

Institut für Human- und Islamwissenschaften





# The Question of Justice in Islamic and Western Philosophy of Law

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*Whatsoever is in the heavens and the earth glorifies Allah, and He is the All-Mighty, All-Wise. His is the kingdom of the heavens and the earth, It is He Who gives life and causes death; and He is Able to do all things. He is the First (nothing is before Him) and the Last (nothing is after Him), the Most High (nothing is above Him) and the Most Near (nothing is nearer than Him). And He is the All-Knower of every thing.*

*Qur'ān, 57:1-3*



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# TRANSLITERATION

<i>Arabic Symbols</i>	<i>Transliteration</i>	<i>Arabic Symbols</i>	<i>Transliteration</i>
ء	'	ل	l
ب	B	م	m
ت	T	ن	n
ث	Th	و	w
ج	j	ه	h
ح	ḥ	ي	i, y
خ	kh	ة	ah, at
د	D	<i>Long vowels</i>	
ذ	Dh	ا	ā
ر	R	و	ū
ز	Z	ي	ī
س	S	<i>Short vowels</i>	
ش	Sh	َ	a
ص	ṣ	ُ	u
ض	ḍ	ِ	i
ط	ṭ		
ظ	ẓ		
ع	'		
غ	gh		
ف	F		
ق	Q		
ك	K		



# 1. Introduction

The issue of Justice<sup>1</sup> is one of the most discussed key topics within legal- and social philosophy. What is Justice? How is it defined? What does it encompass? Throughout the ages, various social, moral, philosophical and political approaches have appeared to find proper answers regarding those questions, concerned with the origin of Justice and its authentication as well as its application in different cultural and religious settings. Thus, a multitude of different concepts of Justice have emerged.

In present times, a strong tendency to neglect the relation between moral concepts of Justice and legal provisions can be observed. Due to different reasons, the legal system and its precepts of the society one lives in, are rarely seen as an expression of Justice as such, by those who are bound to it. However, when it comes to the legal systems of other countries, especially if cultural and religious background differ, usually a more skeptical attitude can be encountered, expecting that quite naturally there should be a strong relationship between the legal system and an underlying concept of Justice.

Thus, we experience today, that sometimes the relationship between Islamic law and Justice is questioned very deeply by Western societies and on the other hand, the morality of Western legal provi-

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<sup>1</sup> I chose to capitalize the term „Justice“ throughout this thesis, whenever it is used as a proper noun, alluding to a particular philosophical concept and not just to justice as a general notion or sentiment. The same also applies to terms such as “Law” or “Ethics”.

sions is questioned by Islamic ones. In this thesis, my aim is subsequently to analyze the theoretical and philosophical backgrounds and foundations of these viewpoints, by making a comparison between the position of Justice in Islamic and Western Philosophy of law with a special focus on different legal schools of thought and legal thinkers in both systems and their perception on Justice, because these systems are not at all as homogenous as often perceived or portrayed.

It is necessary, to allude to the fact, that this study is undertaken within the field of systematic Islamic theology. While in recent years, this field has emerged as a literally response to the Christian method of 'systematic theology', it has in its main idea and its methodological application, already existed as part of Islamic sciences from the very beginning. The systematic theology from a Christian perspective arose as an antonymous approach to its dogmata, whose task is to give a coherent and ordered explanation of the Christian doctrines.

*Wolfhart Pannenberg* writes that:

*"From the early 18th century the term "systematic theology" came into common use to describe the task of offering a comprehensive and coherent presentation of Christian teaching. In 1727 Johann Franz Buddeus explained the term as follows. A presentation of theology can be called systematic if it meets two conditions: (1) it deals with its subject matter comprehensively, which means, for Buddeus, that it takes into consideration all that is necessary to salvation; (2) it also explains, proves, and confirms (explicit, probet, atque confirmet) its content in detail."*<sup>2</sup>

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<sup>2</sup> Pannenberg, 1992, p. 18

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Although in earlier times, a systematic approach had already been existing within Christian theology (such as we can find in *Summa Theologica* of Aquinas<sup>3</sup>), there was still a need for the development of an explicit systematic theology as a demarcation to the dogmata within the Christian discourse.

On the other hand, when it comes to Islamic theology the situation is different. Looking at the history and development of Islamic sciences, there have been various schools of thought from the earliest centuries onwards. Some of them had a more dogmatic understanding of the doctrines of faith, while others were practicing a more systematic approach towards them including the usage of sciences like logic and philosophy.

Based on their specific approaches and the doctrinal arguments that accompanied them, a classification into different schools of thought had developed within the Islamic discourse. This classification made it unnecessary to use the methodological term “systematic”, for describing a whole direction of theology, which in itself is naturally understood as diverse, being based on different rationales and logical lines of argument.

Nevertheless, in modern discourses it can be used in its methodological sense also within the Islamic sciences for a study which is approaching a doctrine through a rational, orderly and coherent explanation. Thus, in this thesis, I am going to undertake a systematic comparison based on an analytical research, while putting both subjects of research in a categorical relationship to each other, instead of analyzing them solely.

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<sup>3</sup> See Pannenberg, 1992, p. 19

I will start my study by giving a short overview about the understanding of Justice in Islamic as well as Western thought. Based on this, I am going to discuss the relationship between Law and Ethics in general, while categorizing the relevant Islamic and Western legal schools of thought according to their approach on this question.

While discussing the various historical Western schools of thought and their theoretical concepts, it will be very important to not disregard that the term “Western” here includes two different implications, which need to be distinguished. The first implication is, what can be called “secular” or “Non-Christian Western thought”, which is a compound of various ideas emerging from different historical periods, starting from the theories of the ancient Greeks all the way to humanism and modern positivistic concepts. The second implication of the term “Western” is its connection to the Christian heritage of Western societies, including its theological and social concepts. Whenever it becomes necessary, I will refer to this distinction, especially in comparing the theoretical concepts and definitions of the different legal schools of thought.

It is further important to note, which should be commonly acknowledged by now, that Greek philosophy had a great impact on Islamic philosophers, and that Islamic Philosophy in turn had a great impact on the Western world, especially in regard to epochal developments, such as the Renaissance and Reformation in Europe. In fact, their relationship is so intertwined, that it would be a fallacy to assume that they had developed in separate spheres. Instead, Islamic Philosophy and “Western” Philosophy have engaged in a continuous process of reciprocity. This reciprocating relation becomes even more apparent, when analyzing the parallels within the different concepts,

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even though they may have been developed during different time periods. Nevertheless, for the sake of a better comprehensibility and clearer accessibility, I mostly preferred to use contrasting juxtaposition.

This publication is based on my Master-Thesis. It is thus my concern here, to thank *Al-Mustafa University* for the opportunity to take part in this intensive Master's program for Systematic Islamic Theology and the facilities they have provided for us. I had the chance to learn from great teachers, within this Program, to whom I feel deeply indebted and grateful, such as *Dr. Mahmoud Karimi*, *Dr. Ali Abbas Shameli* and especially *Dr. Saeedi Mehr*, for his helpful advice. In particular, I want to thank my supervisor *Ayatullah Dr. Muhaqqeq Damad*, for the chance to benefit from his profound and original teachings, and all his efforts in guiding this thesis. I also owe special thanks, to my advisor *Dr. Mohammad Razavi Rad*, the founder and director of the *Institute for Islamic Sciences & Humanities, Hamburg* for without his pioneering work and his ongoing support, all this would not have been possible.



## 2. Conceptions of Justice

### 2.1 In Islamic thought

*“What is Justice? Giving water to trees.  
What is injustice? To give water to thorns.  
Justice consists in bestowing bounty in its proper place,  
not on every root that will absorb water.”*

*Mathnawi [V, 1089-1090]*

The Islamic definition of Justice is based on the presupposition that the whole existence is not only created by God, based on Divine Grace, it is also set into a perfect system of balance and equilibrium by Him. Justice in Islamic thought is the primary, original and most comprehensive human and divine principle at once. It is an Element which is granted with outstanding significance within the Islamic worldview and concepts of existence, as well as in its normative principles and ethics.<sup>4</sup>

Justice is expressed in the *Qur`ān*, which Muslims hold to be direct Divine speech, by using the Arabic terms „*Adl*“ and „*Qist*“. Both can be found in different variations about twenty-seven times in the qur`anic text. While „*al-`Adl*“ is marking the meaning of Justice in its common sense, „*al-Qist*“ is also conveying the meaning of Equity and

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<sup>4</sup> Rashadi, 2003, p. 307

fairness.<sup>5</sup> Thus, the term “*al-‘Adl*” is used within the qur’anic text for the individual (فردِي) as well as social (اجتماعي) spheres, whereas “*al-Qist*” can only be found in reference to social contexts.

But there is also another Arabic word used in the noble *Qur`ān* for conveying the meaning of Justice in a more creational sense; “*al-Mīzān*” which stands for balance and scale.

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ (٧) أَلَّا تَطْغَوْا فِي الْمِيزَانِ (٨)  
وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

*And the Firmament has He raised high, and He has set up the balance (of Justice), In order that ye may not transgress (due) balance. So, establish weight with Justice and fall not short in the balance.*

(*Qur`ān*, 55:7-9)

According to the qur’anic text, Allah has created all of existence in Justice and equilibrium like a perfect balanced scale. Mankind is requested to preserve this balance and not to transgress it, as *Ibn Khaldūn* is expressing it: “Justice is a balance set up among mankind.”<sup>6</sup> Furthermore, in the noble *Qur`ān* God’s command of Justice goes along with the request of kindness (*al-‘ihsān*). *Yazid Said*, following the classical Islamic understanding, is alluding to this relation of ‘*adl* and ‘*ihsān* while pointing to the covenant between God and mankind in this regard:

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<sup>5</sup> Shafi, Justice and Equity in the Qur’an

<sup>6</sup> Khaldun, 1958, p. 105

*“God commands Justice and kindness: adl wa ihsan (Surah al-Nahl: 90). Ihsan signifies taking the extra mile beyond reparatory Justice with those who do good or even hurt others... Justice is to be maintained even with those who are hostile to you (Surah al-Mumtahanah: 8). If Justice, that is giving each their due, is a virtue which humans knew before revelation, the Koran compliments it and fulfills its meaning with Ihsan, reflecting God’s mercy and grace. Therefore, Justice in the Koran is expressed more clearly in the effect of the covenant of alastu (Am I not your Lord?) that is the covenant between God and the whole human race at creation found in Surah al-Araf. 172. God makes the descendants of Adam testify to his Lordship. They say: “Yes, we do testify.” Being aware of God’s sovereignty is the source of acting justly and kindly. To act unjustly is the fruit of turning away from God when the true balance of human character is broken. Thus, Justice and Islam’s understanding of tawhid, God’s unity, go hand in hand.”<sup>7</sup>*

It is this very truth that is reflected in the famous definition of Justice by ‘Alī b. Abī Ṭālib (pbuh), which can be found in the *Nahj-ul-Balāgha*, when he says: *“Justice, is putting everything into its place.”*<sup>8</sup>

This definition necessarily presumes, that there is already a right and just God-given state for every existence and the aim or mission of Justice is to preserve the things there or to put them back into place, in case the equilibrium gets lost or that they go astray. Hence, there

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<sup>7</sup> Said, 2011, p. 601

<sup>8</sup> Nahj ul-Balagah, saying no. 429

is a right place for every existent thing which is serving as a measure for the presence of Justice or injustice related to it.

*“Indeed, Justice is understood within a relation, or in the words of the philosophers, from a mental assignment and allocation. A thing is entitled by nature or social convention with a place or respectively it is already engaged in it. To provide Justice would mean, to reestablish and maintain this relation, when it is not given, after a time of non-existence and instability.”<sup>9</sup> S. M. Khamene’i*

The Arabic term *“al-ḥaqq”* has many different equivalents in English according to its various notions. Also, the legal understanding of the term *“al-ḥaqq”* differs from its understanding in Philosophy and Theology, since it has two connotations, it means „right“ but also conveys the meaning of „reality“ and „truth“, which is identified with God the eternal and necessary being (*“wājib al-wujūd”*).<sup>10</sup> *Mohaqqeq Damad* brings this difference in a nutshell saying; *“Ḥaqq in Philosophy has no plural”*, referring to the fact that in jurisprudence the plural term as *“huqūq”* is used.<sup>11</sup>

The Arabic opposite of it is often stated with *“jawr”*<sup>12</sup> ([جَوْر] tyranny) or *“ẓulm”*<sup>13</sup> ([ظُلْم] wrongdoing, oppression), which both mean injustice and are often defined by putting a thing in a wrong place. It is supposed that the just place of all beings is predetermined by God and rooted in the nature of the creation. Justice from a metaphysical

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<sup>9</sup> Khamene’i, 1996, p. 36

<sup>10</sup> Mohaqqeq Damad, 2015

<sup>11</sup> Ibid.

<sup>12</sup> See. Khadduri, 1984, p. 6

<sup>13</sup> See. Rosen, 2000, pp. 156-157

perspective is inseparable from the Truth and God as the only absolute existence is considered to be the Truth *"al-Haqq"* as such. This being the absolute truth necessitates Him not only to be just (*"al-Ādil"*) but above all being Justice itself (*"al-Adl"*).

Subsequently, this means that there can be no Justice in the world without truth, since they are both inseparable united in the divine nature. *Seyyed Hossein Nasr* writes explaining this relation:

*"To be just is to conform to the nature of the Real and not to the transient and the illusory. In a sense it might be said that injustice is related to ignorance of the truth which would enable us to know beings in their reality. And since that is not possible for the human collectivity in this period of history to achieve by itself, revelations have been sent to guide man in the understanding of the truth, of what is real and of Justice...One cannot be just without truthfulness and on the metaphysical level one cannot understand Justice without knowledge of the truth."*<sup>14</sup>

Maintaining Justice, then means to recognize the reality and nature of things. Injustice on the other hand, would be to ignore or neglect this inner reality. This process of realization is supported essentially by the revelation, since human being will find himself erroring in it, without the guidance of revelation. Eventually this understanding leads to the conclusion, that without recognizing and knowing the truth, Justice cannot be achieved.

The principles of this *ḥaqīqat* (= *pl. truth*) of all things is also intelligible through the human reason, since human being is held to have

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<sup>14</sup> Nasr, 2006, p. xii

an innate understanding of this natural reality of the things, through his *fiṭra* (=primordial human nature).

Islamic law is based on this human *fiṭra* and must be in accordance with it. Hence it is held, that men will find felicity and peace, if he is taking his own natural place in accordance with the natural world order, which is to give everything and every creature its Right and its Truth (*Ḥaqq*) by admitting it to its own place.<sup>15</sup> Rosen is describing this Islamic understanding of Justice by mentioning three elements:

*“relationships among men and toward God are reciprocal in nature, and Justice exists where this reciprocity guides all interactions; Justice is both a process and a result of equating otherwise dissimilar entities; and, because relationships are highly contextual, Justice is to be grasped through its multifarious enactments rather than as a single abstract principle.... These three aspects – Justice as regulated reciprocity, Justice as equivalence, and Justice as relational/contextual – are clearly represented in holy scripture and in received cultural orientations.”*<sup>16</sup>

Justice as a virtue has also been discussed broadly by Islamic scholars, who used to describe it as an inner habitus (*malaka*)<sup>17</sup>, which leads a person to be righteous and just in all his relations. A just person (*al-ʿĀdil*) in this sense refers to a person who is “morally, behaviourally, and spiritually balanced.”<sup>18</sup> But besides this simple idea, regarding the question of what makes a person being regarded as just,

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<sup>15</sup> See. Ibid. p. 41

<sup>16</sup> Rosen, 2000, p. 155

<sup>17</sup> See. Khamene'i, 1996, p. 38

<sup>18</sup> Ayoub, 1996, p. 19

there is a deeper metaphysical understanding of a just man, which finds its worldly manifestation in the person of the Prophets and their successors, which have the obligation to guide mankind in this regard. However, among those sacred guiding figures, it was mostly upon 'Alī b. Abī Ṭālib, the first Shī'ite Imam, cousin and son in law of the holy prophet, to expound the spiritual meanings of Justice as well as its social applications, based on the Word of God and the prophetic teachings.

This deepest metaphysical understanding of Justice, with all its dimensions is retained in the traditions of the Imam, from which the most famous sermons and writings are collected in the well-known *Nahj-ul Balāgha* ("The Path of Eloquence"), which is indisputable the most important and influential source on Justice in Islamic history.<sup>19</sup>

Recapitulating the Islamic idea of Justice, it can be said that, starting from the metaphysical dimension all the way to its worldly and social applications, Justice is considered as the key principle for connecting to Truth. Therefore, its establishment is of absolute significance for mankind to be in harmony and unity with the true nature of its creation.

Now, relating this understanding of Justice to the function of law, it appears that from an Islamic perspective, the main duty of law, is to provide the possibility and requirements to re-establish Justice. Therefore, law and Justice in this regard are seen as a single entity and synonymous to the God given natural order of the creation. Justice in this sense then becomes the core element of social Islamic ideas and concepts, especially in comparison to other religions.<sup>20</sup> But, since

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<sup>19</sup> See. Nasr, 2006, p. xiv

<sup>20</sup> See. Ruthven, 1984, p. 227, Rosen, 2000, p. 154

human being is not capable of understanding the particularities of this divine natural law, there is a need for a genuine link between them. And as mentioned above, these bearers of the true natural law and deep understanding of Justice are the Prophets and Imams, which convey them to the mankind.<sup>21</sup> Yet, this is a very controversial point which has led to subsequent discussion and eventually caused the emergence of different legal schools of thought in Islamic history, which will be dealt with in the second part of this thesis.

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<sup>21</sup> See. Khamene'i, 1996, p. 47

## 2.2 In Western thought

*“Justice (...) is a veritable courtesan among words: Its connections are always subject to alteration, the consequences of its involvements always open to contention. ‘Justice,’ as Edmund Cahn has said, ‘is unwilling to be captured in a formula’ even though it remains ‘a word of magic evocation.’ Such uncertainties have been a magnet for Western philosophers for centuries...”<sup>22</sup>*

*Lawrence Rosen*

Starting from the theories of the ancient Greeks to those of early and new modern philosophers, the idea of Justice is one of the most discussed topics within Western Philosophy, from which naturally spring a broad variety of definitions and concepts, conveying different aspects.

Generally, the Term “Justice” is used in Western Legal Philosophy with two different denotations, which are in correlation to each other; Justice as a “virtue” and Justice as a “normative principle”. It is called a virtue, if it is understood as a specific moral attitude in the relationship to fellow human beings, which leads a person to be just to the others, not because of external pressure, but because of inner ethos.<sup>23</sup> In this regard, Justice was seen as one of the cardinal virtues, by ancient thinkers and jurists, whose reflections can be found in the

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<sup>22</sup> Rosen, 2000, p. 153

<sup>23</sup> See. Luf, 2009, p. 82

famous formula of Justice within the *Corpus iuris civilis* issued from 529 to 534 by order of *Justinian I*:

*“Justice is the constant and perpetual desire to give to each one that to which he is entitled. Jurisprudence is the knowledge of matters divine and human, and the comprehension of what is just and what is unjust. The following are the precepts of the Law: to live honestly, not to injure another, and to give to each one that which belongs to him.”*

*(“Iustitia est constans et perpetua voluntas ius suum cuique tribuens. Iurisprudencia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia. Iuris præcepta sunt hæc: honeste vivere, neminem laedere, suum cuique tribuere.”)*<sup>24</sup>

Beginning with the renaissance, this classical concept of Justice became deeply challenged and various definitions and notions of it arose. *Hobbes* as one of the most important early modern philosophers, was emanating from the idea of Justice being an artificial virtue, whose existence is based on covenant. He states that: *“To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, Justice and injustice have there no place. Where there is no common power, there is no law: where no law, no injustice.”*<sup>25</sup>

So, contrary to the understanding of Justice as a cardinal virtue which is absolute and objective, *Hobbes* while resurrecting the sophist

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<sup>24</sup> *Institutes*, Bk. 1, title 1 (translated by S. P. Scott. in “The Civil Law”)

<sup>25</sup> *Leviathan* 13.13

view, is negating any objective knowledge of Justice, considering it as relative to our desires.

However, later *Kant* as one of the most important figures of recent modern philosophy, based on his deontological theory, reverted to the idea of Justice as an absolute value. For him Justice as a virtue is consisting in respecting the freedom, autonomy, and dignity of others, while not interfering with their voluntary actions, as long as those do not violate the rights of others. This reciprocal understanding of duties and rights leads him to formulate his “categorical imperative” as the ultimate principle of Justice, stating “*Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law.*”<sup>26</sup>

Gradually, while not attaching significance to the idea of Justice as a virtue, the discourse focused on the conception of Justice as a normative principle for the human society, which also for our study is more relevant than the prior. The question here is if Justice can be held to be the fundamental criterion and measure for the justification of norms ruling the Distribution of Rights and duties, which would correspond with the Islamic understanding, or not.

The utilitarian tradition of *Hobbes* and *Hume* was continued afterwards by thinkers like *Jeremy Bentham* and *John Stuart Mill*, who again connected the question of Justice with the utility of an action. Based on *Bentham’s* principle of “greatest happiness” *Mill* explains the principle of utility as: “*The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in*

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<sup>26</sup> Kant, 1999, p. 30

*proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.*"<sup>27</sup>

Following *Kant*, one of the most influential contemporary thinkers in this respect, *John Rawls*, postulated his theory of Justice as fairness, in which he interpreted Justice in terms of maximum equal liberty. He set two basic principles of Justice in the society, from which the first is the equal right to the most extensive basic liberty for each person of the society and the second principle is the arrangement of social and economic inequalities, so that they are reasonably expected to be to everyone's advantage resulting in compensating benefits for everyone, especially the least advantaged members of the society.<sup>28</sup> There have been many more Western legal thinkers and various other conceptions of Justice during the course of Western legal history of course, which also had great significance and cannot all be discussed in this overview of conceptions. Some of them will be mentioned and discussed later on, in the main discourse of this study, regarding the relationship between Justice and law.

As mentioned above, in the second sentence of the quoted phrase from the *Corpus iuris civilis*, we can find a clear statement that Jurisprudence must be performed according to what is just and what is unjust, while the definition of what is just is, according to it, based upon "*knowledge of matters divine and human.*" This as an expression of natural law understanding is emanating from the concept of unity of law and Justice and is characteristic for ancient and medieval legal

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<sup>27</sup> Mill, 1863, Ch. 2: What Utilitarianism Is

<sup>28</sup> See. Rawls, 1971, p. 266

philosophy in the west. However, in later times, when legal positivists gained domination, Law and the moral concept of Justice have been regarded as separate from each other.

Generally, comparing Western discourses on Justice with Islamic ones, it can be stated that, while Islamic thinkers and schools mostly discussed the authentication of the sources of Justice and consequently the divine percepts, Western discourses throughout the ages turned more and more to a discussion about the objective reality of Justice. Famous thinkers like *Max Weber* stated that there is no possibility for the idea of Justice based on ethical Premises.<sup>29</sup> And for *Hans Kelsen*, Justice is an arbitrary, subjective concept, when stating that:

*“The determination of the absolute values in general and the definition of Justice in particular, which are achieved by this way, are turning out to be completely mere phrases, through which any optional social order could be justified as just.”<sup>30</sup>*

While in Western legal schools of thought, the answer to the question regarding the relationship of Justice and Law was based on the understanding of Justice as an objective reality or subjective perception, in Islamic schools of thought this question was approached differently according to the understanding of the authenticity of the source of Justice.

As mentioned in the introduction, it is important to consider that the term “Western” from a historical perspective, besides “secular”

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<sup>29</sup> See. Weber, 1922

<sup>30</sup> Kelsen, 1975, p. 18 („Die Bestimmung der absoluten Werte im Allgemeinen und die Definition der Gerechtigkeit im Besonderen, die auf diesem Wege erzielt werden, erweisen sich als völlig leere Formeln, durch die jede beliebige gesellschaftliche Ordnung als gerecht gerechtfertigt werden kann.“)

or “humanistic” dimensions, also includes Christian religious concepts, which may defer from the secular ones. Alike the Islamic understanding of Justice, the Christian idea of Justice, is also emanating from the believe of a just and merciful God, as the origin of Justice. So, in the Bible it is written:

*“For the Lord is a God of Justice. Blessed are all who wait for him!” (Isaiah 30:18)*

And on another part:

*“But now apart from the law the righteousness of God has been made known, to which the Law and the Prophets testify. This righteousness is given through faith in Jesus Christ to all who believe. There is no difference between Jew and Gentile, for all have sinned and fall short of the glory of God, and all are justified freely by his grace through the redemption that came by Christ Jesus. God presented Christ as a sacrifice of atonement, through the shedding of his blood—to be received by faith. He did this to demonstrate his righteousness, because in his forbearance he had left the sins committed beforehand unpunished— he did it to demonstrate his righteousness at the present time, so as to be just and the one who justifies those who have faith in Jesus.”*

*(Roman 3:21-26)*

In Christian teachings, the manifestation of God in Jesus Christ is the central event for God’s activity and also His main attributes like love, mercy and Justice in this world. This manifestation of God’s

mercy and Justice from a traditional Christian understanding is culminating in the liberation of humanity from the sin, through the sacrifice of Jesus. *Tristen S. Hassel* writes in this regard:

*“For Christians, all moral, political, and philosophical concepts are revealed and sustained in their fullness by Jesus Christ. Through his incarnation, life, death, resurrection, and ascension, Jesus is literally God’s revealing of Godself – God’s will, God’s love, God’s Justice – to the cosmos... Christians believe that Justice is only intelligible as Justice because of who Jesus is – God’s Justice for the world. Justice for Christians has a double operation: It exposes the character of God and requires humanity to be like God.”<sup>31</sup>*

More than being a moral attitude which is requested from the individual, the emphasises in the Christian idea of Justice is based on the vision of reflecting God’s own Justice in human being.<sup>32</sup> In contrast to the Islamic idea of Justice, as an absolute and universal truth which leads to divine laws given by God as the law-giver being in their essence generally binding through all times, from a contemporary Christian view the concept of Justice, due to the nature of the composition of the bible is a more flexible one. *Ingeborg Gabriel* expresses this notion, as follows:

*“It should be noted beforehand, that in the (divinely inspired) biblical scriptures, which have been written in a period of over eleven centuries, right and injustice are considered from a multitude of*

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<sup>31</sup> Hassel S., 2011, p. 592

<sup>32</sup> See. Gabriel, 1996, p. 52

*perspectives. Thus, the conception of Justice of the biblical scriptures is not a systematically homogenous one. The reason is that the individual as well as the nation as a whole have been confronted with various experiences of injustice, during the long period of the formation of these scriptures, which have been interpreted in the light of the divine revelation. In this process, the understanding of what is hold to be just in different situations, have been amplified, which means that the conception of Justice altered dynamically in the history.*"<sup>33</sup>

It becomes apparent then, that there is a variety of ideas about the question of Justice in Western thought and history, which is due to its understanding as being a highly dynamic and flexible conception. Beginning with the natural law ideas of the ancient Greeks, via its religious notion amongst the Christian theologians, proceeding all the way to the conceptions postulated by the thinkers of the so called "enlightenment", to the positivistic approach, which shaped modernity and post-modern ideas, which ultimately tried to harmonise the legal positivism with the natural rights ideas.

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<sup>33</sup> Gabriel, 1996, p. 53 [translation of the author], Original text: "Es ist dabei vorweg anzumerken, dass in den (göttlich inspirierten) biblischen Texten, die in einem Zeitraum von über elf Jahrhunderten geschrieben wurden, Recht und Unrecht aus einer Vielzahl von Perspektiven in den Blick kommen. Das Gerechtigkeitsverständnis der biblischen Schriften ist daher nicht ein systematisch-einheitliches. Dies hat seinen Grund darin, dass sowohl der einzelne als auch das Volk als Ganzes innerhalb des langen Zeitraums der Entstehung dieser Schriften mit unterschiedlichen Unrechtserfahrungen konfrontiert waren, die sie im Lichte der göttlichen Offenbarung deuteten. Dabei wandelte und vertiefte sich das Verständnis dessen, was in unterschiedlichen Situationen als gerecht galt, das heißt, das Gerechtigkeitsverständnis wandelte sich dynamisch in der Geschichte."

## 2.3 Conclusion

If we should give an answer to the question at this point, of how the relationship between Law and Ethics in general is considered by Western legal thought and how the approach to this question differs, when it comes to Islamic thought, we could summarize the following:

- from an Islamic perspective, law and Justice are considered as a single entity, in which the main duty of law, is to provide the possibility and requirements to re-establish Justice.
- In Western legal thought, on the other hand, we have a variety of ideas about the question of Justice. From the natural law idea to the legal positivism there exist, conceptions which consider law and Justice as a unity as well as ideas which neglect any relation between them at all.
- While there exists a great parallelism between the natural law ideas of the ancient Greeks and the Christian theologians on one hand and the Islamic perspective on the position of Justice on the other hand, a major contrast becomes apparent regarding later Western legal thoughts. The main cause for this contrast can be identified in the negation of a higher law and the preference of social agreement which banished the question of Justice to the background of the legal discourse.

Based on this preliminary discussion about Justice, I am going to classify the most relevant Islamic and Western legal schools of thought in general, regarding their view on the relationship of law and moral principles.