the same light as Gordon does, that is, in the context of recovery of pledges, especially where entire families had been pawned to secure a loan. Graeber theorises that in 5th and 6th century BC, Hebrew society was sufficiently advanced (familiar with money and trade) to experience similar debt-related problems as the ones seen in Mesopotamian society. Vagaries of nature could lead to small farmers turning to capital-owning classes. Nehemiah had to deal with a deep 'social crisis' where 'creditors were carrying off the children of the poor.'[502] He proclaimed the cancellation of all 'non-commercials debts' and formalised the Sabbath law whereby people who had been enslaved due to non-repayment of debt would be set free.[503]

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[500] Gordon, ibid, 415; my emphasis.
[501] Deuteronomy 24:6.
[502] Graeber, *Debt*, 81, both references.
[503] Graeber, ibid, 82.

> In the Bible, as in Mesopotamia, "freedom," came to refer above all to release from the effects of debt.[504]

A brief rendezvous is required at this point. It was noted in the literature review that Muslim scholars only include verses 275-281 of Surah Al-Baqara when explicating the prohibition of *ribā*, usually ignoring or excluding verses 282-3. Of these, the former recommends a process for recording debt *in writing* whilst the latter regulates the demand for a pledge. Given the serious problems caused by a lender's appropriation of assets in case of non-payment, and the potential likelihood that a loan was initially advanced *because* the lender's real intention was rapine, this study posits that any conceptualisation of *ribā* must include verses 272-283 to develop a fuller understanding of this divine law.

Hillel Gamoran has charted the changes in the Jewish law of *ribā* from first century AD to contemporary times to identify the reasons for the application of a law about poor loans to business transactions like mortgages and investments. He contends that the Torah was solely concerned with poor loans. Dating this to the period after Israel entered Canaan (c1250 BC),[505] Gamoran notes that Israel was primarily a pastoral community at that time, although it was becoming more settled and agrarian. In any case, it was less advanced than Babylonian economies where interest-based lending was an established practice. In Israel loans were mainly given to the poor and the hungry.[506] Therefore, the Torah law was aimed at protecting the poor.[507] Gamoran's conclusion is very similar to Gordon's and Buckley's: the Bible does not distinguish between usury and interest. He further notes:

> The prohibition against interest in no way made allowance for loans of a business nature. On the contrary, business or commercial loans were not explicitly banned in the Torah because they were not considered there. Out of sixteen biblical passages dealing with loans (but not with interest), not a single one deals with business loans. In thirteen of the sixteen passages it is clear that the loan was intended

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504 Graeber, ibid.
505 'Canaan' <https://www.britannica.com/place/Canaan-historical-region-Middle-East> [accessed 31 January 2021].
506 Gamoran, 5.
507 Gamoran, 3.

> purely for the relief of poverty…business or commercial loans simply did not come under the biblical purview.[508]

Meislin and Cohen hold the same view: both Exodus and Leviticus portray the borrower as someone in financial distress and there is no indication that the prohibition on charging interest was meant for all types of loans; even Deuteronomy did not extend the prohibition to all loans.[509] According to Gamoran, the prohibition's remit was expanded by legal scholars who applied the Pentateuchal prohibition on *poor* loans to trade and commerce. This broadening of remit had the potential to damage economic activity, and the rabbinical response was to develop interpretations and accommodate stratagems that effectively circumvented the law.[510]

Meislin & Cohen further note that scholars who advocated a complete ban on interest did not set out a rationale for expanding the remit of the original law. It is possible, however, to advance the hypothesis that even in trade loans, traders can experience financial difficulty leading to insolvency and bankruptcy. If such bankruptcies were to occur in a socioeconomic context where loans were often utilised for exploitative purposes and the threat of debt bondage was all too real, it is entirely possible that the moralists sought, perhaps only in a normative way, to create moral pressure even if such a ban could not be implemented, to curtail all possible means through which financial exploitation could take place.[511] It is safe to conclude therefore that contemporary scholars have understood the history of the Torah prohibition as regulating poor loans only; any application to business loans is, in their view, not fully justified by the rabbis.

This survey of the practice of lending has demonstrated that exploitation through debt has been a concern for kings, prophets and moralists for millennia. On one hand, debt in the form of trade credit has been one of the driving forces enabling an economy to flourish; on the other, it has been used to oppress and enslave. As shall be expounded in the following section, the institution of debt

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[508] Gamoran, ibid, 10. Gamoran's clear postulate casts a shadow on Gordon's rationale of *lex talionis* (Gordon, op cit., 411-2) in explaining the provisions of Deuteronomy as discussed above.

[509] Meislin and Cohen, supra, 253: *'no scriptural difference is apparent'* between interest and usury.

[510] Gamoran, ibid, 3.

[511] The question of expansion of the remit of the law of *ribā* is discussed in 6.6.3.1. below.

continued to serve both these aims, one immoral and negative, the other morally justifiable and positive, in the economy of the Hejaz prior to and at the time of the revelation of the Qur'ān.

4.3 The Geography and Economy of the Hejaz

This section develops a sketch of the geography and economy of the Hejaz from 1st century AD. The geography is important for two reasons: one, it explains the forms of trade that developed in Mecca given its location and scarcity of natural resources; two, as Cragg notes so eloquently: 'The topography of Muḥammad's native land has a lively relation to the book [the Qur'ān] which is its greatest pride.'[512] Mecca developed innovative economic and political institutions like the *commenda* (*muḍarabah*) and *ilāf* ('to gather')[513] that allowed pooling together of resources to establish large trading caravans that were offered safe passage across vast distances. Central to the Meccan story is the sanctuary of the Ka'ba, originally built as a house of worship to the one God by Ibrahīm and his son Ismā'il, both entrusted with prophethood.

> And remember Abraham and Isma'il raised the foundations of the House (With this prayer): "Our Lord! Accept (this service) from us: For Thou art the All-Hearing, the All-knowing. "Our Lord! make of us Muslims, bowing to Thy (Will), and of our progeny a people Muslim, bowing to Thy (will); and show us our place for the celebration of (due) rites; and turn unto us (in Mercy); for Thou art the Oft-Returning, Most Merciful.*514*

Mecca has a desert climate with very little rainfall through the year. The city itself is nestled within a hollow surrounded by mountains and is prone to flash flooding. The rainfall mainly benefits Al-Tā'if, a fertile region where 'gardens of dates, wheat and barley become possible.'[515] Mecca does not have any rivers and there is very little vegetation in the city. The main source of water is the well of Zamzam close to the holy site of Ka'ba. Mecca's landscape is harsh and forbidding, the aridity of the land making it impossible for settled agricultural communities to emerge. Rather, it is the sanctuary of the Ka'ba and Mecca's

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512 Kenneth Cragg, *The Event of the Qur'an* (Oxford: Oneworld Publications, 1994), 86. My addition in square brackets.
513 Cragg, ibid, 92.
514 Q2:127-8
515 Cragg, op cit., 87.

location along important trade routes that played an instrumental role in its development as a settled urban community.

> Mecca's existence depended primarily on its location near the most important trade route in western Arabia which linked the surplus-producing region of Yemen with Syria.[516]

Eric R. Wolf's paper provides valuable insight into the social relations and economic institutions of Mecca from 1st century AD.[517] According to Wolf, the 'discovery of the regular change of the monsoon'[518] made it possible for traders to use sea routes for trade with Abyssinia; this type of trade was mostly held by non-Arabs. Trade along land routes was minimal due to the dangerous journeys involved. But it was the eventual development of land trade from Yemen to Syria that gave Mecca its profits as well as stability as a permanent settlement, connected 'through the chain of oases, Mudawara, Tabūk, Al-'Alā' and Yathrib (or Medina)'.[519] The permanent settlement was established by the Quraysh circa 400 AD who were 'an impoverished subdivision of the larger pastoral tribe Kinana.'[520] It was the trading genius of the Quraysh and their establishment of institutions guaranteeing safe passage to caravans that led to the rise of Mecca as a trading city.

4.3.1 Meccan Trade

Both Kister and Ibrahim note the definitive role played by Hāshim ibn 'Abd Manāf ibn Quṣayy in developing Meccan trade via land routes. Until the 6th century AD, Meccan trade was small, mainly relying on pilgrims and foreign merchants who visited the holy sanctuary.[521] This changed with the establishment of institutions that created the conditions for Meccan trade to

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516 Ibrahim, supra, 343.

517 Eric R. Wolf, 'The Social Organization of Mecca and the Origins of Islam', *Southwestern Journal of Anthropology*, 7.4 (1951), 329–56. With regards to the history of Mecca, most research works start the narrative from 5th century AD when Mecca had already established itself as a trading city. Wolf's paper starts the story of Mecca from 1st century AD and covers the early development of trade until the advent of Islam by which time Mecca was fully established as an influential trading centre. Wolf's work relies on both the early historians of Islam (Al Balādhuri, Ibn Hishām) as well as the work of 20th century scholars such as Lammens and Caetani.

518 Wolf, ibid, 330.

519 Cragg, op cit., 87.

520 Wolf, op cit., 330.

521 Ibrahim, op cit., 343.

flourish in a sustained fashion across a much larger region. Hāshim negotiated with the rulers of Abyssinia, Yemen, Syria, Persia and Iraq[522] to obtain formal permission (charters) for Arabs to undertake trade in these regions.[523] This expanded the market for Meccan traders and centralised power with the Quraysh, the keepers of the Ka'ba and officeholders of the institutions of *hijāba* (maintenance of the holy sanctuary), and *siqāya* and *rifāda* (respectively, the responsibility to provide water and food to the pilgrims).[524] Travel along land routes remained dangerous due to looting and harshness of the weather. Merchants encountering unfortunate circumstances could lose all their wealth, leading many who faced destitution to commit suicide in a ritual called *i'tifād*. To overcome this problem, Hāshim devised the contract of partnership which would pool together capital and goods from merchants and create a large caravan, protected by an army of men employed for this sole purpose. Hāshim also made pacts (*īlāf*) with tribal chiefs along the trade routes to protect caravans passing through these areas, promising in return to sell the tribes' goods in the markets of Syria, Iraq and Persia. These developments changed the fortunes of Meccan trade, establishing the city as a destination of choice not just for pilgrims but for merchants. This also had the effect of centralising trade in Mecca, with the Quraysh held in high esteem and trust as merchant partners. Wolf notes the following stages of development:

> The Koreish appear to have become the dominant traders in western Arabia by stages. First, they sold protection to caravans. Then they began to offer wares "for sale along the overland routes leading through their territory." Finally, they entered the large markets located outside their area, coming into direct trade contacts with Syria and Abyssinia, and with Persia.[525]

According to Wolf, the items of trade exported to the north (Syria) included high quality leather, 'precious metals, dry raisins and incense', whilst Mecca's main imports included silks, oils, wine and grains.[526] Items of food were of importance

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[522] Ibrahim's view differs from Kister's regarding securing a charter with Iraq. According to Ibrahim, it was Hāshim's brother Nawfal who enabled trade with Iraq, and 'Abd Shams started trade with Abyssinia. See Ibrahim, op cit., 345.

[523] M. J. Kister, 'Some Reports Concerning Mecca', *Journal of the Economic and Social History of the Orient*, 15.1–3 (1972), 61–93, 61-2.

[524] Ibrahim, supra, 344.

[525] Wolf, op cit., 332..

[526] Wolf, ibid, 333, for all trade items listed.

in an arid city like Mecca.[527] A trade caravan could be made up of 2,500 camels carrying tons of goods. Even conservative estimates, like the one cited by Wolf, noted that goods carried by these large caravans could be worth as much as 2,250 kilograms of gold. The flexibility of the *commenda* contract, in effect a credit partnership, enabled even small traders or households to invest in the caravan. Investments as small as 1 dinar were not unknown.[528]

Hashim's son 'Abd ul Muṭṭalib, the grandfather of prophet Muhammad, inherited this highly developed trade infrastructure along with the responsibility for the holy sanctuary and the esteemed position of the Quraysh in Mecca. The market and the pilgrimage site remained intertwined during Mecca's ascent and thereafter. Meccan traders even introduced idols from other tribes into the Ka'ba as a way of attracting trade.[529]

According to Cragg, it is this city of Mecca that is reflected in the imagery of the Qur'ān in its references to starry skies, mountains crumbling to dust, and plentiful rain that regenerates life.

> …Mecca remained the essential mould of his [the Prophet's] mind and his affections…Its genius for trade and finance dominates the imagery of the Scripture. The physical emigration of AD 622 made no difference to the undisputed sway of the Meccan scene over the imagination and the language by which Islamic theology was nourished.*[530]*

Money was a scarce commodity, with Roman and Persian coins in circulation in Mecca. Gold and silver were weighed and traded as commodities as well. There were established markets for buying and selling indigenous and imported goods like milk and wine. There were large markets for buying and selling slaves who were brought in from regions the Arabs traded with. Some professions earned wages, like sheepherding and working as caravan guides. '…wages in Medina were usually paid in kind, in Mecca they were usually paid in money.'[531]

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[527] This is a key historical fact for the present study and influences the analysis of the *ribā al-faḍl* report which mentions two types of grain: wheat and barley, both likely to be imports into Mecca.

[528] Wolf, op cit., 333. A dinar was a Byzantine gold coin in use in Mecca.

[529] Wolf, ibid, 338.

[530] Cragg, supra, 98.

[531] Wolf, op cit., 334.

This overview of development in Meccan trade leading up to the historical moment of the revelation of the Qur'ān demonstrates two important points. First, the survival and flourishing of the Meccan economy was dependent on trade. Second, investment credit was crucial to developing large-scale trade, even enabling small households to invest in these ventures.

4.3.2 Meccan Society

The rapid changes in the economic milieu inevitably influenced social relationships in Mecca, creating social strata underpinned by power relationships. Social relationships shifted both internally and externally; for the present study, however, the internal relationships hold more relevance for it is in the Meccan community that the dynamics of power and wealth are manifested, a key concern of the Qur'ān.[532]

The main organising unit amongst the Bedouins was the tribe. A tribe comprised of the chief and his family, other related families, slaves under tribal ownership, and protected members who were unrelated to the families. One fourth or one fifth of the spoils of war were allocated to the chief of the tribe (a patriarch) who would use these funds to look after vulnerable individuals like widows and orphans, make payments of blood money and provide hospitality to guests.[533] When the Quraysh settled in Mecca and became city dwellers, the economic changes transformed traditional society. Wolf theorises that the wealth-based class system that replaced the old tribal relationships was also reflected in the 'pattern of settlement',[534] with poorer members of the tribe living further away from the city and the holy sanctuary. The rich merchants and their families lived near the centre of the city in the vicinity of the Ka'ba.[535] Ibrahim also traces the changes from Bedouin tribal social ties to 'city' culture, noting that 'ownership of merchant capital'[536] became a determinant of social status and power relationships.

According to Wolf, key social actors on the Meccan stage were the merchants, slaves, mercenaries (often foreigners), people hired by merchants to maintain

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[532] For instance, Q17:34 concerning fairness in using the property of an orphan; Q76:8 about feeding the needy, the orphan and the captive.
[533] Wolf, op cit., 348.
[534] Wolf, 334.
[535] Wolf, 334.
[536] Ibrahim, op cit., 346.

and travel with caravans, middleman who facilitated trade, people who had entered debt bondage of rich merchants due to failure in repaying debts, labourers who worked for wages, and protected persons (*mawālī*).[537] Ibrahim classifies the rich merchants as *sayyids* (leaders of clans) who held the highest social status. Other groups included free individuals who engaged in various professions and supported the rich merchants; the *mawālī*; and slaves. The latter most sat at the lowest rung of the social ladder, having been captured in war or entering servitude of a creditor due to non-repayment of debt. Creditors could also force slave women to work as prostitutes and could claim their earnings.[538] Another vulnerable social group comprised of the *muflisīn (*those who were financially destitute) who relied on charitable giving. Ibrahim also notes the presence of numerous skilled craftsmen and wage-earners in the Meccan economy, providing essential services such as building, food preparation, iron works, protection of caravans and animal herding.[539]

The tribe of Quraysh, in which prophet Muḥammad was born, played an instrumental role in developing the city of Mecca. The key features of this economy were as follows. Mecca, with its harsh desert climate and scarce rainfall was unsuited to agriculture. It imported most of its food, especially grain. As Cragg noted: 'The compulsion to commerce…lay in the facts of geography.'[540] Money was not universally available. Gold and silver were weighed and not counted, hence, they served both as means of exchange (money) and as objects of exchange (traded goods). Slavery and debt bondage were well- established institutions in Mecca, just as prevalent here as they were in Mesopotamia and the surrounding regions with which the Meccans had strong trade ties.

This sketch of the Meccan economy and society has similar features to those of ancient Mesopotamian and Jewish communities characterised by precarity of existence. Livelihoods could be upended by crises like poor harvests, oppressive taxes, and raids on caravans. Economic power in Mecca took the shape of the temple-merchant infrastructure seen earlier in Mesopotamia. Almost unbridled power rested with the merchant-creditor who could increase his capital through heaping misery on the borrower, even stripping away the borrower's freedom. The Jews of Babylonia used various means to exact usury:

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[537] Wolf, op cit., 335.
[538] Ibrahim, op cit., 346.
[539] Ibrahim, ibid, 347.
[540] Cragg, supra, 99.

in the form of interest charges, pledging of millstones and valuable garments, or through the use of *antichresis.* The Arabs, in comparison, used the practice of redoubling the unpaid amount of the loan if the borrower was unable to pay.[541] In all these ancient societies, the economic history of lending has shown a persistent link between debt, pawning, misery, slavery, forced prostitution and rapine. On one hand, debt in the form of trade credit improved the fortunes of merchants and cities; on the other, it could be used to force people into abject destitution for generations. It is this tyranny of debt that acts as the context to the Qur'ānic verses prohibiting *ribā*.

Historical records about the early history of Mecca are scant. However, the research works cited above provide a sufficiently nuanced view of the economy of Mecca in the centuries preceding Islam to enable a historicised interpretation of *ribā*. Prior to this, however, it is important to review how the earliest jurists of Islam interpreted *ribā* based on the canonical sources of Islamic knowledge. The next chapter turns to this task.

[541] See various references to this practice in *asbāb ul nuzūl* traditions discussed in Chapter 6.

Chapter 5

The Subsequent

> The Sunna shows that the divine prohibition of *ribā* extends far beyond *ribā al-jahiliyya*, but it still leaves much uncertainty about its definition.[542]

The Antecedent presented a sketch of the economy from antiquity to the period immediately prior to and synchronous with the revelation of the Qur'an. The point of emphasis in the sketch was the practice of lending from its first recorded emergence in human civilisation to its permutations and developments through time, of which the manifestation in the Meccan economy of the fifth and sixth century AD was but one specific praxis. The present chapter provides a brief overview of the classical juristic thought on *ribā* – the foundation of modern Islamic finance – and aims to locate traces of actual historical practices of lending in the first few centuries of Islam. In other words, the focus of The Subsequent is on how *ribā* was understood by the early interpretive communities of Islam as well as the dialectic between theory and practice.

Classical jurists theorised a complex schematic of *ribā* based on two premises: one, they held that the word *ribā* is *mujmal* (ambiguous),[543] and two, they posited that the Sharīʿah (the law of Islam) has assigned a technical meaning to this word which differs from its original meaning[544] as understood by the immediate addressees of the Qur'an in the *ribā* verses, the rich merchants and moneylenders of the Hejaz. Both these premises are challenged in the next chapter as part of the new theory development process but, prior to this, an explication of the jurists' methods and conclusions is necessary. This is because classical Islamic law is the culmination of a systematic interpretive endeavour based on the foundational texts of Islam, the Qur'an and the Hadith, and continues to guide the work of modern traditionalist scholars of Islamic finance. Contextualising the present thesis within the classical Islamic legal theory has helped to clarify points of departure from the classical and neoclassical theory of *ribā*.

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542 Frank E. Vogel and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return*, Unrevised (Leiden: Koninklijke Brill NV, 2006), 73.
543 Nomani.
544 Fazlur Rahman, 'Riba and Interest', *Islamic Studies*, 3.1 (1964), 1–43, 25.

This brief chapter analyses how *ribā* was understood by the authoritative interpretive community *subsequent to* the revelation of the Qur'an. The methodological decisions of classical jurists have been problematised in this chapter to create space for reconstruction. In addition, the link between legal theory and lived practice is investigated, albeit in a limited fashion due to paucity of historical information. This reflective chapter therefore paves the way to new theory development.

The key areas of focus in this chapter are:

a. How did the classical jurists of Islam understand *ribā*? Does *ribā* have a technical meaning that is different from the Qur'anic term '*al-ribā*'?
b. Is there consensus (*ijmā'*) on the definition of *ribā*?
c. Does the classification of *ribā* into the sub-categories of *ribā al-jāhiliyya* (*ribā* of the pre-Islamic era), *ribā al-nasī'a* (*ribā* of delay) and *ribā al-faḍl* (*ribā* of excess) hold valid in the light of a plain reading of the Qur'an within the context supplied by the Antecedent?
d. What relation, if any, did the classical theory of *ribā* have with trade practices of Muslim merchants during the time when formalised legal theory was taking shape?

5.1 *Al-ribā* in Classical and Neo-classical Islamic Jurisprudence

Classical Islamic jurisprudence sets out a technical definition and sub-categories of ribā. This classical understanding has been reproduced faithfully and without much revision in contemporary Islamic finance discourse as noted in detail in the literature review. The classical *ribā* schematic is as follows:

1. *Ribā al-jahliyyah*. This was the credit *ribā* of pre-Islamic times. In *fiqh* terminology, this is also known as *ribā al-nasī'a* or the *ribā* of delay. Credit sales are often categorised under this latter term. This type of *ribā* 'is forbidden by the explicit text of the *Quran*.'[545] Imām Ibn Ḥanbal was of

[545] Sh. Wahba Al Zuhayli, 'The Juridical Meaning of Riba', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 26–54, 27-8. The definition of *ribā al-faḍl* has also been taken from the same essay.

the opinion that this is the only type of *ribā* expressly forbidden by the Qur'an.[546]

2. *Ribā al-faḍl*: also known as surplus *ribā* (*ribā* of excess or *ribā* of Sunnah). Al-Zuhayli describes this as pertaining to the exchange of fungible commodities in which excess was not permitted. The source of the prohibition is the six-commodity Ḥadīth tradition.[547] The reason for forbidding this excess *ribā* is 'to prevent it being used as a pretext to committing credit *riba*.'[548]

Ibn Kathīr (d. 774/1373), an eminent exegete in the *tafsīr bi'l mathūr* tradition,[549] references the Hadith report from the Second Caliph, 'Umar bin Al-Khaṭṭāb, that categorises *ribā* verses as one of the *al-mujmalāt* (ambiguous verses of the Qur'ān).[550] It seems that this tradition was used to give credence to the juristic view of *ribā* as something ambiguous to be clarified. In an essay titled 'What is *ribā*?' Abdulkader Thomas states that the Qur'ān does not give a clear definition of *ribā* or explain what the transaction involved; rather, it distinguishes *ribā* from trade. In Thomas's view, therefore, trade and *ribā* are opposites of each other.[551] He further notes that 'Sh. Zuhaili [sic] and the examples of the *hadith* allow us to determine a clear idea of what is *riba*.'[552] He then proceeds to provide a taxonomy of *ribā* based on Al-Zuhayli's opinion stated in an essay in the same edited volume by Al-Zuhayli himself, but the taxonomy and rationale for prohibition appear different. The table below summarises the views of Thomas and Al-Zuhayli to demonstrate the confusion surrounding the issue of *ribā* in contemporary Islamic finance. It demonstrates too that the engagement with the Qur'ānic idea of *ribā* is at best perfunctory, hence leading to the view that the *Qur'ān* is not clear in the matter of *ribā*.

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[546] Vogel and Hayes, III, op cit.
[547] This tradition has been discussed in detail in 6.4.3.
[548] Al Zuhayli, op cit., 27.
[549] Jane Dammen McAuliffe, 'Quranic Hermeneutics: The Views of Al-Tabari and Ibn Kathir', in *Approaches to the History of the Interpretation of the Qur'an*, ed. by Andrew Rippin (Oxford: Oxford University Press, 1998), pp. 46–62, 56.
[550] Nomani, op cit., section 1.2, as well as the exegete Al-Razi's citation of the same report in section 2.2 of the article; see also 6.4.1.
[551] Abdulkader Thomas, 'What Is Riba?', in *Interest in Islamic Economics : Understanding Riba*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 125–34, 127.
[552] Thomas, ibid. This is a rather simplistic statement given the numerous contradictions about *ribā* in Ḥadīth traditions. Rahman has charted some of these contradictions in his paper on *ribā*: Fazlur Rahman, 'Riba and Interest', *Islamic Studies*, 3.1 (1964), 1–43, see section II, *Ribā* and Hadith, ff.

Table 5.1 Illustrative Comparison between Conceptualisations of *Ribā* in Established Juridical Thought

Taxonomy of Ribā according to Thomas[553]	**Taxonomy of Ribā according to Al-Zuhayli**[554]
Category 1: ribā al-jāhiliyyah or ribā al-nasī'a (ribā of delay) Defined as the *ribā* of the Qur'an, well-known amongst the Meccans. This *ribā* is the same as bank interest. The lender wishes to completely avoid business risk and instead aims to make money by granting delay (i.e., time value of money).	**Category 1: credit ribā** This is an increase demanded in return for granting more time to settle a loan or a debt created from a credit sale. This type of *ribā* has been prohibited by the Qur'an based on *naṣṣ* (explicit textual indicant).
Category 2: ribā al-faḍl (ribā of excess) This *ribā* arises when one party to a transaction of sale either pushes the other party 'out of the market' or puts pressure on the other party to commit to the sale.[555] Some fuqaha considered this type of *ribā* to be prohibited because it can lead to the first type of *ribā* (presumably in the case of a deferred or credit sale).	**Category 2: Surplus ribā** This is the increase resulting from the sale or exchange of 'six canonically-forbidden'[556] commodities including gold and silver either in unequal amounts or when delay (deferment) is involved e.g., selling wheat now for selling wheat later. This can lead to the *ribā* of the first type. This type of *ribā* has been prohibited by 'the *Sunna* **by analogy** of the first type, since it too includes an increase without countervalue.'[557]

[553] Thomas, ibid.
[554] Al-Zuhayli, op cit., 27.
[555] Thomas, 127.
[556] Al-Zuhayli, ibid., 27.
[557] Al-Zuhayli, ibid. My emphasis in bold.

Thomas's definition is emphasising the unfairness in risk allocation, the seller's access to markets and ability to negotiate freely. Al-Zuhayli's emphasis is on textual indicants, canonicity of named fungible commodities and presence of counter-value.[558] When set by side, it is immediately clear that the two scholars have not articulated the concept of *ribā* with sufficient clarity or concreteness to enable understanding and application (for banks).

Al-Zuhayli further notes that '*Riba* is also forbidden by the scholarly consensus of the entire Muslim nation.'[559] This statement is valid but only at a broad epistemological level. It is often claimed that *ribā* is fully understood and holds binding scholarly consensus (*ijmā'*) yet scholarly interpretations differ markedly. Nabil Saleh helpfully summarises both the traditional viewpoints on *ribā* in six Islamic legal schools – these views often converge at the epistemological level as noted above[560] – as well as dissenting views articulated by a few renowned scholars. Saleh's presentation of the legal schools' understanding in tabular format demonstrates two points: one, classical legal scholars expended considerable energy in explaining the complex transaction listed in the six commodities Ḥadīth reports; two, scholars differed markedly in their explanations as to the causative factors of the prohibition. The key aspects of the dispute rested on the types of commodities mentioned in the report (fungibility, measurability, use as victuals). Further, scholars disagreed as to whether the prohibition only pertained to the commodities mentioned in the report or if the list could be expanded further, in which case the list of commodities has no canonical value. Overall, the scholars' primary concern was *ribā al-faḍl* rather than the Qur'ānic *al-ribā*. The controversy around riba is such that proponents claim consensus despite there being numerous conflicting interpretations. Saleh has expressed and resolved the paradox thus:

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[558] Traditionalist scholars often implicitly assume that the borrower does not benefit from debt i.e., there is no counter-value. This assumption is incorrect. Even in the case of credit card debt, the borrower benefits from the expenditure enabled by the credit e.g., new clothes. In the case of credit sale, the debtor is given time to supply the goods, and the advance payment functions as 'input capital' enabling the seller / supplier to produce / purchase the items.

[559] Al-Zuhayli, op cit., 27.

[560] The six schools of thought – Ḥanafī, Shāfi'ī, Mālikī, Ḥanbalī, Ja'farī and Ibādī – differ mainly as to inclusions and exclusions based on their interpretation of the famous six commodities hadith report, but at a broad level they agree on the sub-categories of *ribā*. The primary focus of *fiqh* discussion is the genus of commodities and the prohibition's link with the *'illah* (*ratio legis* or causative factor) i.e., fungibility, volume and weight. See Saleh, supra, pp.16-33.

> Whatever the reason for an extensive and wide-ranging interpretation of the Quranic prohibition of *ribā*, this interpretation has been followed for centuries by the consensus (*ijma'*) of Muslims and has thus become a binding rule of law**. This consensus is over the broad interpretation** of the prohibition, but it does not mean that the Islamic schools of law share the same view on *ribā*; **on the contrary each school and practically every scholar has an individual view**…This has made the *ribā* issue one of the most debated in Islamic *fiqh*.[561]

Saleh's use of the phrase 'broad interpretation' is reflective of his own agreement with the established view that the forbidden *ribā* is the same as 'interest'.[562] This interpretation shows Saleh's own preference for the *ribā*-interest equivalence characteristic of the modern orthodox view of *ribā*. On the same page, Saleh notes:

> Sunna and ijma' **enlarged considerably** the ambit of this interdiction, as we will discover later.[563]

In other words, Saleh's view of Qur'anic *ribā* is itself a preference for a particular definition. It is however refreshing to read the explicit statement that the Sunnah (here understood as Ḥadīth) and scholarly legal reasoning expanded the remit of *ribā*.

As shall be shown presently, there is no consensus even on the broad interpretation of *ribā* except to the extent that all scholars agreed that the pre-Islamic *ribā* (or Qur'ānic *ribā*) in loans or debt was expressly forbidden, while the *ribā* of Ḥadīth (pertaining to sales) may not be expressly forbidden. Thus, the consensus merely amounts to a recognition of the two categories of *ribā* based on the epistemological source of the concept (Qur'ān or Ḥadīth). This consensus disintegrates quickly when inclusions, exclusions, and operative causes come into play. There is doubt even about the nature of the prohibition (absolute or recommended) of *ribā al-faḍl*. Due to this disagreement among scholars, the definitions of *ribā* which should ideally delineate these categories become confusing and contradictory. It is more appropriate to posit instead that *ribā* is a matter of controversy, not consensus.

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561 Saleh, 15. In a footnote to this text, Saleh notes that the 'reality of this consensus is denied by few Muslim scholars'; ibid., n17; my emphases.

562 Saleh, ibid., 13.

563 Saleh, ibid., n8, 13; my emphasis.

In a paper providing comprehensive coverage of scholarly opinion from the formative period of Islamic law until contemporary times, Farooq demonstrates that there has never been any consensus on the definition of *ribā* or the equivalence of *ribā* and bank interest.[564] Of note is the opinion of the 14th century scholar Ibn Qayyim al-Jawziyya who offered another categorisation of *ribā*. According to Ibn Qayyim, *ribā* could be manifest or hidden; *ribā al-nasī'a* was the manifest *ribā* practiced in the pre-Islamic days and explicitly prohibited by the Qur'ān. In comparison, *ribā al-faḍl* was the hidden *ribā* or *the means to* manifest *ribā*.[565] Khalil is of the view that Ibn Qayyim developed this categorisation as he wished to reduce the frequent use of *ḥiyāl* (legal stratagems) that Muslims had developed to circumvent the strict (and expanded) *ribā* prohibition in *fiqh*.[566]

A strongly dissenting opinion on *ribā al-faḍl* was given by the respected Shāfi'ī jurist and theologian 'Izz al-Dīn ibn 'Abd al-Salām Sulamī (d. 660/1262), who found no justification for classifying *ribā* as a major sin unless it led to serious harm.[567] He also questioned the legal principle of 'time' in making a transaction invalid, as has been argued against *ribā al-faḍl* in a credit sale:

> Also, with respect to the attendant harm (*mafsada muqtadiya*) that [supposedly] renders *ribā* from among the major sins (*kabā'ir*) - I have not understood/grasped the relied-upon [position] concerning it. It being a foodstuff (*mat'um*) or a measure of things (*qiymat lil ashya'*) or quantifiable (i.e. by weight or volume) does not in itself render it (i.e. *ribā*) an immense harm so that it warrants being categorised as a major sin. And the rationalisation given - that it is because of its eminence (*sharaf*) that spot and credit based *ribā* are prohibited - is not correct. So someone who sells 1000 dinars for a dirham, his transaction is valid (*ṣaḥīḥ*); as is someone who sells a kurr (2,925kg?) of barley for 1000 kurr of wheat or sells a mudd of barley for 1000 mudd of wheat; [whereas?] someone who sells a mudd of wheat for its like or a dinar for its like or a dirham for its like and delays it even a moment, this transaction is categorised as harmful!

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564 Mohammad Omar, 'The Riba-Interest Equivalence: Is There an Ijma (Consensus)?', *SSRN Electronic Journal*, 4.5 (2017) <https://doi.org/10.2139/ssrn.3036390>.

565 This view of *ribā al-faḍl* as a prohibition of *sadd al-ḍharai* (means to an end) has also been adopted by Maudūdī. See Maulana Mawdudi, 'Sood (Interest)', 2000 <http://www.scribd.com/doc/15492367/Sood-Interest-By-Maulana-Maududi-in-Urdu#scribd> [accessed 13 July 2021], 118-9. Classical scholars did not consider *sadd al-dharā'i* a sound principle of legal reasoning; see discussion in 3.2.

566 Khalil, *Overview of the Sharia'a prohibition of* riba, supra, 62.

567 Fazlur Rahman, *Islam & Modernity* (Chicago: The University of Chicago Press, 1982), 30. '…al-Sulami…rejected the ban on interest that had been almost unanimously pronounced by Muslim lawyers…'

> In these various transactional forms no clear sense emerges that one can proceed towards or rely upon (presumably for a legal rationale?).[568]

The above evidence shows that the classical *ribā* schematic is both complex and confusing. There is hardly any consensus on the legality of the different types of *ribā* or even the rationale for prohibition. When revisited after the first hermeneutical engagement with the *ribā* verses, the jurists' theorisation of *ribā al-faḍl* became even more questionable, as discussed below.

5.2 The Traditional *Ribā* Schematic in Light of the First Reading of the Verses

The interpretive experience is characterised by movements between the text and context, also known as the "'circularity' of understanding."[569] In this section, the first reading of the Qur'ānic verses is undertaken to analyse the premises underpinning the classical theory of *ribā*.[570] The actual practice of the Arabs as appearing in the sketch in the previous chapter, and its dialectic with the classical theory of *ribā*, are analysed after this initial reading.

Ribā is mentioned in the Qur'an in four separate chapters. An excerpt of the verses is as follows:[571]

> That which ye lay out for increase through the property of (other) people, will have no increase with Allah: but that which ye lay out for charity, seeking the Countenance of Allah, (will increase)…[572]

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[568] Izz al-Din ibn 'Abd al-Salam, *Kitab Qawai'd Al Ahkam Fi Masalih Al Anam* (Al-Maktaba Al-Shamila Al-Haditha) <https://al-maktaba.org.book/8608/191#p4>, p194. Above translation by Dr Mustapha Sheikh. My thanks also to Naveed Idris, Headteacher at Feversham Primary Academy, for locating the original text and providing comment on 'Izz al-Dīn's opinion. Idris noted that 'for usury to be classified as a major sin (*kabā'ir*), it must lead to significant harm like enslavement and dependency. However, in business transactions this is clearly not the case, and this is the point which Izz al Deen [sic] is driving at.'

[569] Theodore George, 'Hermeneutics', *Stanford Encyclopedia of Philosophy* (Stanford University, 2020) <https://plato.stanford.edu/entries/hermeneutics/>, [accessed 18 March 2022].

[570] A further detailed (second) reading and full exegesis are completed in the next chapter.

[571] Detailed discussion on chronology (time of revelation) follows in the next chapter. The excerpts are listed here in chronological order.

[572] Q30:39

> That they [the Jews] took usury, though they were forbidden; and that they devoured men's substance wrongfully…[573]
>
> Devour not usury, doubled and multiplied…[574]
>
> …they say "Trade is like usury," but Allah hath permitted trade and forbidden usury.[575]
>
> …Fear Allah, and give up what remains of your demand for usury…[576]
>
> …But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.[577]
>
> If the debtor is in a difficulty, grant him time Till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.[578]

Without delving into detailed exegesis or technical use of the term *al-ribā*, an initial attempt at meaning-making is possible at this stage. The Qur'ānic *al-ribā* – with the definite article *'al'* ('the') referring to something specific and well-known, in this case a type of financial deal – holds some attributes. Firstly, it increases in the property of others, implying that the property of one of the parties is harmed. Second, *al-ribā* is oppositional to charity. Third, *al-ribā* is wrongful appropriation of someone's property or wealth. Fourth, *al-ribā* is related to an original amount, likely referring to the original amount of the loan (principal). Fifth, the lender is entitled to the principal sum, and this is viewed as just. Sixth, a lender must take a charitable approach to a borrower who is in financial difficulty by giving her more time to repay the loan.

This first reading clarifies that *al-ribā* is a concept pertaining to *dayn* i.e., debt obligations created through a loan or credit sale. The Qur'ān neither offers any information about the sub-categories of *ribā* nor does it forbidlending. Using the Antecedent as a contextual lens to view these verses, it seems that the Qur'ān is referring to the well-known practice amongst Meccan traders[579] who used spare wealth to advance loans to the poor or those in financial need, with non-

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573 Q4:160-1. My addition in square brackets to indicate that the Qur'an is referring 'To the iniquity of the Jews.'

574 Q3:130

575 Q2:275

576 Q2:278

577 Q2:279

578 Q2:280. Verses 282-3 describe a process for writing and witnessing contracts of debt (*dayn*), hinting that *ribā* pertained to loans or debts.

579 Ziaul Haq, 'Inter-Regional and International Trade in Pre-Islamic Arabia', *Islamic Studies*, 7.3 (1968), 207–32 <https://www.jstor.org/stable/20832920>. Zia uses the term 'merchant-capitalists' at 228.

repayment resulting in expropriation of property or debt slavery. Whilst the existence of *ribā* disguised as sale or barter is entirely plausible in a precarious economy dependent on scarce rainfall and long-distance trade, the technical category of *bay'* (sale, trade or commerce) does not seem to be the focus of the verses, except to refer to it to refute the Meccans' argument that 'trade is like usury.' In the matter of trade, the two parties usually negotiate as equals and wealth is employed to generate value for both parties. On the other hand, in the case of *al-ribā* the wealth of one party increases at the expense of the other. The *al-ribā – bay'* comparison, therefore, is at two levels - situational (circumstances of the two parties) and functional (use of wealth) – but it is not a technical comparison based on the form of the transaction.

Based on this first reading, it can be concluded that the Qur'ān does not offer a schematic categorisation of different types of *ribā*, referring only to the well-known *al-ribā*. Further categorisation of *al-ribā* developed subsequently when early Muslim interpretive communities sought to explicate and apply the teachings of the Qur'ān. The decision to categorise *ribā* as a *mujmal* (ambiguous) word is key to this development. It is this categorisation that turned the jurists' attention to employing Ḥadīth reports to specify riba, especially the category of *ribā al-faḍl* which was explained through reports about transactions of sale.[580]

5.3 The 'why' of *Ribā* Interpretation in Classical Islamic Jurisprudence

This section explains the 'why' of The Subsequent: why was *ribā* understood the way it was understood? The answer to this question not only sheds light on how the classical view of *ribā* was formed, but it also acts as the foundational step in reconstructing[581] *ribā*, the focus of the next chapter of this research.

Classical Islamic jurisprudence (legal theory - *uṣūl*) and law (application of rules – *far'*) are the result of a human endeavour undertaken over a millennium ago. *Fiqh*, the exertion of effort to reach a concrete understanding of God's revealed

[580] Nomani. See Abstract.

[581] Reconstruction is one of the aims of this thesis; a full explanation of the concept of reconstruction as employed in this study is given in 3.2.

law,[582] is the best of Islamic interpretive sciences. Epistemologically, *fiqh* is a sustained and eventually systematised engagement with the sources of Islam, the Qur'ān and Sunnah. Distinct from the divinely revealed laws of God, *fiqh* is the human understanding of these laws by men of learning[583] whose thoughts and teachings were shaped by their own histories, cultural influences and politics. Viewed from the present, Islamic *fiqh* an impressive tradition of knowledge (*'ilm*) situated in its own history, speaking to its political, cultural, social and economic expediencies. The principles and branches of Islamic law are one thorough attempt at understanding the ideals and goals of Islam at a point in time, roughly 3-4 centuries after the revelation of the Qur'ān. Whilst the Qur'ān itself is transcendental, a point elaborated in detail below, classical law itself is a *time-bound* elucidation of the holy book. This view of Islamic law creates possibilities of fresh interpretive efforts across future generations of Muslims and releases the thinking Muslim from the constraints of the historical era in which *fiqh* developed. In other words, a revised *fiqh* can and should be written as humanity traverses across time and civilisational change. Furthermore, classical Islamic law as a body of knowledge is built on the foundation of methods of interpretation, the aims of legal theory itself shaped by the influence of doctrine. It is these methodological, epistemological, and doctrinal factors - the winds and waves shaping the terrain - that require further examination, for they have shaped too the classical legal opinions on *ribā*.

5.3.1 The Shaping of *Ribā* in *Fiqh*: epistemology, methods of reasoning and doctrine

The obedience of God and His last messenger, Muḥammad, is a firmly established tenet of faith in Islam. The praxis and words of the Prophet hold normative value and the precedents set by him must be engaged with in the understanding and application of divine law.

> Say: "Obey Allah, and obey the Messenger: but if ye turn away, he is only responsible for the duty placed on him and ye for that placed on you. If ye obey him, ye shall be on right guidance. The Messenger's duty is only to preach the clear (Message).*[584]*

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[582] Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 32.

[583] Almost exclusively, the eminent legal scholars of Islam are men.

[584] Q24:54. Numerous verses repeat this message making it obligatory to obey the Prophet; for instance, 'He who obeys the Messenger, obeys Allah' (Q4:80).

Further, in the matter of the book (*kitāb* or law, also called Sharīʿah) and wisdom (*ḥikmah)*, the Qur'ān states:

> It is He Who has sent amongst the Unlettered a messenger from among themselves, to rehearse to them His Signs, to sanctify them, and to instruct them in Scripture and Wisdom,- although they had been, before, in manifest error;[585]

The Qur'ān and Sunnah (normative praxis) represent the epistemological sources of Islamic law and lived tradition. Reformist scholars like Ghamidi assert that, in the final analysis, the origin of Islam lies with the person of the Prophet.

> Muḥammad (sws) is the last of these prophets [of God]. Consequently, it is now he alone who in this world is the sole source of religion. It is only through him that man can receive divine guidance and it is only he who, through his words, deeds or tacit approvals, has the authority to regard something as part of Islam until the Day of Judgement.[586]

In classical Islamic legal theory, the Qur'ān is considered above criticism and the knowledge (*'ilm*) contained in the Qur'ān holds absolute certitude as the word of God. The Qur'ān was transferred through oral recitation, memorisation and standard manuscripts, with God taking responsibility for its preservation. In the Qur'ān, God Himself takes ownership of its collection, recitation and preservation.[587] From the time of its revelation, the Qur'an has been memorised and reproduced by countless Muslim *ḥuffāẓ* (those who memorise the book verbatim), eliminating the possibility of corruption in the text. This study accepts the theological postulate that the Qur'ān is the preserved word of God. In comparison, Ḥadīth reports represent individual initiative to preserve the memory of the Prophet. A report could be transferred via a handful of narrators or many people. Some Ḥadīth reports were of weak authenticity due to their questionable provenance or lack of credibility of narrators, whilst others were

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585 Q62:2

586 Javed Ahmad Ghamidi, *Islam: A Comprehensive Introduction*, trans. by Shehzad Saleem, 1st edn (Lahore: Al-Mawrid, 2010), 17. The term '(sws)' is shorthand for the greeting of peace sent to the Prophet as an act of respect. My addition in square brackets.

587 Q15:9.

aḥad (solitary), that is, narrated by less than five transmitters.[588] Overall, the Ḥadīth corpus is composed of *aḥad* reports that do not reach a level of certainty (*qat'*). As Hallaq notes:

> Though some solitary reports may lead to acquired knowledge, the majority do not exceed the level of probability (ẓann).[589]

Ḥadīth scholars were aware of the challenges posed by the mode of transfer of Ḥadīth and the uncertainties this created. They developed a type of knowledge called *'ilm al-rijāl* (the knowledge of men) to mitigate against the threat of fabrication, aiming to preserve the authenticity and credibility of the words and actions attributed to the Prophet. This was painstaking work of recording the biographies of Ḥadīth narrators to establish provenance, chronological coincidence (i.e., whether a narrator had met the person they were narrating form), and strength of the Ḥadīth chains (*isnād*) linking back to the Prophet himself. Exhaustive criteria were developed to pass verdict on the reliability of a Ḥadīth report. Reports could range from *ṣaḥīḥ* (authentic and reliable) to *ḍa'īf* (weak), in turn affecting their epistemological status as normative precedent. Overall, the Hadith corpus comprised of a very large number of solitary reports of which some were classed as *ṣaḥīḥ*. The Islamic community eventually gave canonical status to six collections of Hadith of which the two *ṣaḥiḥīn* – compiled by Imām Bukhārī and Imām Muslim – are held in the highest esteem in the Sunni legal tradition.

Formalised Islamic legal theory eventually came to equate Sunnah with Ḥadīth, that is, it *came to view* Ḥadīth as the repository of Sunnah. Rahman attributes this development to Imām Shāfi'ī who 'successfully fought for the general acceptance of "traditions from the Prophet" as a basis for interpretation instead of *ijtihād* or *qiyās*',[590] the latter two representing reason-based methods of understanding the revealed law. This, however, was a departure from how Sunnah (praxis) was understood by the earliest community of believers, who viewed this as the normative practice of the Prophet and his Companions.

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[588] Whilst there is no clear consensus about the threshold that a report must reach to be considered *mutawatir* (recurrent), Hallaq notes that most jurists considered a report to be solitary if it had 'fewer than five channels of transmission.' See Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999), 61.

[589] Hallaq, ibid., 62-3.

[590] Fazlur Rahman, *Islam & Modernity* (Chicago: The University of Chicago Press, 1982),18.

These practices and precedents could vary regionally even as the community of believers retained an overall sense of the Prophet's normative praxis. For Imām Mālik, the best reflection of the Prophet's praxis was found in community practices in Medina.[591] This multiplicity of understandings of the Sunnah and competing claims to authenticity led Imām Shāfiʿī to assert that the most authentic source of the Sunnah were the reports attributed to the Prophet himself, that is, Ḥadīth.[592]

Hallaq further notes that in the second century of Islam, legal reasoning was often based on the Qur'an and what the local community accepted or knew as the practices of the Prophet and his companions.[593] During the time of the eminent jurists Imām Abū Ḥanīfa (d.150/767) and Imām Awzāʿī (d.157/774), there were very few hadith reports in circulation and legal reasoning assigned more weight to praxis. Hallaq notes that:

> Awzāʿī…used relatively few Prophetic reports, though he often referred to the "Sunna of the Prophet." The technical relationship between the Sunna and the reports that express it is still tenuous in Awzāʿī, for he considers an informal report or a legal maxim without *isnād* sufficient to attest to the Prophetic Sunna. But like the great majority of his contemporaries and immediate predecessors, Awzāʿī viewed the practice (=*sunna*) of his community as having been continuous since the Prophet, and as having been maintained throughout by the caliphs and the scholars.[*594*]

According to Hallaq, it was Aḥmad b. Ḥasan al-Shaybānī (d.189/804) who introduced the legal method of basing law on the authentic text of the Qur'ān and Ḥadīth reports although he still included the opinions of the Companions in his method. Like Rahman, Hallaq contends that it was Imām Shāfiʿī who persuasively argued that 'the Quran and the Sunna [Hadith] of the Prophet are the sole material sources of law.'[595] The shift from the use of *ra'y* (rational and pragmatic opinion) to Prophetic reports in the second century of Islam took place in the second century. This shift impacted both the epistemology and methodology of law: the process of legal reasoning came to rely on Ḥadīth

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591 Jonathan A.C. Brown, *Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy* (London: Oneworld Publications, 2014), 36.
592 Brown, ibid.
593 Hallaq, op cit., 16.
594 Hallaq, ibid., 17.
595 Hallaq, ibid., 18. My addition in square brackets. Hallaq uses 'Sunna' with the uppercase S to refer to hadith, and *sunna* to refer to praxis.

reports, with the 'authoritative texts…gradually upgraded to the status of Prophetic Sunna', and the methodology became more rigid.[596] The use of *ra'y* was discarded and legal method eventually took the form of *qiyās* (analogical reasoning from an *existing* precedent) and *ijtihād* (independent reasoning) in light of the Qur'an and Hadith.

When viewed within the milieu of these epistemological shifts in the developing jurisprudence of Islam, it becomes clear that the understanding of *ribā* was also affected by these shifts. The first reading of the *ribā* verses yielded insight into an exploitative lending practice of capital owners familiar with trade and profit making; yet the jurists' use of Ḥadīth to explain the Qur'ānic text led to the development of the category of *ribā al-faḍl*, and eventually changed the meaning of Qur'ānic *ribā*.[597] Jurists became pre-occupied with explaining the confusions in the six-commodity report and its variants. An extended example of resolving the issues created by the six-commodity report is found in Vogel & Hayes' attempt at 'Plumbing the Rules of *Ribā*',[598] whereby, when linking legitimacy of profit-making to risk-taking, they note that 'The prohibition of riskless gain is linked to the prohibition of "sale of *gharar*," or the sale of risk.'[599] Reliance on this Hadith has the consequence of confusing *ribā* with *gharar*.[600] This example illustrates how *ribā* eventually became linked to the technical ideas of sale and risk, missing altogether the Qur'ānic view of an exploitative lending practice resulting in humiliation, destitution and slavery.

This epistemological shift in legal theory has been instrumental in taking focus away from the sociohistorical circumstances within which the Qur'ān was revealed and *understood* by the earliest Muslim community, how community practice itself was shaped under the guidance of the Prophet as he sought to implement the Qur'ānic directives as the Messenger to be obeyed, and shifted it towards a strict methodological approach in which reason (observation, intuition, experience, opinion, historical facts) had a very small role to play, with Ḥadīth tradition holding normative authority. Reliance on Hadith as source of law was therefore a development based on conscious choice by the early jurists

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596 Hallaq, op cit., 19.

597 In the next chapter, the opinions of Ibn 'Abbās and Zayd bin Aslam, among the earliest authorities in Islamic knowledge, will show a closer affinity to both the sociohistorical reality and the Qur'ānic narrative about *ribā*.

598 Frank E. Vogel and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return*, Unrevised (Leiden: Koninklijke Brill NV, 2006), 77-87.

599 Vogel & Hayes, ibid., 84.

600 See 6.4.3.

of Islam. Until that shift took place and became accepted, with the Mu'tazilī (rational) school resting its case in the face of the Traditionists' arguments during the 9th century *Mihna*,[601] legal reasoning was more fluid and flexible, able to accommodate community practice and pragmatic considerations.

The above discussion is not aimed at challenging the epistemological value of Ḥadīth but to highlight the methodological preference of classical jurists to assign normative weight to Hadith in deriving law, which in turn had an impact on how *ribā* was understood by this authoritative community of interpreters. Thus, the crucial question is not about the importance of Ḥadīth as a store of valuable historical knowledge; rather, the question is about the *normative authority granted to Ḥadīth* to explicate and even alter the message of the Qur'ān. If the first stage in the epistemological process was to accept Ḥadīth reports as the second source of law, reducing or excluding the use of reason, then the second stage was the acceptance of the premise that Ḥadīth could specify (*takhṣīṣ* – particularisation of) verses of the Qur'ān.

> As the history of Islamic jurisprudence demonstrates, the normative weight given to the traditions of the Prophet in the particular form in which they were preserved and transmitted was not inevitable. Rather, it was the cumulative efforts of generations of jurists that created a nexus between authenticity and normativity.[602]

Hallaq notes 'the rather consequential disagreement' about the authoritativeness of Ḥadīth reports with jurists adopting two positions. One set of jurists argued that Ḥadīth possessed normative authority to specify (*takhṣīṣ*) or abrogate (*naskh*) a Qur'ānic verse or Sunnah.[603] On the other hand, the second group argued that Hadith reports could not abrogate the Qur'an or the Sunnah but they admitted the possibility of particularisation of Qur'anic verses through Hadith.[604] This development is key to understanding the complexity surrounding the issue of *ribā*: the jurists' categorisation of *ribā* as a *mujmal* term automatically created the need for clarification, which was sought through the use of Ḥadīth reports, creating a confusing theory of *ribā*. This is because the text of Ḥadīth reports on *ribā* is often contradictory and lacking in context and

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601 Brown, op cit., 36.
602 Abou El Fadl, *Speaking in God's Name*, 97.
603 Hallaq uses the term 'concurrent sunna' to refer to normative praxis of the Prophet; see Hallaq, *A History of Islamic Legal Theories,* 73.
604 Hallaq, ibid., 71-4.

detail. When given the authority to explain the Qur'ān, the reports altered both the meaning and the aims of the Qur'ānic teaching.

For as long as Sunnah (praxis) remained an oral tradition, it showed the pliability one would expect from a living tradition. With the transcription and compiling of the living Sunnah in Ḥadīth books, the oral tradition became fossilised: 'these traditions no longer mutated and developed but took a highly structured and organized format.'[605] Moreover, it is not always possible to recover 'the context of the Prophet's voice'. [606] In any case, the recovery of context has not received due attention amongst classical Muslim scholars and those of the post-formative era, barring exceptions like Ibn Khaldun (d. 1406).[607] In the case of *ribā*, the later Ḥadīth reports differed not only from the *asbāb ul nuzūl* reports and the opinions of the Companions, but they also eventually overshadowed the Qur'ānic verses. It is these epistemological developments in legal theory that resulted in the jurists' pre-occupation with *ribā al-faḍl* as 'the *ribā*', with the six-commodities Ḥadīth dominating the Qur'ānic context and conceptualisation of *al-ribā*.

The definition of *ribā* offered by the Ḥanafī scholar Al-Jaṣṣāṣ is the most matured conclusion resting on this methodological commitment. He defined *ribā* as stipulated excess over the original amount of a loan (i.e., interest.)[608] Farooq has written in detail about how *ribā* was understood by early authorities in Islam and how this definition changed after Al- Jaṣṣāṣ's conceptualisation.[609] Al-Jaṣṣāṣ categorised *ribā* as a *mujmal* (ambiguous) word that required explication from Hadith. It is important to note here that by the time Al- Jaṣṣāṣ was writing his exegesis titled Ahkam ul-Qur'an in the 4th century of Islam, the epistemological shift in accepting *aḥad* Hadith reports as source of law had already taken place. Al- Jaṣṣāṣ, however, did not cite reports from the six canonical collections but relied instead on his own collection of Hadith without providing references, a routine practice at that time.[610] Al- Jaṣṣāṣ's definition changed the earlier understanding of *al-ribā* – the practice of increasing the amount of the loan at the time of maturity when the borrower declared financial

[605] Abou El Fadl, op cit., 101.
[606] Abou El Fadl, 109.
[607] Abou El Fadl, 109.
[608] Rahman, 'Riba and Interest', 25.
[609] Farooq, 'Stipulation of Excess in Understanding and Misunderstanding Riba: The Al-Jassas Link'.
[610] Farooq, 'Stipulation of Excess in Understanding and Misunderstanding Riba: The Al-Jassas Link', 293.

difficulty[611] – to *al-ribā* being a sophisticated financial practice of *stipulating* the rate of interest at the time of contracting the loan. Neoclassical scholars of Islamic finance have adopted this technical and expanded definition of *ribā*.[612]

5.4 *Ribā* as Practice in the Classical Period

There is controversy about the link between the legal theory of *ribā* and its actual practice in classical times. As noted above, Islamic law expanded the remit of *ribā* considerably and banned all interest-based lending. This would have had the effect of severely damaging trade and commerce but the reality is that long-distance trade flourished under Islam. According to Graeber, legal scholars' pragmatism in allowing 'goods bought on credit to be priced slightly higher than those bought for cash'[613] made it possible for credit to be made available for profitable ventures.[614] Thus, the permissibility of credit sales and the use of *commenda* contracts for long-distance trade were sufficient to sustain thriving trade. The practice of charging a higher price in credit sales, as compared to cash sales, was accepted by Islamic jurists as legally valid. This difference in prices was not considered interest but 'it does fulfill, from the point of view of its economic function, the same role as interest.'[615] The blanket ban on interest seems to have been put in place to eradicate usurious *personal* loans,[616] where free loans intended to help a needy borrower were often turned into high interest loans through 'stipulation' of excess over the principal amount.[617] Viewed in this context, a strict ban on interest would serve to reduce harm (debt peonage, rapine) in the absence of any state regulation protecting the lender and borrower. Therefore, it is safe to conclude that whilst interest-

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611 Farooq notes that Ibn Qayyim disagreed with Al- Jaṣṣāṣ's opinion and preferred the earlier understanding of riba. Importantly, Ibn Qayyim linked the practice of increasing the principal at the time of maturity to the debtor being in financial hardship: 'In most of the cases, only a needy individual would keep doing so as he would have no choice but to defer the payment of the debt.' Mohammad Omar Farooq, 'Exploitation, Profit and the Riba-Interest Reductionism', *International Journal of Islamic and Middle Eastern Finance and Management*, 5.4 (2012), 292–320 <https://ssrn.com/abstract=1995142>, 302.

612 Farooq, ibid., 290-7.

613 David Graeber, *Debt: The First 5,000 Years* (London: Melville House Publishing, 2014), 275.

614 In other words, both the time value of money and the risk to the creditor were recognised as valid basis for charging a higher price.

615 Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 80.

616 Historical evidence reviewed so far has shown that usury – exploitative lending – was a phenomenon in personal loans, not trade loans.

617 Examples of free *qard* and *salaf* loans from which *ribā* was extracted have been discussed in 6.4.5.

bearing usurious loans were banned, profit-bearing commercial credit was considered legal and valid by the jurists of Islam.

Whether the merchants scrupulously avoided interest is again contentious.[618] Graeber notes that the Muslim merchant was 'a respected figure'[619] because he conducted his business with trust and honour and did not act as a usurer.[620] It is also a fact that the Islamic world developed sophisticated credit instruments.[621] The presence of *ḥiyāl* (legal stratagems; singular *ḥīla*)[622] to circumvent the riba prohibition is also well-documented in Islamic sources, testifying to the fact that merchants were using credit in all its forms in their business activities. The controversy hovers around the question of the *extent* to which *ḥiyāl* were being utilised. Udovitch notes the difficulty in determining the link between Islamic legal theory and its influence on actual practice. He is of the view that *ḥiyāl* were a site of convergence i.e., actual practices of Muslim merchants can be gleaned from *ḥiyāl* literature:

> In using the *ḥiyal* works as an indicator of actual practice, one must exercise a measure of caution in attempting to discern those devices which were of obvious importance for practice and those which were merely exercises in cleverness and legal gymnastics. Taken as a whole, the *ḥiyal* literature represents the pressure points of daily practice on legal theory and can serve, in the field of commercial law especially, as a valuable guide to the practices current in the medieval Muslim world.*[623]*

Ḥanafī jurists, in particular, developed various *ḥiyāl* to aid trade and commerce using partnership contracts.[624] For the purpose of this study, it is the employment of *ḥiyāl* to extract interest that is of most interest. Siadat Ali Khan is of the view that the law prohibiting the charging of interest on loans was

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618 Graeber, op cit., 445, n70. I have further investigated the sources cited by Graeber (Udovitch, Khan and Ray) and brought my own conclusion; see below.

619 Graeber, 278.

620 Graeber, 275.

621 Graeber, ibid.

622 Examples include the use of a double sale to hide interest; keeping an orchard as a pledge and using or selling the fruit from the orchard as 'payment' for the loan (*antichresis*).

623 Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 12.

624 Udovitch has provided multiple examples of *ḥiyāl* in partnership contracts like the *commenda* (mudarabah).

circumvented early in the Islamic world (late first and second century):[625] Imām Mālik has discussed cases where the motive of the creditor is suspect (i.e., the creditor wishes to exact interest but is hiding it). It is also known that Imām Yūsuf and Imām Muḥammad, both students of Imām Abū Ḥanīfa, were engaged in devising legal stratagems.[626] Ali Khan critiques the approach taken by Ḥanafī and Shāfiʿī jurists in allowing *ḥiyāl*, which in effect meant that the letter of the law was being kept but not the spirit. Even usurious loans were allowed to a borrower in dire need.[627] In comparison, Ray is of the view that the role of interest-bearing loans in trade and commerce was very limited;[628] hence, *ḥiyāl* were used in a very limited way, and mainly in cases where governments and individuals outrightly ignored the prohibition and borrowed on interest 'to avert financial disaster.'[629] Ray further notes that the use of *ḥiyāl* may have been over-emphasised in 'Orientalist' scholarship because of its focus on the Ḥanafī school of law and seeing *ḥiyāl* as proof of double-standards in Islamic law.[630]

Importantly, the forms of credit and partnerships used in trade ventures (credit sale, *commenda* etc.) offered a more secure mechanism. Ziaul Haq notes that:

> Due to dangers and risks involved in the caravans, the carrier-merchants also tended to prefer this type of enterprises [commenda, where the exact share of the profit is pre-agreed], to a deal involving borrowed capital on interest, which could not assure maximum profit and minimum loss.[631]

Based on the sources cited above and the sociohistorical information brought to attention in this thesis, Ray's view of *ḥiyāl* is the soundest. If interest-bearing loans had a very small role in trade, then it is safe to conclude that interest was mainly present in personal loans for consumption. *Ribā* - whether in the form of

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625 Mir Siadat Ali Khan, 'The Mohammedan Laws against Usury and How They Are Evaded', *Journal of Comparative Legislation and International Law*, 11.4 (1929), 233–44 <https://doi.org/10.2307/754019>, 233.

626 Khan, ibid, 241.

627 Khan, 239.

628 Nicholas Dylan Ray, 'The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations', *Arab Law Quarterly*, 12.1 (1997), 43–90 <http://www.jstor.org/stable/3381386>, 76.

629 Ray, ibid.,71.

630 Ibid., 47.

631 Ziaul Haq, 'Inter-Regional and International Trade in Pre-Islamic Arabia', *Islamic Studies*, 7.3 (1968), 207–32 <https://www.jstor.org/stable/20832920>, 229. My addition in square brackets. In interest-based lending, the borrower's liability would be unlimited making it a very risky option. Given the Quraysh's commercial acumen, Haq's theory is sound.

interest-based lending or as a penalty for delaying repayment – existed mainly in *personal loans*. Interest-bearing loans had a very limited role to play in trade and commerce. The use of *ḥiyāl* to circumvent the riba prohibition was rare, however, *ḥiyāl* were employed to make partnership contracts more flexible and pragmatic.[632] In the economic milieu of the early jurists of Islam, a blanket ban on interest was both desirable and implementable. Divine law in the Qur'an required Muslims to avoid riba, a phenomenon seen in personal lending by the wealthy merchant to a needy borrower. A complete ban on interest achieved the aim of effectively eradicating exploitative lending. The ban itself could be implemented without detriment to the merchants who were working on profit-and-loss-sharing basis within a thriving economy in a vast empire with extensive trade routes.

Islamic finance has lifted this classical theory of riba from early Islam and tried to implement it in a completely different milieu. In the contemporary economy, interest-based lending is one of the pre-dominant forms of investment by specialised institutions (banks). This especially holds true of small and medium-sized companies that do not have a joint stock shareholding structure. Bankruptcy laws offer protection to the borrower. In contrast with the economic reality of the Arabs in 7th century Hejaz and later in medieval times, profit-and-loss-sharing (PLS) now represents a higher risk option for investors. The nascent Islamic banking sector tried to implement the PLS model only to find that businesses borrowing on this basis often committed fraud and hid their true profits because they did not wish to share the gains with the investors.[633] Currently, Islamic banks mainly invest in mortgages, leases, *murabaḥah* (credit sales) and *sukūk* (bonds) – all these credit instruments offer a steady monthly return at an agreed rate (interest) - and avoid the risky PLS form of investment. Ironically, Islamic banking has eventually taken the form of a *ḥīla* by charging interest in various guises.

If any new theory of *ribā* is to be developed, it must be cognisant of the modern economic reality of trade and commerce. This is very much in keeping with the implicit principle used by the classical jurists of Islam.

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[632] For examples, see Udovitch, *Partnership and Profit,* supra.
[633] Yousef, supra, 68.

5.5 Concluding Thoughts

The classical theory of *ribā* took the form of a ban on interest-bearing lending and commodity debt. This theory was based on the methodological preferences and pragmatism of Muslim jurists and fitted the economic realities of that period in Islamic history. The early history of Islamic legal development shows that legal reasoning relied on the Qur'ān, the lived practice of the Companions of the Prophet and the early community, as well as use of reason (*'aql*) and opinion (*ray'*). In the second and third century of Islam, the Ḥadīth corpus started to become formalised and systematised. Eminent jurists like Imām Shāfi'ī argued for Ḥadīth to become the second source of law after the Qur'ān, eventually leading to a shift in legal methodology characterised by reliance on Ḥadīth. In the matter of *ribā*, Hadith was used to develop a schematic of different types of *ribā*. The classical legal theory of *ribā* represented a pragmatic juristic opinion in an economic milieu where a ban on interest-bearing debt did not impede economic growth. This is due to the fact that interest was almost always a feature of personal lending, whereas trade investment depended on credit advanced through deferred payment or delivery of goods, or through profit and loss sharing arrangements. In this economic milieu, a blanket ban on interest was an effective way of curbing exploitative lending to the poor and needy in society.

As source material for the law of *ribā*, the Ḥadīth corpus is problematic because of its contradictions and lack of context. Moreover, the categorisation of the term *ribā* as a *mujmal* term is not convincing, given the linguistic style adopted in the Qur'ān which speaks of *ribā* as something familiar and well-known. While the classical theorisation of *ribā* was appropriate for the socioeconomic reality of Muslim jurists of the medieval period, it does not suit the reality of the modern economy. The reliance on contradictory or confusing Ḥadīth traditions is also problematic because it detracts from the original intent of the Qur'ān. The next chapter turns to the task of developing a historically contextualised theory of *ribā* that assigns primacy to the Qur'ān and takes a cautious approach in assigning normativity to Ḥadīth traditions.

Chapter 6

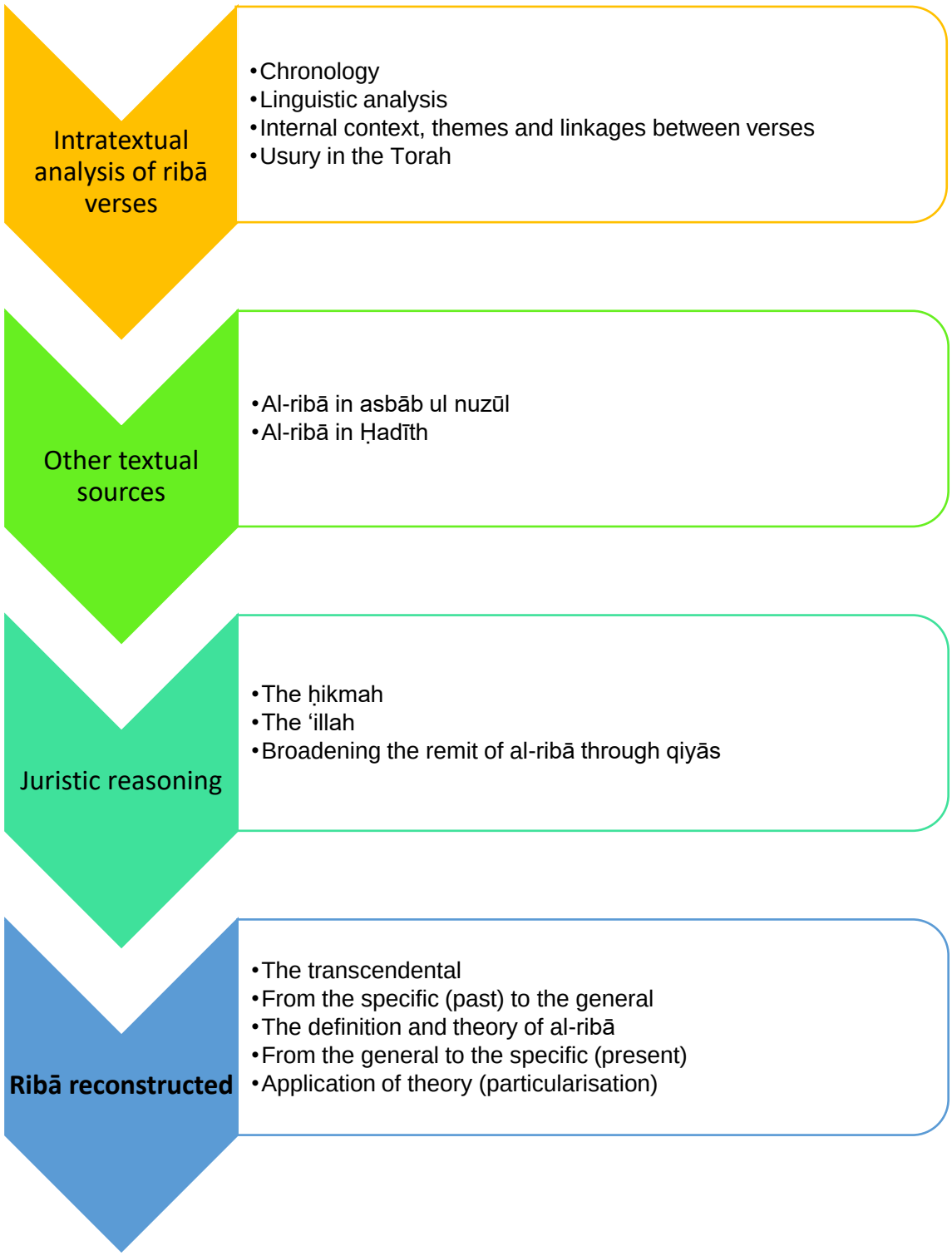
Ribā Reconstructed

The aim of this chapter is to develop a reconstructed theory of *ribā* through a contextualised reading of the canonical sources of Islamic knowledge.[634] Simply put, the aim is to understand *what* was prohibited and *why* in order to identify general principles and apply the guidance to our economic situation today (the Rahmanian double-movement). The method used to achieve this objective sits within the ambit of Islamic legal theory (*ijtihād* or independent legal reasoning). The first step consists of an intratextual analysis of the *ribā* verses, quarrying of exegetical and sociohistorical information from *asbāb ul nuzūl* reports, and a thorough survey of foundational Ḥadīth reports. The second step builds on this multi-layered analysis to offer a contextualised exegesis of *ribā* verses. In the third step, the *ḥikmah* and *'illah* of the prohibition are identified, finally leading to full theory development. The validity of the theory is tested across a comprehensive set of scenarios in keeping with the Gadamerian postulate that understanding lies in application. The chapter concludes with reflections on the hermeneutical movement from the traditional to the reconstructed theory of *ribā*.[635]

The following diagram illustrates the method of *ijtihād* (legal reasoning) used to develop the theory of *ribā*. This *ijtihād* provides the working mechanism within the Rahmanian-Gadamerian conceptual framework. The first three arrows represent the movement to the past; the last (blue) arrow identifies the process used to extract general principles which are applied to the 'present'. Conceptually, this last arrow represents the Rahmanian-Gadamerian model developed in this research. The fruits of the hermeneutic endeavour are realised at this stage.

[634] Engagement with canonical sources is discussed in 3.2.2.
[635] For the discussion on the conceptual framework, see 3.1.

Figure 6.1 The Process of *Ijtihād* (Legal Reasoning) about the Law of *Ribā*



For practical reasons, only selected exegetical or juristic works have been consulted. 'New' *asbāb ul nuzūl* reports, not found in IF literature, have been gathered through original research. Only those Ḥadīth reports have been analysed that are cited as *dalīl* (indicants) for the traditional theory of *ribā*.

Finally, the text of the Judgement of the Supreme Court of Pakistan (1999)[636] penned by Mufti Taqi Usmani has been selected as representative of traditional thought on *ribā* due to its comprehensive coverage of the established juridical view of riba and the detailed responses to queries raised by banking practitioners at the time. Numerous references are made to the Judgement throughout this chapter.

6.1 Approaching the Qur'ān

As outlined in the Methodology chapter, this study approaches the Qur'ān as a book of moral guidance, revealed in the eloquent Arabic of Mecca's great orators and poets.[637] The Qur'ān declares itself a manifest book, reassuring believers that Allah has made clear His signs (*ayāt*) to aid the believer in her quest for guidance. The Arabic word *mubīn* (active participle form IV noun *l-mubīn* / the clear) in its various grammatical forms is used at numerous occasions throughout the Qur'ān.[638]

> These are verses of the Book that makes (things) clear (*al-mubīn*).[639]

This clarity applies to matters of worship, ethics and law. After explaining the law on fasting, the Qur'ān states: 'Thus doth Allah make clear His Signs to men: that they may learn self-restraint.'[640] Similarly, the verse prohibiting gambling and wine concludes with: 'in them is great sin…Thus doth Allah Make clear to you His Signs: In order that ye may consider-'[641] The rules in these verses are linked to nurturing self-restraint and avoidance of sin. These examples show that the Qur'ān does not present rules as arbitrary; rather, it explains the rationale underpinning the rules and alludes to what is required of the believer (self-restraint, reflection or adherence to limits as in Q2:230 pertaining to divorce). The following verses hold paradigmatic value in explaining the

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636 Usmani, 'The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan'.

637 Islahi, Taddabur, Vol 1, 14-17; cf., Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 126.

638 'The Quranic Arabic Corpus' <https://corpus.quran.com/>. The full list of conjugates for the triliteral root *bā yā nūn* are listed at https://corpus.quran.com/qurandictionary.jsp?q=byn

639 Q26:2. Other similar references (not an exhaustive list): Q12:1 'symbols of the perspicuous book'; Q15:1 'a Qur'ān that makes things clear'; Q16:103 'this is Arabic, pure and clear.'

640 Q2:187

641 Q2:219

relationship between revelation, its role as *guidance*, and its realisation as *practice*:

> O people of the Book! There hath come to you our Messenger, revealing to you much that ye used to hide in the Book, and passing over much (that is now unnecessary): There hath come to you from Allah a (new) light and a perspicuous Book, - Wherewith Allah guideth all who seek His good pleasure to ways of peace and safety, and leadeth them out of darkness, by His will, unto the light,- guideth them to a path that is straight.[642]

Specifically in matters of law, the mere acceptance of the Qur'ān as a *mubīn* text does not automatically lead to understanding the wisdom embodied in Qur'ānic teachings. Rather, a believer must search[643] for meaning. The task itself is complicated: the Qur'ān is a text revealed over a millennium ago. A historical text can only be understood through systematic hermeneutic effort. Meaning does not reside in the text alone; the author's intent and the reader's own subjectivities and prior paradigms shape both the process and the outcome.[644] The faith-based acceptance of the Qur'ān as a clear text provides the motivation to engage meaningfully and sincerely in the question to understand the message of this divine guidance. Meaningful interpretation is possible but it will always hold the epistemological status of probabilistic knowledge, imperfect and requiring constant review. The exciting possibility of achieving *effective* clarity – in locating meaning, developing understanding and application (walking the path) – guides the search for the Qur'ānic *al-ribā*[645] in this chapter.

Throughout this process of legal reasoning, the law of *ribā* is approached as *moral-legal*, in keeping with the paradigmatic view of the purpose of Sharī'ah,

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642 Q5:15-6

643 This should be an honest and humble pursuit. 'If one is obligated to perform the *ijtihād*, and is ultimately not responsible for missing the truth, then the emphasis is on the process…a duty of utmost diligence, exertion, and even exhaustion in investigating the sources is mandated.' See Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 34.

644 Abou El Fadl, ibid.; see chapter 'The text and authority.'

645 The terms *al-ribā* and *ribā* have been used interchangeably to refer to the Qur'ānic concept. The juristic development of *ribā al-faḍl* is always referred as such. The word 'usury' is mostly avoided as it holds a narrower sense of 'high interest rates' as understood in post-Reformation Christian canonical law.

which is to guide human beings to salvation through purifying themselves (*tazakkā*).[646]

> It is He Who has sent amongst the Unlettered a messenger from among themselves, to rehearse to them His Signs, to sanctify them, and to instruct them in Scripture and Wisdom,- although they had been, before, in manifest error.[647]

6.2 *Ribā* in the Qur'ān

By the fact of including *ribā* in its narrative, the Qur'ān brings *ribā* into the realm of *dīn* (the moral way of life) - that is, *ribā becomes* a divine concern. This being the case, we must start interpretation from the text of the Qur'ān with the aim to determine the 'authorial intent'.[648] It is recognised by Muslim jurists that it is not possible for human beings to fully understand the authorial intent behind a text. The reader's subjectivities affect the interpretation of a text, hence the most a reader can achieve is suitable interpretation that respects the text and provides good approximation of authorial intent. This task is aided by the integrity of the text itself.[649] The Qur'ān not only considers itself *mubīn*, written in eloquent Arabic, it also claims to be free of discrepancies by virtue of being God's word.[650] In other words, it makes a claim to perfect integrity and 'is demonstrably hostile to whimsical and idiosyncratic determinations of meaning.'[651] The text of the Qur'ān must be the first port of call in the search for law *and* the divine *ḥikmah* underpinning the law.

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[646] See 3.2 for discussion on this, and the importance of avoiding utilitarianism. This purpose of Shari'ah is based on Ghamidi's theory of objectives of religion; see Ghamidi, *Islam, A Comprehensive Introduction,* 80-1.

[647] Q62:2; see also Q2:129 and Q87:14.

[648] I have borrowed this phrase from Khaled Abou El Fadl's work cited frequently in this chapter. Further use of this phrase will be without single quotes. I also share his assumption, as do all Muslim scholars, about the centrality of the text in determining meaning. This is because the Qur'ānic text is the preserved word of God and the best indicator of divine intent. See Abou El Fadl, op cit., 121.

[649] Abou El Fadl, ibid.

[650] 'Do they not consider the Qur'ān (with care)? Had it been from other Than Allah, they would surely have found therein Much discrepancy.' (4:82)

[651] Abou El Fadl, 126.

6.2.1 An intratextual Analysis of the *Ribā* verses

6.2.1.1 The Chronology of the *Ribā* Verses

The Qur'ān mentions *ribā* in four separate chapters. Full verses are stated first, followed by a discussion on chronology and historicity. Citations from Mufti Taqi Usmani are based on the text of the Supreme Court Judgement.[652]

Sūrat l-rūm (Chapter 30 - The Romans)

> That which ye lay out for increase through the property of (other) people, will have no increase with Allah: but that which ye lay out for charity, seeking the Countenance of Allah, (will increase): it is these who will get a recompense multiplied. (Q30:39)

Usmani, Rahman, Islahi and M. Asad are of the view that this is a Makkan chapter. Islahi dates this to 614AD when the Sasanian empire conquered Jerusalem from the Byzantines. He notes that the pagan Arabs rejoiced at the defeat of the monotheistic Romans, followers of Christianity. With morale boosted, the Arabs intensified their campaign against Prophet Muhammad and his message of monotheism.[653]

Rahman also considers this to be the first revelation on *ribā*. Relying on the 'inner evidence of the opening verses',[654] he offers a date range from 611AD to 614AD, which sits within the Byzantine-Sassanian war of 602-628. Asad also dates this Makkan verse to 'between six or seven years before the hijrah...'[655]

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652 Muhammad Taqi. Usmani, 'The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan', 1999 <https://www.albalagh.net/Islamic_economics/*ribā*_judgement.pdf> [accessed 29 May 2018], para 16-35.

653 Amin Ahsan Islahi, *Tadabbur-i-Qur'ān*, Volume 6 (Lahore: Faran Foundation, 2012), 69.

654 Rahman, '*Ribā* and Interest', 3.

655 Muhammad Asad, *The Message of the Quran* <http://www.muhammad-asad.com/Message-of-Quran.pdf>, 840. Asad offers an exposition of *ribā al-jahiliyya* at this point in his commentary; this is discussed under 'Themes' later in this section.

Buckley agrees with Asad's opinion and notes that the verse was revealed '…when Muhammad was still living among a trading community.'[656]

Rahman considers this verse to be a moral condemnation. Like Usmani, he is of the view that this verse does not constitute a *legal* prohibition.[657] Some classical and modern scholars[658] have opted to translate the word *ribā* in this verse as 'gift'; however, this translation has not been accepted by most contemporary scholars, including Islahi and Usmani, who note, respectively, that the literary style (*aslūb*) of the verse and the use of the word *ribā* elsewhere in the Qur'ān does not accommodate the meaning of 'gift.'[659]

Sūrat l-nisāa (Chapter 4 – The Women)

> For the iniquity of the Jews We made unlawful for them certain (foods) good and wholesome which had been lawful for them;- in that they hindered many from Allah's Way;- That they took usury, though they were forbidden; and that they devoured men's substance wrongfully;- we have prepared for those among them who reject faith a grievous punishment. (Q4:160-1)

Rahman does not take this verse into consideration in his paper on *ribā*. Asad also does not delve into a discussion on usury when explaining this verse, however he notes in the introduction to the surah that it is entirely Medinan and was most likely revealed in the '4th year after the hijrah.'[660] Usmani's dating of this verse concurs with Asad's and he considers this as the second revelation on the matter of *ribā*.[661] Further, he notes that the verse may have been revealed prior to most of the Jews leaving Medina by 4 A.H.[662] Islahi does not date the verses but notes that the chapter, Sūrat l-nisāa, is Medinan.[663] Islahi further notes that the *ribā* verse in this chapter sits within the cluster of verses

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656 Susan L. Buckley, *Teachings on Usury in Judaism, Christianity and Islam* (Lampeter: The Edwin Mellen Press, 2000), 187.
657 Rahman, op cit., 3. Cf., Usmani, op cit., para 17.
658 Al-Ṭabarī is an example of an early exegete adopting this view of *ribā* as 'gift'; see Usmani, ibid. In modern times, Mohsin Khan has adopted this view, see https://corpus.quran.com/translation.jsp?chapter=30&verse=39 [accessed 02 September 2021]
659 Islahi, op cit., 69; Usmani, op cit., para 17. Usmani notes that the translation of the term as 'usury' is more *probable*.
660 Asad, op cit., 154.
661 Islahi, Usmani, ibid.
662 Usmani, op cit., para 19.
663 Amin Ahsan Islahi, *Tadabbur-i-Qur'ān*, Volume 2 (Lahore: Faran Foundation, 2012), 245.

150 – 162, which deals with the conspiracies and obstacles erected against the Prophetic mission by the Jews of Medina.[664]

Sūrat āl ʾim'rān (Chapter 3 – The Family of Imrān)

> O ye who believe! Devour not usury, doubled and multiplied; but fear Allah; that ye may (really) prosper. (Q3:130)

This is also a Medinan chapter of the Qur'ān. Rahman, whilst not dating this verse, considers this to be the legal prohibition of *ribā* in categorical terms.[665] Rahman accords 'central' importance to this verse in his conceptualisation of *ribā* as 'an exorbitant increment whereby the capital sum is doubled several-fold, against a fixed extension of the term of the payment of debt.'[666] [667]

Usmani dates this verse to 2 AH, when the Battle of Uhud took place:

> Some commentators have also pointed out the reason why this verse was revealed in the context of the battle of Uhud. They say that the invaders of Makkah had financed their army by taking usurious loans and had in this way arranged a lot of arms against Muslims. It was apprehended that it may induce the Muslims to arrange for arms on the same pattern by taking usurious loans from the people. In order to prevent them from this approach the verse was revealed containing a clear-cut prohibition of ribā.[668]

Asad dates this Medinan chapter to 3 AH and notes that 'some of its verses, however, belong to a much later period…'[669] He further notes that a third of this chapter is devoted to discussing the Battle of Uhud and its implications for the Muslim community. Along similar lines, Islahi notes that this chapter was revealed shortly after Sūrat l-baqarah, when Islam started to become a dominant political force and the People of the Book (Jews and Christians) were no longer able to openly criticise its message without facing repercussions.[670]

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[664] Islahi, ibid., vol 2, 242.
[665] Rahman, op cit., 3.
[666] Rahman, '*Ribā* and Interest', 40.
[667] This study questions the definitional value of this verse, and hence, Rahman's definition; for detail, see 6.5.2.
[668] Usmani, op cit., para 20.
[669] Asad, op cit., 107.
[670] Islahi, op cit., vol 2, 10.

The Battle of Uhud is one of the central themes of the chapter as a test for the Muslim community's devoutly faithful as well as those whose faith could waiver easily. The *ribā* verse is situated within the narrative on Uhud which starts from verse 121 and continues for the rest of the chapter. It is worth noting that the verse prohibiting *ribā* (Q3:130) precedes the verse of *infāq* (charity) in which the Qur'ān is exhorting the Muslim community to turn to charity after the demoralising defeat at Uḥud.[671]

Sūrat l-baqarah (Chapter 2 – The Cow)

> Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever). Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loveth not creatures ungrateful and wicked. Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord: on them shall be no fear, nor shall they grieve. O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly. If the debtor is in a difficulty, grant him time Till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew. And fear the Day when ye shall be brought back to Allah. Then shall every soul be paid what it earned, and none shall be dealt with unjustly. (Q2:275-81)

This is the most detailed set of verses on *ribā*. It reiterates the legal prohibition of *ribā* and outlines the rationale of the prohibition as well as the process to be followed in settling *ribāwi* debts. Both the chronology and the order of revelation of these verses is controversial.

According to Usmani, this was the last set of verses revealed after Mecca had been conquered by Muslims in 8 AH (629-30 AD). The occasion for the revelation of these verses (*sabab al nuzūl*) was the dispute between the tribes of Banū Thaqīf and Banū Mughīrah, whereby Banu Thaqīf demanded the

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671 Islahi, op cit., vol 2, 173-4.

payment of interest on loans given to the other tribe. According to Usmani, whilst the categorical prohibition of *ribā* had taken place much earlier, the annulment of *ribāwi* loans only took place after the conquest of Mecca.

Usmani's opinion is detailed[672] but it is contradicted by the internal evidence of the *sabab* reports, which note that:

> Banu al-Mughirah said, 'Why have we remained the most miserable of men through usury? It has been **forbidden for all the people** except us.'*[673]*

It is not clear from the report whether the phrase 'forbidden for all the people' simply showed a widespread understanding of the illegality of *ribā* after the revelation of Q3:130 in 2AH, or whether this is a reference to the annulment of all *ribāwi* debts at the Ḥajj sermon.[674] If the latter is accepted, this situates the Banū Mughīrah incident in 10AH, the year of the Ḥajj, more than two years after the conquest of Mecca.

Further contradiction is created by a sound Ḥadīth tradition from the Prophet's wife, 'Ā'isha, where she links prohibition of alcoholic drinks with the prohibition of *ribā*. This is dated to 4AH:[675]

> Narrated `Aisha: When the Verses of Surat-al-Baqara regarding usury (i.e. Ribā) were revealed, Allah's Messenger recited them before the people and then he prohibited the trade of alcoholic liquors.*[676]*

Moreover, the exegetes Al-Rāzī and Ibn-Kathīr have cited a report from 'Umar, the second caliph among the *Rāshidūn* (the rightly guided ones), to the effect that the Prophet died before explaining the full meaning of *ribā* because the

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672 See Usmani, *Judgement,* para 23.
673 See full reports (AN6 and AN8) in 6.3 below. My emphasis in bold.
674 A detailed discussion about the Ḥajj Sermon tradition follows in 6.4.4.
675 Rahman, '*Ribā* and Interest', 9.
676 Muhammad Al-Bukhari, 'Sahih Al-Bukhari', Book 65, Hadith 63 <https://sunnah.com> [accessed 11 April 2021].

verses were the last to be revealed.[677] The version of this report found in Masnad Aḥmad is as follows:

> It was narrated that ‘Umar bin al-Khattab said:
>
> The last thing to be revealed was the verse on *ribā*, but the Messenger of Allah passed away and did not discuss it with us. So give up *ribā* and doubtful things [*rībah]*.[678]

The eminent Hanafi jurist Al-Jaṣṣāṣ, whose definition of *ribā* is foundational in Islamic finance literature,[679] also held the same view and concluded on this basis that *ribā* was a *mujmal* (ambiguous) term.[680] Rahman has problematised the reliance on the report from ‘Umar, providing robust evidence in light of the Qur’ān’s claim of perfecting the *dīn* (Q5:3), the contradictions found in Ḥadīth reports and historical evidence, that the *ribā* verses of *sūrat l-baqarah* can be dated to 4 AH (625 AD) and they certainly ‘ante-dated 5 A.H.’[681] His view rests primarily on the report from ‘Ā’isha, quoted above, and a report from Barā’ah bin ‘Āzib which states:

> Narrated Al-Bara [Barā’ah]:
>
> The last Sura that was revealed was Bara'a [Chapter 9], and the last Verse that was revealed was: "They ask you for a legal verdict, Say: Allah's directs (thus) about those who leave no descendants or ascendants as heirs." (4.176)[682]

A similar report is found in Ṣaḥīḥ Muslim, narrated by Abu Isḥāq from the same Barā’ah bin ‘Āzib. This second report gives the same facts but with slightly different wording.[683]

Further, as noted earlier, the Qur’ān states that the religion has been perfected (Q5:3), so the possibility that the Prophet did not fully explain a matter as

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677 Rahman, op. cit., 8.
678 Ahmad bin Hanbal, ‘Musnad Ahmad’, Book 2, Hadith 160 <https://sunnah.com> [accessed 21 December 2021].
679 See Chapter 2 of this thesis.
680 Nomani, op cit., section 1.2, no pagination. See also 5.3.
681 Rahman, op cit., 11; see full discussion 9-12.
682 Al-Bukhari, op cit., *kitāb al-tafsīr*, Book 65, Ḥadīth 127. My additions in square brackets.
683 Muslim ibn al-Hajjaj, ‘Sahih Muslim’, *kitāb al-farā'id*, Book 23, Hadith 14 <https://sunnah.com> [accessed 12 September 2021]..

serious as *ribā*, which invites war from Allah, simply cannot be entertained. Additional historical evidence further corroborates this. The main addressees of Sūrat l-baqarah are the Jewish tribes,[684] most of whom were expelled from Medina in 627AD (5th year of the Hijrah),[685] and had been admonished in Q4:161 for taking usury (the verse has been dated to 4AH as noted above). The *prohibition of usury* had already been revealed by 2AH at the time of the Battle of Uḥud. Lastly, in the Ḥajj sermon in the 10th Hijri, the Prophet formally annulled all *ribāwi* debts at state level by which time a Muslim community was firmly established in Medina. Therefore, it is implausible that the *ribā* verses were not explained by the Prophet. Rather, it is safe to conclude that the latter three groups of verses of *ribā* are clustered within a short period between 2AH and 5AH in the following order: Q3:130 in 2AH, Q4:161 in 4AH and Q2:275-281 in 5AH.

In view of corroborating evidence from the Qur'ān and the historical events mentioned above, as well as the Qur'ānic claim of 'perfection of religion', the report from 'Umar can only be accepted to mean that there were other forms of exploitation that the Prophet had not explained.[686] In other words, the concept of *al-ribā* of the Qur'ān was clear to its addressees.

6.2.1.2 Linguistic Analysis of *Ribā* Verses

While classical and modern exegetical works on *tafsīr* set out the rules for interpretation with the aim to understand the 'authorial intent behind the text,'[687] in the field of jurisprudence, the emphasis shifted to understanding the nature of a legal indicant (*dalīl*), especially how the import and remit of the ruling changed depending on the linguistics of the Qur'ān. The most pertinent category of analysis for *ribā* is that of *mufassar*, *mujmal, muḥkam* and *mushkil* words:

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[684] Islahi, *Tadabbur-i-Qur'ān,* Vol 2. 76.

[685] Philip K. Hitti, *History of the Arabs*, Revised tenth edition (Palgrave Macmillan, 2002), 117. Cf. Rahman, op cit., 11.

[686] Taqi Usmani is of the view that 'Umar's concern in this report was *ribā al-faḍl* and not *ribā al-nasī'a*, the latter falling under the Qur'ānic prohibition. This is a justificatory statement to uphold the status of *ribā al-faḍl*, a category created by later jurists as they attempted to explain *ribā* through Ḥadīth. As such, Usmani's view is not tenable unless one interprets this report as a remarkably prescient statement from 'Umar about the future confusion about *ribā*. See Usmani, *Judgement*, para 64. For a discussion on *ribā al-fadl*, see 6.4.3.

[687] Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 119.

> …the *mufassar* and the *mujmal* – whether the words taken in their context are unequivocal and specific, or ambivalent and non-specific; the *muḥkam* – whether the words or sentences used are inherently clear, beyond doubt, and not open to abrogation; the *mushkil* – whether the words and sentences used are inherently ambiguous or rendered ambiguous by their context…[688]

These categories did not have clear boundaries; rather, jurists differed in their opinions about which words sat in one category or another. Neither did they function as neatly defined repositories of words 'designed to produce canonical results';[689] rather, they functioned to limit vagrant or subjective interpretations by the reader and to create a burden of accountability on the interpreter.[690]

According to Nomani, Muslim jurists through the ages have categorised *ribā* as a *mujmal* (ambiguous) word that requires further clarification from the Qur'ān, the Sunnah and / or Ḥadīth.[691] The developments in exegesis as well as jurisprudence share a commonality: both eventually adopted the epistemological assumption that the Ḥadīth tradition could explain the Qur'ān and its laws. It is this methodological preference that explains the categorisation of *ribā* as a *mujmal* word as well as the almost exclusive juristic focus in seeing *ribā* as a phenomenon in sales rather than loans.

The word *ribā* comes from the triliteral root *r-b-w*. The literal meaning of *ribā* is 'increase.' This word has been used in the Qur'ān as *warabat* – 'to swell' (Q22:5); as *arba* – 'more numerous' (Q16:92); as *rabwatin* – 'a high ground' (Q23:50).[692]

In the Qur'ānic verses pertaining to *ribā*, this word has been used in the following forms:

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688 Abou El Fadl, ibid., 119. Underlined text denotes my emphases. Nomani simply defines *mushkil* as 'difficult' i.e., a word that is difficult to interpret. See section 1.2 in Farhad Nomani, 'The Interpretative Debate of the Classical Islamic Jurists on *Ribā* (Usury)', *Topics in Middle Eastern and North African Economies*, 4 (2002) <https://ecommons.luc.edu/meea/39/> [accessed 24 August 2021], no pagination.

689 Abou El Fadl, ibid., 120.

690 Ibid.

691 Nomani, op cit..

692 Sh. Wahba Al Zuhayli, 'The Juridical Meaning of *Ribā*', in *Interest in Islamic Economics : Understanding Ribā*, ed. by Abdulkader Thomas (New York: Routledge, 2006), pp. 26–54, 26. See also Rahman, op cit., 1.

- Q30:39: *ribān* (usury); *liyarbuwā* (to increase); *yarbū* – will increase. Here, the word is first used in its genitive masculine indefinite form, referring to the increase demanded as usury; the latter two forms are verbs. It is important to note here that the Qur'ān takes a different view of the increase (*r-b-w*) depending on the *type* of increase it is. The first increase is realised 'through the property of (other) people' and becomes forbidden. This first increase sits in the material reality of this world and includes within it the meanings of avarice and short-term gain at the expense of others. Whereas the second 'increase' refers to the great reward from God, bestowed upon those who give in charity *(zakāt)*. The first increase is the forbidden *ribā*; the second increase is the worthy *zakāt*.
- Q4:161: *l-ribā* [(of) (the) usury]. Here, the word *r-b-w* is used in the accusative feminine noun form with the 'l' signifying '*the* usury' or '*the* [practice of] usury.' In this verse, God is admonishing the Jews of Medina for taking *ribā*, which was forbidden to them. The definite form of the noun alludes to the fact that the addressees of the Qur'ān, including the Jews, were familiar with this *ribā*.
- Q3:130: *l-ribā* (the usury). Here the noun is in the accusative feminine form. The noun is definite, indicating that the original audience was familiar with this *ribā*. The word *ribā* is preceded by the prohibitive 'Do not eat.' This verse, therefore, has legal import and falls into the legal category of *ḥukm* (command, in this case a prohibitive one).
- Q2:275: *l-ribā* (the usury); *l-ribā* (the usury); *l-ribā* (the usury). The first instance of usage of this definite noun is in the accusative feminine, followed by the genitive and the accusative again. In each case, the noun of *r,b,w* is used.
- Q2:276: *l-ribā* (the usury); *wayurbī* (and gives increase). Here, the first instance of the word is the definite noun in the accusative; the second instance is the imperfect verb, a conjugate of *yarbū* seen in Q30:39 above. Again, the first increase is the forbidden *ribā*; the second is the increase God has promised as a reward for charities (*l-ṣadaqāti*).
- Q2:278: *l-ribā* (the usury). This is the definite noun in the genitive feminine form.

In each verse, the pattern is consistent. The noun refers to the forbidden *ribā,* a well-known concept of increasing the loan liability, whereas the verb *yarbū* refers to increase that is promised as a reward for charity. *yarbū* in the

Hereafter results from a *decrease* in worldly wealth (sharing through charity) whereas *ribā*, devoid of blessing, results from the desire to increase worldly wealth through wrongfully devouring the property of others. In Q30:39, the Qur'ān informs its audience that the increase is sought through / from / in the property of others (*fī amwāli l-nāsi*).

This linguistic analysis shows that *ribā* was a specific type of increase. As a practice, it was well-known and familiar to the Qur'ān's addressees. Therefore, *ribā* was a *mufassar*[693] word for its audience. This represents a point of departure from both classical and neo-classical categorisation of *ribā* as a *mujmal* (ambiguous word).

6.2.1.3 Internal Context of *Ribā* Verses, Themes and Linkages

This sub-section explores the internal context of the *ribā* verses through the methodology of grouping together of verses adopted by Islahi who is by no means unique in adopting this approach but is the most systematic and consistent across his *tafsīr*. Islahi's approach rests on creating groups of verses based on their *muṭali*b (demands) and linking these groupings back to the *'umūd* (central pillar) of the surah itself. The Urdu word *muṭālib* (plural of *ṭalab*) is etymologically related to the Arabic word *maṭlūb (*pl*. maṭalīb)*, and has within it the meaning of demand, requirement, wish or desire. The *muṭālib*, therefore, are the demands made on the believer in a particular group of verses. The *ribā* verses are analysed below in their group, then the direction of the argument and the *muṭālib* are delineated, followed by notes on key themes.

Sūrat l-rūm (Q30:39)

According to Islahi, the verse of *ribā* in Sūrat l-rūm (Q30:39) sits within the group starting from v30 and ending at v39. The addressees of this group are the

[693] My conclusion echoes Rahman's who noted his disagreement with Al-Jaṣṣāṣ's opinion that *ribā* was a term that had been given a technical meaning by the Qur'ān and this meaning differed from its historical usage (e.g. the term *zakāt* is now a technical term in Sharī'ah referring to a wealth tax at 2.5%). Rahman is of the opinion that *ribā* was simply a historical practice that the Arabs knew well and which was condemned in the Qur'ān due to its exploitative nature. He does not, however, use the interpretive category of *mufassar*. See Rahman, '*Ribā* and Interest', 25.

Prophet and the Muslim community. The key themes and *muṭālib* of this group are as follows:[694]

Turn to the *ḥanīf* (upright) religion > Establish its two main pillars: *ṣalāt* (prayer) and *infāq* (charity) > Charity is for the near of kin, the poor, the wayfarer etc. > The usurious loans you give, looking for increase in the property of others, have no increase with God. But your charity (*zakāt*) has an increase with God.[695]

Contextually, *ribā* is linked to the theme of *infāq* (charity) in this group of verses. God demands the believer to pray and give charity rather than engage in avaricious behaviour that harms others. The *aslūb* (style) of the verse shows that the word *zakāt* is used here in the general meaning of charity, rather than the technical legal (Sharīʿah) meaning of *zakāt* as a wealth tax.

Sūrat l-nisāa (Q4:161)

This verse sits within the group of verses starting from v153 to v162. These verses constitute a set of stern warnings to the *ahl-e-kitāb* (People of the Book – Jews and Christians) whose many transgressions are recounted. One of these transgressions was the taking of usury by Jews, which was forbidden by God in the Old Testament.[696]

After the admonishment in v161, God reminds the Jews of Medina of their iniquity in usurping the wealth of other people through *bāṭil* (wrongful) means. Here, usury is linked to exploitation:

That they took usury > That they devoured people's wealth wrongfully.

Sūrat āl ʿim'rān (Q3:130)

This verse takes the form of a prohibitive command: *do not* eat *ribā*. It appears at the start of the group v130 to v143.[697] The prohibition of *ribā* is stated first, followed by the exhortation to hasten to forgiveness and seek *Jannah* (the

694 Islahi, *Tadabbur*, vol 6, 90-100.
695 My translation.
696 Islahi, Tadabbur, Vol 2, 415-8.
697 Islahi, ibid., 172.

Garden).[698] The means of entering the Garden are spending in charity in times of hardship and ease, restraining anger and exercising forgiveness towards others. Here again, *ribā* and *infāq* (charity) are mentioned together and linked to salvation, in an echo of Q30:39 where prayer and charity were linked to the *ḥanīf* religion and Muslims were exhorted to turn away from *ribā* and practice charity instead.

This verse uses the accusative noun-adjective phrase *aḍʿāfan muḍāʿafatan,* translated as 'doubled multiplied.'[699] There are three possible explanations of the use of this phrase. One, it refers to the specific form of *ribā* practiced by Arabs, where the amount due was doubled by the lender when he agreed to grant more time to the borrower. Two, the phrase is alluding to the phenomenological aspect of *ribā* as experienced by the borrower: the futility of chasing a fast-growing debt. Islahi has chosen this explanation and contrasted this with the use of the word *wasāriʿū*[700] - and *hasten* to salvation – in the same verse. This verse is telling the believer that one of the ways of achieving salvation is to hasten to charity rather than extract fast-growing *ribā* from the needy. Thirdly, the verse has a metaphysical meaning: the swiftly increasing *ribā* does not increase with God; rather, charity multiplies (swiftly) with God and is rewarded generously in the hereafter.

According to Islahi, the Qur'ān repeatedly and consistently sets *ribā* in contradistinction to charity (*infāq* or *ṣadaqah*), adopting the same *aslūb* (literary style) as it does in the *ribā* verses in Sūrat l-baqarah. The Urdu word used by Islahi for this contradistinction is *ḍiddayn,* which carries the connotation of stubbornness and obstinacy.[701] In other words, *ribā* sits in stubborn opposition to charity and this is what makes it a *moral* concern.

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698 Islahi, ibid, 173.

699 See corpus.quran.com for this translation. Muhammad Asad has translated this as 'doubling and re-doubling it [usury].' Asad, *supra*, 139; my addition in square brackets.

700 Islahi, op cit., 177.

701 Islahi, ibid.

Sūrat l-baqarah (Q2:275-81)

The verses on *ribā* are preceded by an extensive discussion (v261 – v274) on the blessings of *infāq*,[702] its nature and purpose.[703] This is immediately followed by a detailed discussion about usury in verses 275 – 283. Verses 282-283 pertain to settling practical matters of debt, hence alluding to the fact that the subject of the overall discussion is lending (debts) rather than present sales or spot barter. This places *ribā* in the realm of lending rather than sales.

The reasoning in verses 275-281 proceeds as follows:

Those who consume usury will be raised on the Day of Judgement as irrational beings > the argument that profit from trade is like *ribā* is irrational > God has permitted trade and forbidden *ribā* > those who have heeded this command should give up what remains of *ribā* > those who continue with this practice are condemned to Hell fire > God destroys *ribā* but increases that which is given in *l-ṣadaqāti* (charities) > Those who have faith and establish *ṣalat* (prayer) and *zakāt* (charity) will neither experience fear nor grief > If you fear God, give up your claims to *ribā* or face a notice of war from God and His Prophet > If you repent, you are entitled to the principal sum > If the borrower is in hard time, give him time to repay or remit the loan as charity.

Verses 282-3 give a detailed procedure for dealing with contracts of debts or future obligations (*bidaynin*) and taking pledges to secure debts (*farihānun maqbūḍatun*):

> O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah Has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord Allah, and not diminish aught of what he owes. If they party liable is mentally deficient, or weak, or unable Himself to dictate, Let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can

[702] Islahi, Tadabbur, Vol 2, 608.

[703] Ziauddin Sardar, *Islam, Reading the Qur'ān - The Contemporary Relevance of the Sacred Text Of* (New York: Oxford University Press, 2011), 189-91. Sardar also points to v261 as the start of the narrative on infāq, culminating at v281 with the discussion on usury.

> remind her. The witnesses should not refuse when they are called on (For evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is juster in the sight of Allah, More suitable as evidence, and more convenient to prevent doubts among yourselves but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear Allah; For it is Good that teaches you. And Allah is well acquainted with all things. If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another, let the trustee (faithfully) discharge his trust, and let him Fear his Lord conceal not evidence; for whoever conceals it, - his heart is tainted with sin. And Allah knoweth all that ye do. If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another, Let the trustee (Faithfully) discharge His trust, and let him fear his Lord. Conceal not evidence; for whoever conceals it,- His heart is tainted with sin. And Allah Knoweth all that ye do.

Contextually, this sits within a long narrative on *infāq*. Once again, *ribā* is placed in opposition to charity rather than trade. The equivalence drawn by the 'merchant-capitalists' of the Quraysh and the Jewish lenders between trade and *ribā* is called out as a fallacy. The believer is exhorted to show leniency towards the borrower and drop the demand for both principal and interest if the borrower is unable to repay. The link between faith, prayer, charity and salvation is established and the believer is promised a great increase (reward) from God for her act of charity.

Rahman is also of the view that the opposite of *ribā* is charity:

> …we should take into account the important fact that, according to the Qur'ān, the opposite of *ribā* is not *bay'* (trade) but *ṣadaqah* (charity). The prevailing confusion about the problem, we submit, was due to *ribā* and *bay'* being considered opposed to each other.[704]

Therefore, in the Qur'ān's internal context *ribā* is the opposite of *infāq*. This is consistently the case in the four chapters where *ribā* is mentioned.

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[704] Rahman, *supra*, 31. For an example of development of an argument against *ribā* based on its opposition to sale, see Maududi, *Sūd*, 110-2.

The diagram below provides an ontology of the key themes and words located in the internal context of the *ribā* verses in the Qur'ān.

Figure 6.2 Thematic Ontology of *Ribā* Verses

6.2.1.4 A Brief Excursus: Internal Context of Usury in the Torah

A brief excursus is necessary at this juncture to emphasise the contradistinction between *ribā* and *infāq* in previously revealed scripture. This excursus has been included because of the Qur'ān's inclusion of *ribā* that was forbidden to Jews (Q4:160-1). Using the *uṣūl* (jurisprudential principle) of *shar' man qablana* (the laws of earlier nations),[705] the indicants in this verse give insight into the concern of the divine in sending ethical and legal guidance to earlier nations The opposition between *ribā* and charity is a consistent feature of divine revelation regarding this moral issue. Exodus 22:25 mentions 'If thou lend money to *any* of my people *that is* poor by thee, thou shalt not be to him as an usurer…'[706] In Leviticus 25:35-6, God says, 'And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him: *yea, though he be* a stranger, or a sojourner; that he may live with thee. Take thou no usury of

[705] See detailed discussion on this principle and *ribā* in Jewish scripture in 4.2.4.
[706] 'The Bible - Authorised (King James) Version'. See Appendix B. All references to the Old Testament have been taken from the same website.

him…' Later in Deuteronomy, God forbids Jews not to lend to other Jews on usury.[707]

In Nehemiah 5, verses 1-5 report Jews lamenting the usury exacted from them by other Jews: with lands and other valuables mortgaged, the poor borrowers were unable to redeem the loans to secure the return of their sons and daughters held in debt bondage. When the lament reached Nehemiah, he declared a debt jubilee and the restoration of all mortgaged assets to the original owners. Proverbs 28:8 states that 'He that by usury and unjust gain increaseth his substance, he shall gather it for him that will pity the poor.' In Ezekiel 18:7-8, God mentions the kind debtor who 'hath not oppressed any, *but* hath restored to the debtor his pledge', fed the hungry and clothed the naked, and kept away from immorality by withdrawing from usury.

Therefore, charity has always formed the implicit and / or explicit context in the scriptural prohibition of usury. God expects believers to exercise concern and kindness to an individual in need, rather than extract a profit from a person in distress or a person of limited means. The above also explains the *familiarity* that is implicit in the Qur'ān's address to the Jews of Medina in Q4:160-1: they knew that *ribā* is opposed to charity and is tantamount to wrongful devouring of other people's property.[708]

6.3 *Ribā* in *asbāb ul nuzūl*

Whilst technically *asbāb ul nuzūl* (occasions of revelation) are a sub-genre of Ḥadīth literature, their epistemological value lies primarily in the field of Qur'ānic exegesis. According to Herbert Berg:

> A *khabar* or *sabab al-nuzūl*, a report about or **cause** of revelation, is an exegetical technique whose main purpose is to explain the meaning of a quranic passage by providing it with the events, person(s), or context that precipitated its revelation.[709]

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[707] This ethnocentric dimension has caused much consternation over the millennia. See Kirschenbaum, supra.

[708] Further, as noted in The Antecedent, the Hebrew word for *ribā* is *marbit* or *tarbit*, drawn from the same triliteral root.

[709] Herbert Berg, *The Development of Exegesis in Early Islam - The Authenticity of Muslim Literature from the Formative Period* (New York: Routledge, 2000), 153. It is incorrect to view these reports as 'causes'; see discussion in 3.2.2.

Some of these reports also offer chronological anchors to Qur'ānic verses or chapters, enabling in turn the process of abrogation of earlier verses by later verses.[710] The *asbāb* are not without controversy. Berg's research focusses on the reports in Al-Ṭabari's *tafsīr* which cite Ibn 'Abbās (as a sample) to establish reliability of *isnād* (chains of narration) overall. Ibn 'Abbās (d. 67-8/686-8) is held in high esteem amongst exegetical scholars and the Muslim community. Berg concludes that the *isnād* which cite Ibn 'Abbās 'as either the exegete or as a transmitter' are not reliable.[711] He further notes that a 'mythic status' was created for Ibn 'Abbās by later scholars[712] and his students mainly narrated reports which used 'haggadic devices'.[713] Berg's scepticism is an echo of the more established Western view of Ḥadīth literature and the origins of Islam, with Goldziher and Schacht on the extremely sceptical end of the spectrum and MM Azami on the non-sceptical end.[714] Berg's definition of *asbāb* as 'causes' is also incorrect. In this study I have adopted the view of Fazlur Rahman and Khaled Abou El Fadl, both of whom acknowledge the value and *potential* of ***asbāb ul nuzul***. For Rahman, this value has not been realised fully because Qur'ānic exegetes tended to focus on the language of the text and did not pay sufficient attention to the 'situational context of a given injunction.'[715]

El Fadl captures the epistemological value of *asbāb* in his definition of *'ilm asbāb ul nuzūl*:

> Science of the occasions and situations for which Qur'ānic verses were revealed and concerned with ascertaining God's original Intent, given human limitations, in order to apply the verse in the formulation of law.[716]

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[710] Berg, ibid., 154.
[711] Berg, ibid., 3.
[712] Berg, ibid., 3.
[713] Berg, ibid., 187. The use of the term 'haggadic' reduces *asbāb* reports to the work of 'wandering story-tellers and pious preachers…enjoyable and edifying.' As concluded by Rippin in Andrew Rippin, 'The Function of Asbab Al-Nuzul in Qur'ānic Exegesis', *Bulletin of the School of Oriental and African Studies*, 1988 <https://www.iis.ac.uk/academic-article/function-asbab-al-nuzul-qur-anic-exegesis> [accessed 6 April 2021].
[714] Berg, ibid., offers a survey of Western scepticism in the second chapter of his book titled '*Ḥadīth* Criticism.'
[715] Fazlur Rahman, *Islam & Modernity* (Chicago: The University of Chicago Press, 1982), 17.
[716] Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women,* 302.

Not only do the *asbāb* reports hold 'halakhic' value,[717] they were also employed by Qur'ānic commentators to study 'the context of the text…but this contextual enquiry was primarily concerned with deciphering the original intent of the Author [God].[718] By bringing to the fore the context of the text, the *asbāb* can enable transcendence: the occasions of revelation do not bind the text in time; rather they indicate the 'historicity of the Qur'ānic text',[719] allowing in turn for a link to be created between the Qur'ānic text and its historical moment.[720] As Mayer notes:

> …might one not nowadays somewhat expand the venerable Islamic exegetical concept of *asbāb al-nuzūl* – i.e. the notion of a 'horizontal', historical context through which the 'vertical', essentially metahistorical, revelation (*nuzūl*) is itself, in practice, expressed?[721]

In the matter of *ribā*, the 'situational context' has been provided by the Antecedent, which lays bare the reality of *ribā* (usurious) lending. As shall be seen presently, the findings in the Antecedent have a discernible echo in the *asbāb* reports on *ribā*. This anchoring of *ribā* in history opens the door to developing the metahistorical, transcendental concept of *ribā* that would in turn offer guidance for Muslims in contemporary times. As El Fadl notes:

> …the very fact that early and late Muslim scholars have always insisted that particular incidents occasioned the revelation of the Qur'ānic verses, points to the historicity of the Qur'ānic text…if we are reading the text for the purpose of drawing normative implications from it, a historical reading is necessary.[722]

This historical reading of the text does not bind the text to the past, rather it enables a more insightful reading. It behoves repeating Rahman's view that using *asbāb ul nuzul* as 'anchoring points'[723] would 'eliminate vagrant interpretations.'[724]

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[717] See Rippin, 'The Function of Asbab al-Nuzul'. In this paper, he critiques John Wansbrough's thesis that the *asbāb* reports hold 'halakhic' value.
[718] El Fadl, op cit., 118. My addition in square brackets.
[719] El Fadl, op cit., 126.
[720] El-Fadl, op cit., 126.
[721] Toby Mayer, 'Review Reviewed Work(s): The Qur'ān and Its Interpretive Tradition . (Variorum Collected Studies Series) by Andrew Rippin', *Journal of Qur'ānic Studies*, 4.2 (2002), 91–104 <https://www.jstor.org/stable/25728078>, 104.
[722] Abou El Fadl, op cit., 126.
[723] Rahman, *Islam & Modernity,* op cit., 143.
[724] Rahman, 144.

There are a handful of *asbāb* reports on *ribā* found in *tafsīr* and Ḥadīth literature. I have chosen to review all the reports to ensure comprehensiveness, listed in the table below.

Table 6.1 *Asbāb ul nuzūl* Reports on *Ribā*

Asbāb report no.	**Full report**	**Sociohistorical information**
AN1	*Malik related to me that Zayd ibn Aslam said, "Usury in the Jahiliyya was that a man would give a loan to a man for a set term. When the term was due, he would say, 'Will you pay it off or increase me?' If the man paid, he took it. If not, he increased him in his debt and lengthened the term for him."*[725]	There is no information available about the circumstances of the lender and borrower. Increase in the length of the term is granted in return for increase in amount of debt due. There is no indication that the initial loan was interest free.[726]
AN2	*Muḥammad b. 'Amr reported to us, he said that Abū 'Aṣim related to him from 'Isā, he from Ibn Abū Najīḥ, who said that concerning the Qur'ānic verses 'O you who believe, do not devour ribā with continued re-doubling', Mujahid said, 'This is the ribā of pre-Islamic days.'*[727]	There is no information available about the circumstances of the lender and borrower. Re-doubling of the debt was a typical practice in the Hejaz at the time of the revelation of the Qur'ān.
AN3	On the authority of Zayd b. Aslam: *"The ribā of pre-Islamic days consisted in its*	There is no information available about the

[725] Imam Malik bin Anas, 'Muwatta', *Kitāb al-buyu',* Book 31, Hadith 1371. <https://sunnah.com> [accessed 11 April 2021].

[726] Fazlur Rahman contends that the first loan probably included interest as that was the prevailing practice in the Hejaz at that time. Rahman, *Riba and Interest, 6.* Rahman, 'Riba and Interest'.

[727] Rahman, ibid., 6-7.

Asbāb report no.	Full report	Sociohistorical information
	doubling and redoubling in terms of cash [in the case of borrowed money] and age [in the case of borrowed cattle].”[728] The process of re-doubling as explained ‘by the son of Zayd bin Aslam (d.136/**754**):[729] *“Ribā in the pre-Islamic period consisted of the doubling and re-doubling [of money and commodities], and in the age [of the cattle]. At maturity, the creditor would say to the debtor, ‘Will you pay me, or increase [the debt]? If the debtor had anything, he would pay. Otherwise, the age of the cattle [to be repaid] would be increased…If the debt was money or a commodity, the debt would be doubled to be paid in one year, and even then, if the debtor could not pay, it would be doubled again: one hundred in one year would become two hundred. If that was not paid, the debt would increase to four hundred. Each year the debt would be doubled.”*[730]	circumstances of the lender and borrower. Re-doubling of the debt was a typical practice in the Hejaz at the time of the revelation of the Qur’ān.

[728] Rahman, ibid., 7. Text in square brackets is Rahman’s.
[729] Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Ribā and Its Contemporary Interpretation*, 2nd edn (Leiden: Koninklijke Brill NV, 1999), 22.
[730] Saeed, ibid.

Asbāb report no.	**Full report**	**Sociohistorical information**
AN4	*It was narrated that 'Umar bin Khattab said:* *"The last thing to be revealed was the Verse on usury but the Messenger of Allah died before he had explained it to us. So give up usury (interest) and doubtful things."*[731]	This report gives information about the chronology of the revelation of *ribā* verses. This report contradicts the chronology of the *ribā* verses and other AN reports.
AN5	*Narrated `Aisha:* *"When the Verses of Surat-al-Baqara regarding usury (i.e. Ribā) were revealed, Allah's Messenger recited them before the people and then he prohibited the trade of alcoholic liquors."*[732]	This report gives information about the chronology of the revelation of *ribā* verses. It contradicts AN4 above. Rahman dates the *Sūrat l-baqarah* verses to '*before* 5 A.H'[733] i.e., between 620-625AD.[734] This dating seems accurate. Liquor was prohibited in 4AH.[735]
AN6 and AN7	In reference to verses 278-9 of *Sūrat l-baqarah*: *Commentators have differed as to the people intended in these verses.*	These reports offer rich sociohistorical information: *Ribā*-based transactions were taking place

[731] Ibn Majah, 'Sunan Ibn Majah', *Kitāb al-tijārāt*, <https://sunnah.com> [accessed 11 April 2021]. See Book 12: Ḥadīth 2362

[732] Muhammad Al-Bukhari, 'Sahih Al-Bukhari', *Kitāb al-tafsīr*, <https://sunnah.com> [accessed 11 April 2021]. H65:63.

[733] Rahman, '*Ribā* and Interest', 11-2. Emphasis in the original.

[734] Abdullah Saeed presents a different view, situating the revelation of *ribā* verses in 8 Hijri. See Saeed, *Islamic Banking and Interest*, 23-4. The chronology has been established above in 6.2.1.1.

[735] Rahman, op cit., 9.

Asbāb report no.	Full report	Sociohistorical information
	Wahidi reports that according to Ibn ‘Abbās, they were sent down concerning two tribes in Mecca, Banu ‘Umayr of the Thaqif and Banu al-Mughirah of the tribe of the Makhzum. Banu al-Mughirah paid usury to Banu ‘Umayr before the conquest of Mecca. Thus when Mecca was conquered, two people came to the governor of the city to judge among them. Banu al-Mughirah said, “Why have we remained the ***most miserable of men*** *through usury? It has been forbidden for all the people except us.” Banu ‘Umayr argued that it was agreed that they retain their interest. The governor wrote to the Prophet concerning this problem and thus God sent down these verses.* *According to ‘Ata’ and ‘Ikrimah, the verses were sent down concerning al-‘Abbās ibn ‘Abd al-Muttalib, the uncle of the Prophet, and ‘Uthman bin ‘Affan, the third caliph. “It was that they lent someone dates. When the time came for the man to pay them back, he said, ‘****I shall not have enough to feed my children if you take all your share.*** *Would you*	between tribes and not just individuals. The tribe in debt complained of misery. Interest due to the lender was abolished when the *ribā* verses were revealed. The second *sabab* report provides information about loans given to individuals by individuals. Crucially, it mentions the *ribā* of ‘Abbās which was a type of *ribā al-jāhiliyya*, abolished by the Prophet at the Ḥajj sermon.[737] The debtor is in difficult times so much so that payment of debt would lead to his children going hungry. Re-doubling of the *remaining amount* of debt is agreed.

[737] See 6.4.4 for detailed discussion about the Ḥajj Sermon.

Asbāb report no.	Full report	Sociohistorical information
	therefore accept half now and postpone the other half, which I shall double for you?' They agreed, but when the time came and they asked for the interest, The Prophet forbade them to do so. They obeyed and received only the capital.[736]	
AN8 and AN9	Al-Wāhidi's *Asbab ul-Nuzul* cites the same reports as above in reference to Q2:278 and 2:280, with a slight change in wording for the first report: *Banu 'Amr ibn 'Umayr and Banu'l-Mughirah, then, went to see 'Attab ibn Usayd who was in Mecca. Banu'l-Mughirah said: '**Why are we the most wretched of all people?** Usury has been cancelled from amongst people, but we still pay it'.*[738] Al-Wāhidi also brings a report from Suddi which mentions Khālid ibn al-Walīd as a lender:	These reports provide sociohistorical information: The theme of misery and wretchedness is repeated as in AN6. Khālid ibn Walīd is also mentioned as a lender to whom large sums of money were owed. Wolf notes that: *"…there were people who had come under the domination of the wealthy through debts, like the dependents of al-'Abbās who*

[736] Mahmoud Ayoub, *The Qur'ān and Its Interpreters - Volume I* (Albany: State University of New York Press, 1984), 273. The above excerpt has been taken from a scanned preview version of the book available at https://books.google.co.uk/books?id=sIXpFtvp2JYC&printsec=frontcover#v=onepage&q&f=false As far as I am aware, these specific *asbāb* reports have not been cited in other research works on *ribā*, even though they offer rich sociohistorical information synchronous with Qur'ānic revelation. My emphases in bold.

[738] Ali ibn Ahmad al Wahidi, *Asbab Al-Nuzul*, tr. by Mokrane Guezzou (Amman: Royal Aal al-Bayt Institute for Islamic Thought, 2008) <https://www.altafsir.com/Books/Asbab Al-Nuzul by Al-Wahidi.pdf>, 28.

Asbāb report no.	Full report	Sociohistorical information
	Said al-Suddi: "This verse was revealed about al-'Abbās and Khalid ibn al-Walid who were partners in the pre-Islamic period. Both of them used to lend others money with usury. ***When Islam came, people owed huge sums of money to them because of usury****. Allah, exalted is He, then revealed this verse, and the Prophet, Allah bless him and give him peace, said: 'Any usurious transaction agreed in the pre-Islamic period is cancelled and the first usury I cancel is that of al-'Abbās ibn 'Abd al-Muttalib' ".*[739]	*had brought them under his sway through usury."*[740] Kister notes that al-'Abbās and Khalid bin al-Walīd were trade partners and 'they both used to lend money for interest; when Islam appeared they had big sums lent for interest…'[741]
AN10	In reference to Q2:280, Al-Wahidi brings the following report: *(And if the debtor is in straitened circumstances...) [2:280]. Said al-Kalbi: "The Banu 'Amr ibn 'Umayr said to Banu'l-Mughirah: 'Give us our capitals and we will spare you the payment of the usury on them'. The Banu'l-Mughirah said: '****We are now in straitened circumstances, please give us some respite***	This report provides clues about the precarity of economic circumstances at the time of the revelation. Repayment of debts depended on timing (harvest) as well as the quality of the harvest (yield). A poor harvest could lead to the borrowers sinking further

[739] Al-Wahidi, ibid., 29. My emphasis.

[740] Eric R. Wolf, 'The Social Organization of Mecca and the Origins of Islam', *Southwestern Journal of Anthropology*, 7.4 (1951), 329–56 <https://doi.org/10.1525/california/9780520223332.003.0008>, 335.

[741] M. J. Kister, 'Some Reports Concerning Mecca', *Journal of the Economic and Social History of the Orient*, 15.1–3 (1972), 61–93 <https://doi.org/10.1163/156852072X00040>, 78.

Asbāb report no.	Full report	Sociohistorical information
	***until the time of the harvest'**. Banu'l-Mughirah refused this request. Allah, exalted is He, then revealed (And if the debtor is in straitened circumstances...)".*[742]	into debt or unable to meet their obligations.
AN11	*Ibn Abi Hatim on the authority of Said ibn Jubair:* *"They used to say that it is all equal whether we increase the price in the beginning of the sale, or we increase it at the time of maturity. Both are equal. It is this objection which has been referred to in the verse by saying 'They say that the sale is very similar to Ribā.'"*[743]	The report links directly to the argument in Q2:275 where sale and *ribā* are falsely equated. *ribāwi* debt was often created through credit sales (e.g., advance payment for a commodity using *salaf* loans).[744] Lenders would use this as an excuse to extract fast gains from a borrower unable to meet his obligation. The increase was demanded at maturity when the borrower probably declared financial difficulty.

The *asbāb* reports above are primarily a site of historical knowledge about the chronology of *Sūrat l-baqarah* verses on *ribā* and the actual practice of *ribā* in the Hejaz, synchronous with the revelation of the Qur'ān. As discussed in The Antecedent earlier, exploitation through personal loans existed in the ancient economy, including at the time of the Israeli prophets. The *asbāb* reports show that amongst the addressees of the Qur'ān *ribā* took the form of doubling the debt at the time of maturity if the borrower was unable to repay the debt as

[742] Al-Wahidi, op cit., 29. My emphasis.
[743] Usmani, *Judgement*, para 51.
[744] See discussion on *salaf* loans in 6.4.5.

promised. The lender seems to have absolute coercive authority in redoubling the full amount of the debt (as seen in AN1-3) or doubling the remaining balance (as in AN7), while the borrower seems to have very little influence in setting or negotiating the terms of the loan.

These reports do not clarify if the original loan was free from interest. Rahman contests Maudūdī's assumption that the initial loan was given gratis on the grounds that the rapaciousness of Arab merchants and Jewish money lenders would not allow them to extend such generosity.[745] Whilst Rahman's conclusion is tenable, the transactions cited in Ḥadīth literature (reviewed below) show that loans were often given as *qarḍ* (a type of gratuitous loan for consumption)[746] to those in need but were later turned into *ribāwi* loans. It seems the lender took up the mantle of philanthropy but immediately discarded it when given the opportunity to make quick gains through usurping the borrower's valuables by doubling the burden of the loan. Therefore, both Maūdudī's and Rahman's assumptions are plausible.

Another important insight from the *asbāb* reports, corroborated by historical sources, pertains to the loans of 'Abbās bin 'Abdul Muṭṭalib, 'Uthmān bin 'Affān and Khālid bin Walīd. These three Companions of the Prophet were wealthy traders and routinely extended *ribāwi* loans. Wolf records the following about 'Abbās's debts:

> …there were people who had come under the domain of the wealthy through debts, like the dependents of al-'Abbās who had them under his sway through usury.[747]

Report AN7 above shows that one of the borrowers from 'Abbās could not return the full loan payment on time. He offered instead to pay up half and double the remaining amount (an interest rate of 50%). The borrower was facing extreme distress: the choice was between returning the loan and feeding his children. This report offers powerful insight into the nature of *ribāwi* loans. The other reports show Banū Mughīrah as a 'miserable' tribe, pleading for

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[745] Rahman, *Ribā and Interest*, 5.
[746] A *qarḍ* loan is the same as the Roman *mutuum* loan (loan of fungibles for consumption).
[747] Wolf, op cit., 335.

leniency until harvest time to pay off the loan. The theme of misery, hunger and constrained choices runs through the *asbāb* reports.

The *asbāb* reports do not shed light on the nature of the loan, whether these were gratuitous loans for consumption or productive loans for agriculture and trade. Ḥadīth reports offer deeper insight into this issue.

6.4 *Ribā* in Ḥadīth

For this study, Ḥadīth reports (other than *asbāb*) are being analysed separately. This is due to two reasons. Firstly, Ḥadīth reports discuss *ribā* extensively but do not, at first appearance, bear resemblance to the Qur'ānic concept of *ribā* as recorded in the *asbāb* reports. The most frequently cited Ḥadīth reports in IF literature pertain to sales. Reports on lending tend to be general in tenor and seem to include all types of lending. Second, even though there is a preponderance of Ḥadīth reports about sales (spot, deferred or barter-like transactions), they are either contradictory or contain very little contextual information. Due to this reason, historical information was appended to some reports to create a meaningful picture of the transaction, as appropriate. *Tarjīḥ* (preference) was given to reports which provided a fuller historical context and met the definition of 'competent' traditions.[748]

As demonstrated earlier in The Subsequent, the established interpretation of *ribā* rests primarily on using Ḥadīth reports to explain *ribā* of delay (*nasī'a*) and *ribā* of excess (*faḍl*). The Qur'ānic *ribā* is considered distinct and is relegated to the past by labelling it as *ribā al-jāhiliyya* (*ribā* of the pre-Islamic period), a category which creates the impression that such forms of *ribā* no longer exist. In the established theory the Ḥadīth-based view of *ribā* is transcendental. This study questions this method and posits a new interpretation of the foundational Ḥadīth reports to align them with the Qur'ānic view of *ribā* so that the Qur'ānic view of *ribā* becomes transcendental.

6.4.1 The Reports from 'Umar

There are two reports cited from the second caliph 'Umar bin Al-Khaṭṭāb. The first one states that the *ribā* verses in *Sūrat l-baqarah* were the last to be revealed and the Prophet passed away soon after, leaving the matter of *ribā*

[748] See Abou El Fadl's opinion about 'competent' traditions in 6.4.4 below.

unexplained. This report cannot be relied upon because its *matn* (content) contradicts the Qur'ān's claim of perfection of *dīn* (Q5:3) as well as other Ḥadīth reports about the chronology of *ribā* verses in Sūrat l-baqarah.[749] This report creates a theological crisis about the mission of the Prophet, yet it was accepted by jurists and used as the basis of the opinion that *ribā* was from the *ayat-al-mujmalāt* (ambiguous verses) of the Qur'ān.[750]

The second report from 'Umar is more detailed and identifies three legal matters which were left unexplained, including *ribā*. Similar to the first report, this second report also contradicts the Qur'ān's claim to perfection (completion) of *dīn* as well as the chronology of *ribā* verses established above. The full report is as follows:

> Narrated Ibn `Umar:
>
> `Umar delivered a sermon on the pulpit of Allah's Messenger, saying, "Alcoholic drinks were prohibited by Divine Order, and these drinks used to be prepared from five things, i.e., grapes, dates, wheat, barley and honey. Alcoholic drink is that, that disturbs the mind." `Umar added, "I wish Allah's Apostle had not left us before he had given us definite verdicts concerning three matters, i.e., how much a grandfather may inherit (of his grandson), the inheritance of Al-Kalala (the deceased person among whose heirs there is no father or son), and various types of Ribā (usury).*751*

Usmani has theorised that 'Umar was in fact referring to *ribā al-faḍl* and not the well-known Qur'ānic *ribā* (*ribā al-jāhiliyya*).[752] This theorisation is not tenable because the category of *ribā al-faḍl* is a later development in *fiqh*, as will be discussed in the next section. The report from 'Umar and another report from Ibn 'Abbās are employed to provide an ontological justification for this category of *ribā*.[753] In other words, it is not possible for 'Umar to be discussing a category of *ribā* that did not exist during his time. The only plausible interpretation of 'Umar's report is that he understood the complexity of *ribā* (the ease with which it can be hidden in different types of transactions) and the report above is the acknowledgement of this complexity.

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749 See full discussion on this report in 6.2.1.1.
750 See full discussion in 5.3.
751 Sahih al-Bukhari, Book 74, Ḥadīth 14
752 Usmani, para 64.
753 See detailed discussion on the six-commodity report and *ribā* al-fadl in section 6.4.3 below.

6.4.2 The Report: *Ribā* is in Credit Only

This report from various transmitters records that *ribā* is only in loans or debts, which are transactions of delay (*nasī'ati*):

> Usama bin Zaid Narrated that the Messenger of Allah said:
> 'There is no Ribā except in credit.'[754]

A further report from Abu Sa'īd Al-Khudrī concludes with the following words:

> لاَ رِبًا إِلاَّ فِي النَّسِيئَةِ
> There is no ribā except when there is [*nasī'a*] delay.[755]

The eminent exegete 'Abdullah bin 'Abbās held the same view: *ribā* is in credit only. Nabil Saleh has discussed this view of *ribā* under the heading 'Other Views on *Ribā*' following a detailed discussion on the matter of *ribā al-faḍl* which pre-occupied Muslim jurists. Saleh notes that:

> Ibn 'Abbās…as well as some of the Prophet's Companions…considered that that only unlawful *riba* is *riba al-jahiliyya* (pre-Islamic *riba*) manifested…by the lender asking the borrower at maturity date: "Will you settle the debt or increase it?"…This **liberal** interpretation of *riba* relies on a Ḥadīth that Ibn 'Abbās has himself reported… "No *riba* except in *nasi'a*"…It is also reported that Ibn 'Abbās retracted later on his earlier interpretation.[756]

It is rather astonishing that the opinion of the earliest Muslims including exegetes of the Qur'an has been labelled as 'liberal.' There is consistent evidence from the Qur'ān, *asbāb ul nuzūl* and authentic Ḥadīth reports pointing to *ribā* as something that emerges or is found in credit transactions. Yet, the idealisation of classical *fiqh* and its conclusions has not only relegated *ribā* of

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754 Al-Nasa'i, 'Sunan An-Nasa'i', *kitāb al buyū',* Book 44, Hadith 132, <https://sunnah.com> [accessed 12 September 2021].
755 Al-Bukhari, *kitūb al buyū'*, Book 34, Ḥadīth 128. My addition in square brackets.
756 Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Ribā, Gharar and Islamic Banking*, 2nd edn (London: Graham & Trotman Ltd., 1992), 34. My emphasis in bold.

the Qur'ān to the periphery, it is also prompting modern scholars to view the opinions of 'leading Meccan scholars'[757] as 'liberal.'

These and similar reports align with the Qur'ānic view of *ribā* as an increase present in transactions of debt or lending (delay) as well as the *asbāb ul nuzūl* reports discussed earlier. In my opinion, these reports offer a succinct definition of *ribā*: it is an increase linked to delay.

6.4.3 The Report on Six Commodities

The famous six-commodities report is perhaps the most oft-cited in the canonical collections although with variation in wording. The version quoted below is from An-Nasa'ī:

> Muslim bin Yasar and Abdullah bin Ubaid who was called Ibn Hurmuz narrated that 'Ubadah bin As-Samit and Muawiyah met at a stopping place on the road. 'Ubadah told them:
>
> "The Messenger of Allah forbade selling gold for gold, silver for silver, dates for dates, wheat for wheat, barley for barley"- one of them said: "salt for salt," but the other did not say it-"unless it was equal amount for equal amount, like for like." One of them said: "Whoever gives more or takes more has engaged in Ribā," but he (sic) other one did not say it. "And he commanded us to sell gold for silver and silver for gold, and wheat for barley and barley for wheat, hand to hand, however we wanted."*[758]*

Vogel & Hayes have quoted the following from Ṣaḥīḥ Muslim:

> Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, equal for equal, hand to hand. If these types differ, then sell them as you wish, if it is hand to hand.*[759]*

Whilst the canonical Ḥadīth literature is almost silent on *ribā al-jāhiliyya*, the above report about *ribā al-fadl* is one of the most oft-narrated on the subject of

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[757] Saleh, ibid., n87.

[758] Al-Nasa'i, *kitāb ul buyū'*, Book 44, Ḥadīth 113. There are over a dozen similar reports in Al-Bukhari.

[759] Frank E. Vogel and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return*, Unrevised (Leiden: Koninklijke Brill NV, 2006), 73.

ribā. The legal scholars of Islam, in keeping with their epistemological approach to Ḥadīth, spent tremendous energy on expounding the complexities created by this tradition.[760] Hence, it is apt that this tradition is explored in full. Economic, historical and linguistic analysis of the report shows that the barter-type exchange referred to in the report is impossible, and the text of the report may have been misreported or misheard. There are numerous reasons for positing this view.

First, according to economic theory, an essential condition for immediate barter to take place is complementarity of needs. A cobbler selling shoes and looking to purchase wheat must meet a farmer selling surplus wheat and who needs to buy shoes. In this hypothetical scenario, the farmer would exchange wheat for shoes. The Ḥadīth report provides no clue as to whether complementarity existed; rather, it suggests that wheat was being exchanged for wheat. This raises an important question as to why anyone would exchange wheat for wheat on the spot. *Fiqh* scholars have assumed that a superior type of wheat could have been exchanged for an inferior type, but this would demand a difference in quantities. The Ḥadīth however insists that the amount must be equal. In reality, such a transaction cannot exist unless a type of wheat was being exchanged for another type but with delay. In other words, this report could be referring to debt (credit sale) created in an exchange of similar commodities with delay. For example, a farmer could be borrowing wheat to feed his family and the lender (seller) could be demanding an additional amount when the debt came due. Without the assumption of delay, the Ḥadīth report does not meet the demands of sound reason. On the other hand, the second half of the report is referring to immediate barter with complementarity of need (silver for gold, barley for wheat). One possible interpretation, therefore, is that the first half of the Ḥadīth is a discouragement of exchange of similar commodities with delay while the latter half is an encouragement of present barter.

Moreover, the report provides no clues about the circumstances of the transaction. If it is accepted that immediate barter between wheat and wheat in equal amounts is improbable,[761] then it is only the presence of delay that would explain such a transaction. In other words, wheat now can be exchanged for similar wheat later as a commodity debt to a villager unable to feed his family or

[760] See Saleh.
[761]'Who would engage in such a transaction?' Vogel and Hayes, op cit., 77.

seeking agricultural input for his farm. Therefore, adding ‘delay’ to these transactions can provide a more logical explanation: that the Prophet is in fact prohibiting *ribā* of *delay* (the Qur’ānic *ribā*) in exchange of commodities.

A further question raises its head: why would the Prophet forbid the delayed exchange of wheat for wheat (equal in amount and quality) when there is no increase in this transaction? In other words, this is a zero-interest loan. A probable answer is that these items are either currency which could fluctuate in value or staple food items required for nourishing families. The categories of items included in this report (fungibles) allude yet again to taking advantage of borrowers in a precarious economy where exploitation was rife and the vagaries of the weather or trade losses could make it impossible for the borrower to return the same amount of wheat on time. Lastly, it is possible that these items were borrowed by those in extreme need but the words of the Ḥadīth report do not offer any clue to the financial standing of the borrower.

Second, the economic reality of barter is very different from its theory. As has been demonstrated in The Antecedent, the assumption in economic theory that barter was characteristic of primordial ancient economies does not hold in the light of anthropological evidence demonstrating that coinage, credit and interest rates have existed for millennia while barter exchanges only emerged in distressed economies.[762] If the types of exchanges assumed by legal scholars of Islam existed, the true form of which is yet to be explicated in this study, then they would need to be analysed in the context of a distressed economy where currency exchange had collapsed. Demanding a profit in debt transactions of food items and currency at a time of distress would indeed be a morally bankrupt course to take.

Third, the complexity of the barter economy is such that it entails huge transaction costs making barter inefficient and occurring mainly in specialist and luxury goods, rendering it a niche economic phenomenon at a time of low money supply, as demonstrated by Caroline Humphrey.[763] In contrast with this research, the frequency with which this report is cited may be reflective of the *popularity* of this transaction rather than its niche existence. Moreover, the items cited in this Ḥadīth and other similar traditions – gold, silver, salt, wheat, barley

[762] The Antecedent outlines Graeber’s hypothesis of distressed economies.
[763] Humphrey, supra.

and dates – are all fungibles and represent currency and staple food provisions in the economy of the Hejaz. If my assumption is correct – that is, the report is referring to *commonplace transactions* of currency and staple foods – then the transactions cannot be immediate barter. It is more likely that wheat was being exchanged for wheat on credit either to meet consumption demands or to provide agricultural input. The historical sketch of the Hejazian economy showed that wheat and barley were imported commodities, more prone to supply problems, whilst salt and dates were available as indigenous commodities. The quality and quantity of gold and silver varied considerably depending on the coinage in use, and coins were used both as medium of exchange and as commodities for the weight of gold or silver they contained. As legal scholars sought to search for the *ratio legis* of the prohibition of *ribā al-faḍl*, Shāfiʿī and Mālikī scholars were particularly occupied by the fact that currency and staple foods were mentioned consistently in the various versions of this report.[764] It is also worth noting that even within the category of food items, wheat and barley were more susceptible to shortages and price fluctuations than dates and salt. Of the latter two, dates would be susceptible to lack of rainfall or drought, whilst salt would be essential for preservation and storage of food items. Given these economic and trade conditions, it would be impossible to conceive of an efficiently functioning barter economy in fungible items, casting even more doubt on any theorisation by modern scholars that this Ḥadīth is about barter.[765]

Rather than accepting the interpretation of classical / neo-classical jurists, it is possible to re-interpret this tradition in the light of the Qur'ān and the history of *ribā*. By assuming the presence of exploitative credit practices in currency and food stuff (fungibles, of which food items are victuals), it is possible to conclude that the Prophet was indeed warning against consumption loans given to the needy. Alternatively, this report is a detailed explanation of the type of credit sale mentioned in AN11, where the amount due to be paid at the time of maturity of the debt was increased (usually doubled). As has also been seen in Judaic law and later in *fiqh*, it is entirely possible to extract *ribā* from credit sales but there would be no *ribā* in immediate barter between two different goods - e.g., dates for wheat – a transaction entirely probable in an economy where commodity exchanges would be common because not every household possessed wealth in the form of coins. In other words, the presence of delay

[764] Saleh, op cit., 18-9.
[765] See Usmani, *supra*, para 58-61.

(*nasī'a*) aligns this tradition with the Qur'ān, making it an example of the *ribā* of the Qur'ān.

The most thorough attempt at reconciling the many contradictions created by this and similar Ḥadīth traditions[766] has been made by Vogel and Hayes who provide the following rationales for the prohibition: 'mathematical equivalency, avoiding commercial exploitation, minimizing commerce in currency and foodstuffs, linking lawfulness of gain to risk-taking; using money and markets to allocate and moderate risks.'[767] Of these, only the avoidance of commercial exploitation is a moral concern, holding the most validity in the framework of this thesis which views *ribā* as a moral-legal matter. The other four rationales have the effect of categorising this report not as one of *ribā* but of *gharar* (speculative gain or gambling, forbidden in Islam), creating an even bigger epistemological and legal conundrum.

Despite the numerous difficulties associated with the interpretation of this tradition, it is possible to put forward three explanations which resolve the complexity of this report. One explanation is offered by Imām Shāfi'ī; he suggests that the Prophet may have been asked about exchanging dissimilar items on the spot, to which he would have replied that *ribā* was only in exchange involving credit.[768] Thus, the Prophet excluded present barter of typical household goods or currencies (assuming complementarity) from the remit of *ribā* and emphasised the point that *ribā* is only in delay (lending or debt). The second explanation, linguistic in nature, is offered by Ghamidi, who also views this report as 'borrowing in barter.'[769] In his opinion, it is possible that the narrator misplaced some words in the narration – *al-waraqa bi'l zahabi* (if you lend silver in exchange for gold) were replaced by *al zahabu bi'l zahabi* (gold in exchange for gold), together with *hā'a wa hā'* (on the spot) - inadvertently creating the meaning that gold must be exchanged for gold on the spot and like-for-like. Ghamidi then provides two versions of the report from Ṣaḥih Muslim. The first version employing the term *al-dhahab bi-l-dhahab* is as follows:

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[766] For example, the Prophet asking Bilal to sell inferior quality dates for cash and then use the cash to buy superior quality dates. See Bukhari, Book 40, Ḥadīth 12.

[767] Frank E. Vogel and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return*, Unrevised (Leiden: Koninklijke Brill NV, 2006), 78.

[768] Rahman, *supra,* 14.

[769] Javed Ahmad Ghamidi, *Islam: A Comprehensive Introduction*, 1st edn (Lahore: Al-Mawrid, 2010), 475.

> If you lend gold, then take back the same type and the same amount of gold; and if you lend silver, then take back the same type and the same amount of silver; for he who gave more or desired more, then this is precisely what interest is.[770]

The second version employs *al-waraqa bi'l zahabi*:

> If you lend gold in exchange for silver, then there is the possibility of interest in this. Similarly, for wheat in exchange for another type of wheat, barley in exchange for another type of barley, date for another type of date. Indeed if the exchange is done on the spot, then there is no harm.[771]

According to Ghamidi, it is due to this error in narrating the report from the Prophet that 'our jurists have erroneously derived the concept of *ribā al-faḍl*...' While Ghamidi dismantles the category of *ribā al-fadl* through this method, he still insists on the established definition of *ribā* i.e., 'a pre-determined increase acquired on a loan' is *ribā*.[772]

The third explanation, posited by this study, divides the information in this tradition into two distinct transactions. The first transaction pertains to *credit sale or lending* of 'like-for-like' commodities (wheat now for wheat later). Commodity lending seemed to be a common practice in the Hejaz. The credit involved in the exchange of 'like' items was nothing other than the type of transaction explained by Zayd bin Aslam's son.[773] Wheat now could be exchanged for a similar type of wheat later with the understanding that if the commodity debt was not settled on time, the lender would re-double it. Alternatively, wheat of poorer quality could be lent with the stipulation to return wheat of superior quality within a set time, hiding *ribā* in this transaction (the higher quality wheat would be more expensive, thus returning a profit to the lender). This transaction is nothing other than an example of *ribā al-nasī'a* (*ribā* of delay) prohibited in the Qur'ān.[774] The second transaction is immediate barter of dissimilar commodities, which can exist given that the condition of complementarity of needs is met. This immediate barter was considered

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[770] Ghamidi, ibid, 476. Here, the word *ribā* in the original report is translated as 'interest', alluding to Ghamidi's opinion of *ribā*.
[771] Ghamidi, ibid.
[772] Ghamidi, ibid., 477, both references.
[773] See AN3 in section 6.3 above.
[774] This independently derived conclusion is similar to that of Ghamidi, ibid.

permissible by the Prophet. Taking into account the research presented earlier about barter, such transactions were uncommon or occurred in times of economic crisis. From an economic point of view, the lending of ‘like for like’ commodities is a *mutuum* loan (*qard*),[775] a gratuitous loan for consumption of fungible goods (all the goods mentioned in this report are fungible). The second half of the Ḥadīth simply acknowledges barter of complementary commodities. Appending this economic and historical information to the report resolves the complexities of this tradition. This historically informed opinion about the six-commodity report is further corroborated by the Ḥadīth reports analysed in 6.4.5 below.

Before concluding this subsection, a brief comment is necessary about the alleged change in ‘Abdullah bin ‘Abbās’s opinion on *ribā al-faḍl*.[776] Tirmidhi reports that:

> Ibn 'Umar and I went to Abu Sa'eed and he narrated to us: 'the Messenger of Allah said - and I heard him with these [two] ears: "Do not sell gold for gold except kind for kind, nor sliver for silver except kind for kind, do not exchange more of one than the other, and do not sell what is not present from them for what is present."
>
> [Abu 'Eisa said:] There are narrations on this topic from Abu Bakr, 'Umar, 'Uthman, Abu Hurairah, Hisham bin 'Amir, Al-Bara', Zaid bin Arqam, Fadalah bin 'Ubaid, Abu Bakrah, Ibn 'Umar, Abu Ad-Darda', and Bilal.
>
> [He said:] The Ḥadīth of Abu Sa'eed, from the Prophet [about Ribā] is a Hasan Sahih Ḥadīth.
>
> This is acted upon according to the people of knowledge among the Companions of the Prophet and others, except for what has been related from Ibn ‘Abbās; he did not see any harm in exchanging gold for gold or silver for silver, more for less, when it is done hand in hand, and he said: "Ribā' is only in credit." Similar it has been related from some of his companions. It has been related that Ibn 'Abbās changed his opinion when Abu Sa'eed narrated it to him from the Prophet. The first view is more correct.
>
> And this is acted upon according to the people of knowledge [among the Companions of the Prophet and others]. It is the view of Sufyan Ath-Thawri, Ibn Al-Mubarak, Ash-Shafi'i, Ahmad, and Ishaq. It has

[775] See 6.6.3.1 for detailed discussion on *mutuum* (*qard*) and *commodatum* (*‘āriyya*) loans in the Hejaz.
[776] Saleh, 35.

been reported that Ibn Al-Mubarak said: "There is no difference over exchange."[777]

There is almost no research available about the factors leading to the change in Ibn ‘Abbās’s opinion about *ribā*. Such a change, however, is highly unlikely, given that many of the Companions of the Prophet considered only *ribā al-jāhiliyyah*[778] to be the only unlawful *ribā*. (It seems the report about the change in Ibn ‘Abbās’s opinion is a justificatory narrative to provide authentication to the category of *ribā al-faḍl,* whose authority was often invoked to lend credence to legal opinions and matters of exegesis.[779]) Various authoritative transmitters have relayed that there is no *ribā* except in delay or credit. The *asbāb ul nuzūl* reports about *ribā al-jāhiliyya* cited above lead to a similar conclusion: *ribā* existed in money or commodity debt. It is more likely that Mujāhid, one of Ibn ‘Abbās’s students,[780] was of the same opinion as his teacher (see AN2 above) and that Ibn ‘Abbās’s authority as a prominent exegete of the Qur’ān was invoked later to strengthen the legal opinion based on the Ḥadīth of *ribā al-fadl*.

The report sheds no light on the circumstances of the borrower or the purpose of the loan. Given the frequent presence of this report in canonical collections, it is possible to hypothesise that *ribā*-based practices often took the shape of commodity debt in sales transactions and the Ḥadīth report is an example of the application of the Qur’ānic law by the Prophet. However, the report does not provide sufficient basis to be used for the purposes of defining, explaining or amending the remit of Qur’ānic *ribā*. Neither is it robust enough to justify the categorisation of *ribā* into its two distinct types.

Usmani’s view that the Ḥadīth from ‘Umar - stating that the Prophet passed away without explaining *ribā* fully - was referring to *ribā al-faḍl* is not tenable. *Ribā al-faḍl* is a category most likely created by later jurists to explain the law of *ribā* they had developed according to their methodological preferences. Seen in this light, the Ḥadīth from ‘Umar could also be a post-justificatory attempt to

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[777] Imam Al-Tirmidhi, ‘Jami Al-Tirmidhi’, *kitāb al-buyū‘*, Book 14, Ḥadīth 41, <https://sunnah.com> [accessed 21 December 2021]. .

[778] Saleh, supra, 34.

[779] This attribution of some traditions and changes of opinion to Ibn ‘Abbās is a controversial matter. Berg gathers the explanations provided by western scholars in Berg, *The Development of Exegesis in Early Islam,* 129-35. Overall, he maintains a highly sceptical view of the traditions attributed to him.

[780] Berg, ibid., 135.

strengthen the jurists' stance on this matter. It seems that Usmani's explanation of 'Umar's Ḥadīth is borne from the modern traditionalists' loyalty to classical legal methodology.

The exact place of *ribā al-faḍl* in the theory of *ribā* is contested. Whilst Islamic finance specialists cite this concept often, eminent jurists of Islam like Ibn Sulāmi have cast doubt on its validity.[781] Even if *ribā al-faḍl* is categorised as a prohibition of *sadd al-dharīʿa* (the blocking of the means),[782] this does not give validity to it as a clear prohibition because it has no basis in Qur'ānic law. Moreover, it is difficult to determine what harm this type of *ribā* would prevent, as Ibn Sulāmi has noted. The principle of *sadd al-dharīʿah* as basis of law is also contested: '...most Ḥanafī and Shāfiʿī jurists rejected the concept of *sadd al-dharīʿah* as a principle of jurisprudence…Mālikī and Ḥanbalī jurists endorsed the principle, but with limitations.'[783]

This study takes a point of departure and posits instead that the six-commodity Ḥadīth is an example of *ribā al-nasīʾa* in *qarḍ* or *salaf* loans of fungibles. Consequently, no further investigation of the *ʿillah* (*ratio legis*) of *ribā al-fadl* will be undertaken in developing the reconstructed theory of *ribā*.[784]

6.4.4 The Report on the Ḥajj Sermon

The report from the Prophet's sermon at the Ḥajj in 10 Hijri explicitly mentions the *ribā* of the pre-Islamic period (*ribā al-jāhiliyya*) with some versions of the report referring to the annulment of *ribā* owed to the Prophet's uncle, 'Abbās bin Abdul Muṭṭalib. Only the relevant excerpts of this long report have been copied below:

It is reported in the Sunan of Abu Dawūd, *kitāb al-manāsik wa'l-ḥajj* (The Rites of Ḥajj):

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781 See 5.1.

782 Abou El Fadl, op cit., 190. Maulāna Maudūdī has used the legal basis of *sadd al-dharīʿah* to justify the prohibition of *ribā* al-fadl; see discussion in chapter 2, and Maududi, *Sūd*, 120.

783 Abou El Fadl, 191.

784 Section 6.5 of this chapter therefore focuses on developing the *ʿillah* and *ḥikmah* of Qur'ānic *ribā*, the *ribā* of lending (credit or delay). The link between the six-commodity Ḥadīth and *qard* loans is explored fully in section 6.4.5.

وَرِبَا الْجَاهِلِيَّةِ مَوْضُوعٌ وَأَوَّلُ رِبًا أَضَعُهُ رِبَانَا رِبَا عَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ فَإِنَّهُ مَوْضُوعٌ كُلُّهُ

…The usury of the pre Islamic period [wa-ribā al-jāhiliyya] is abolished and the first of usury I abolish is our usury, the usury of ‘Abbās bin ‘Abd Al Muttalib for it is all abolished…[785]

Another version of the above report in Abu Dawūd’s *kitāb al-buyū*‘ (Chapter: Regarding the abolition of *ribā*) mentions ‘all claims to usury’ but omits the reference to the usury of ‘Abbās. Importantly, it records the Prophet’s use of the words *lā taẓlimūna walā tuẓ'lamūna* (do not wrong and not you will be wronged), the phrase found in the final Qur’ānic ruling on *ribā* in *Sūrat l-baqarah*:

أَلاَ إِنَّ كُلَّ رِبًا مِنْ رِبَا الْجَاهِلِيَّةِ مَوْضُوعٌ لَكُمْ رُءُوسُ أَمْوَالِكُمْ لاَ تَظْلِمُونَ وَلاَ تُظْلَمُونَ

Narrated Sulaiman b. 'Amr: “...On the authority of his father: I heard the Messenger of Allah say in the Farewell Pilgrimage: "Lo, all claims to usury of the pre-Islamic period have been abolished. You shall have your capital sums, deal not unjustly and you shall not be dealt with unjustly..."[786]

The version of this report in al-Tirmidhi has a slight variation about the *ribā* of ‘Abbās that seems to suggest that the Prophet cancelled *both* the usury (increase) due on his debts as well as the principal amount:

أَلاَ وَإِنَّ كُلَّ رِبًا فِي الْجَاهِلِيَّةِ مَوْضُوعٌ لَكُمْ رُءُوسُ أَمْوَالِكُمْ لاَ تَظْلِمُونَ وَلاَ تُظْلَمُونَ غَيْرَ رِبَا الْعَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ فَإِنَّهُ مَوْضُوعٌ كُلُّهُ

Narrated Sulaiman bin 'Amr bin Al-Ahwas: “…Behold! All Ribā from Jahiliyyah is invalid, for you is the principle [sic] of your wealth, but your [sic] are not to wrong nor be wronged - except in the case of Ribā of Al-‘Abbās bin 'Abdul-Muttalib - otherwise it is all invalid.”[787]

In the present hermeneutical endeavour, this report is critically important for three reasons. First, this authentic report provides the full context in which the Prophet gave his sermon: at the one and only Ḥajj he completed in his lifetime.

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785 Abu Dawud Al-Sijistani, ‘Sunan Abi Dawud’, *kitāb al-manāsik wa'l-ḥajj*, Book 11, Ḥadīth 185 <https://sunnah.com> [accessed 12 September 2021].. This is one of the most comprehensive versions of the sermon. Another detailed report is found in Ṣaḥīḥ Muslim, *kitāb ul-ḥajj*, Book 15, Ḥadīth 159.

786 Abu Dawud, *Sunan,* ibid, *kitāb al buyū‘*, Book 23, Ḥadīth 9.

787 Al-Tirmidhi, op cit., *kitāb al-tafsīr,* Book 47, Ḥadīth 139.

Second, the event of the sermon at Mount ‘Arafāt holds theological value. It has historical echo of the sermons of earlier prophets who also promulgated the key tenets of faith to the gathered and declared that God’s judgement would follow.[788] Moses summoned all Israel and commanded them to ‘love the LORD thy God, to walk in his ways, and to keep his commandments and his statutes and his judgments’.[789] ‘And seeing the multitudes, he [Jesus] went up into a mountain…and taught them [the law].’[790] Prophet Muhammad too spoke to a large gathering of the faithful, declaring the day of the Ḥajj to be a sacred day, exhorting the believers to follow the laws of Allah. This Ḥadīth report captures the widespread promulgation of the law of God sent to Muslims. Third, the Ḥadīth report mentions not just *ribā* but repeatedly links it to *ẓulm* (injustice or oppression) using the exact words of the Qur’ān (Q2:279) - *lā taẓlimūna walā tuẓ'lamūna.* Fourth, the report specifically mentions the loans made by ‘Abbās, which may be seen as the typical *al-ribā.* Fifth, the Ḥadīth reports the declaration of a debt jubilee on that blessed day when the Prophet removed the shackles of debt from the people of the Hejaz, reviving the long historical tradition of restoring freedom and dignity to people through the annulment of debts.[791] Seeing the annulment of *ribā* in this historical paradigm explains the Qur’ānic reference to *fadhanū biḥarbin mina l-lahi warasūlihi* (then be informed of a war from Allah and His Messenger) in Q2:279. Lastly, this report is unique in its mention of the Qur’ānic *ribā* and the rationale of its prohibition.[792] Otherwise, the Ḥadīth corpus is mainly silent on the Qur’ānic *ribā*, a silence that signifies the Arabs’ familiarity with *ribā* and its oppression. Given these reasons, the present study posits the view that the epistemological status of this report is that of a *dalīl* (legal indicant) in the interpretation of *ribā*. Further, the annulment of exploitative loans (jubilee) provides a legal precedent that offers a concrete example of the ‘declaration of war from Allah and His Prophet’ against the usurers.

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[788] Ghamidi notes that the historical importance of these sermons and their locations is recorded in *sūrat l-tīn* (Q95:1-8) where God mentions the Fig and the Olive, i.e., Jerusalem, where Jesus gave his sermon, the Mount of Sinai where Moses was given the Law, and the city of Mecca (the peaceful city around the sanctuary) where the last Prophet of God brought the final revelation; see Ghamidi, op cit., 514.

[789] Deuteronomy 29:30:16.

[790] Matthew 5:1-48.

[791] See the discussion on debt jubilees in The Antecedent.

[792] After I had finished writing this thesis, I discovered Islahi’s methodological note where he states that he found (authentic) Ḥadīth traditions to be the most useful source in matters related to the *ḥikmah* (wisdom) of the Qur’an. This point merits further research, as I have noted in the Conclusion; see Islahi, *Tadabbur,* Vol. 1, 30.

The Ḥajj sermon report is a ‘competent’ tradition. Abou El Fadl defines competency of a tradition (Ḥadīth report) as follows:

> Competence refers not just to the ultimate decision of authenticity of a tradition but to the totality of circumstances that affect the authoritativeness of the tradition…A competence inquiry does not seek simply to reach a judicial-type decision declaring a tradition to be *ṣaḥīḥ* (authentic) or *mawḍū*‘ (fabricated). It is a comprehensive inquiry into the full historical context in order to evaluate the role of the Prophet in a particular tradition.[793]

The Ḥajj sermon was a public proclamation in which the Prophet of Allah played the central role. At this public event, the historicity of which is not contested, he summarised the key tenets of the Islamic faith and law. As the political leader of the Muslim community, he cancelled all exploitative loans, thus ‘declaring war’ on those who use their financial strength to inflict harm on the poor and the destitute. In taking this action, he explicitly linked *ribā* to its rationale of prohibition – *ẓulm*. This report, therefore, has normative authority in the hermeneutic of *ribā*.

6.4.5 The Reports on any Increase on a Loan being *ribā*

There are various reports that state that any increase on a loan is the forbidden al-*ribā*. Most of these reports are in fact opinions of the Companions of the Prophet with similar content. I have mainly relied on the text of the Supreme Court Judgement as source material for these reports.[794]

It is narrated by ‘Ali bin Abū Ṭālib (the fourth caliph):

> ‘Every loan [*qarḍ*] that derives [*jarra*] a benefit (to the creditor) is ribā.’ This Ḥadīth is reported by Harith ibn Abi Usamah in his Musnad.[795]

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[793] Abou El Fadl, 110.

[794] The text of the Judgement cites numerous reports. Only those reports have been selected that hold a foundational role in the traditional theory of *ribā*.

[795] Usmani, *supra*, para. 99 (viii). My additions in square brackets refer to the Arabic words in the report.

The second report is from another companion of the Prophet, Fazalah bin ‘Ubaid, and has been cited in Al-Baihaqī’s Sunan collection:

> Every loan [*qarḍ*] which derives [*jarra*] a benefit is a kind of ribā.[796]

Usmani also cites excerpts from two reports from Imām Mālik’s Muwatta, the first narrated by ‘Abdullah bin ‘Umar and the second by ‘Abdullah bin Masʿūd:

> Whoever advances a loan [*salafan*] must not stipulate except that the principal loan shall be repayable.[797]

> Whoever advances a loan [*salafan*] cannot stipulate in the agreement that he will receive something better than he has advanced. Even if it be a handful of fodder, it is ribā.[798]

After an extensive discussion, Usmani concludes that even though the first report is not reliable, the content of the report, corroboration between the reports as well as the opinion of many companions lend credibility to the opinion that any increase on a loan is *ribā*. Usmani’s conclusion is based on the *uṣūl* of *ghalabāt al-ẓann* (preponderance of evidence)[799] but it is problematic on both methodological and linguistic grounds. In terms of methodology, Usmani seems to have abandoned the traditionalist stance by accepting the content of the report when the *sanad* is not reliable. Linguistically, the translation of these traditions is not accurate. The English word ‘loan’ has been used consistently in the translation even though the traditions use two different Arabic words: *qarḍ* and *salaf*. A historical contextualisation of these terms is required to understand the nuance in these traditions.

Historically, the term *qarḍ* was used for free loans of fungibles for consumption purposes.[800] Both the lender and the borrower understood these to be loans

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796 Usmani, para. 101.

797 Usmani, para 99 (iii). My addition in square brackets to indicate that the report mentions *salaf* loans.

798 Usmani, para 99 (iv). My addition in square brackets.

799 This term is used by Abou El Fadl as an example of the linguistic practice of the juristic community who were cautious about stating opinions as black and white ‘certainties (*qaṭʿ*).’ See Abou El Fadl, 39.

800 Vogel & Hayes categorise *qarḍ* as a gratuitous loan that ‘is repaid with goods of identical description, rather than with the very goods originally borrowed. *Ribā*

without compensation. By demanding profit on these loans, the lender would turn them into *ribā*. In other words, the lender would extract profit from a loan given gratis, changing the terms of the loan when the borrower would be unable to pay. Furthermore, the English translation above does not capture the full connotation of the Arabic words *jarra* (*jarr*) and *wajha min wujūhu ribā* used in Al-Baihaqī's report. The word *jarra* has the meaning of drawing out, dragging, to pull out, to tow.[801] The English word 'derive' used above does not accommodate the nuance of the Arabic *jarra,* because deriving is a neutral term free of any phenomenological meaning, whereas the word *jarra* hints at the extraction of profit through dragging out. Further, the word *wajha* (pl. *wujūh*) has the meaning of façade, face, guise, goal. Both the singular and the plural are used in the *qarḍ* traditions and Usmani's translation of the plural *wujūh* as 'a kind' of *ribā* is inaccurate. The following translations are more accurate:

> Literal translation: *Every free loan, dragged out benefit / profit, of which, cause / objective / goal, from causes / objectives / goals of ribā.*
>
> Translation 1: Every free loan in which a benefit is dragged out / strained / pulled out is one of the causes / objectives of causes / objectives of *ribā*.
>
> Translation 2: All free loans where the profit is dragged out is a cause from the causes of *ribā* / is one of the goals of *ribā*.

As for the term *salaf* in the traditions from Mālik, the explanation of the term is also found in the full report from Mālik, of which only an excerpt was cited in the Supreme Court Judgement. According to Mālik:

> And Malik related to me that he had heard that a man came to Abdullah ibn Umar and said, "Abu Abd ar-Rahman, I gave a man a

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rules require that it be free of any form of compensation, even in kind or services'; See Vogel & Hayes III, 105. Whilst their definition of *qard* has been offered in the perspective of *ribā* rules, historical evidence shows that the Arabs used the word *qard* for free loans. For this, see Abraham L Udovitch, 'Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East', *Studia Islamica*, 41, 1975, 5–21 <https://doi.org/10.2307/1595397>, 10.

[801] Hans Wehr, *A Dictionary of Modern Written Arabic*, ed. by J Milton Cowan, 4th edn (Urbana: Spoken Language Services Inc., 1979), 139. This meaning of dragging, straining or pulling is also found in classical usage, see Edward William Lane, *Arabic-English Lexicon* (London: Willams & Norgate, 1863) <http://www.tyndalearchive.com/TABS/Lane/>, 399.

> loan [*aslaftu rajulan salafan*] and stipulated that he give me better than what I lent him." Abdullah ibn Umar said, "That is usury." Abdullah said, "Loans are of three types:
>
> A free loan [*salafu*] which you lend by which you desire the pleasure of Allah, and so you have the pleasure of Allah. A free loan which you lend by which you desire the pleasure of your companion, so you have the pleasure of your companion, and **a free loan which you lend by which you take what is impure by what is pure, and that is usury.**" He said, "What do you order me to do, Abu Abd ar-Rahman?" He said, "I think that you should tear up the agreement. If he gives you the like of what you lent him, accept it. If he gives you less than what you lent him, take it and you will be rewarded. If he gives you better than what you lent him, of his own good will, that is his gratitude to you and you have the wage of the period you gave him the loan."[802]

A report in Abu Dawud explains how *salaf* loans were created:

> Muhammad or 'Abd Allah b. Mujahid said:
>
> 'Abd Allah b. Shaddad and Abu Burdah disputed over *salaf* (payment in advance). They sent me to Ibn Abi Awfa and I asked him (about it) and he replied: We used to pay in advance (*salaf*) during the time of the Messenger of Allah, Abu Bakr and 'Umar in wheat, barley, dates and raisins. Ibn Kathir added: "to those people who did not possess these things." The agreed version then goes: I then asked Ibn Abza who gave a similar reply.[803]

Salaf loans were understood to be ‘free’ loans an example of which is found in the tradition from ibn ‘Umar. The term also includes the meaning of advance payment for a commodity with stipulated weight and time of delivery, and free hire of property.[804] Translating this term simply as ‘loan’ is inaccurate; a better translation would be ‘free loan’ or ‘advance payment.’ It is also important to note that both traditions about *salaf* loans also mention stipulation. In other words, the loan was advanced as a free loan but the lender then stipulated (demanded) a return on what was originally understood to be a free loan. It is this stipulation that turned the loan into *ribā*.

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802 Anas. *Kitāb al-buyū’*, Book 31, Ḥadīth 1379. My transliteration in square brackets; my emphasis.
803 Sunan Abi Dawud, *Kitāb al-ijārah*, Book 24, Ḥadīth 49.
804 Lane, *Lexicon,* 1408.

This linguistic and historical analysis generates a preponderance of evidence showing that originally free loans of fungibles or hire were being used to extract *ribā* from borrowers. Therefore, more accurate translations of these traditions indicate that the Arabs had a common practice of cheating borrowers by turning gratis loans into interest-bearing loans. These traditions provide excellent insight into the practice of *ribā*. It is immediately obvious that they are in alignment with the Qur'ānic meaning of *ribā* as *ẓulm* (injustice or exploitation) perpetrated by one party on another through the mechanism of lending. On this basis, they can be accepted as competent. An accurate translation also renders the narrations specific rather than general. In Usmani's translation, the emphasis is on the technical form of the transaction (loan), rendering *every loan* with an increase to be forbidden, and strengthening the traditionalist view that *ribā* is any increase *on a loan* and thus the equivalent of bank interest. In comparison, the alternative translations provided above lead to the conclusion that when a benefit is *dragged out* from free loans, they turn into *ribāwi* loans. Therefore, it is incorrect to conclude, as Usmani does, that the Companions were in full agreement with the opinion that any increased amount over the principal was *ribā*.[805] Rather, it is more accurate to conclude that the Companions were in full agreement about *free* loans for consumption or hire which were used to *drag out* profit from borrowers. These examples can be accommodated within the Qur'anic narrative of *ribā*, the revelation to which the Companions 'were direct addresses.'[806]

6.4.6 The Report that both the Lender and the Borrower are Guilty

This Ḥadīth report identifies the parties to a *ribā* transaction. The full text of this report is as follows:

> Ibn Mas'ud narrated:
>
> "The Messenger of Allah cursed the one who consumed Ribā [*ākil ar-ribā*], and the one who charged it [*mūkilahu*], those who witnessed it, and the one who recorded it."
>
> He said: There are narrations on this topic from 'Umar, 'Ali, Jabir [and Abu Juhaifah].
>
> The Ḥadīth of 'Abdullah (bin Mas'ud) is a Hasan Sahih Ḥadīth.*[807]*

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[805] Usmani, para. 103.
[806] Usmani, ibid.
[807] Tirmidhi, *kitāb al-buyū'*, Book 14, Ḥadīth 3. My addition in square brackets.

The same report is found in Sunan Abi Dawud, also narrated from ‘Abdullah ibn Mas‘ūd:

> Narrated Abdullah ibn Mas'ud:
>
> The Messenger of Allah cursed the one who accepted usury [*ākil ar-ribā*], the one who paid it [*mūkilahu*], the witness to it, and the one who recorded it.[808]

This report is considered authentic. Based on the translation above, it seems to assign the same level of culpability to all parties to the transaction. However, during the very first reading a reasonable question arises: why would the borrower be considered equally guilty when, in the light of all the evidence seen so far, including the Qur’ānic narrative on *ribā*, the borrower is someone in distress? Why would a borrower willingly enter a transaction knowing well the Arab practice of doubling and re-doubling the loan on maturity? Ghamidi has undertaken a linguistic analysis of this report and pointed out that the meaning of the Arabic word *mūkilahu* is ‘one who feeds *ribā*.’ This has a different connotation from the phrase ‘gives *ribā*’ which is often found in English translation of this tradition. Ghamidi thus translates *mūkilahu* as ‘one who acts as an agent of the interest-devourer.’[809] This translation is more suitable as it indicates the *unwillingness* of the borrower. It also indicates that the person who ‘feeds’ *ribā* to others is an accomplice of the usurer and hence, the level of culpability assigned to all parties involved in exploitative lending is the same. I have found this translation to be satisfactory.

The multi-layered analysis of the textual sources pertaining to *ribā* – the Qur’ān, *asbāb ul nuzūl* reports and Ḥadīth reports – has yielded important clues about the nature of *ribā* and the sophisticated lending practices of Arabs in 7th century Hejaz. A rather consistent and nuanced narrative has emerged about *ribā* from *within* the recognised sources of knowledge in Islam. The following section moves to juristic reasoning based on insights from this analysis of sources. These insights have been contextualised within the historical sketch that was drawn up in The Antecedent to create a full picture of the practice of *ribā*, finally leading to the theorisation of *ribā*.

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808 Abu Dawud, *kitāb al-buyū‘*, Book 23, Ḥadīth 8. My addition in square brackets.

809 Ghamidi, supra, 475. Ghamidi’s view is not unique. Al-Zuhayli has translated this tradition as: ‘The Messenger of Allah (peace and blessings of Allah be upon him) cursed the devourer of *ribā*, its constituent, the one who acts as witness to it, and one who acts as a notary to it.’ See Al Zuhayli. 27.

6.5 The *ḥikma*h and *'illah* of the Prohibition of *Ribā*

6.5.1 The *ḥikmah*

Earlier in the chapter on methodology, it was noted that the theological doctrine of Ash'arīsm effectively declared redundant any attempt at determining the rationale of legal prohibitions like *ribā*. It befits repeating Al-Rāzī at this point:

> It is not necessary for mankind to know the rationale of duties. Therefore, the prohibition of ribā must be regarded as definitely known even though we do not know the rationale for its prohibition.[810]

Orthodox tradition's continued adherence to Ash'arīsm is problematic. Firstly, it detaches the *'illah* from the *ḥikma*h of laws, a position that clashes with the paradigmatic framework of the Qur'ān. The Qur'ānic framework about the mission of Muhammad and the role of Sharī'ah (law) is outlined in the following verse, which forms part of the prayer of prophet Ibraham as he raised the foundations of the Ka'ba:

> Our Lord! send amongst them a Messenger of their own, who shall rehearse Thy Signs to them and instruct them in **scripture and wisdom, and sanctify them**: For Thou art the Exalted in Might, the Wise.[811]

The Qur'ānic paradigm is based on three key terms in this verse: *l-kitāba* (the Book), *wal-ḥik'mata* (and the wisdom), and *wayuzakkīhim* (and purify them). In the Qur'ān, the noun *kitāb* has the meanings of revelation (Q4:136), decree (Q4:24) and written scripture (Q6:7). The paradigmatic verse above uses the definite form of the noun - *l-kitāba* – to refer to the Qur'ān, a revealed book which includes within it the laws of God. With this law, God has sent *ḥikmah* (the wisdom), the word used as a definite noun to indicate a specific wisdom revealed by God. The word *wayuzakkīhim* is a verb (form II), referring to the desired outcome of understanding the law and the specific wisdom of the law: to purify.[812] The last section of this verse reminds the reader that God is the *l-ḥakīmu* (the All-wise). It means that both the law and the wisdom were revealed

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[810] Saeed, supra, 27.
[811] Q2:129. The Messenger alluded to in this verse is Muhammad, who was from among the children of Ibrahīm's son, Ismaī'l. My emphasis.
[812] See detailed discussion on the purpose of divine law in 6.1.

by God, and it was the responsibility of the messenger to explain both.[813] Coupled with the numerous verses in the Qur'ān where it self-identifies as a *mubīn* (clear, manifest) book, it becomes very difficult to agree with the Ash'arī doctrine that a search for rationale is a redundant enterprise.

Furthermore, if the search for rationale is abandoned, the law itself appears purposeless. Yet, some pondering over the legal verses in the Qur'ān shows that God alludes to the rationale within the verses.[814] In the case of *ribā*, the rationale has been explicitly cited in the final detailed prohibition - *lā taẓlimūna walā tuẓ'lamūna* (do not wrong and not you will be wronged). The same rationale has been used by the Prophet when annulling the *ribā* contracts of *jāhiliyya*, as noted earlier in the interpretation of the Ḥadīth report on the Ḥajj sermon. The doctrinal position based on Ash'arīsm is untenable in view of the *naṣṣ* (textual evidence) from the Qur'ān as well as historical evidence about the mission of the Prophet. Instead, a doctrinal position that views the Qur'ān as offering details of *both* the rule and its *ḥikmah* would fit aptly in the Qur'ānic paradigm. Moreover, it would be a disservice to the Prophet's mission if it were accepted that he did not complete the task of instructing his followers in the laws of God. At the crucial historical moment of the Ḥajj sermon, the Prophet implemented not just the prohibition of *ribā* but also explained the reason for the prohibition and implementation. If there was no *ẓulm* in 'Abbās's loans, he would not have annulled them. Hence, the law of *ribā*, like the other laws in the Qur'ān, is neither purposeless nor quasi-explained.

Just as the Qur'ān linked *ribā* with *ẓulm* in the *revelation*, the Prophet linked *ribā* with *ẓulm* at the time of *implementation* at state level.[815] The rationale for the prohibition of *ribā*, therefore, is to prevent *ẓulm* inflicted on those in financial difficulty by the wealthy and powerful. The noun *ẓulm* has the meaning of injustice and oppression. In verb form I, as used in Q2:279, *taẓlimūna* means to oppress, to wrong. It behoves repeating the relevant verse:

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[813] This summarisation of the framework is based on the opinions of Rahman and Ghamidi about the *moral* role of law; see 3.2 and 6.1.

[814] Examples include the command to fast (Q2:183), linking it to *taqwa* (self-restraint created through increased awareness of God). Similarly, intoxicants are prohibited (Q2:219) because their *ithm* (sin) outweighs any benefit.

[815] See 6.4.4 above, The Report on the Ḥajj Sermon.

> If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly. [Q2:279]

Whilst debt slavery and trafficking are the realities of twenty first century exploitation, The Antecedent brought to fore the kind of exploitation rampant in ancient economies. Debt bondage, loss of valuables (oxen, plough, jewels), losing family members to debt, hunger and humiliation resulted due to non-payment of debt. Later in England, defaulting borrowers were sent to debtors' prisons, often living in degrading conditions.[816] Yet, Islamic finance is devoid of focussed expositions of exploitation through debt in contemporary times. Whilst it is beyond the remit of this study to propose a full theorisation of financial exploitation, a brief conceptualisation is entirely necessary.

At the time of the revelation of the Qur'ān, exploitation through debt was a well-recognised practice with history going back millennia. The merchants of Mecca were not only experienced traders but were also well-versed with financial practices in trade destinations. It is safe to assume that the Quraysh knew the practice of interest-based lending, the earliest records of which are found in Mesopotamia, one of the trade destinations. There is historical evidence demonstrating their use of the *commenda* (muḍarabah) contract, a common form of investment for long-distance trade. It is highly plausible that any spare wealth held by the rich merchants of the Hejaz, whether in the form of gold and silver (coins) or commodities (stored dates), was being used to lend to those in need. *Ribāwi* loans would thus provide an opportunity to make quick gains. In the absence of any regulation, the lender could exact whatever return he wanted. In the Hejaz, re-doubling of the debt at the time of non-payment was the usual practice, as evidenced in the ***asbāb ul nuzūl***. According to Al-Ṭabarī:

> Do not consume ribā after having professed Islam as you have been consuming it before Islam. The way pre-Islamic Arabs used to consume ribā was that one of them would have a debt repayable on a specific date. When that date came the creditor would demand repayment from the debtor. The latter would say, "Defer the repayment of my debt; I will add to your wealth." This is the ribā which was doubled and redoubled.[817]

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816 Andy Wood, 'In Debt and Incarcerated: The Tyranny of Debtors' Prisons', *The Gazette* <https://www.thegazette.co.uk/all-notices/content/100938> [accessed 17 October 2021].

817 Farooq, op cit., 295.

The Qur'ān itself hints at exploitation through *ribā*. The verse below is alluding to loans given by lenders knowing that they will be able to usurp the property of the borrower.

> That which ye lay out for increase through the property of (other) people, will have no increase with Allah: but that which ye lay out for charity, seeking the Countenance of Allah, (will increase): it is these who will get a recompense multiplied. (Q30:39)

Further, the Qur'ān notes in Q2:280 that on some occasions the opportunity for exploitation presented itself when the borrower experienced financial difficulty. Whilst the original loan may not have been exploitative, a rapacious lender would take advantage of a borrower's worsened financial situation and demand increase knowing that the borrower would have no choice but to accept the terms. This is a contingent form of exploitation. Hence, in the Qur'ānic narrative there are two subtly different cases of exploitation. The first is *ab initio*, whereby the lender deliberately offers a loan (or credit) knowing that the borrower cannot repay. In the customary practice in the Hejaz, the lender would then be able to take possession of the borrower's property or person in the highly likely case of debt default. The second type of exploitation is contingent and opportunistic; here the lender takes advantage of an adverse change in the borrower's circumstances and demands an increase, knowing the borrower would not be able to repay. The goal is the same: usurpation of the borrower's property or person. When seen with a historical lens, the Arab practice of *ribā* is similar to the practice of rapine and enslavement seen in ancient Mesopotamia and later in Jerusalem. In both cases of exploitation, an increase is demanded when the borrower is unable to repay. This conclusion is appropriate and tenable in the light of the Qur'ānic revelation, history of lending as well as the *asbāb ul nuzūl* reports. Furthermore, there is evidence in Ḥadīth of the Arab practice of advancing free loans to help borrowers, then demanding an increase from these originally gratuitous loans (*qard* or *salaf*).[818] This shows that the lender had immense power in setting and altering *post-hoc* the terms of a loan. The practice of lending was unregulated, leading to extreme misery for the borrowers.

The language of the Qur'ānic verses on *ribā*, the normative report of the Ḥajj sermon of the Prophet linking *ribā* to *ẓulm*, the annulment of 'Abbās's loans who

[818] See discussion in 6.4.5.

had enslaved borrowers, the lender's power in setting terms of repayment and the harsh consequences of default paint a picture of a highly exploitative praxis of *ribā*. This *ribā* of *jāhiliyya* was a means to exploit those who were already in need or facing financial precarity. This practice was distinct from both trade investment and gratuitous lending. It is for this reason that the Qur'ān challenges the false equivalence set by the Quraysh between *ribā* and trade (Q2:275). Moreover, it is incorrect to view *ribā* as 'any increase on a loan' for three reasons. Firstly, the Qur'ānic linguistic and exegetical context consistently refers to injustice and charity, situating *ribā* within the narrative context of charity and charitable behaviour, in opposition to rapacious behaviour. This also makes it possible to posit that *ribā* was being extracted in situations that demanded a compassionate and charitable response. Second, viewing *ribā* as 'increase on a loan' shifts the focus away from the moral concern of the Qur'ān and turns it instead to the form of the transaction: sale (*bayʿ*) or lending. Such a reductionist view also overlooks exploitation through profit (shareholding, stock dividends and private equity) which is a key driver of inequality in modern times. The *ḥikmah* of prohibiting *ribā*, therefore, is to reduce exploitation of those in financial need by those who possess financial power. In political terms, the prohibition of *ribā* aims to curtail and rebalance the hegemony of the wealthy. Coupled with the redistributive wealth tax in Islam (*zakāt*), the prohibition is an effective means of reducing financial exploitation, cruelty and injustice that have far-reaching and long-term consequences for those who are financially weak.

Therefore, *al-ribā,* as practice, was a specific and well-understood exploitative form of lending to the poor, or those who became poor whilst they were in a state of indebtedness. This exposition of the *ḥikmah* of *ribā* creates a point of departure from classical and neo-classical theory. It is this *ḥikmah* of *ribā*, fully articulated, that has enabled two hermeneutical movements: one, the prohibition of *ribā* moves from the legal category of *indicative inference* to *causative inference*; two, the term *ribā* moves from *mujmal* (ambiguous) to *mufassar* (clear).

6.5.2 The *'illah* (*ratio legis*) of *ribā*

The classical (and neo-classical) theory of *ribā* categorises the word *ribā* as *mujmal* (ambiguous) that requires further evidence to be considered *mufassar*. The reason for this conclusion is the methodological preference of jurists: the process of reasoning employed to explain *ribā* by using a complex and arguably inexplicable Ḥadīth report about the exchange of six commodities. The report is devoid of any historical context, making it impossible to link the reference to *ribā* with the type of transaction mentioned in the Qur'ān that was well-known to the Arabs. Whilst the jurists have made admirable effort in developing the category of *ribā al-faḍl* and explaining the *'illah* (operative cause[819] or reason for the law – *ratio legis*) based on this report, it has only resulted in rendering *ribā* even more ambiguous. My analysis of the report has shown that *ribā al-faḍl* as a category is not tenable and the six-commodity Ḥadīth explains *ribā al nasī'a* (*ribā* of delay or *ribā* of the Qur'ān) in fungible loans for consumption. Therefore, the *'illah* of *ribā* – the only type of *ribā* in this thesis's schema - should be based on the text of the Qur'ān.

As shown earlier, the definite noun *al-ribā* refers to both the practice of exploitative lending and the increase (interest) demanded by the lender knowing that the borrower would find it difficult to repay. It is a broad term that can include varied practices such as high interest loans as well as exploitative zero-interest lending, the latter seen at the time of Nehemiah in the past,[820] and in the case of Nasreen's loan[821] in the present, where increase in the property of others is possible through usurpation of assets. Farooq notes that:

> …the reality is that even at zero interest rate, which would be Qard Hasan or Islamically acceptable loan, debt can be amassed by the borrowing parties and used as an instrument of exploitation by the lenders. For capital-poor or revenue-poor countries, high indebtedness can be financially unsustainable even at zero interest rate.*[822]*

The legal reasoning employed by classical and neo-classical traditional jurists is as follows:

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819 Abou El Fadl, *Speaking in God's Name,* 36.
820 See discussion in 4.2.4 and 4.2.5.
821 See Appendix A for details of this loan.
822 Farooq, op cit., 297.

Ribā is an ambiguous term (mujmal) > the term requires explanation > Ḥadīth includes sunnah and therefore can offer legal precedent > use Ḥadīth text to explain the term *ribā* > the six commodities Ḥadīth is most appropriate > identify *'illah* of prohibition of these six commodities (or those like them).[823]

The above line of reasoning is flawed due to the following reasons. Firstly, it classifies *ribā* as a *mujmal* (ambiguous) term when in fact it is *mufassar.* As demonstrated earlier, the addressees of the Qur'ān were clear about the meaning of *ribā*, and the Qur'ān uses the definite article 'al' with the word '*ribā*', signifying familiarity with this practice. The almost complete silence of the Ḥadīth corpus, barring the few *asbab* reports and the Ḥajj sermon, testifies to this as well: there are no reports in the Ḥadīth corpus where the Prophet has been asked to explain the meaning of *ribā al-jāhiliyya*. Secondly, normative authority was assigned to the six-commodity Ḥadīth to explicate the ambiguous term. Thirdly, the search for the *ḥikmah* of *ribā* was abandoned. The result of these errors is the *generalised* and *expansive* law of *ribā* that forbids any increase on any type of loan, but is unable to accommodate situations like the one outlined in Nasreen's loan which would be considered non-*ribāwi* in the traditional interpretation of *ribā* due to the absence of increase.

The present hermeneutical endeavour has problematised the traditional adherence to the Ash'arī principle and identified the *ḥikmah* of the *ribā* prohibition. Stated plainly, the *ḥikmah* of the *ribā* prohibition is to reduce financial exploitation through lending or credit. This broad conceptualisation can accommodate the inclusion of exorbitant exploitative profits on equity, which is a modern form of debt (capital) given to a company by numerous shareholders. The profits are derived from the surplus created by labourers and machines, and in recent years of ultra-low interest rates, this surplus has created huge returns for shareholders. A particularly egregious form of exploitation through the use of equity is 'vulture' capital, where rich investors pool their resources and lend to struggling countries and businesses, making quick gains in the process. Wealth is extracted via sovereign debt or investment in struggling

[823] See The Subsequent for an explanation of how *ribā* was understood by classical jurists.

companies.[824] The conceptualisation of the *ḥikmah* of *ribā* opens the exciting possibility of developing a causative inference of *ribā*.

Classical jurists categorised *qiyās* (inference) into two types depending on whether the rationale for the prohibition was known or not:

> According to this typology, *qiyās* is of two types, the first of which may be called causative inference (*qiyās 'illa*), and the second indicative inference (*qiyās dalāla*). According to the definition of some theorists, causative inference must be understood as being identical with the inference in which both the *ratio legis* and the rationale (*ḥikma*) behind the rule can be determined, whereas in an indicative inference the ratio can be identified, but without that rationale.[825]

According to Hallaq, the prohibition of wine is an example of the first type because the rationale is determinable: intoxication. An example of the second type is *ribā*, where the rationale is not known[826] or it is disputed.

On the other hand, some jurists gave emphasis to the relationship between *ratio legis* (the reason for the law) *and* rationale, and the rule itself.

> The distinction between them [the two types of inference] lies in the difference of **stating** the ratio legis. In the causative inference, both the ratio and the rationale are stated in such a manner as to create a causal relationship between them and the rule of the case.[827]

Hence, *qiyās 'illah* referred to a type where there existed a causal relationship, explicit or implicit, between the *ratio* and the rationale, and the rule. In *qiyās dalāla*, the *ratio* only 'indicated' the rule.[828]

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[824] Heather Stewart and Ashley Seager, 'Vulture Fund Swoops on Congo over $100m Debt', *The Guardian*, 9 August 2009 <https://www.theguardian.com/world/2009/aug/09/congo>. The human cost of such transactions is enormous.

[825] Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999), 101-2.

[826] Hallaq, 102.

[827] Hallaq, ibid. My addition in square brackets; my emphasis in bold.

[828] Hallaq, ibid.

With this categorisation in view, the pertinent question in the matter of *ribā* is as follows: is there a causal relationship between the *ratio legis* and the (now known) rationale, and the rule itself? Classical and modern traditionalist jurists have posited that *ribā* is any increase on a loan: the presence of increase triggers the rule. In other words, any increase *per se* is exploitative. Thus, they have created a causal relationship between *any* increase and exploitation based on the literal meaning of the word '*ribā*' and the Qur'ānic exhortation to return the principal amount. This reasoning substitutes the *ratio legis* for the rationale. Moreover, in generalising *ribā* to *any* increase, jurists have overlooked the specificity of the Qur'ānic word al-*ribā*, accurately translated as '*a type* of increase' or '*the* increase'. As shall be detailed below, increase per se is not the *ratio legis* of *ribā*.

Classical and modern jurists have derived the *ratio legis* of Qur'ānic *ribā* through the exegesis of Q2:278-9, focusing on the term *ruūsu amwālikum* referring to the original amount of the loan or capital sum:

> O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.

The traditionalist's view that *any* increase on the principal amount is *ribā* leads to the conclusion that all loans with interest are forbidden and therefore any interest income previously received by the lender must also be returned. This exegesis is universal and general, sitting in dissonance with the specific language and the contingent reality mentioned in the Qur'ān: *the* loans which possess 'al-*ribā*' (*takhṣīṣ,* meaning particularisation); *the* debtor who is *now* in hard times (contingent circumstances). A more accurate and consonant exegesis would take account of this *takhṣīṣ* (specificity) in the language of the Qur'ān, leading to the reasonable conclusion that the above verses pertain to the process of settling *ribāwi* debts in a way that the needy borrower is not harmed. The verses are referring either to a debt that was exploitative *ab initio* – the lender knowingly charged interest (profit) from a borrower in financial need - or the debt became *ribā*wi when the borrower's circumstances worsened. In both cases, God demands a charitable and compassionate response from the believer who must abandon any rapacious tendencies and give up what remains of *ribā* or forgive the loan altogether. This *takhṣīṣ* and contingency in

the narrative casts much doubt on the traditionalist's insistence on viewing *ribā* as any and all increase, whether in consumer lending or business loans, equivalent to modern bank interest. It also opens the possibility that not all interest or increase is exploitative; rather it is *the* increase or *the* practice of al-*ribā* which is exploitative.

It must also be noted here that the verses in *Sūrat l-baqarah* do not define *al-ribā*. God does not engage in any definitional argument with the Quraysh; rather, He condemns exploitation and sets out a path for the believer to follow. Due to this reason, it is not possible to establish the *ratio legis* of *ribā* from these verses; however, the verses clearly stipulate the *ḥikmah*: not to commit injustice by exploiting those in need. For hermeneutical purpose, these verses shed light on the contradistinction between *ribā* and *ṣadaqah*, rapacity and charitableness. They also have important legislative value in the process of settlement of debts. However, for a hermeneutic of the *'illah* of *ribā*, further exegesis of the Qur'ānic verses is required.

This thesis takes a point of departure and posits that the legal verses of *Sūrat l-baqarah* pertain to the *process* of dealing with *ribā*wi loans at state and individual level and identify the *ḥikmah* of the prohibition. The definition of *al-ribā* is actually located in the very first revelation on this matter, the verse of *Sūrat l-rūm*. It behoves repeating the verse:

> That which ye lay out for increase through the property of (other) people, will have no increase with Allah… (Q30:39)

The Qur'ān uses the triliteral root of *ribā* ***r-b-w*** multiple times in this verse.[829] A striking feature of this verse is how the same phenomenon, increase (r-b-w), becomes immoral and condemned if it is realised at the expense of others: an increase that grows from, through or in the property of others, thus reducing their wealth and financial wellbeing; whereas a decrease in wealth through charitable giving will be experienced as an increase in the Hereafter. Here, the Qur'ān once again alludes to the experiential: the borrower's helplessness as he sees his wealth reduced or usurped. Further, the Qur'ān sets out *al-ribā* as an inverse relationship between the wealth of the lender and the borrower, depicted in the illustration below. *Al-ribā*, or *the ribā*, is a type of interest-bearing

[829] See section 6.2.1.2 above.

loan or debt that results in increase or growth in the wealth of the lender whilst reducing the wealth of the borrower. Rather than being a mutually beneficial loan, the growth is only experienced by one party *at the expense of* the other. *Al-ribā* is a parasitic relationship. This definition of al-*ribā* precludes mutually beneficial interest-bearing loans like business or agricultural loans that result in economic growth for the borrower (increase in property or wealth), a symbiotic relationship. It is Q30:39 that offers the *ratio legis* of *ribā*: an increase for one party through / in the property of others. This verse also offers a conceptualisation of *ribā* from which an 'exclusive and inclusive definition of *ribā*'[830] can be extracted, the aim of the hermeneutic endeavour in this study.

Figure 6.3 The *al-Ribā* Relationship

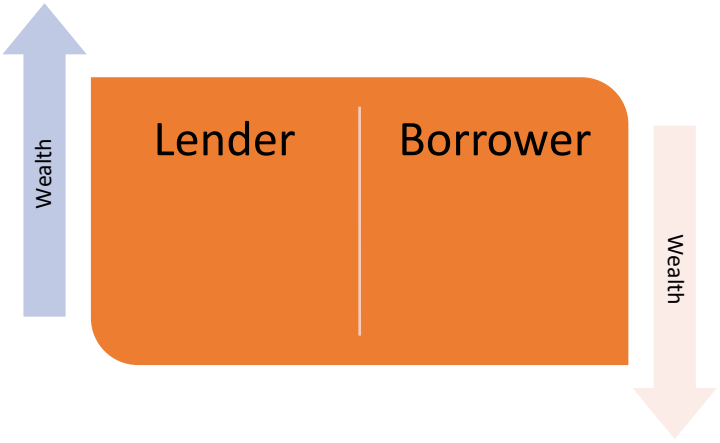
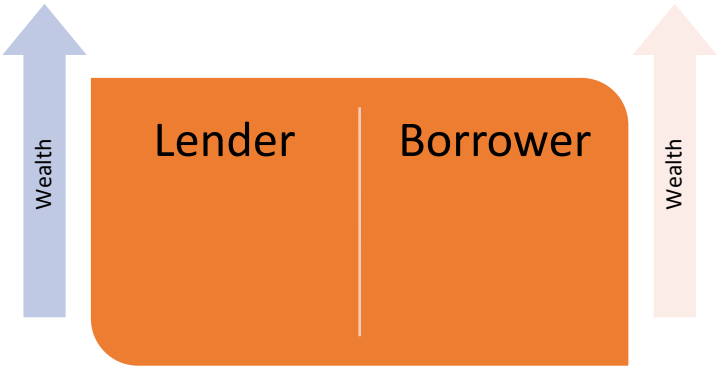


Figure 6.4 The Mutually Beneficial Lending Relationship



[830] Rahman, '*Ribā* and Interest', 21.

Based on the above analysis, it can be concluded that the *ratio legis* - the reason for the law or the operative cause – is an increase that accrues to the lender while the borrower's circumstances are worsening, either due to the terms of the loan itself or because of external factors that have made the borrower insolvent. Had the borrower been thriving with the use of the loan, the lender would be perfectly justified in demanding a return on the funds that have enabled the borrower to prosper. There is a synergetic link between the *ratio legis* of *ribā* – the increase through the property of others – and the rationale. It is this increase that contains within it the element of exploitation and has a causal relationship with the rule that comes into effect, that is, the prohibition of such increase. The demand for profit (on loan or debt) from a struggling or insolvent borrower leads to exploitation, condemned in the Qur'ān.

Q30:39 and Q2:280 also absolve the borrower from responsibility for carrying the sin of *ribā*.[831] The immediate sociohistorical context of the Qur'ān shows that the borrowers were often in dire financial need which drove them to enter *ribā*wi contracts or agree to paying additional sums in return for more time to repay the loan. This absolution or reduced culpability does not hold in the case of borrowers who deliberately cheat lenders.

The table below summarises my view of the Qur'ānic verses on *ribā* from a legal perspective:

Table 6.2 Legal Import of *Riba* Verses

Verses (in chronological order)	**Meaning and legal import**
Q30:39	This verse provides the *'illah* of *ribā* (increase through the property of others). For juristic purposes, this verse sets out the definition of *ribā*.
Q4:160-1	This verse includes the Jewish practice of exploitative lending as *ribā*. It links the prohibition of *ribā* to the long history of oppression and injustice in lending practices. This verse is an invitation to

[831] Hence giving credence to Ghamidi's translation of Ibn Mas'ūd's tradition about the culpability of the parties to the transaction; see 6.4.6.

Verses (in chronological order)	**Meaning and legal import**
	bring historical context into the Qur'ānic narrative.
Q3:130	This verse refers to the specific practice of *al-ribā* amongst the Arabs at the time of the revelation of the Qur'ān: doubling and redoubling. The experience of the borrower – the futility of trying to settle a swiftly increasing liability – is also captured by this verse. This verse also has legal import of a prohibitive command: '*do not* devour usury.'
Q2:275-283	This set of verses have legal import: they forbid *ribā*. The detailed narrative explains the process of settling *al-ribā* loans. It sets out the rights of the lender and borrower. It explains the rationale of prohibition. It exhorts the lender to act with compassion in a situation that demands a charitable response. A full write-off of the loan is given the status of charity earning reward from God. The verses give authority to the state to take action against usurers. Prophet Muhammad, as head of state, took such an action by declaring a debt jubilee at the Ḥajj Sermon.[832] The last two verses set guidelines for the process of securing a pledge against a loan, establishing the debtor's right to dictate the terms of the pledge and encouraging parties to the transaction to put the contract in writing.

The above juristic reasoning places *ribā* in the category of *qiyās 'illah* (causative inference) where the rationale has been made explicit by the Qur'ān and the Prophet (*lā taẓlimūna walā tuẓ'lamūna*). The *ratio legis* and rationale, together,

[832] The debt jubilee has special significance in the case of egregious cases of *al-ribā*. See the application of theory in the case of personal loans (section 6.6.5.1).

have a causal relationship with the rule (law) prohibiting *ribā*. The mere presence of increase does not trigger the rule, rather the transaction itself must lead to exploitation or include an element of exploitation. Therefore, the *'illah* of the prohibition is the unjustified or unfair demand for increase from a party unable to provide such increase without suffering serious financial harm. Al-*ribā* transactions lead to an increase in the wealth of the lender at the expense of the financial health of the borrower. In the case of interest-free usurious loans, the lender exercises his power to confiscate the borrower's assets or deprive him of his freedom. This *'illah* is consonant with the *takhṣīṣ* in the term *al-ribā* which God chose not to explain in *Sūrat l-baqarah* because the addressees of the verse knew with full clarity the meaning of *ribā*.

6.6 The Reconstructed Theory of *Ribā*

Before taking the final step to reconstruct *ribā*, the issue of transcendentalism of the Qur'ān must be broached. This is so the juristic reasoning developed above does not undermine itself by becoming calcified in the sociohistorical circumstances of 7th century Hejaz. If the meaning making enterprise is to guide understanding today, it must be effective in enabling the fusion of horizons and consider the question of application in modern times.

6.6.1 The Transcendental Meaning of the *Ribā* verses

Despite the dominant Islamic tradition's insistence on the uncreatedness of the Qur'ān, Muslim jurists and exegetes have always accepted that the Qur'ān was revealed in the language spoken by the Quraysh in 7th century Hejaz.[833] Moreover, it has already been detailed in the Methodology chapter that the revelation of the Qur'ān itself was a historical event. The challenge at this point is to extract transcendental meaning from the historical *ribā* to inspire our efforts at reducing financial exploitation in our time. Dr El Fadl notes:

> … if we are considering a text with a Divine element to it, studying the text in its historical moment is part of recognizing its integrity. However, part of acknowledging the integrity of the text is to recognize that it has a continuing and persistent life. If God is truly speaking to all ages and generations, the text of the Qur'ān cannot be understood to be limited to a historical context.[834]

[833] See Islahi, *Taddabur*, Vol. 1, 17.
[834] Abou El Fadl, ibid, 126.

The Qur'ān transcends its historical context by employing a linguistic practice where the textual indicators (*dalīl naṣṣi*) guide the way for the jurist.[835] When the Qur'ān discussed *ribā* it was addressing its immediate audience, the Quraysh and the People of the Book who perfectly understood the practice of exploitative lending in society. Although the Qur'ān explicitly refers to the Hejazi practice of *al-ribā* - doubling and re-doubling - the language of the verses holds within it the possibility to transcend the immediate context. In the matter of *ribā*, the Qur'ān itself provides an example of such transcendence when it refers to the *ribā* of the Jews. In Q4:161, the wrongdoing (*fabiẓul'min)* of the Jews in their practice of *ribā* is linked to eating the wealth of others wrongfully (*bil-bāṭili).* There is a gap of two millennia between Moses and Muhammad, long enough for society to evolve new ways of trade. The *ribā* practices during the time of Israeli prophets differed from the *ribā* practices of the Arabs, but in their essence these were lending or debt transactions used to exploit those in need. In both instances, the Qur'ān links *ribā* to *zulm* and mentions the usurpation of the borrower's wealth. This is a striking example of transcendence in the Qur'ān. From a hermeneutic perspective, it is the rationale of the rule that provides the key anchor in enabling this transcendence.

As eternal guidance to all mankind, the Qur'ān's primary concern is moral. The Prophet was tasked to explain the law and the *ḥikmah* (Q2:129). The mechanism of the transcendence is the link to *ḥikmah* (rationale of laws).[836] The *ḥikmah* of the prohibition of *al-ribā* is to reduce injustice by eradicating exploitation through lending. This *ḥikmah* will remain relevant and transcendent across time. The task for future readers of the Qur'ān will be to identify unjust lending practices. In other words, the practices of *ribā* may change and become more sophisticated, but the outcome (or consequence) will remain the same across time.

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[835] Non-textual indicators like *'urf* (custom) can also guide juristic legal reasoning, however, Islamic jurisprudence has always assigned the highest authority to textual indicators, an *uṣūl* I accept and agree with in the case of the Qur'ān. This is because the Qur'ān is a fully preserved text available to us and future generations of Muslims as a source of guidance.

[836] It is outside the remit of this thesis to develop a theory of the transcendental in how meaning is created. The above is my hypothesis based on the indicants in the *ribā* verses.

6.6.2 From the Specifics of the Past to the General

The interpretive endeavour has so far resulted in completing the first movement in the Rahmanian-Gadamerian conceptual framework of this thesis. Specific details of *al-ribā* as unjustified increase (interest) demanded in a loan or debt, and *al-ribā* as the practice of exploitative lending have been delineated above. Furthermore, the general indicators in the Qur'ān have also been identified. The table below summarises these findings:

Table 6.3 Specific and General Indicators in Ribā Verses

Verse	Specific indicators	General indicators
Q30:39	- *Ribā* (indefinite noun) is a type of increase that is extracted from the property of the borrower, hence reducing his property (wealth). The noun '*ribā*' is *khāṣṣ* because it is a growth (*liyarbuwā)* linked to a decrease in (the) wealth (of) people (*amwāli l-nāsi).*	- *Al-ribā* is the opposite of charity (*zakātin*) - *Al-ribā* grows but charity grows manifold.
Q4:160-1	- Jews were forbidden from consuming *al-ribā* (definite noun, *khāṣṣ*) but they did not heed this prohibition. *Al-ribā* is tantamount to wrongfully (*bil-bāṭili*) devouring other people's property. The *takhṣīṣ* of *al-ribā* exactly echoes Q30:39.	- *Al-ribā* has a long history (from antiquity). This long history is relevant to the Qur'ānic narrative on *al-ribā* and includes all the historical practices of *al-ribā* that deprived people of their wealth and freedom.
Q3:130	- Reference to the specific practice of *al-ribā* at the time of the revelation of the Qur'ān: doubled and multiplied *(aḍʿāfan muḍāʿafatan).*	- The liability of a borrower trapped in an *al-ribā* loan grows very quickly, making it impossible for him to repay. - The lender should refrain from demanding exorbitant

Verse	Specific indicators	General indicators
		increase from a borrower in need. - The lender should refrain from setting exploitative terms for a loan.
Q2:275-83	- *Al-ribā* (definite noun) does not need to be explained to the addressees of this verse because they fully understand this practice. - The demand for profit above the principal amount due on historical *al-ribā* loans was to be withdrawn and no new loans were to be made.	- The scenario of legitimate, mutually beneficial trade is distinct from the scenario in which a borrower is experiencing financial difficulties (trade is not like *al-ribā*). - The situation in which a borrower is struggling calls for a charitable response. - The state can take steps to deal with financial exploitation. - *Al-ribā* is exploitative (*ẓulm*). - Justice must be ensured for both the lender and the borrower. - Contracts of debt that involve pledges should be recorded in writing.

Based on this analysis, a set of general principles have been drawn to aid in theorisation, application and policymaking.

1. *Al-ribā* emerges in transactions of lending or credit.

2. *Al-ribā* is the opposite of charity. It is demanded in situations which require a charitable response.

3. *Al-ribā* is a moral concern with implications (and application) in the economic milieu. Injustice, exploitation, and harm are necessary elements of al-*ribā*. It is a practice whereby powerful lenders enrich

themselves by extracting wealth from a needy borrower or one who is facing difficulties.

4. A *ribā* loan only enriches the lender, while the borrower experiences loss of wealth and assets. As a result of this *takhṣīṣ* (particularisation) in the type of loan referred to in the Qur'an, mutually beneficial loans are excluded from the prohibition of *ribā*.

5. The stipulation of increase on a loan (interest) must be justified and fair. Demanding an increase from a borrower who is struggling to meet consumption needs (food, clothing, shelter, health crisis), has entered insolvency, facing a temporary personal or business crisis, is unjustified.[837] An interest-bearing loan becomes *ribāwi* when the boundary of 'justified demand for an increase' is crossed. A zero-interest loan becomes *ribāwi* when a valuable asset is pledged and such a pledge causes harm to the borrower.[838]

6. High interest loans make it extremely difficult for the borrower to repay the loan and are thus *ribāwi* due to their possessing the attribute of *aḍʿāfan muḍāʿafatan* (doubled multiplied). Compounding of interest also falls under this prohibition.

7. Justice should be ensured for the lender and the borrower. Many a times, borrowers cheat lenders by deliberately delaying repayment. If the borrower is sufficiently solvent to pay back the principal on a *ribāwi* loan, this should be returned so that the lender does not lose his wealth. The lender is entitled to demand the principal back but this demand should be withdrawn (or the liability reduced) if the borrower is in severe financial distress. Here, the legal basis of *damnum emergens*[839] and *lucrum*

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[837] For instance, loss of crop yield due to draught.

[838] The crisis at the time of Nehemiah (The Antecedent, supra), and Nasreen's loan (Appendix A, infra) in modern times, are examples of this.

[839] The borrower's failure to repay the loan can lead to financial problems for the lender. The Latin term *damnum emergens*, recognised by Christian scholastics in their discussions on usury, refers to 'legitimate compensation for loss to capital.' See Constant J Mews and Ibrahim Abraham, 'Usury and Just Compensation: Religious and Financial Ethics in Historical Perspective', *Journal of Business Ethics*, 72.1 (2007), 1–15 <https://doi.org/10.2307/25075354>, 4. See also Buckley, 120-2.

cessans[840] should be considered when legislating for lender and borrower rights. The Qur'ān explicitly states the lender's entitlement to the principal amount of the loan. This indicant should guide the legislator and policymaker to consider reasonableness and fairness to ensure there is no *ẓulm* against the lender.

8. Types of lending which force a borrower into destitution, humiliation and slavery represent egregious cases of *ribā*.

9. The state can take strict actions against those who lend on *ribā*. In egregious cases of *ribā*, the state can declare a debt jubilee to cancel such loans completely and return pledged assets to original owners. Egregious cases of *ribā* such as debt slavery can be persecuted under criminal law and breach of human rights.

6.6.3 The Definition and Theory of *al-ribā*

The Qur'ānic definition of *al-ribā* is an increase (interest or profit) demanded on a loan or debt which results in reducing the property of the borrower (person, business enterprise, tribe, nation-state). Theoretically, *al-ribā* represents unjustified or unfair increase demanded and extracted by lenders in situations where the borrower is unable to meet this demand. A *ribāwi* loan is exploitative *ab initio* or it may become exploitative when increase is demanded from a borrower who is experiencing financial distress or stagnation in profits.

Al-*ribā* can exist in zero-interest, low interest and high interest loans:

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[840] This refers to opportunity cost to the lender. 'By handing over money to another the lender deprived himself of the gain he might have made in various ways *(lucrum cessans).*'; see Buckley, ibid. Islamic law also recognises opportunity cost. Udovitch cites Sarakhsī, 'An object is sold on credit for a larger sum than it would be sold for in cash,' and explains that 'For, while the difference in the price for which one sells on credit and the price for which one sells for cash does not formally or legally constitute interest, in the view of some early legists it does fulfil, from the point of view of its economic function, the same role as interest by providing a return to the creditor for the risks involved in the transaction, and compensating him for the absence of his capital.' See Abraham L Udovitch, 'Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East', *Studia Islamica*, 41, 1975, 5–21 <https://doi.org/10.2307/1595397>, 9.

- A zero-interest loan becomes *ribāwi* when it is deliberately utilised to usurp valuables or property from the borrower, or when a pledge of a valuable item leads to harm for a borrower.

- A low interest loan becomes *ribāwi* if the borrower is unable to meet the obligation due to change in her circumstances. At institutional level, a low-interest sovereign loan can become *ribāwi* due to the conditionalities imposed on the borrowing nation.

- A high interest loan, like payday lending, is easily recognisable as *ribāwi* (in modern parlance, such loans are labelled 'usurious'). These loans are extremely difficult or impossible for the borrower to repay. Borrowers enter such agreements in times of significant difficulty or emergency.

Al-ribā can lead to financial loss (or deepening of losses), stress and ill-health of the borrower. In egregious cases, it results in loss of dignity and personal freedom.

The demand for al-*ribā* becomes unjustified either because of the borrower's initial or changed circumstances (if the debtor is in hard times), through setting oppressive terms and conditions (e.g., doubling and redoubling of the liability), or due to the coercive power of the lender accepted in law or social custom. **The presence or absence of interest is not the determining factor in the matter of *al-ribā*;** rather, the overall context of the loan is crucial. Specifically, the following aspects of the transaction require full investigation before any conclusion is drawn regarding the *ribāwi* nature of a loan:

- **The terms and conditions of the loan.** If there is significant asymmetry in power so that the terms are dictated by one party, then the loan is likely to be *ribāwi.*
- **The financial circumstances of the borrower and the lender.** If the borrower is asking for a loan to make ends meet, then any demand for a return (interest) is unjustified. Paradoxically, in institutional forms of lending under modern banking, small lenders (households) are often deprived of vast financial gains made by large corporations (borrowers)

using the accumulated capital provided by the lenders.[841] In such situations, a mechanism for adjusting the rates of interest is required.

- **The purpose of the loan,** whether it is intended to help someone in financial need or intended as an investment opportunity in a productive venture.
- **The process of settlement.** If the safeguards for debt settlement are insufficient, for instance, weak bankruptcy protection or aggressive debt collection practices, a loan can become *ribāwi* even if it was originally a legitimate loan. The state and financial institutions can play an important role in strengthening these safeguards to minimise distress for the borrower during this difficult process, balancing this with the right of the lender to recover the loan amount.

The Qur'ān sets *ribā* in opposition to charity. From this, it is valid to infer that *ribā* is demanded in situations that require a humane and charitable response. Such situations are distinct from situations where business-like decisions need to be made about potential revenue growth, rates of return and market share. Financial dealings that require philanthropy are distinct from financial dealings based on economic potential of a productive venture. It is this distinction that the merchant-capitalists of Mecca were deliberately trying to blur. This distinction is so obvious that God did not engage in an argument to refute this false equivalence, stating instead that the usurers had lost their ability to see things rationally because cruelty and greed had clouded their reason. Trade is not like *ribā*: the former results in mutual benefit to the parties to the transaction while the latter enriches one and harms the other. The link to charity further cements the idea that at the time of the revelation of the Qur'ān, these harmful loans were mostly taken out by borrowers in dire need, otherwise, no borrower would willingly enter a lending agreement that carries such adverse consequences for him.

6.6.3.1 Broadening the Remit of *al-Ribā* through *Qiyās*

Earlier in The Antecedent, it was shown that the institution of the 'household' in ancient and medieval economy differed from the modern household. Most ancient households were consumer-producer units, selling surplus agricultural produce or manufacturing goods like leather, baskets, carpets, oils and silks for sale. In modern times, households are often not engaged directly in production

[841] See Farooq, *'Exploitation',* 307.

due to increase in specialisation and the advancement to large-scale production in the industrial age. It is very likely that ancient households borrowed money for buying agricultural inputs, raw materials for producing finished goods, and even trade financing. This creates the possibility that some 'household' loans indeed had a productive purpose at the time the loan was extended and the borrower intended to use this capital to generate more surplus (growth).

On the other hand, there is no evidence to indicate that interest-bearing loans were a dominant form of financing for long-distance trade. Novel forms of contracts were developed to manage the risk of long-distance trade funded through credit extended by investors willing to lend money and wait for a profit. The *muḍarabah*, an invention of the Arabs prior to Islam,[842] was the preferred mode of financing long-distance trade since ancient times. Historically, partnership agreements were made between parties that trusted each other and were of similar social standing.[843] It is highly probable then that the *muḍarabah* was mainly the prerogative of the powerful merchant class in 7th century Hejaz and smaller households were unable to secure financing on these terms. It is important to note that the Arab preference for the *muḍarabah* contract was not based on ideological affinity of any kind. It is also historically inaccurate to claim that the *muḍarabah* was an Islamically sanctioned or ideal type of contract. The Arab preference was in fact based on purely commercial reasons. Firstly, this form of financing was flexible enough to accommodate the smallest to the largest amount of capital: '…the most humble sums could be turned into capital down to the participation of a dinar or a piece of gold, or even…half a ducat of gold.'[844] Secondly, this form of financing was far less risky than financing through interest-bearing loans which set a fixed payment period and instalment pattern. In the prevalent trade and travel conditions, the agent simply could not agree to providing a fixed return on a loan. If the *muḍarabah* venture was successful, everyone shared in the profit. If the venture was unsuccessful, the travelling merchant (agent) would lose his share of the profit but did not have to return the original amount to the investors, i.e., his personal liability was limited. It behoves repeating Ziaul Haq's theory about these partnerships:

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[842] Udovitch, *Partnership and Profit,* 172. This corresponds directly to the later Roman *commenda*, in use in European trade but originally an indigenous trade instrument in pre-Islamic Arabia; see Mark Koyama, 'Evading the "Taint of Usury": The Usury Prohibition as a Barrier to Entry', *Explorations in Economic History*, 47.4 (2010), 420–42 <https://doi.org/10.1016/j.eeh.2009.08.007>, 424 and n28.

[843] See 4.2.3.

[844] Wolf, op cit., 333.

> Due to dangers and risks involved in the caravans, the carrier-merchants also tended to prefer this type of enterprises [commenda, where the exact share of the profit is pre-agreed], to a deal involving borrowed capital on interest, which could not assure maximum profit and minimum loss.[845]

This type of partnership therefore offered the best structural form for managing trade risk.

> …one should also note the existence and great importance from the early centuries of Islamic hegemony over the Near East of numerous forms of partnership and especially of highly developed and adaptable *commenda* arrangements which, from the point of view of both investor and trader, adequately, flexibly and licitly fulfilled the economic function of an interest-bearing loan.[846]

Udovitch further notes that:

> …the two types of interest-free loans which are discussed in early Islamic legal texts – the *qarḍ* and '*āriyya* – corresponding almost exactly to the *mutuum* and *commodatum* of Roman law – i.e., loans for use and loans for consumption.[847] From all indications, however, these forms of loans were almost insignificant in medieval Islamic commerce.[848]

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845 Ziaul Haq, 'Inter-Regional and International Trade in Pre-Islamic Arabia', *Islamic Studies*, 7.3 (1968), 207–32 <https://www.jstor.org/stable/20832920>, 229. My addition in square brackets.

846 Abraham L Udovitch, 'Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East', *Studia Islamica*, 41, 1975, 5–21 <https://doi.org/10.2307/1595397>, 10.

847 Udovitch, 'Reflection', ibid., 10. There is an error in translating the Latin terms, respectively. *Mutuum* (*qarḍ*) is a loan for consumption; *commodatum* (*'āriyya*) is a loan for use; see correct translation in Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 106-7. The six-commodity Ḥadīth is an example of *qarḍ* or *salaf* loans that were understood to be interest-free and were meant for consumption; see 6.4.3 and 6.4.5. Examples of *'āriyya* include borrowing a ship or animals for carrying goods; see Udovitch, ibid., 165. See also Koyama, op cit., 421, n8, who notes, in the context of canon law on usury in medieval Europe, that the *commodatum* loan involved non-fungible items therefore, demanding rent for hiring an item was acceptable; in comparison, the Arabs understood the *commodatum* (*'āriyya*) as a loan 'which transfers the usufruct of property **gratis** to the borrower'; Udovitch, *Partnership and Profit,* 106, my emphasis. Report AN3 in 6.3 above is an example of how a *commodatum* loan of cattle, originally a free loan, was turned into a *ribāwi* loan if the borrower requested more time to return the animal.

848 Udovitch, 'Reflections', 10.

Based on the above evidence, it is posited that interest-based loans made miniscule contribution to trade ventures but their use in financing smaller household production activity cannot be ruled out. This further strengthens the premise in the present interpretation of *al-ribā* that exploitative lending was taking place mainly between wealthy individuals and needy households. However, any theory development must take account of the consumer-producer household. The ancient and medieval household could in fact borrow small sums for agricultural inputs and there is evidence to indicate, such as AN7, that wealthy merchants were lending money or commodities to households and tribes and were charging interest on this. This 'profit' was in addition to their trade ventures and was simply seen as a sensible use of spare wealth. It is also possible that small household loans for productive purposes, where the borrower would promise a share of the crop or profits from selling leather, later became *ribāwi* due to an adverse change in the borrower's circumstances caused by common problems like illness, poor weather, and volatile markets. If the borrower asked for more time, his liability would be doubled. The borrower's destitution presented an opportunity for the lender to usurp his assets or put him under debt bondage. It seems therefore that there was a lucrative niche market in *ribāwi* lending whereas trade was being financed primarily through *commenda* arrangements.

In addition to the realistic consideration of lending to consumer-producer households, the question of business loans must be considered. This further broadening of remit is indeed possible based on the Qur'ān's use of the general term *amwāli l-nāsi* in Q30:39. The term *amwāl* (singular, *māl*) has been used in the Qur'ān numerous times. It is a general term, invariably referring to wealth or properties. Wealth can be inherited, saved through personal hard work or entrepreneurial success, or discovered by chance; all these meanings can be accommodated in the term *amwāl* and the prohibition can thus be extended to include business assets and retained earnings. There is no basis to exclude the use of productive loans (like agricultural inputs) that would increase the wealth of the borrower. However, the liability for the borrower would be unlimited in the case of taking out a personal loan for business purposes. In Qur'anic times, this liability would even extend to the borrower's personal freedom and that of his family members. In such circumstances, originally productive loans would become *ribāwi* loans if the lender continued to demand a return regardless of whether the borrower had become too ill to work or lost his crop to a storm. In the past there were no safeguards to protect *amwāli l-nāsi* and this continues to be the case in less developed nations. This absence of safeguards gives further

emphasis to the Qur'ānic command to grant the borrower time to repay or write-off the loan. In modern times, personal liability can be limited either through business structure (limited liability and joint stock companies) or by the borrower filing for personal bankruptcy. For a large business, this process is completed formally by appointing administrators to liquidate a business. Proceeds from asset sales are shared according to the law of preferences, whereby creditors with secured debt have the first right on funds obtained after asset liquidation. The growth and protection of *amwāli l-nāsi* is an important consideration in allowing financing through interest-based business loans.

To conclude, it is possible to extend the remit of the *ribā* prohibition to productive business loans (personal or institutional) by including the property (wealth) of the enterprise in the definition of *amwāli l-nāsi.* Using analogical reasoning, it can be posited that if the wealth of a business is reducing (deepening of losses) because of the terms of a loan or it is entailing human costs (like mass redundancies), then the loan becomes *ribāwi*.[849]

6.6.4 From the General to the Specifics of the Present

Before the second movement from the general to the specific can take place, the modern sociohistorical sketch must be drawn, albeit as an outline, to create the fusion of the past and present horizons, eventually making it possible to move to application of theory.

The sketch of the past was coloured with human misery resulting from lending practices that divested people of their wealth and freedom. Crises created by war, drought, famine and illness were exploited by the more powerful, often resulting in debt bondage for entire families. The past horizon conjoins with the twenty first century in egregious situations such as bonded labour, human trafficking, ill-health related indebtedness, unregulated lending, payday lending, vulture capitalism, and feudalism. In these situations, helpless borrowers – even entire nations - have no choice but to sell their bodies, ransom their labour or endure economic shock to pay off fast accumulating debts. The less egregious cases include sovereign debt conditionalities, sub-prime mortgage lending and interest payment demands from struggling businesses. On this shared horizon, the reality of the borrower is one of facing financial crisis, anxiety, stress and

[849] Further discussion on productive personal and business loans follows in the Application of Theory section.

helplessness. It is in these situations that the Qur'ānic rule of *ribā* becomes applicable. The moral issue at stake in such situations is concern for the dignity and personal and financial freedom of fellow human beings. These situations require charity – dropping the demand for interest, delaying loan repayments without penalty, reducing outstanding debt or writing off the debt altogether – that is to be balanced with the requirement to be just to both the borrower *and* the lender. This is the space for application of the law of *ribā* in the present.

Earlier, The Antecedent shed light on the practice of exploitative lending in ancient economies. The avaricious lender dominated this sketch, intent only on maximising his own wealth, subjecting the borrower to cruelty and humiliation. The lenders in 7th century Hejaz in the immediate social context of the Qur'ān were wealthy merchants who used their vast wealth to make fast profits through *ribā*. In these unregulated economies, the lenders constituted a hegemonic class that enjoyed unbridled power accorded to them through economic and military might, slave ownership and local custom. In the modern era, in comparison, there are two distinct practices in lending. One is highly regulated through financial institutions, with transparency in the terms and conditions of the contract, even listing consequences for the borrower in case of default. The lender's powers are usually curtailed and debt collection orders are made by court of law. At institutional level, lenders are often small households who deposit savings in banks. Large businesses make use of these loans for productive purposes but rarely share the profits fairly amongst the creditors and shareholders. This indicates that the corporate borrower is more powerful than the small lender.

In contrast, the second type of lending practice is unregulated. Examples include loan sharks in villages, agricultural loans offered by feudalist landowners, bonded labour and other types of emergency lending on exorbitant rates of interest. Lending in the unregulated sector closely resembles *ribā al-jāhiliyyah*. The lender holds immense power in this sector.

The modern sketch, therefore, features two very distinct types of lenders with differing levels of personal and collective power. The policy implications of this are briefly covered in the concluding chapter of this thesis.

6.6.5 Application of Theory (Particularisation)

The methodology of this thesis made a commitment to Gadamer's view that 'understanding is always application.'[850] In this sub-section, the appropriateness and validity of the reconstructed theory of *ribā* is being tested across five representative scenarios covering personal, business, and institutional loans to provide comprehensive coverage of key aspects of lending in modern finance. A comparative approach has been used to indicate how the application of law would change depending on the socioeconomic realities of the countries under discussion, the United Kingdom and Pakistan, although reference is made to other countries as relevant. This approach resonates with the well-established jurisprudential principle that states: 'It may not be denied that laws will change with the change of circumstances.'[851]

According to Gadamer, the present always represents the special case. Appropriate application of the law in the special case ensures that the 'spirit of justice' is achieved.[852] It is to this goal of attaining the spirit of justice that this study turns to next.

6.6.5.1 Scenario 1 – Personal Loans for Consumption

This scenario sits at the conjoined horizon of the past and present: it represents the archetype case of *al-ribā* in antiquity, in 7th century Hejaz and in modern times. In the twenty first century, consumption loans are taken out to meet immediate need e.g., to buy food, pay rent or settle medical bills etc. Loan sharks are active in UK cities and villages and exploit people through various means, including keeping nude photos for security.[853] Surprisingly, the exact form of *ribā al-jāhiliyya* is still extant and is called '"double bubble" interest, (the amount of the original loan, plus the same again on top…)'.[854] Medical debts feature in up to 60% of personal bankruptcies in the USA.[855] In the UK, the situation is not as dire because of a taxpayer funded national health system free

[850] Grondin, op cit.,102.
[851] Abou El Fadl, op cit., 34.
[852] Grondin, op cit., 108.
[853] Daisy Schofield, 'Loan Sharks at the School Gates, Nude Photos as Security: How Desperate People Fall into the Debt Trap', *The Guardian*, 21 February 2022 <https://www.theguardian.com/money/2022/feb/21/i-didnt-know-who-to-go-to-the-desperate-people-trapped-by-loan-sharks-and-lenders-on-social-media>.
[854] Schofield, ibid.
[855] Michael Sainato, '"I Live on the Street Now": How Americans Fall into Medical Bankruptcy', *The Guardian*, 2019 <https://www.theguardian.com/us-news/2019/nov/14/health-insurance-medical-bankruptcy-debt> [accessed 14 December 2021].

at the point of use. In Pakistan, one of the least developed nations in the world, state-funded healthcare coverage is small and inadequate, leading people to turn to village loan sharks at a moment of crisis. All these loans are modern examples of *ribā,* sitting on the fused horizon of the past and the present.

Another egregious case of *ribā* in modern times is debt bondage, an acute problem in South Asia. Strikingly, like the *ribā* of the Prophet's time, these debts are linked to slavery.[856] This egregious case of *ribā* in modern times requires immediate attention from government legislature and Islamic banks.

A second type of consumption loan which is common in advanced economies like the UK is unsecured credit card debt. Credit card companies typically charge between 19% - 35% interest per annum.[857] While it can be argued that buying goods with credit cards offers a benefit to the borrower - there is a positive counter-value, tangible and intangible, in the form of luxury goods, boost to self-esteem, happy experiences like holidays – the debt itself is for consumption. The rates of interest are extremely high and debtors can quickly find themselves trapped. There is neurological evidence indicating that credit cards can encourage more spending,[858] potentially leading to extravagance condemned in the Qur'ān (*walā tubadhir tabdhīran*).[859] At macroeconomic level, debt-fuelled growth is a serious problem, straddling households with enormous amounts of debt and contributing to extreme consumerism which is at the heart of the climate crisis. The root causes of this problem are long-term depressed wages and rising consumerism, leading individuals to borrow to meet immediate needs or spend recklessly. Overall, credit card debt is primarily for consumption purposes, holds a high rate of interest, and leads to much harm to the borrower and the planet, making these interest-bearing loans *ribāwi*.

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856 Jan Breman, 'On Labour Bondage', *Contributions to Indian Sociology*, 48.1 (2014), 133–41 <https://doi.org/10.1177/0069966713502424>. Based on statistics gathered over a decade ago, there were 18 million bonded labourers in South Asia; see Breman, 134. Islamic finance literature does not mention this egregious case of al-*ribā*.

857 See <www.moneysupermarket.com> [accessed 17 December 2021].

858 Sachin Banker and others, 'Neural Mechanisms of Credit Card Spending', *Scientific Reports*, 11.1 (2021), 4070 <https://doi.org/10.1038/s41598-021-83488-3>.

859 'And render to the kindred their due rights, as (also) to those in want, and to the wayfarer: But squander not (your wealth) in the manner of a spendthrift.' (Q17:26)

6.6.5.2 Scenario 2 – Personal Loan for Production

Two examples are discussed in this scenario: student loans in the UK and USA,[860] and productive loans for enterprise including agriculture.

Student loans are 'productive' because they are a form of personal investment that yields a return over the long run.[861] The post-2012 loan system in the UK works like a graduate tax, where graduates pay a percentage of their income back to the government. The rate of payment is progressive: graduates earning higher wages pay back more and settle the debt earlier. If the graduate's income falls below the salary threshold (currently £27,295 per annum), the repayments stop but the interest still accrues. The loan repayment period is 30 years and the liability is completely written off after 30 years. With these safeguards in place, the loan is not *ribāwi* but it is regressive overall.[862] In comparison, the US loan system is extremely harsh. If the loan repayment is deferred (maximum of four years' deferral), the interest on the loan continues to accrue. Student debt affects the credit rating score, making it difficult for graduates to take out mortgage and other loans. The situation has turned into a crisis (total debt now stands at $1.86 trillion)[863] with adverse impact on graduates' finances and health especially Black and minority ethnic students. Student Loan Justice (a citizen group) is calling for federal loans to be cancelled

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[860] My personal political view is that student loans should be abolished. Higher education should be deemed a public good funded by public taxes. Models for this already exist, e.g., Finland and Norway.

[861] Without wishing to reduce the value of higher education to the utilitarian measure of 'better salary,' graduates do have higher lifetime earnings. See 'Graduates Continue to Benefit with Higher Earnings', 2019 <https://www.gov.uk/government/news/graduates-continue-to-benefit-with-higher-earnings> [accessed 21 December 2021].

[862] See full analysis of UK student loans at Martin Lewis, 'Student Loan Interest Is Now 4.1% - Should I Panic or Pay It Off?', 2021 <https://www.moneysavingexpert.com/students/repay-post-2012-student-loan/> [accessed 24 December 2021]. Since the time of writing, the UK government has announced changes to the loan system, which are regressive overall and create a bigger financial burden for women; see analysis at Ben Waltmann, 'Sweeping Changes to Student Loans to Hit Tomorrow's Lower-Earning Graduates', *Institute for Fiscal Studies*, 24 February 2022 <https://ifs.org.uk/publications/15953>.

[863] Michael Sainato, '"Killing the Middle Class": Millions in US Brace for Student Loan Payments after Covid Pause', *The Guardian*, 9 December 2021 <https://www.theguardian.com/us-news/2021/dec/09/us-student-loan-crisis-paymentshttps://www.theguardian.com/us-news/2021/dec/09/us-student-loan-crisis-payments>.

and bankruptcy rights granted to all borrowers.[864] The student loan system in the USA is a modern example of *ribā* in the regulated sector.

Fatwa Committee UK, the local arm of the European Council for Fatwa and Research, has issued the legal opinion that Muslim students in the UK can take out student loans to study.[865] The basis of the opinion is the *uṣūl* of *ḥāja* (basic need)[866] which has become a *general* need for society due to its impact on millions of students and the importance of higher education in modern times. The Assembly of Muslim Jurists of America (AMJA) has issued a similar opinion on the basis of *ḥāja*, noting that Muslim students should try to acquire grant funding (non-repayable) and subsidised loans where possible, with interest on the latter type of loan payable by the federal government and a further six-month interest-free period available to pay off the principal amount of the loan. AMJA considers the unsubsidised student loan to be *ribā*wi and categorically forbidden *(ḥarām)*. Both these instances of legal reasoning adopt a reductionist view of *ribā* as interest with little consideration of the terms and conditions of the loan and their impact on the student, both in terms of future prospects and the pressure of paying off the loan.

The above *fatāwa* are situated within the 'hierarchical classification' of the goals of the law (*maqṣūd*, pl. *maqāṣid*) theorised by Imām Ghazālī (d. 1111 AD).[867] The first in the hierarchy are the *ḍarūriyyāt* or basic necessities of human beings that the law must fulfil,[868] followed by *ḥajiyyāt* (sing. *ḥāja*) which are 'needed for maintaining an orderly society properly governed by the law'[869] and finally, *taḥsīniyyāt*, which are luxuries or embellishments.[870] Whether a student loan is a basic necessity or a general need is open to debate, just as there is controversy surrounding whether the subsidised loan is prohibited in itself (*ribā* proper) or as the means to *ribā* (*sadd al-dharā'i*).[871] This reasoning leads AMJA to conclude that the subsidised loans are a means to *ribā* and hence these can be made permissible given the general need for higher education. 'Need' is

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[864] 'Student Loan Justice' <https://studentloanjustice.org/index.html#> [accessed 24 December 2021].
[865] 'Fatwa Committee UK Fifth Meeting (English)', 2017 <https://fatwacommitteeuk.com/fatwa-committee-uk-fifth-meeting-english> [accessed 8 January 2022].
[866] Abou El Fadl, op cit., 300.
[867] Hallaq, *Islamic Legal Theories,* 89-90.
[868] Abou El Fadl, op cit, 299.
[869] Hallaq, op cit., 90.
[870] Abou El Fadl, op cit., 308.
[871] The use of *sadd al-dharā'i* as the basis of law making is disputed in Islamic law, see 3.2.

defined as eligibility for *zakāt*, therefore, Muslim students who are not *zakāt*-eligible are discouraged from using these loans to fund study.[872]

The weakness in the above reasoning is that it burdens the Muslim student with guilt by stating that all interest-based borrowing is prohibited. Second, it puts pressure on the student to return the principal amount within the interest-free period of six months after graduation. Thirdly, it makes it incumbent on the student to gain expert advice from a Muslim jurist who may be offering opinions on a case-by-case basis which may be inconsistent.[873] This approach is focussed on the presence of interest in the loan, rather than the overall terms and conditions of the loan. In the reconstructed theory of *ribā*, the terms and conditions of the loan are significant.[874] Given that there is no consensus on the type of *ribā* which is hidden (i.e., means to *ribā*), the question of permissibility does not arise. Moreover, the loan becomes *ribā*wi only when a return is demanded from a borrower unable to pay. Taking a few additional measures would make student loans fairer. These include setting an income threshold in the US system (and a higher threshold in the UK), providing payment holidays during which interest does not accrue, giving increased bankruptcy protection to students, using less aggressive approaches to loan recovery, and writing off loans for students who are facing very significant hardship. These measures would take these interest-bearing loans out of the remit of *ribā* in the US and make the loans more progressive in the UK.

Personal loans for production are also taken out by individuals setting up small entrepreneurial ventures (microcredit) and for obtaining agricultural inputs. Charging interest on these loans would be legal from an Islamic point of view, provided the borrower's wealth is increasing. The overall state of agricultural – productivity, access to water and good quality seed, prevalence of subsistence farming – also present important factors for consideration. For instance, it would be unjustified to charge interest on loans to subsistence farmers. As a general principle, however, as long as the borrower is generating sufficient surplus to meet their personal and business requirements, she should be sharing the profits with the lender whose capital enabled this venture. These loans,

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[872] Dr Main Al-Qudah, 'Summary of Student Loans in the United States: Facts and Rulings', 2015 <https://www.amjaonline.org/summary-of-student-loans-in-the-united-states-facts-and-rulings/> [accessed 8 January 2022].

[873] Dr Main Al-Qudah, 'Can We Take Student Loan for Study, If You Can't Afford It?', 2010 <https://www.amjaonline.org/fatwa/en/81740/can-we-take-student-loan-for-study-if-you-cant-afford-it> [accessed 8 January 2022].

[874] See full list of principles in 6.6.2.

provided they are tightly regulated by the banking institution to ensure there is no exploitation, offer an effective mechanism for alleviating long-term poverty.

The Grameen Bank in Bangladesh is an excellent example of the benefit of these loans. Farooq notes:

> Indeed, the modern experience of microcredit, as pioneered by institutions such as Grameen Bank is interest based and yet it has helped in alleviation of poverty of millions of people…In case of Grameen Bank like projects, interest-based credit has provided an escape for millions of people from the chokehold and exploitation of village loan sharks.[875]

These loans are also a mechanism for reducing financial exclusion, one of the leading causes behind the problem of exploitation through lending. Rahman has mentioned the oppressive (and extant) institution of feudalism in Pakistan, an agrarian economy with subsistence farming. Here, the small farmer is dependent completely on the whims of the landowners. Good quality agricultural inputs like disease-resistant seed, fertilisers and farming equipment are out of the reach of most farmers, condemning those who till the land to precarious financial circumstances, poor quality crop and low yields. The immense profits from the venture are extracted by the brokers and landowners. Soft agricultural loans offered by regulated financial institutions would help millions escape this vicious cycle of poverty.

6.6.5.3 Scenario 3 – Home Purchase with a Mortgage

The ban on bank interest in the contemporary traditionalist thought on *ribā* has had a profound impact on Muslim diaspora in Europe and America for whom home purchase has become a major worry. In these advanced economies, house purchase is often done through mortgages. The transaction usually involves the home buyer using personal savings to make a 10% deposit based on the value of the property. The remaining balance from the purchase price is paid by the bank in the form of an interest-bearing loan with a duration of up to 30 years (in USA) and 25 years (in UK), although mortgages with a longer-term are also available. In the USA, fixed interest rate mortgages are common,[876]

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[875] Farooq, '*Exploitation*', 298.

[876] 'Mortgage Term Comparison' <https://www.mortgagecalculator.org/helpful-advice/how-many-years-mortgage-loan.php> [accessed 7 January 2022].

whereby the interest rate remains the same for the duration of the loan. In comparison, variable rate mortgages are more common in the UK especially when interest rates are low. Fixed rate deals are usually offered for two to five years, although recently some new providers have started to offer 30 year deals. Payments are made in monthly instalments over the life of the loan. The loan amount is decided according to criteria such as the buyer's income and expenses (affordability) and credit score (reliability based on historical behaviour such as timely payment of utility bills and rents). The lender (bank) secures the loan by legally taking first right on the property (lien). Leading scholars of Islam are almost unanimous in their stance that bank interest is the forbidden *ribā*; as a corollary of this rule, purchasing a house with a mortgage is also considered *ḥarām* by the vast majority of Muslim diaspora, with implications for individual, family and community well-being.[877]

Muslim jurists hold different opinions on permissibility of mortgages. Ghamidi considers a mortgage to be a combination of a sale and rental of a non-fungible commodity, with interest charges representing the 'rent' for benefitting from residing in the property. On this basis, he declares it permissible to take out a mortgage from a conventional bank.[878] In comparison, traditionalist scholars like Dr Yasir Qadhi and Dr Hatem (representing AMJA) use similar legal reasoning as for student loans and consider it permissible to take out a mortgage on the basis of *ḥāja* if no other alternatives, such as Islamic mortgages, are available. The European Council for Fatwa and Research arrives at a similar conclusion, noting that '…Jurists have established that that [sic] Hajah, i.e. need, whether for an individual or a group, can be treated in equal terms like Darurah, i.e., extreme necessity.'[879] The Council attaches numerous conditions to this permission such as the house must be for the buyer's own use. They recognise the imperfection of Islamic banking as a nascent sector where transparency of borrower and lender rights, contractual obligations and higher transactional costs are ongoing issues but urge Muslims to support this sector so it can strengthen its product offering.

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[877] The number of YouTube videos and lectures where leading scholars have been asked this question is testament to the Muslim communities' concern about owning a property through a mortgage. For example, [EPIC MASJID], Dr Yasir Qadhi, and Dr Hatem Al-Haj, 'Islamic Financing / Mortgages' <https://www.youtube.com/watch?v=MPuAj6Q2tHg>, 16 July 2020, [accessed 7 January 2022].

[878] Ghamidi, Islam: A Comprehensive Introduction, 476.

[879] 'The Fourth Ordinary Session of the European Council for Fatwa and Research', 1999 <https://www.e-cfr.org/blog/2017/11/04/fourth-ordinary-session-european-council-fatwa-research/> [accessed 9 January 2022].

This argument based on *ḥaja* is the second instance (along with the issue of student loans) where the traditionalist prohibition of *ribā* has been suspended. The need to create so many exceptions demonstrates that the understanding of the 'general' situation in the prohibition of *ribā* is flawed. Due to the expansive and strict nature of the original *fatwā* (i.e., any increase on a loan is *ribā*), we have seen that the general rule had to be suspended repeatedly. The needs identified in these *fatāwa* are not exceptions; rather, they are general and affect millions of Muslims in the diaspora. This has created a situation where the general rule has become inapplicable in general situations in the diaspora, pointing to the need to reform the rule itself.

A mortgage is a 'productive' loan as it provides immense benefits to the borrower (purchaser) including family stability, improved self-esteem, sufficient certainty to allow future planning, community integration and potential financial gain from increase in property prices. In the UK, mortgages are handled by conveyancers. A borrower does not receive cash payment from the bank for the purchase; rather, the payment is given to the seller via the conveyancer. Mortgage loans are approved after a thorough affordability check hence it is not intended to create an unreasonable burden on the borrower. Mortgage providers offer 90 days' payment holiday if the borrower encounters financial difficulty, and bankruptcy law protects the borrower from any aggression from the lender. As such, this loan is not *ribā*wi but it possesses some exploitative features that require reform.[880]

Viewed from the perspective of the individual Muslim buyer, a mortgage is a beneficial loan and does not fall into the remit of *ribā*. But the terms and conditions of the loan can be made fairer to reduce default, indebtedness and re-possession leading to homelessness. First, accrual of interest during the payment holiday period is *ribā*wi. This is because the buyer has declared financial difficulty and it is unfair for the lender to demand a return in this

[880] However, the success of this house purchase model depends on buyer affordability and market conditions as the 2008 credit crunch showed in a stark manner. The 2008 credit crisis led to immense human misery in the USA and globally. The root cause of the problem was poor lending practice: mortgage lenders were offering high interest rate mortgages to high-risk buyers (sub-prime mortgages), knowing well that the buyers would struggle to afford payments. These loans were collateralised and sold further after being given safe credit rating. Mass defaults on these loans led to the failure of established financial institutions like Lehman Brothers, while hundreds of thousands of buyers lost their homes due to foreclosure. The repercussions of this crisis were felt globally.

situation (this is the boundary at which interest becomes *ribā*). Second, the payment holiday should be extended to give borrower more time to pay especially in case of family crises such as redundancy or long-term illness. This will reduce repossession and homelessness. Third, banks should amend the loan contract to share some of the losses resulting from negative equity when house prices are falling; this would delay the need for foreclosures. Fourth, property foreclosures and evictions must be tightly regulated to ensure minimal distress for the borrowers, with banks and local councils arranging emergency housing and sharing the associated costs. Lastly, governments should take measures to stabilise house prices by requiring banks to invest more of their loan portfolio into long-term wealth-generating investments, creating more housing stock and improving tenant rights (e.g., improved housing stock, long-term rental agreements to bring stability and regulation of increase in rents). Muslim jurists should therefore focus their efforts on the national policy on mortgage lending and property prices, rather than create religious pressure on Muslims to live in rented properties and face the problems generated by precarious or sub-standard housing.

If housing stock in an economy is low, as in the UK, availability of cheap credit can lead to increases in property prices, taking property out of reach of first-time buyers whilst existing owners benefit from capital gains. Mortgages are one of the safest and most lucrative markets for banks and it is in the interest of banks, politicians and homeowners to support a policy of growth in property prices. However, when property prices fall or when interest rates rise, many homeowners experience negative equity or end up in default, often creating a vicious cycle of decreasing property prices and more defaults. This phenomenon of ever-increasing property prices, even in stagnant or recessive economies, is a serious macroeconomic problem requiring national policy level solutions. At an aggregate level, current bank lending practice is detrimental to the economy because it attracts capital away from investment in entrepreneurial activities and makes gains instead from creating asset bubbles (inflated house prices and stock markets).[881]

[881] Kate Raworth, *Doughnut Economics: Seven Ways to Think like a 21st-Century Economist* (London: Random House Business Books, 2017), 182.

6.6.5.4 Scenario 4 – Business Loans

Business finance is at the heart of economic activity. The merchants of Mecca in 7th century Hejaz were skilled financiers offering credit in the form of *muḍarabah* partnerships. In modern times, business lending often takes the form of interest-bearing loans. Debt secured against business assets or stock is viewed as less risky and attracts a lower interest rate compared to unsecured debt. In the case of the latter, the loan is to be paid back personally if the business fails to repay. Banks or creditors lending to businesses do not take a share in the ownership of the business, which allows the business owner full autonomy in running the enterprise. Islamic finance experts consider this type of lending to be *ribā*wi because it involves payment of interest.

The other type of business finance is called 'equity.' This either takes the form of a finance partner investing into the business and taking an ownership share, or for larger organisations, it takes the form of 'joint stock' ownership where the ownership of the business is divided into very small shares for investors to purchase. Islamic finance experts consider this 'equity' form of finance to be Sharī'ah compliant.

Often, businesses are funded through a combination of both types of finance. The use of leverage – loans – on the balance sheet tends to increase the return to equity holders when the business is doing well, but it also magnifies losses. In other words, the advantages of this cheaper form of finance (loans) tend to accrue to the equity holders. When coupled with wage suppression, this model maximises profits for equity holders. Farooq has pointed out greed and the profit-making impulse as the main culprit, whereby owners of large corporations exploit labour markets to make huge financial gains.[882] Moreover, all types of income, whether interest income or dividends, 'accrue more to the rich…'[883] As such, both types of financial capital – lending and equity – need further regulation to remove exploitation.

Interest-based loans to businesses do not fall under the original remit of the *ribā* prohibition. This is because the lender advances the funds for utilisation in productive enterprise: the wealth of the lender and the business grows as a result.

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[882] Farooq, *Exploitation*, 308.
[883] Farooq, ibid., 309.

> Capital…provides and indispensable condition of fruitful labour in affording the labourer time to employ lengthy methods of production.[884]

If the wealth of both the lender and the borrower is increasing, the loan is not *ribāwi*. However, there are certain conditions under which the loan becomes *ribāwi* i.e., the demand for interest payments becomes unjustified. These include exogenous factors such as turbulent weather that can affect supply lines, economic recessions, changes to taxation policy, and global crises like pandemics. In these situations, lenders should take a humane approach by offering loans on softer terms but, in reality, banks often tighten both the amount of credit and the loan terms, further deepening business failure and losses.[885] During the recent pandemic, small and medium-sized businesses took on more debt to stay afloat (at a time of record low interest rates), which may result in redundancies or reduced future investment[886] because interest payments are a fixed charge on revenues that must be paid. Furthermore, redundancies resulting from tighter credit conditions lead to loss of income for employees, often putting them in a situation of hardship. Lastly, some firms terminate employment and re-hire their staff on more precarious contracts in order to cut costs during a period of falling revenues, leading to an erosion of employment rights. In such situations, bankers' strict demands can exacerbate the problems and lead businesses to make harmful decisions, making the loan *ribāwi*. Lenders can choose to mitigate for business difficulties by offering softer terms on loans and working capital and agreeing payment holidays with no accrual of interest.

Under normal conditions, a business making interest-payments on loans that have enabled the business to flourish is a fair arrangement and does not fall under the remit of *ribā*.

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884 Eugen V. Bohm-Bawerk, *Capital and Interest: A Critical History of Economical Theory*, ed. by William Smart (London: Macmillan and Co., 1890), xx.

885 Stuart Fraser, *The Impact of the Financial Crisis on Bank Lending to SMEs*, *The Impact of the Financial Crisis on Supply*, 2012 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/34739/12-949-impact-financial-crisis-on-bank-lending-to-smes.pdf>.

886 'Financial Stability in Focus: The Corporate Sector and UK Financial Stability', 2021 <https://www.bankofengland.co.uk/financial-policy-summary-and-record/2021/october-2021/financial-stability-in-focus> [accessed 11 January 2022].

6.6.5.5 Scenario 5 – Sovereign Debt

Sovereign lending by institutions like the International Monetary Fund (IMF) and World Bank has been an important feature of the global financial landscape since the Second World War. This sub-section offers a brief analysis of IMF loans made to Pakistan since 1958[887] and handling of the Greek financial crisis by European banks. The reconstructed theory of *ribā* is used to decide if these loans are *ribāwi* or not. A brief comment is made about the human cost of these crises. The sub-section concludes with an overall comment about indebtedness of low-income countries around the world.

Pakistan currently owes $127 billion in external debt and liabilities,[888] including $6 billion to the IMF.[889] Of the total revenue generated by the country, including federal income tax and other indirect taxes, an astonishing 85% is earmarked for debt servicing, leaving only 15% for public expenditure on education, health, defence, and civil government.[890] Pakistan is now borrowing money to pay the salaries of government officials and meet the expenditure on defence. With the fiscal budget looking so dismal, it is not possible for the government to undertake any long-term investment that would lead to reduction in poverty. Over the last 6 years, poverty has been increasing in Pakistan after 15 years of decrease;[891] it is expected that up to 30% of the country's population will be living below the poverty line, with the Covid pandemic leading to contraction in economic growth.[892] Given the state of the country's finances, it meets the definition of 'borrower in need.' Yet, the conditionalities attached with the IMF

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887 'Pakistan: History of Lending Commitments as of December 31, 2021', *International Monetary Fund* <https://www.imf.org/external/np/fin/tad/extarr2.aspx?memberkey1=760&date1Key=2021-12-31> [accessed 30 January 2022].

888 Mehtab Haider, 'Out of Total Revenue Last Fiscal Year, Pakistan Spent Rs85 out of 100 in Debt Servicing', *The News International*, 27 November 2021 <https://www.thenews.com.pk/print/912063-out-of-total-revenue-last-fiscal-year-pakistan-spent-rs85-out-of-100-in-debt-servicing>.

889 Faseeh Mangi and Ismail Dilawar, 'IMF Revives $6 Billion Bailout for Pakistan's Teetering Economy', *Bloomberg*, 22 November 2021 <https://www.bloomberg.com/news/articles/2021-11-22/imf-revives-bailout-in-relief-to-pakistan-s-struggling-economy>.

890 Haider, ibid.

891 Silvia Redaelli, *Poverty and Equity Brief - South Asia: Pakistan*, 2020 <https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_PAK.pdf>.

892 Ben Farmer, 'Ten Million More People in Pakistan Set to Fall below Poverty Line', *The Telegraph*, 12 June 2020 <https://www.telegraph.co.uk/global-health/science-and-disease/ten-million-people-pakistan-set-fall-poverty-line/>.

loans, even though these represent only 8% of the total external debt liability,[893] are incredibly strict and have had a disproportionate impact on the country for decades. These conditionalities include increases in interest rates, fuel and electricity prices, improvements to tax revenues, and a more independent central bank. The government has responded by increasing fuel and electricity prices and recently introduced or increased general sales tax on 144 products, including staple food items, agricultural inputs and infant formula.[894] These are highly regressive taxation measures which will lead to starvation and malnutrition in a poor country with inadequate healthcare and where most farmers work at subsistence level. These measures are meant to increase tax revenues and improve the country's fiscal outlook, reassuring lenders like the IMF that appropriate 'adjustments' have been made. However, in Pakistan's case these are tantamount to imposing rationing and austerity on an already starving populace.

These shocking but sadly familiar government actions are a result of Pakistani governments operating in an extremely tight fiscal policy space dictated by vicious debt liabilities. Federal tax income revenue is small because the ultra-rich elite and politicians move wealth to offshore tax havens.[895] Endemic corruption results in meagre government spending being squandered by dishonest civil servants and local public bodies. It is impossible for Pakistan to pay off its debts yet the lenders' conditionalities and unwillingness to cancel the debt has led to great social and human cost. Applying the reconstructed theory of *ribā*, foreign loans and conditionalities attached to these loans render them *ribāwi* regardless of the rate of interest. These are egregious cases of *ribā* that demand a charitable response according to Q2:280, whereby debts should be converted to non-repayable grants. The principal amount should also be written off. This would result in creating much needed fiscal space for government to spend on development rather than use most of the tax revenue for debt servicing.

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[893] Abdul Khaliq, 'Pakistan in a Perfect Debt Spiral with the Worst Impacts of the Pandemic', *Committee for the Abolition of Illegitimate Debt*, 2021 <https://www.cadtm.org/Pakistan-in-a-perfect-debt-spiral-with-the-worst-impacts-of-the-pandemic> [accessed 30 January 2022].

[894] Shahbaz Rana, '17% GST on 144 Items to Yield Rs360 Billion', *The Express Tribune*, 30 December 2021 <https://tribune.com.pk/story/2336319/17-gst-on-144-items-to-yield-rs360-billion>.

[895] Megan Specia, 'How the Panama Papers Changed Pakistani Politics', *The New York Times*, 28 July 2017 <https://www.nytimes.com/2017/07/28/world/asia/panama-papers-pakistan-nawaz-sharif.html>.

The Greek debt crisis is also a saga of human punishment and a lost decade of growth. The Jubilee Debt Campaign has characterised it as a story of 'banks before people.'[896] US, German, French and British banks had lent vast sums to Greece from the 1990s to 2011[897], which in turn fuelled spending on imports from these countries even though unemployment in Greece was high. In 2010, it became obvious that Greece would not be able to service its debt liabilities. To avert default, the EU and IMF gave bailout loans to Greece so it could continue to pay its lenders. They also imposed austerity measures on the country as a condition of the bailout. In 2015, the Syriza government requested the EU and IMF to write off some of its loans to make the repayments manageable. This request was refused and Greece was threatened with expulsion from the Eurozone.[898] The Greece government accepted the harsh terms of the bail out loans, which in effect protected the lenders who had been imprudent in advancing the loans, their behaviour reminiscent of the lenders who created the sub-prime mortgage crisis in the USA in 2007-08. According to the IMF's own reflection on the crisis, in 2019 Greece's 'GDP per capita is still 22 percent below the pre-crisis level. We forecast that it will take another 15 years, until 2034, to return to pre-crisis levels.'[899] The country's debt repayments will finish in 2060.[900] 22% of the population is living in extreme poverty.[901] This 'macroeconomic stability' has been achieved through paying a huge human cost. By the time the country finishes servicing its debt, if this happens, it would have spent 50 years in austerity and fiscal reform.

The immediate question here is about prioritisation. The financial health of banks who lent to Greece was protected whilst two generations of Greeks have been subjected to harsh economic circumstances. Specifically, the rigidity shown by the EU and IMF in not cancelling Greek debts has led to severe consequences for the population. The overall context of this historical event – the imprudent decisions made by lenders, the strict austerity measures imposed

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896 'The Greek Debt Crisis: A Case of Banks before People', *Jubilee Debt Campaign* <https://jubileedebt.org.uk/countries-in-crisis/greek-debt-crisis-case-banks-people> [accessed 30 January 2022]. See also Stiglitz, *Greece, The Sacrificial Lamb,* supra.

897 Jubilee Debt Campaign, 'The Greek Debt Crisis', ibid.

898 Ibid.

899 Poul M. Thomsen, 'The IMF and the Greek Crisis: Myths and Realities', *International Monetary Fund*, 30 September 2019 <https://www.imf.org/en/News/Articles/2019/10/01/sp093019-The-IMF-and-the-Greek-Crisis-Myths-and-Realities>.

900 Kimberly Amadeo, 'Greek Debt Crisis Explained', *The Balance*, May 2020 <https://www.thebalance.com/what-is-the-greece-debt-crisis-3305525>.

901 Jubilee Debt Campaign, op cit.

by the IMF and EU while purporting to help Greece, and the refusal to cancel unsustainable debt – render this an egregious case of *ribā* in recent times.

The behaviour of financial institutions is crucial in meeting the complex challenge of reducing poverty through sustainable development. There are severe, long-term consequences of the actions of these lending institutions as Kevin Watkins has noted in his recent article: debt distress, low-income countries spending more on debt servicing than public health provision even during the Covid pandemic, and austerity measures leading to reduced investment in public services. Poverty and malnutrition are increasing across most low-income countries. 'Progress towards the 2030 sustainable development goals (SDGs) has been thrown into reverse.'[902] In this situation, reducing the debt burden of low-income countries is a *moral* responsibility of international financial institutions and their members. Whilst the IMF and the World Bank have offered assistance during the pandemic through issuing zero-interest loans,[903] low-income countries cannot even service the principal amount. Like personal consumptive loans, the horizons of the past and the present of *ribā* come together in the practice of sovereign lending. The degradations of *ribā* are at their most visible in this arena, with adverse long-term implications for hundreds of millions of the most vulnerable people on the planet.

6.7 Concluding Remarks on this Chapter

In this phase of the research journey, there has been a significant hermeneutical shift from the traditionalist to the reconstructed theory.

In this chapter, the exegesis of the Qur'ānic verses on *ribā*, the *asbāb ul nuzūl* surrounding these verses, and Ḥadīth traditions about *ribā* provided the evidence base to develop a deeper, more nuanced understanding of *ribā* as an exploitative lending practice. The conceptualisation of *ribā* in gestalt has shifted focus away from the presence / absence of interest charges towards

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[902] Kevin Watkins, 'We Can Afford to Reverse Poverty and Climate Breakdown. What We Can't Afford Is the Alternative', *The Guardian*, 24 January 2022 <https://www.theguardian.com/global-development/2022/jan/24/we-can-afford-to-reverse-poverty-and-climate-breakdown-what-we-cant-afford-is-the-alternative>.

[903] Watkins, ibid.

exploitative lending. The conceptualisation is legally concrete: it identifies inclusions and exclusions and draws the boundary at which a loan becomes *ribāwi*. Application in five different scenarios has tested the validity of this theory in the present. This concreteness of the reconstructed hermeneutic of *ribā* will enable substantive legal and policy developments in the Islamic banking sector and Muslim countries.

This chapter has also achieved the fusion of horizons of the past and the present. It can now be posited that personal loans for consumption resulting in bonded labour and sovereign debt with strict conditionalities imposing austerity on entire nations are situated firmly at this shared horizon. As such, they represent the most egregious cases of the forbidden *al-ribā.*

Chapter 7
Conclusion

7.1 Research Problem, Aims and Questions

This thesis set out to develop a fresh interpretation of *ribā* (interest or usury), prohibited by the Qur'ān in emphatic terms. In Islamic law (*fiqh*), *ribā* is typically categorised into *ribā al-nasī'a* (*ribā* of delay, of which the Qur'ānic *ribā* of pre-Islamic days – *jāhiliyya* - is an example), and *ribā al-faḍl* (*ribā* of excess, understood on the basis of Ḥadīth traditions about barter-like transactions). Proponents of the established juridical view, which defines *ribā* as *any* increase above the principal amount of a loan or debt, claim consensus on this definition. However, a quick glance at the opinions of legal scholars from the formative period to modern times confirms that *ribā* is a controversial concept in Islamic law (*fiqh*). Muslim jurists disagree about the categorisation of *ribā* into *ribā* al-*nasī'a* and *ribā al-faḍl* based on the epistemological origin of the concept (Qur'ān for the former, Ḥadīth for the latter), the operative causes triggering the prohibition, the legal import of *ribā al-faḍl*, and, in contemporary times, the inclusion of bank interest into the remit of the forbidden *ribā*. The earliest authorities in Qur'ānic exegesis and Islamic law held only the Qur'ānic *ribā* to be forbidden: the *ribā* of pre-Islamic days (*jāhiliyya*) which took the form of redoubling of the debt or loan if the borrower asked for more time to repay. This disagreement about *ribā* has profound implications for the Muslim world where Islamic finance emerged as a phenomenon in the 1960s with the aim to offer interest-free banking options. The practice of Islamic banking rests on the established juridical view of *ribā* which considers interest *per se* to be exploitative. Six decades later, Islamic financial institutions are facing a crisis of credibility. Critics of Islamic finance have labelled the avoidance of interest as a semantic change; some scholars have even declared it a legal stratagem used to circumvent the Qur'ānic prohibition. The established juridical view of *ribā* is based on the methods and conclusions of Muslim jurists of the formative 'classical' period (third to fifth century of Islam). Traditionalist scholars of Islamic finance have couched the classical theory of *ribā* in the semantic field of modern finance and concluded that Islamic finance is an interest-free model where investment is done on a profit-and-loss-sharing (PLS) basis. The forms of contracts extant in pre-Islamic Hejaz, for instance, the *muḍarabah* (merchant-

agent partnership or *commenda*) and *musharakah* (partnership), have been given Islamic sanction as the 'ideal' forms of investment. However, the expediency of modern investor behaviour and pragmatic considerations like reducing moral hazard have compelled Islamic banks to move away from PLS models and rely primarily on credit sales contracts, which are safer but mimic interest-bearing loans. At macroeconomic level, Islamic banks have made unsatisfactory progress towards meeting human development goals. In other words, the established theory of *ribā* neither meets the spirit of the Qur'ānic law nor is it fit for purpose for the demands of investors in modern economies. This thesis has argued that the legal reasoning underpinning the classical (and neoclassical) law of *ribā* is flawed. A reconstructed definition of *ribā* is required to unleash the transformative potential of Islamic finance which will facilitate economic growth in Muslim countries and provide an ethical framework for financial practices in a globalised world.

One of the most glaring lacunae in Islamic financial literature is the absence of the history of *ribā* prior to and synchronous with the revelation of the Qur'ān. The methodological preference of classical jurists to adhere to the literal text of the canonical sources divorced from sociohistorical context is a key contributory factor in the weaknesses in juristic reasoning. This research started with curiosity towards the ground reality of *ribā*: What did the Qur'ān mean when it used the word *ribā*? Was the Qur'ān referring to any increase or a specific type of increase? What did the Arabs of that time understand from this prohibition? Why did the Prophet annul the *ribā* of 'Abbās bin 'Abdul Muṭṭalib during the sermon after his last (and only) ḥajj pilgrimage? Further questions emerged in this quest, pertaining to the linguistic meaning of *ribā*, the epistemological role of Ḥadīth tradition in the *fiqh* understanding of *ribā*, the disputes about the *ratio legis* ('*illah)* and rationale (*ḥikmah*) of the prohibition, the ontology and legal status of *ribā al-faḍl*, and the remit of the Qur'ānic prohibition (personal or business loans, high interest rate, low or zero interest rate loans).

The impediment created by this lacuna could only be overcome by developing a sociohistorical understanding of the practice of *ribā* at the coincidental moment of the revelation of the Qur'ān. The main objective of this research, therefore, was to develop a historically anchored interpretation of *ribā* that gave primacy to the Qur'ānic narrative to extract transcendental meaning and develop a legally concrete definition for application in modern times. The methodology emerged from the needs of the research, which demanded an understanding of the

history of *ribā* before making any confident conclusions about the original intent of the Qur'ān. It required a move to the past to understand the sociohistorical circumstances surrounding the Qur'ānic verses on *ribā*. This almost intuitive approach found articulation in Fazlur Rahman's hermeneutical framework known as the 'double movement theory'. In the first movement, the historical lens was lengthened to create a sketch of lending (including usurious lending) within the economic history of debt from antiquity to the point of the revelation of the Qur'ān. This sketch was titled The Antecedent. Once the past of *ribā* had been understood in this immediate (specific) context, this research identified general principles to guide the application of theory in modern times, this being the second 'particularising' movement to the specifics of the present moment. Gadamer's philosophical approach guided two aspects of this thesis: first, the creation of fused horizons of the past and the present where 'true understanding' becomes possible; second, the commitment to 'vigilance in application' to ensure that the law met 'the spirit of justice' in the present. This research set three measures of success. First, the use of appropriate categories of knowledge in the first movement to the past to avoid creating an ahistorical sketch; second, faithfulness to the text of the Qur'ān to honour the research commitment to the primacy of the Qur'ānic paradigm; third, testing the validity of theory through application to meet the Gadamerian test: 'an understanding without application is no understanding at all.' This Rahmanian – Gadamerian model provided the conceptual framework for thesis methodology.

Two types of reconstruction were undertaken in this research: sociohistorical and epistemological. For the first, the sociohistorical research method of triangulation of evidence was employed to create a *particularising* history to address some of the research questions about *ribā*. Economic history of lending and anthropological work on social institutions and barter transactions formed the first apex. The canonical sources of Islam – Qur'ān, Ḥadīth, and the sub-genre of *asbāb* ul *nuzūl* (occasions of revelation reports) – formed the second apex. The interpretive communities of the past and the present formed the third apex. The second reconstruction pertained to the intellectual tradition of Islam. This thesis adopted Muhammad Iqbal's premise that Islamic jurisprudence is a dynamic space for developing responsive solutions to the challenges of modernity, provided its principles (*uṣūl*) and methods of reasoning are critiqued and enhanced. The Subsequent explained how *ribā* was understood by classical scholars whose theory had been revived by contemporary traditionalists. The classical understanding of *ribā* was based on the methodological preferences of jurists; these preferences explain the

weaknesses in legal reasoning, particularly the debilitating influence of Ash'arism and the approach to employing Ḥadīth reports in legal reasoning, specifically, accepting the authority of Ḥadīth reports to particularise (*takhṣīṣ*) or clarify (*tafsīr*) the meaning of the Qur'ān. With reconstruction in view this research has assumed the doctrinal position - based on the Qur'ān's repeated encouragement to ponder on its meaning (*tadabbur*), its claim to eloquence and clarity (*mubīn*), its reference to the responsibility of the Prophet in teaching the law (*al-kitāb*) and its wisdom (rationale - *wal-ḥik'mata)* with the aim to purify (*wayuzakkīhim*) and achieve salvation (*falāḥ*) - that 'authorial intent' can be determined from within the Qur'ān and the normative praxis of the Prophet. This positionality created a point of departure from the traditionalist's adoption of the Ash'arite theological view about the 'inefficacy of the human will' in understanding the intent of divine law. Further, this research used a cautious approach to assigning normativity to Ḥadīth traditions about *ribā*, using Khaled Abu Al-Fadl's theory of 'competence' of a Ḥadīth report including the criterion of the centrality of the role of the Prophet in the narration itself.

Triangulation helped to overcome the main methodological challenge of the absence of documentary archives (contracts, letters) that would have otherwise enabled the piecing together of a picture of commercial practices during the very early days of Islam.

Employing the Islamic legal principle that the Qur'ān offers certain knowledge (*qat'*) and makes its meaning clear, the process of developing a reconstructed theory of *ribā* started from an intratextual analysis of the *ribā* verses. Using the principle of *shar' man qablana* (the laws of the People of the Book: Jews and Christians) and the Qur'ān's mention of the *ribā* of Jews in Q4:160-1, this thesis took a brief excurses into the prohibition of *ribā* in the Torah. The practice of *ribā* mentioned in the *asbāb ul nuzūl* was reviewed next, followed by an analysis of relevant Ḥadīth reports from the perspective of economic history and linguistics. The normativity of the six-commodities Ḥadīth about *ribā al-faḍl* was questioned in view of present historical and anthropological research about the conditions for barter transactions. Thus, the historical insights developed in the Antecedent informed the full reading and exegesis of these canonical sources of Islamic knowledge. This multi-layered analysis yielded a clear picture of the practice of *ribā* and its oppressive consequences in 7th century Hejaz, the immediate setting of the Qur'ān.

The next step involved the identification of the ‘*illah* and the *ḥikmah* of the *ribā* prohibition. In the final step of this hermeneutic endeavour, the Gadamerian test of application was used and the reconstructed theory of *ribā* was applied to five different scenarios in the ‘present’, including personal consumption and production loans, mortgages, business loans and sovereign debts.

Throughout, the Qur’ānic law was approached as a *moral-legal* law, casting aside any utilitarian aims or expedient concerns. The key findings of this research are stated below, in the order in which the research questions were listed in the introductory chapter.

7.2 A Summary of Findings

7.2.1 Sociohistorical Reality of *Ribā*

Ribā was a well-established financial practice amongst the merchants of Mecca and the Jews of Medina. Just before the revelation of the Qur’ān, the merchants and money lenders used to advance loans to the poor and needy either in the form of currency (*qarḍ*), debt created through a credit sale (*salaf*), or through lending items for use, for instance an animal, plough or ship (*‘āriyya*). These loans correspond exactly to the Roman *mutuum* and *commodatum* loans and were common forms of gratuitous loans. However, not all lending was gratuitous *ab initio*. Further, at the time of maturity, if the debtor was unable to repay the remaining amount of the debt was re-doubled. It is this redoubling that the Qur’ān refers to in Q3:130. Non-payment of the loan resulted in the borrower losing all his valuables, or worse, entering debt bondage. Redoubling, therefore, is a particular manifestation of *ribā* in the society where the Qur’ān was revealed. As such, it is not the *only* form of *ribā*, but a specific form practiced in the Hejaz. Analysis of lending practices in antiquity shows other manifestations of *ribā*, including zero-interest loans leading to violent usurpation of assets, and the use of *antichresis* and double-sale to circumvent the Torah prohibition of *ribā* (Hebrew: *marbit*).

7.2.2 Linguistic and Exegetical Findings

An analysis of the chronology of the *ribā* verses (Q4:160-1, Q3:130, Q2:275-83) showed that they were revealed between 2AH and 5AH, except for Q30:39

which was revealed much earlier.[904] Linguistically, the word *ribā* comes from the triliteral root *r-b-w*. The literal meaning of *ribā* is 'increase.' This word has been used in the Qur'ān as *warabat* – 'to swell' (Q22:5); as *arba* – 'more numerous' (Q16:92); as *rabwatin* – 'a high ground' (Q23:50).

In each Qur'ānic verse, the pattern is consistent. The noun refers to the forbidden *ribā,* a well-known practice, whereas the verb *yarbū* refers to increase that is promised as a reward for charity. *yarbū* in the Hereafter results from a *decrease* in worldly wealth (sharing through charity) whereas *ribā*, devoid of blessing, results from the desire to increase worldly wealth through wrongfully devouring the property of others. In Q30:39, the Qur'ān informs its audience that the increase is sought through / from / in the property of others (*fī amwāli l-nāsi*). The *takhṣīṣ* (specification) in the Qur'ānic language, with the definite article '*al'* in *al-ribā*, shows that *ribā* was a specific type of increase. As a practice, it was well-known and familiar to the Qur'ān's addressees. Therefore, *ribā* was a *mufassar* (unequivocal) word for its audience. This represents a point of departure from both classical and neo-classical categorisation of *ribā* as a *mujmal* (ambiguous word). In the internal context of the Qur'ān, *ribā* is consistently situated in opposition to *infāq* or *ṣadaqah* (charity). An analysis of the *ribā* verses in narrative groupings brings up the themes of charity and salvation, harm to the poor and needy through exploitative lending and rapaciousness (seeking manifold increase).

Employing the *uṣūl of shar' man qablana,* the brief excursus into the Jewish law on *ribā* resulted in emphasising the contradistinction between *ribā* and *ṣadaqah.* It demonstrated that charity has always formed the implicit and / or explicit context in the scriptural prohibition of usury. God expects believers to exercise concern and kindness to an individual in need, rather than extract profit from a person in distress. The above also explains the *familiarity* that is implicit in the Qur'ān's address to the Jewish moneylenders of Medina in Q4:1601: they knew that *ribā* is opposed to charity and is tantamount to wrongful devouring of other people's property.

The *asbāb ul nuzūl* reports provided details about the Arab practice of *ribā al-jāhiliyya*, the extant form of *ribā* when the Qur'ān was being revealed. The reports typically mentioned a process of re-doubling whereby the liability of the

[904] See 6.2.1.1.

debtor was doubled if he was unable to settle the debt at the agreed time. A report from the Prophet's wife 'Ā'isha mentions the prohibition of liquor and *ribā* to have happened at the same time (around 4AH). This cast doubt on the normativity of the report from 'Umar bin Al-Khaṭṭāb (the second Caliph) which mentions that the *ribā* verses were the last to be revealed and the Prophet could not explain them fully before his death. Crucially, a report from 'Ata and 'Ikrimah provided details about the loans of 'Abbās, who, together with 'Uthmān bin 'Affān (the third Caliph), had lent dates to a man who could not settle his debt because he did not have enough dates to feed his children. The debtor offered to pay half of the loan amount and double the remaining amount. Another report mentions Khālid bin Walīd and 'Abbās as business partners who used to make *ribāwi* (possessing *ribā*) loans and owned numerous debt slaves as a result. Independent historical evidence corroborated these facts. Verses Q2:278-9 – '…give up what remaineth (due to you) from usury…And if ye do not, then be warned of war (against you) from Allah and His messenger…' – are said to have been revealed on this occasion. It is this *ribā* of 'Abbās that was annulled by the Prophet at the Ḥajj. A second report mentions the debts owed by the tribe of Banū al-Mughīrah to the tribe Banū 'Umayr of the Thaqīf. The former were 'the most miserable of men' in their indebtedness. It is not clear, however, if the cancellation of the former's debts took place on the same occasion of the Ḥajj. Together, these reports provide important sociohistorical information about the practice of *ribā* as well as the chronology of the *ribā* verses.

7.2.3 The Role of Ḥadīth in Explaining *Ribā* and the Ontology of *Ribā al-faḍl*

An analysis of the content (*matn*) of the foundational Ḥadīth traditions cited in Islamic finance theory led to the following findings.

First, the tradition from 'Umar about the lateness of *ribā* verses contradicted the Qur'ānic verse confirming the completion of the religion of Islam (*akmaltu lakum dīnakum* in Q5:3) as well as the *sabab* report from 'Ā'isha which dates the prohibition of *ribā* to 4AH. 'Umar's report was used by classical jurists to posit that the word '*ribā*' was *mujmal* (ambiguous) and required explication from Ḥadīth reports. Some modern traditionalists have even stated that 'Umar's report was referring to *ribā al-faḍl*, which implies a remarkably prescient opinion from 'Umar about a category of *ribā* conceptualised by later jurists. If the report

from ‘Umar was to be accepted, it would be tantamount to accepting that the Prophet left the law of the Qur’ān quasi-explained. Such a possibility could not be entertained. Moreover, the chronology of the *ribā* verses, corroborated through various reliable reports, cast serious doubt on the veracity of this tradition.

Second, the six-commodity Ḥadīth report, used by classical jurists to remove the ambiguity about *ribā*, lacked ‘competence’ on multiple grounds. It provided no contextual information to establish the nature of the transaction. Any assumption of *present* barter in *similar* commodities proved unsound because barter transactions only take place if there is complementarity of needs and the report did not allude to such complementarity. Economic history and anthropological research showed that barter only emerged during times of economic crisis and entailed huge transaction costs, making it likely that the report’s context was one of economic precarity and high likelihood of exploitation. Linguistic analysis of the report showed the possibility of error in the text of the tradition. Furthermore, any attempt at viewing this tradition as aiming to ensure equivalency in exchanged commodities or marking prices to market to minimise risks – examples of technical reasoning offered by modern scholars - shifts this tradition to one prohibiting *gharar* (speculative gain or gambling), creating further confusion as to its categorisation under *ribā*. Taken together, these issues challenged the validity of this type of *ribā*. *Ribā al-faḍl*, therefore, is an error in juristic reasoning. This thesis appended contextual information to this report and re-interpreted it as a report about credit sales in currency and food items, where the creditor could change the demand for payment if there was a delay. All items listed in the report were fungibles (currency and victuals) probably lent gratis as *qarḍ* or *salaf* loans during difficult economic conditions. This conclusion was further corroborated through two types of traditions. Firstly, the tradition from Ibn ‘Abbās which records his opinion that *ribā* is in delay only (*nasī’a*). Secondly, linguistic analysis of numerous reports that mention extraction (*jarra*) of profit through stipulation of increase on gratis loans (*qarḍ* or *salaf*) for consumption demonstrated that the Arabs were typically turning gratuitous loans into *ribāwi* loans. Employing the *uṣūl* of *ghalabat al-zann* (preponderance of evidence), it was concluded that the six-commodity report and other reports about extracting profits from loans or credit sales refer to the *ribā al-nasī’a* (*ribā* of delay), making redundant the legal category of *ribā al-faḍl*. Given this conclusion, it was deemed unnecessary for the purpose of this thesis to identify the ‘*illah* of *ribā al-faḍl*.

The report about the Ḥajj Sermon (10 AH) held normative value in the interpretation of *ribā*. In the final promulgation of the key tenets of Islamic faith to a large gathering of believers, reminiscent of the sermon of Moses at Sinai and Jesus at the Mount of Olives, the Prophet played a central role in this Ḥadīth tradition. His reference to the *ribā* of ‘Abbās as an example of *ribā al-jāhiliyya* assigned the status of legal precedent to these loans. The annulment of *ribāwi* loans gave practical meaning to the Qur’anic warning -‘take notice of war from Allah and His Prophet’; that is, the state can declare a debt jubilee in egregious cases of *ribā* to emancipate people from oppression. Crucially, the Prophet linked the prohibition of *ribā* to its *ḥikmah* by citing the exact phrase from Q2:279: *lā taẓlimūna walā tuẓ'lamūna* (Deal not unjustly, and ye shall not be dealt with unjustly), thus confirming that the rationale for the prohibition is found in the Qur’ān.

7.2.4 Legal Reasoning: The *‘illah* and *ḥikmah* of the *Ribā* Prohibition

The rationale for the prohibition of *ribā* is to prevent *ẓulm* inflicted on those in financial difficulty by the wealthy and powerful. The noun *ẓulm* has the meaning of injustice and oppression. In verb form I as used in Q2:279, *taẓlimūna* means to oppress, to wrong. The Prophet’s decision to cancel ‘Abbās’s *ribā* and declare a debt jubilee confirms that *ẓulm* was a feature of these loans and it was for this reason the loans were cancelled. The established theory of *ribā* posits that the *ratio legis* of the prohibition is *any* increase on the principal amount of the loan. Yet, the Qur’ān particularises *ribā* as *l-ribā* or *the* increase. In Q30:39, it explicates *l-ribā* as an increase through / from the property of others. This alludes to an inverse relationship between the wealth of the lender and the borrower, whereby the lender benefits at the expense of the borrower. This relationship is parasitic rather than symbiotic. If an interest-bearing loan enables the borrower to benefit by generating a surplus, then this loan should be excluded from the prohibition. The prohibition of *ribā* is triggered when the increase accrues to the lender while harming the borrower, either due to the terms of the loan itself or because of external factors that have made the borrower insolvent. *Ribā*, therefore, is not a generic increase (interest or bank interest) but an unjustified increase demanded from a struggling or insolvent borrower, leading to exploitation. The *ratio legis* is an increase that accrues to the lender while the borrower’s circumstances are worsening. The linguistic style adopted in Q2:280 – ‘If the debtor is in a difficulty, grant him time…But if ye remit it by way of charity’ – lends further credence to this articulation of the ‘*illah* and accommodates the possibility that the loan may have been *ribāwi ab*

initio or become *ribāwi* when the struggling debtor sought more time to repay due to an adverse turn in circumstances. In serious cases of financial distress, the Qur'ān exhorts the lender to cancel the debt in its entirety. Thus, the *'illah* and the *ḥikmah* of *ribā* have a causal relationship with the rule, shifting the prohibition to the type of inference called *qiyās 'illah* (causative inference).

From the perspective of juristic reasoning, Q30:39 holds definitional value. Q4:160-1 links the Qur'ānic prohibition of *ribā* to the long history of exploitative lending, providing an example of transcendentalism in the Qur'ān: while the explicit form of the *ribā* transaction had evolved with the passage of time from the revelation of Torah law to Moses to revelation to Muhammad, the rationale has remained the same. Q3:130 refers to the form of *ribā* practiced by the merchant-capitalists of the Hejaz (*aḍʿāfan muḍāʿafatan* - doubled and multiplied) and alludes to the distress of the borrower as he futilely chases a fast multiplying loan. The detailed final set of verses Q2:275-83 emphatically prohibit *ribā*, regulate the process of settlement of *ribāwi* debts, grant the state the authority to take legislative steps to declare debt jubilees and return usurped assets to original owners (borrowers), exhorts believers to act charitably in situations demanding charity and compassion, and regulate the contractual aspects of securing loans through pledges (collateral).

The original remit of *ribā* extended to consumption loans to individuals and households. These loans could be used for productive purposes by consumer-producer households, an important institution in ancient economies, but did not play a substantive role in Meccan trade, which mainly relied on investment capital in the form of *muḍarabah* (*commenda*) partnerships. As *ribā* was almost always a feature of personal loans, early jurists of Islam included all interest-bearing loans in the prohibition to prevent exploitative practices. This had no detrimental effect on commercial activity due to the traders' reliance on partnership investments. This historical condition does not hold true in modern times, hence, a blanket ban on interest can be extremely detrimental to grassroots economic development which relies on the availability of loan credit.

The remit of the original prohibition can be extended to include productive personal and business loans. This further broadening of remit is possible based on the Qur'ān's use of the general term *amwāli l-nāsi* in Q30:39, referring to wealth or properties. There is no basis to exclude business or institutional wealth from this term. In the past there were no safeguards to protect *amwāli l-*

nāsi and this continues to be the case in less developed nations especially in the unregulated sector. This absence of safeguards gives even more emphasis to the Qur'ānic command to grant the borrower time to repay or write-off the loan. In modern times, however, personal liability can be limited either through business structure (limited liability and joint stock companies) or by filing for personal bankruptcy. Assets of large insolvent businesses are liquidated by administrators, offering a more controlled mechanism. Overall, the growth and protection of *amwāli l-nāsi* form important priorities in allowing financing through interest-based business loans. Lastly, zero interest loans can become *ribāwi* if the lender secures a pledge that harms the borrower or uses coercive methods for debt collections. (The example of Nasreen's loan in Appendix A is important in illustrating this point.) In other words, zero interest loans can also become *ribāwi* depending on the terms of the loan and the borrower's circumstances.

Based on an analysis of specific and general indicators in the *ribā* verses, this thesis has posited some general principles which have guided application of theory.

7.2.5 General Principles and Application of Theory

Al-ribā emerges in transactions of lending or credit. It is contra-distinct from charity and is demanded in situations which require a charitable response. Injustice, exploitation, and harm are necessary elements of *al-ribā,* rather than increase on the principal amount. A *ribā* loan only enriches the lender, while the borrower experiences loss of wealth and assets. As a result of this *takhṣīṣ* (particularisation), mutually beneficial loans are precluded from the prohibition of *ribā*. The stipulation of increase on a loan (interest) must be justified and fair. Demanding an increase from a borrower (individual, businesses, countries) in distress is unjustified. An interest-bearing loan becomes *ribāwi* when the boundary of 'justified demand for an increase' is crossed. A zero-interest loan becomes *ribāwi* when a valuable asset is pledged and such a pledge causes harm to the borrower. High interest loans are always *ribāwi* due to their possessing the attribute of *aḍʿāfan muḍāʿafatan* (doubled multiplied). Compounding of interest is also an example of unjustified 'multiplication' of interest and therefore falls under the prohibition of *ribā.*

When settling a debt, justice should be ensured for the lender and the borrower. The Qur'ān recognises the right of the lender to the original sum of the loan.

The legal basis of *damnum emergens* (compensation for loss of capital) and *lucrum cessans* (opportunity cost) will also apply in this situation. On the other hand, the borrower should be spared distress.

Types of lending which force a borrower into destitution, humiliation and slavery represent egregious cases of *ribā* and are situated on the fused horizon of the past and present. The state can declare a debt jubilee for these loans and take legal steps to return pledges to original owners. Egregious cases of *ribā* such as debt slavery should be persecuted under criminal law and breach of human rights.

Lastly, the overall context of the loan – terms and conditions, financial standing of borrower and lender, purpose of the loan and process of settlement – play a part in determining the *ribāwi* nature of the loan.

These general principles guided the application of theory across five different scenarios. In the case of personal loans for consumption, it was concluded that charging interest on these loans would make them *ribāwi*. In the unregulated sector, non-payment of these loans can have serious consequences such as individuals being trafficked or entire families forced into bonded labour. These egregious cases of *ribā* closely resemble *ribā al-jāhiliyya* and affect the lives of millions of individuals, especially in South Aisa. In the case of personal productive loans, such as student loans and mortgages, traditional scholars have used the *uṣūl* of *ḥaja* (basic need) to suspend the blanket ban on interest. This thesis has posited instead that the *fatwā* (non-binding legal opinion) issued by scholars is based on flawed understanding of the case of ‘general’ need and should be revisited. The reconstructed theory of *ribā* considers student loans and mortgages as ‘general’ financial dealings of a beneficial nature in which paying interest is fair and reasonable. However, reform is required in these financial transactions to make the loans less distressful for borrowers such as improving bankruptcy rights for students, setting income thresholds at which student loan repayments will be triggered, halting interest accrual during payment holidays, giving more time to borrowers to repay the loans if they are facing ill health or financial crisis, and banks sharing in losses originating from macroeconomic level reduction in house prices to prevent the build-up of negative equity. In the case of business loans, interest-bearing micro-credit is an effective mechanism for reducing poverty. Banks and governments should also offer soft agricultural loans to subsistence farmers to reduce financial

exclusion which leads them to rely on oppressive landowners, especially in countries like Pakistan where feudalism is still extant. During periods of macroeconomic crisis, such as recessions or other exogenous shocks, banks should ease terms of repayment for businesses. Lastly, in the case of sovereign loans, loan conditionalities imposing fiscal austerity and creating largescale social and economic distress will render such loans *ribāwi*. Countries in severe financial distress who are unable to repay even the principal amount should have recourse to carefully managed debt cancellation processes.

7.3 Research Implications, Contributions, and Reflections

There are three major implications of this research. The first implication is that it will move Islamic finance theory away from a narrow focus on avoiding interest towards developing fairer banking practices. This research brings the weight of canonical sources of Islamic law to create more space for Islamic banks to develop financial products that meet the developmental needs of struggling economies whilst reducing legal and transactional costs entailed due to the need to ensure Sharī'ah-compliance in secular legal systems. The *moral-legal* thrust of this new theory can benefit not just those nation-states where Muslims live in a majority but all struggling economies where unsustainable debt, poverty and financial exclusion are common.

The second implication of this research is that by identifying *ribāwi* loans that sit on the fused horizon and resemble the *ribā al-jāhiliyya* most closely – loans leading to debt slavery, usurpation of assets, human trafficking and prostitution, loan sharking, payday lending, double-bubble interest, bankruptcy due to medical bills, exploitative student loans, sovereign debts leading to huge human and social costs - it calls for a shift in the hierarchy of priorities set by scholars and practitioners of Islamic finance and the governments of Muslim countries who have embarked on Islamisation of the financial sector. The most important priority is the elimination of egregious cases of *ribā*. This must take the form of a debt jubilee and legal prosecution of moneylenders operating in the unregulated sector. The second priority is to strengthen bankruptcy protection and eliminate aggressive debt collection practices. The third priority is to undertake land reform and break large landholdings in countries like Pakistan where feudalism and its horrors are still extant. Banks can play a key role in providing skills training to farmers and improving availability of soft loans to help households escape the struggles of subsistence farming. Governments should also make

emergency funding available to help those in precarious employment or low wages to deal with the financial implications of serious illness or accidents. All citizens should be enabled to open bank accounts to reduce financial exclusion, a key factor in people turning to village loan sharks during periods of distress. Muslim governments should consider lobbying the IMF and World Bank or create another credible institution that can act as the lender of last resort to support countries in financial distress through soft loans where conditionalities are agreed in the best interests of the borrowing countries' economic recovery, rather than any ideological commitments to neoliberal economic orthodoxy. Lastly, all Islamic banks should sign up to the United Nations' Sustainable Development Goals as a key policy priority.

The third implication is the potential for improved 'connectedness', which was the impetus for using profit-and-loss-sharing partnership models in the early days of Islamic finance and has since fallen prey to expediencies of investor behaviour. The Qur'ānic concern with the borrower's plight can be meaningfully incorporated in policy by creating a new service model that puts genuine human interaction and service user needs at the heart of the banking sector. The last 30 years of financial deregulation and hyper-financialisation of economies have led to a disconnect between grassroots 'real' economic activity and financial services, a phenomenon Islamic banks have not been immune to. The decision makers in the financial sector – advisory boards, commodity traders, investment bankers, hedge fund managers and other actors in the financial sector – are isolated from the impact of their decisions. A profound implication of this detachment is that financial decision making has become immoral and amoral. Islamic finance can lead the world by situating moral and human concerns at the heart of its mission. The reconstructed theory of *ribā* developed in this thesis provides a firm foundation for this purpose, expanding the discourse to moral-legal concerns of this divine prohibition. At sector level, four initiatives will be required: one, the abandonment of the self-conscious political project tied to Muslim identity and a move towards true collaboration with debt activists and thinktanks advocating for a new economics for the people and the planet, regardless of their religious or secular affiliations; two, policy-level shifts that make it mandatory for financial practitioners and scholars of Islamic finance to build genuine relationships with clients to understand their life circumstances (and this may include witnessing family evictions after foreclosures on mortgaged properties); three, development of a diverse client base – farmers, shopkeepers, street vendors, female entrepreneurs, labourers and small businesses - rather than the current narrow base of established businesses,

middle class homeowners and wealthy clients in fossil fuel and construction industries; and fourth, enshrining the Qur'ānic principle of *ṣadaqah* as a policy response to borrowers in financial distress. Islamic finance has the potential to change the discourse and practice of finance at a global level but it can only unleash its potential by reviewing its understanding of *ribā*.[905]

The first major contribution of this research is a rich historical sketch. For the first time in Islamic finance literature, this study has drawn a detailed sketch of the sociohistorical reality of *ribā* prior to and synchronous with the revelation of the Qur'ān. By doing so, it has shifted the historic horizon, taking scholars of Islamic finance closer to the revelatory moment.

This thesis has also contributed to the development of *fiqh* discourse on *ribā*. Exegetically, it has declared *ribā* as a *mufassar* term in the Qur'ān, which was fully explained by the Prophet and well-understood by the original addressees of these verses, the capitalists of Mecca. It has re-categorised the *Sūrat l-baqarah* verses as pertaining to settlement of debts and posited that the verse in *Sūrat l-rūm* Q30:39, the first revelation about *ribā*, holds pivotal importance in developing an inclusive and exclusive definition of *ribā*. This hermeneutical movement has the potential to accommodate all types of *ribā*wi loans, even those at zero interest. Further, this thesis has removed *ribā al-faḍl* from the *fiqh* law of *ribā*, re-aligning the law to the original Qur'ānic prohibition. This research has posited that exploitation, rather than increase, is the necessary condition for a loan to be considered *ribā*wi. It has questioned the normativity of the Ḥadīth traditions on *ribā*, identifying the Ḥajj sermon as the most authoritative tradition about *ribā* and categorised it as a legal precedent. Finally, this research has problematised the idealisation of ancient forms of contracts – *muḍarabah* and *musharakah* – and posited that these forms of contacts are not linked to Islam or Islamically sanctioned.

The third contribution of this research is a dynamic methodology that historicises the message of the Qur'ān to extract transcendental meaning. This methodology emerged from wider reading about lending in antiquity, Judaic

[905] This thesis provides a conceptualisation of *ribā* based on a contextualised exegesis of the relevant verses of the Qur'an. The resulting theory may be perceived as 'liberal' but, in its implications and its re-centering of the vulnerable (outlined below), it brings with it several safeguards with the potential to re-shape the exploitative policies and practices of contemporary financial institutions.

legal thought on usury, and anthropological research about trade practices and social organisation in Mecca which created the backdrop for the Qur'ānic law. This methodology has met the commitment of viewing *ribā* in gestalt, not merely as a legal transactional form, and applied this full-bodied conceptualisation to multiple scenarios to test the validity of the new theory. This methodology holds promise for scholars working in the field of Islamic law. A most serious crisis of intellectual thought is apparent in the charged field of 'women in Islam', its discourse saturated with patriarchal interpretations and reliance on spurious traditions. Just as the sociohistorical reality of the word '*ribā*' shed light on the original and transcendental intent of the Qur'ān, a historicised re-interpretation of the Qur'ānic word *qawwām* (protectors and maintainers) may lead to developing robust critique of the idea of ontological superiority of men in traditional discourses. Dynamic historicism, therefore, holds much promise in the reconstruction of Islamic religious thought.

Arguably, the most important contribution of this thesis is to re-centre the vulnerable in the discourse on *ribā*. Barring some exceptions, Islamic finance literature does not acknowledge the reality of egregious forms of debt extant in modern times. This research has identified the elimination of such practices as a key priority based on its commitment to the Qur'ānic narrative on *ribā*.

There were some crystalline moments in this hermeneutical engagement that are likely to shape my future engagement with Islamic law. In the process of this research, it became manifest that historicism made transcendentalism possible. The approach to historicism matured to one of viewing the holy text as historically anchored, not bound. God chose Mecca as the original location for the Qur'ān to drop anchor. The latitude and longitude of that location have critical significance in any interpretative engagement with the Qur'ān. Even though the Qur'ān's language and its message is imbued with the contemporaneous realities of 7th century Hejaz, it is not limited by them. Its linguistic brilliance and transcendental teachings hold universal inspiration but its law needs to be re-interpreted by future generations of Muslims. The Qur'ān, therefore, is not bound by the circumstances of its locale and temporality but only when its context is understood fully, its transcendental meaning unleashes itself and becomes inspiring in the present moment.

During the course of the research, it became manifest that it is the Qur'ān's articulation of the *ḥikmah* of its laws that yields insight into the universal moral impetus of the law. In other words, transcendentalism is not possible without understanding the wisdom behind a rule, prohibitive or positive. Utilitarian considerations or expedient concerns undermine the Qur'ānic thrust, concerned as it is with guiding the individual believer and the polity to purify itself spiritually. This concern with *tazakka* (purification) provides the most suitable paradigmatic framework for understanding Qur'ānic law, ethics and theology.

Given the complexity of the law of *ribā*, the hermeneutic task itself was daunting. It was the commitment to self-reflexivity and openness that lead to moments of clarity, including the discovery of Q30:39 as the verse holding the definition of *ribā*. At this moment of discovery, the pieces of the puzzle started to slot into place.

Viewed in retrospect, this thesis places itself within a pre-Shāfi'ite epistemology. It represents an endeavour in undertaking legal reasoning from a place of empowerment, not futility. In the final analysis, this research yields probabilistic knowledge (*ẓannī*) but it is hoped that its rigour will be sufficient to shift the established juridical view of *ribā*.

Appendix A
Nasreen's Loan

Most middle-class Pakistani households employ servants. This is a first-hand account from a female servant named Nasreen who took out a loan at a time of need.

Nasreen lived in a deprived area. Her house had a narrow entrance door opening into a small courtyard with a kitchen in a corner. On the far side of the courtyard was a large bedroom shared by the family of five: Nasreen, her brother and elderly father, her sister and sister's husband. Apart from the father, all family members were wage earners. The men worked as labourers, their wages more precarious than the women's who worked as household servants and received a steady salary. The family were extremely poor and had very few belongings. A single light bulb hung in the doorway between the bedroom and the courtyard to illuminate both spaces. They also owned one pedestal fan in good condition, the only source of comfort in sweltering summer heat.

In spring 2003 year, Nasreen's brother fell ill and could no longer go to work, wracked by shivery fevers and weakness caused by malaria. Without medicine this could be fatal. Loss of daily wages already meant eating flatbread with brine. The family did not have money to see a doctor or buy medicine, so they turned to a neighbourhood moneylender. She offered to lend them PKR 1,000 with no interest, to be paid back in three months. The loan was pledged against the pedestal fan, which the lender took possession of at the point of advancing the loan. The resale value of the fan was in the region of PKR 1,200.

According to the technical definition of *ribā* in the traditionalist conceptualisation, Nasreen's loan is not *ribāwi* because the lender did not ask for an increase on the principal amount.

Appendix B

Usury in the Old Testament

This appendix lists the verses on usury in the Old Testament. The Authorised (King James) Version of the Bible is used, unless specified otherwise in citations. The chronology of the verses is based on the views of Gamoran and Buckley.[906] The last column of the table provides brief notes on the exegetical context of the verses and linguistic analysis of the original Hebrew terms for usury. All emphases are in the original text.

Verse	**Chronology**	**Exegetical context**	**Analytical notes**
If thou lend money to *any of* my people *that is* poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury. [Exodus 22:25]	Elohistic Code of the Covenant; 9th century BC or earlier	Protecting the poor; concern for the poor	The Hebrew word *neshekh* (bite) is used here for usury.[907] The poor debtor experiences usury as painful.
If thou at all take thy neighbour's raiment to pledge, thou shalt deliver it unto him by that the sun goeth down: for that *is* his covering only, it *is* his raiment for his skin: wherein shall he sleep? and it shall come to pass, when he crieth unto me, that I will hear; for I *am* gracious. [Exodus 22:26-27]	Elohistic Code of the Covenant; 9th century BC or earlier	Concern for the debtor	The use of the pledge taken for a loan is regulated so that the debtor does not come to harm (see parallels here with Nasreen's loan, a modern example).[908] The Qur'ān is also concerned with the use of collateral in debt transactions and allows its use when the lender is on a journey and cannot find a scribe.[909]

[906] Based on the views of Hillel Gamoran and Susan Buckley. See Hillel Gamoran, *Jewish Law in Transition: How Economic Forces Overcame the Prohibition against Lending on Interest* (Hebrew Union College Press, 2008), 11-2. Susan L. Buckley, *Teachings on Usury in Judaism, Christianity and Islam* (Lampeter: The Edwin Mellen Press, 2000), 5-10.

[907] Buckley, ibid., 20.

[908] See Appendix A – Nasreen's Loan.

[909] Q2:282

Verse	Chronology	Exegetical context	Analytical notes
And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him: *yea, though he be* a stranger, or a sojourner; that he may live with thee. Take thou no usury of him, or increase: but fear thy God; that thy brother may live with thee. Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase. [Leviticus 25:35-37]	The Law of Holiness; revealed prior to Deuteronomy.[910]	Protecting the poor; concern for the poor	These verses distinguish usury from increase. In the first instance, the Hebrew word *neshek* (or *neshekh,* meaning 'bite') is used for usury; the word 'increase' is a translation of the Hebrew *tarbit* or *marbit* meaning gain for the creditor. In other words, usury is experienced as a painful bite by the borrower but as a gain by the creditor. This word turns into *ribbit* in later Hebrew.[911] The triliteral root of the word *tarbit / marbit* is r-b-w, same as the Arabic *ribā*. The Qur'ān uses the term *ribā* for the usury charged by Jews.[912] Based on the Qur'ānic usage of the term when recalling 'the iniquity of the Jews', it can be concluded that *tarbit / marbit* was similar to *ribā*. Its form may be different but the experiences of the two parties to the transaction and the outcome (exploitation) were the same. In verse 37, the word be-neshekh is used. According to Cohen, here the

[910] Gamoran's view; see Gamoran, op cit., 12.
[911] Buckley, op cit., 20.
[912] Q4:160-1.

Verse	Chronology	Exegetical context	Analytical notes
			Torah is addressing the lender and asking him not to demand biting usury.[913]
Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of any thing that is lent upon usury: unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury: that the Lord thy God may bless thee in all that thou settest thine hand to in the land whither thou goest to possess it. [Deuteronomy 23:19-20]	Deuteronomic Code; 7th century BC	Kinship; lending of money and food provisions; double usury	In this verse, the Hebrew word *neshekh* (bite) and its conjugates *tashik* and *ishak* are used. They have the same triliteral root N' Sh' K'.[914] According to Cohen, 'the ancient translations of the Torah…render the term [tashik] as "Thou shalt take usury…"'[915] It is interesting to note here that the Tannaim broadened the prohibition by translating the term to mean 'Thou shalt bring is about that they take usury from you…' This view eventually received halakhic sanction. This development has parallels with the common translations of the Hadith tradition in the Sahih of Bukhari that assigns equal responsibility to the one who 'eats' riba and the one who gives it.[916]

[913] Avinoam Cohen, 'The Development of the Prohibition against Usury in Jewish Law during the Mishnaic and Talmudic Periods' (Sir George Williams University - Montreal, Canada, 1974), 90, n197.
[914] Cohen, ibid., 91, n198.
[915] Cohen, ibid. My addition in square brackets.
[916] Muhammad Al-Bukhari, 'Sahih Al-Bukhari', *kitāb al-libās,* <https://sunnah.com> [accessed 11 April 2021], Book 77, Hadith 161.

Verse	Chronology	Exegetical context	Analytical notes
he *that* hath not given forth upon usury, neither hath taken any increase, *that* hath withdrawn his hand from iniquity, hath executed true judgment between man and man [Ezekiel 18:8]		Do that which is lawful and right. Preceding verse: “and hath not oppressed any, but hath restored to the debtor his pledge, hath spoiled none by violence, hath given his bread to the hungry, and hath covered the naked with a garment.”	Usury is translated from *neshekh* and increase from *tarbit*.[917]
hath given forth upon usury, and hath taken increase: shall he then live? he shall not live: he hath done all these abominations; he shall surely die; his blood shall be upon him [Ezekiel 18:13]		Preceding verse: "hath oppressed the poor and needy, hath spoiled by violence, hath not restored the pledge, and hath lifted up his eyes to the idols, hath committed abomination,"	Usury is translated from *neshekh* and increase from *tarbit.*
that hath taken off his hand from the poor, *that* hath not received usury nor increase [Ezekiel 18:17]		Preceding verse: "neither hath oppressed any, hath not withholden the pledge, neither hath spoiled by violence, but hath given his bread to the hungry, and hath covered the naked with a garment,"	Usury is translated from *neshekh* and increase from *tarbit.*
In thee have they taken gifts to shed blood; thou hast taken usury and increase, and thou hast greedily gained of thy neighbours by extortion, and hast forgotten me, saith the Lord God. [Ezekiel 22:12]		Prohibition of lewdness and other sins.	Usury is translated from *neshekh* and increase from *tarbit.*

[917] ‘Orthodox Jewish Bible’ <https://www.biblegateway.com/> [accessed 29 January 2022].

Verse	Chronology	Exegetical context	Analytical notes
He that putteth not out his money to usury, nor taketh reward against the innocent. He that doeth these *things* shall never be moved. [Psalms 15:5]		Who shall abide with the Lord / find salvation	
He that by usury and unjust gain increaseth his substance, he shall gather it for him that will pity the poor. [Proverbs 28:8]	Observation of the Sages;[918] 4th century BC.[919]	Charity to the poor	

[918] Barry Gordon, 'Lending at Interest: Some Jewish, Greek, and Christian Approaches, 800 BC-AD 100', *History of Political Economy*, 14.3 (1982), 406–26 <https://doi.org/10.1215/00182702-14-3-406>, 407.

[919] 'The Proverbs: Old Testament', *Encyclopaedia Britannica* <https://www.britannica.com/topic/The-Proverbs> [accessed 29 January 2022].

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