9. Non-interest financing arrangements in three Abrahamic religions

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INTRODUCTION

Judaism, Christianity and Islam all view wealth as a blessing of God, and see man's appointment as custodian imposing obligations and constraints upon its rightful use. All three religions have strong views on the acceptability of usury (interest) that have been extensively analysed in the literature. Less well researched are the principles and practices of various non-interest financial instruments acceptable in the three Abrahamic religions. This chapter seeks to cover this gap by examining the principles and practices of Judaism, Christianity and Islam towards selected financial concepts, namely partnership and equity-based financial instruments, debt-based financial instruments, and interest free loans.

RELIGION AND FINANCE

Religion can be seen as a set of beliefs by which a person shapes his or her life ranging from spirituality to daily affairs, including financial matters. Academic research has explored how religion (beliefs, norms, values) affects the economic decisions of individuals, groups and society at large (Iannaccone, 1998). According to Rae (2002, p6) 'we are seeking from Scripture general principles or norms that govern economic life and can be applied to different economic arrangements.'

Religion and financing is a recent addition to the literature on finance which caught the attention of Western academics after some significant developments in Islamic banking in Muslim countries. According to Tinker (2004) an initial analysis of religion[1] and financing starts from interpreting the sacred Scriptures to answer modern day economic requirements.

This is followed by empirical studies to compare the religious principles and empirical realities. Subsequently, policy proposals are developed that endeavour to apply the Holy intentions to reality.

In this respect, the starting point is the attitude of the Holy Scriptures to money and wealth. Judaism and Islam both view wealth as a blessing of God and see the appointment of man as custodian imposing restrictions upon its rightful use. With different emphasis, Christianity believes wealth to be a test from God, and charity and good deeds are the only solutions to overcome. All three religions unanimously prohibit usury (interest) and declare it a sinful event, producing disharmony and inequality. As an alternative, they introduce the concept of brotherhood, sharing and cooperation to promote equality among communities. The exception is Jewish law where the notion of brotherhood in the Old Testament is not universalized as in Christianity and usury is allowed to be levied upon non-brethren (Dt. 23:20).

As well as prohibiting usury, the religions also ban factors such as gambling, hoarding, bribery, fraud, extravagance and miserliness which can disturb the overall distribution of wealth in the society. Instead, they encourage factors such as honesty, hard work, free consent, inheritance, meeting contractual obligations and charity to ensure the equitable distribution of wealth. Further, mandatory or optional charities, benevolent loans, sabbaticals from loans and even trade in Islam, so long as it satisfies the requirement of 'justice in exchange' (Iqbal and Lewis, 2009), are declared various alternatives to usury.

Earlier research, for example that conducted by Visser and McIntosh (1998) and Lewis (2007), primarily compared the teachings of various religions towards usury and developed the economic rationale behind anti-usury laws. Neither study discussed the economic needs of the rich and poor separately nor did they focus on the religious validity of various alternative modes of financing currently prevailing in financial markets. No serious work has been done so far that specifically compares the teachings of Judaism, Christianity and Islam with reference to various non-interest financial instruments. This gap constitutes our research agenda[2] which seeks to examine the principles and practices of Judaism, Christianity and Islam towards selected financial concepts, namely

- partnership and equity-based financial instruments
- debt-based financial instruments, and
- interest free loans

PARTNERSHIP ARRANGEMENTS

The concept of partnership is different from pure lending where the lender receives the guaranteed return regardless of the economic outcome of investment. Partnership allows the transferring of funds from financier to entrepreneur while ensuring participation of both parties in the risk sharing process. In addition, it develops a spirit of cooperation, group decision-making and the idea of brotherhood (Paris, 1998).

Five features are normally present in the establishment of a partnership (Broyde and Resnicoff, 1997). First, the parties must intend to create a genuine partnership and agree with the terms of the contract. Second, they must engage in profit-seeking commercial activities. Third, each party must have a proprietary interest in the partnership itself. Fourth, the partners must share in the profit of the business. Fifth, partners must have capital and resources at risk if the business sustains losses, although not necessarily to the same extent.

Partnership based contracts exited in the Middle East well before the emergence of even Judaism. The main contribution of the religious teachings were to provide guidance based upon equal opportunity, justice and societal development. This emphasis is needed because partnership requires a high level of business ethics, and trust as well as commercial acumen among all partners.

Judaism

Judaism is undoubtedly the first Holy religion to define the social and economic boundaries for believers, including partnership contracts. When two people jointly conduct a business where both (or only one person solely) invested, the agreement is considered as a valid partnership. Both partners can stipulate any division of the profit and loss as desired. In the absence of any agreement, they are deemed considered to divide profit and loss on equal basis.

One important scenario arises when both or only one person invests and only one person controls the business. This type of partnership is called *iskah* (an investment agreement). The person who controls the business is called the ‘administrator’ while the other person is referred to as the ‘financier’. The problem is that an arrangement in which one partner finances a business and the other manages it is illegal under Jewish law if profits are shared, but losses are borne by the managing partner alone. An arrangement where the financing partner bears or shares the losses is valid only if the managing partner is paid a salary in addition to the share of profit. Consequently, profit-sharing partnerships were validated by regarding the investment of the financing partner as half-loan and half-deposit. While the borrower is responsible for the loan, the bailee is not responsible for the loss of deposit; thus the financier (as bailor) will also bear his share of the losses, and the partnership is legal

(*Encyclopedia Judaica*, 1971, p30). According to Udovitch (1962, p.199), the Babyulonian Talmud characterized *iskah* as ‘semi- loan and semi-trust’, with the profit-sharing ratio directly linked to the ratio of financial liabilities that each party undertook, as specified by *Halakah.*[3]

Another important instrument is *hetter iskah* (meaning the permission to form a partnership) which converts a lender-borrower relationship into a silent partnership, and allows interest based loans among Jews without violating the Talmudic prohibition on usury. *Hetter iskah* is not a formal loan. Here the lender invests in the business of borrower while stipulating two conditions. First, the borrower pays the lender a fixed amount on a predefined date as the lender’s share in the profit. Second, the borrower must have sufficient profit to pay the lender his due share unless the rabbinical judge issues a decree against the agreement.

According to *Encyclopedia Judaica*, over time this form of legalizing interest has become so well entrenched that nowadays all interest loans are freely carried out, even in compliance with Jewish law, by simply adding to the note or the contract (*sheter iskah*) the words *al-pi-hetter iskah.* *Hetter iskah* is generally created for commercial loans: however, according to Broyde and Resnicoff (1997, p. 1818) many Jewish authorities allow this arrangement for consumer financing as well, relegating the prohibition on interest to friendly and charitable loans.

Christianity

Trading and business related activities were initially not encouraged in Christianity and Churchmen, to defend the path of salvation, opposed the idea of commercialization. Indeed, the attitude to trade and exchange was summed up by the medieval saying, ‘*Homo Mercator* *vix aut numquam Deo placer potest'* - the merchant can scarcely or never be pleasing to God (Lewis, 2007). Profits derived from the agriculture and wool production were seen positively while profits from banking and finance were viewed with suspicion.

Nevertheless, the concept of partnership gained its initial footstep in European port cities during the tenth century. This was the time when Europe was emerging from manorial society to developed commercial markets.[4] The merchants of that period used *commenda* agreements to raise funds.

A *commenda* partnership agreement differed from a loan in four respects. First, *commenda* linked money with commodity or entrepreneurial skills, while there was no such compulsion in an interest based loan. Second, a lending agreement allowed the lender to retain the ownership of money, whereas only the possession and right to use of money were transferred to the borrower. By contrast, a c*ommenda* agreement transferred ownership of money to a joint partnership fund and attached the outcome to commodity or entrepreneurial skills. Third, *commenda* related the rate of return with the productive power of the capital. A loan linked interest income with the borrowed capital regardless of profit made. Lastly, *commenda* made the investor potentially liable to bear the risks of losing capital in case of loss. An investor was not merely a partner in profit which is the case with an interest bearing loan.

As trade flourished, the nature of trading agreements changed. Some of the business risks were transferred from the financiers towards the entrepreneurs who began contributing capital. The term *societas* for this new arrangement signified three aspects. First, all parties were liable for gains and losses according to their business contribution. Second, partners in common were liable for the harm done to the business. The liabilities of all partners were unlimited even if the losses were due to the act of any single partner. Third, the share of each partner was clearly stipulated subject to his business contribution both in terms of capital and entrepreneurial skills.

The development of *societas* was significant in two respects. They contributed towards the later developments in partnership laws covering variety of relevant issues such as rights, duties, responsibilities, profit sharing ratios etc. Also, European merchants introduced the concept of limited liability in *societas*, creating separate pools of funds to finance business ventures. All losses were compensated or settled from these pools of funds. These practices effectively converted the general partnership into a limited partnership form, and marked a first step toward the development of limited liability companies.

A further step toward the modern corporation came with *carati*. *Carati* is a more complex type of partnership agreement introduced in thirteenth century Italy. Under this arrangement, the financial values of ships were divided into multiple shares and investors were asked to invest. *Carati* shares were free to float, change hands or even be used as collateral against loans. Interestingly, *carati* shares guaranteed investors through limiting liabilities up to their investments.

Islam

Partnership is part of a broader agenda in Islam that encourages involvement in trade rather than interest. Prophet Muhammad, his first wife and the first four Caliphs were traders. A famous Islamic jurist who led the large Hanifi-Islamic school of thought, Imran Abu Hanifa, was also a well known trader. According to Cizakca (1996, p.6), the concept of partnership was well established in Arabia during the seven century.

Mudaraba is the simplest form of Islamic partnership whereby one person provides the funds while the other brings his entrepreneurial skills. Both parties have absolute freedom to determine the terms and conditions of the agreement including the profit sharing ratio which must be in absolute terms, not in fixed amount. What is novel and distinctive about the *mudaraba* is that the investor bears the financial loss while the entrepreneur only loses his time and efforts. However, the liabilities of the investor are limited to the original investment.

Mufawada is the second type of Islamic partnership where all parties share capital and profits/losses in the same proportion. None of the partners can get a higher share of profit due to better entrepreneurial skills and reputation in the market. The third partnership agreement *musharaka* is quite similar to *mufawada* except the partners can share profits on any pre-agreed quota but losses must be borne in proportion to the capital contributed. Lastly, the liabilities of the partners are unlimited under *mufawada* and *musharaka* agreements.

Similarities and differences

Trade and its related activities were recognized and encouraged in Talmudic and Qur'anic teachings, but less so in the Biblical literature which considers dealing in money contrary to the concept of salvation. Nevertheless, trading activities flourished under the umbrella of Judaism, Christianity and Islam, albeit using different names and diverse terms and conditions.

In particular, there is a superficial similarity between *mudaraba, iskah* and *commenda.* The Talmudic concept of *iskah* is quite comparable to the Christian concept of *commenda* where the entrepreneur also has to bear some of the risks in case of loss. But *commenda* unlike *iskah* does not emphasize regular wages for the entrepreneur. The Islamic *mudaraba* adopts a similar view towards regular wages as *commenda.* *Commenda* can be seen to have similarities with *mudaraba*. Entrepreneurs were guaranteed the return of the principal in case of losses and were not liable if losses were incurred due to events beyond their control. Of course, there was no equivalent to the Islamic exclusion of prohibited avenues for investment in the Christian world, although Dante's *Inferno* (1984) makes clear that the Church's displeasure was not confined to usurers.

The concept of *societas* is similar to the Islamic concept of *musharaka* where all parties share in the profits and losses in a pre-agreed ratio. The difference arises in the case of liabilities of each partner which are unlimited in *musharaka*, whereas *societas* limits the liabilities of the investor to their investments. Lastly, the word *carati* is quite near to an Arabic term of *qirat* which is an alternative word for *musharaka* (Cizaka: 1996, p.27). *Carati* was an ideal agreement used for risk diversification and can be considered as a foundation of joint stock companies in Europe.

DEBT BASED FINANCIAL INSTRUMENTS

The Holy religions prohibit the generation of profit from the process of lending, although profit created as a result of deferred payment or advanced payment sales is allowed. Profits on debt based instruments are legitimized and rationalized because all the relevant parties appropriately share the risks related to real goods. The sacred laws do not allow any type of conditional sales or changes in the profit rates once decided. Similarly, extra charges in case of late payments are not permitted as specific sources of income.

Judaism

Profit on debt created in the case of deferred payment sale is permitted, provided that the sale is unconditional and no extra amount is charged in case of late payment. *Gemara* encourages full disclosure of cost and the profit margin at the time of the sale agreement (BM 5:2, BM 65a). Further, a credit sale does not automatically transfer the ownership rights to the buyer. Assets sold will remain the property of a seller until the final settlement of the account.

Christianity

Following the Old Testament strictures, Christianity holds similar views towards the interest on lending money and profit in case of credit and advance sale. Further, with the invention of 'just price theory'[5] any oppressive bargains came under the description of usurious. Berger (1935) noted that the Pope Alexander III in 1176 condemned the sale of dearer goods under the device of excessive credit price. A clear definition of usury in an English statute was first given by Henry VII (1494) who forbade two types of financial transactions; lending of money and sale of property with an intention to repurchase at lower price to create a loan. The law imposed harsh fines and penalties on usurers but failed to eradicate usury at large. Ekelund *et. al.* (1989, p.326) noted that even the Church 'routinely borrowed advances against the collection of revenues, then raised taxes to cover the cost of loans.'

European merchants in the twelfth century also traded in bills of exchange to remit money from one place to another. Bills of exchange were an important source of creating debt because of time lags in receipts and payments. Merchants when signing bills of exchange combined foreign exchange with credit to conceal the interest rates in terms of an inflated exchange rate (Einzig, 1962; Ekelund *et. al.*, 1989; Lewis, 2007).

Islam

Islamic jurists permit different agreements where profit on debt is created as result of either deferred payment sale or advance payment against future delivery of goods. A seller can demand premium prices in case of deferred payment sale. Similarly a buyer can negotiate a discounted price in case of advance payment (Udovitch, 1975). The Holy Qur'an declares it mandatory to document all transactions in writing, witnessed by two persons, where liabilities arise in future (2:283).

Murabaha is a technique which allows the buyer to pay the price of goods either as a lump sum or in instalments at a future date. The seller must mention the cost price plus his profit margin in such transactions. *Murabaha* (and *Bai Bathamal Ajil* (BBA)) is the most popular financial instrument in Muslim countries. A *musawamah* contract is an alternative arrangement to *murabaha*. But in this case the seller is not explicitly required to mention the cost price of his goods sold. Under both agreements, profit once decided cannot be altered and no extra charges are allowed even in the case of late payment.

Bai Salam contracts are the opposite to *murabaha.* *Bai Salam* is an advance payment contract where goods are to be delivered in future. The contract is allowed in Islam but subject to certain conditions. For instance, agreement must be unconditional and buyer must pay to the seller fully in advance. In response, the seller must provide to the buyer exactly the same quantity and quality of goods as agreed. History indicates that Islamic governments frequently engaged in advance payment agreements to raise funds against the sale of rights to collect revenue (Ray, 1997, p.68).

Suftaja (bill of exchange) is another important financial instrument developed and used by Islamic merchants from the eighth century. These bills were issued against specific commission to transfer large sums of money from one place to another. Merchants were required to pay in the same currency and could not charge any interest. The conditions attached to *suftaja* made them less attractive among the merchant community and they only issued *suftaja* contracts once assured about payment at the other place (Udovitch, 1975, p.16).

Comparisons

Comparing the several debt based instruments available in Judaism, Christianity and Islam brings out the point that all the religions are in principle agreed on the acceptability of debt created as result of either advance payment or deferred payment sales. But the sales must be absolute, information related to cost must be available and no extra is allowed in case of late payment. Islamic and Christian canon law specifically discourages transactions related to sale and immediately repurchase of the same assets at lower price to create loans, such as occurs under *tawarruq*. Talmudic law allows such transactions subject to being fair and temporary in nature.

Muslim and Christian rulers as well as merchants frequently used advance payment agreements and bill of exchange to raise funds. The only condition attached is that in the case of bills of exchange, Muslim merchants were not allowed to make any gain against the difference in exchange rates. They only charged specific commission against the issuance of the bill of exchange.

BENEVOLENT LOANS

A benevolent loan is different from charity. A benevolent loan means the transfer of the use and possession of money to the end user but not the ownership of money. Charity transfers possession and ownership of money to the recipient. The Holy religions support the idea of benevolent loans to improve the economic health of the poor.

Judaism and Christianity

Exodus (22:25) clearly prohibits the charging of interest on loans to the needy. The next two verses even ask to return valuable goods that are pledged as security to seek the blessing of God (Ex. 22;26-27). The charging of interest, especially in the case of commercial loans, may deprive the poor from salary (2 Kgs 4:1-7). One of King David's psalms declared that 'the wicked borrow and do not repay, but the righteous give generously' (Ps. 37:21). The New Testament forbids people from stealing, encourages them to work and share earnings with the needy (Eph.4:28). This is the only way to win respect from outsiders and not depend upon others (Thess.4:11-12).

Talmudic law requires benevolent loans to be extended to all brethren who are in need (BM 64b, BM70b). It considers any gift as a kind of interest if it is received in anticipation of the offering of loans in future, and thus is not permitted. Similarly, accepting a gift even after receiving the loan back is also viewed as another form of interest. The Torah (Pentateuch), the law of Moses, discourages commodity loans in kind for fear that the prices of the commodities may increase or decrease at the time of return. Finally, a mortgagee, even if he is in possession of the mortgaged property, is not allowed to take its produce. He must either return it or sell it off against the capital debt (BM 67a-b).

Gemach is the word used in Hebrew for a benevolent loan with an easy repayment plan. This type of loan is generally for the poorer in society. The Torah treats lending as philanthropic in nature. The idea is to achieve a larger goal i.e. preservation of the family unit and collective survival.

Islam

Islam, similarly to Judaism and Christianity, encourages believers to help their fellows to promote brotherhood among them. Kaleem and Ahmad (2009) argue that the idea of trade is only for productive purposes and for rich people who can afford the risk of losses. Islam's alternative is a benevolent loan (*qard-i- hasan*) for the poor. The Holy Qur'an declares *qard-i-hasan* as a loan to God who Himself takes responsibility of the reward (2:245, 64:17). Benevolent loans are purely provided on a goodwill basis to encourage the hard working and talented people to earn their own living. Here, the debtor is only required to return the principal amount without a prescribed time limit.

Islam defines a clear difference between a benevolent loan and compulsory charity (*zakat*). Benevolent loans are for productive purposes while charities are mainly to meet the immediate and consumption needs of the poor. Prophet Muhammad was asked, 'Which are the best forms of income generation?' He replied, 'A man's labor and every legitimate sale' (El Gamal, 2000, p.10).

Ariya is another type of benevolent loan where only the usufruct is transferred to the borrower on a temporary and gratuitous basis. The loan article will remain the property of the lender. Lastly, a benevolent loan can also be created if the debtor is in financial trouble. As a first step, the debtor is given some extension in repayment time and later his loan may be converted to charity (2:280). Conversion of the loan into charity is entirely at the discretion of the creditor with only a moral compulsion applying.

Comparisons

Neither the Holy Bible nor the Holy Qur'an seek to abolish loans from society but instead encourage their followers to extend benevolent loans to the poor in order to seek the blessings of God. This emphasis can be seen to be welfare enhancing. Charity provides material benefits to the poor but at the cost of a loss of their dignity. A creditor will likely lend more to the poor if there is a chance of the money being returned. Benevolent loans minimize inefficiency in society relative to money received as charity or a gift.

Our discussion highlights the differences in Biblical and Quranic approaches towards benevolent loans. Christianity considers benevolent loans as an integral part of grants or charity, but Islam separates benevolent loans from charity. According to the Holy Bible, benevolent loans must be repaid within seven years after which loans may automatically be remitted. The Holy Qur'an does not impose any time limit in returning money. Lastly, the Holy Qur'an also provides an option to convert a debtor's liabilities into a benevolent loan. The matter is entirely left at the discretion of the creditor who may also convert his loan into charity. Alternatively, the creditor can claim his loan to be adjusted from the compulsory charity (*zakat*) fund.

CONCLUSION

This chapter has undertaken a preliminary analysis of the acceptability of various non-interest financial instruments in Judaism, Christianity and Islam. It has not sought to compare or align the non-interest financial instruments with the interest-based financial instruments, but this is certainly an important area for our future research. Although there are some differences (and significant similarities) between the approaches of the religions and the non-interest instruments that have developed, there is a remarkable agreement amongst the three religions as to the desirability and value of non-interest financial transactions, and a shared hostility to interest-based ones. This is perhaps to be expected given their common heritage. Nevertheless, the similarity of the attitudes begs again the question of why there has been such a strong movement towards interest (Judaism, Christianity) or to transactions that appear in many cases closely related to interest (Islam). Why has debt (in its variety of guises) proven to be so seductive and seemingly indispensible in financing? Why, as Timur Kuran (2010) has recently reminded us, have partnerships evolved so very differently in the various cultures, providing a base towards the evolution of merchant banking and joint stock companies in the West but not in the Middle East? These are questions for further consideration.

Notes

[1] Some writers are more comfortable using the words ‘spirituality’ and ‘ethics’ than ‘religion.’ They argue that instead of emphasizing belief as religion does, the words spirituality and ethics emphasize how values are applied and embodied.

[2] Our plan is to pursue this agenda in a forthcoming volume *Religion and Finance: Comparing Islamic Finance with Judaism and Christianity*, for which the present chapter can be seen as introducing the main themes.

[3] *Halakah* is a legal decision regarding a matter for which there is no direct enactment in Mosaic law, deduced by analogy from the law or from the Scriptures, and included as a binding precept in the Oral law. The *Talmud* is the vast compilation of the Oral Law of the Jews, with rabbinical elucidations, elaborations and commentaries, as compared to the Scriptures or Written law. It is the accepted authority for Orthodox Jews, in two divisions:

- *Mishna*, or text of Oral law (in Hebrew); and
- *Gemara* (in Aramaic), a commentary on *Mishna* which it supplements.

Legal sections of the *Talmud* are known as *Halakah*.

[4] Callahan (2004, p.221) argues that the Catholic Church during the Middle Ages ‘stood at the apex of society as a centralized, hierarchical institution’. The Church seized the real authority and the Pope as the Spiritual Head considered it his honest duty to lead his followers to eternal life. Roman law, which was largely forgotten in the West during that period, was rediscovered in the eleventh century to respond to the process of urbanization and commercialization.

[5] The idea of the ‘just price’ of the Justinian code was established to regulate the market and to establish effective Church control over economic matters (Callahan, 2004)

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