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Reintegrating the Legal into the Social: Reviving Islamic Transactional Law in the Context of the Civil Economy, with Special Reference to *Waqf*

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Abstract: The potentialities and role of Islamic transactional law (ITL) and its underpinning axio-teleological concepts are explored in the cause of reclaiming the development process. In the Islamic scheme of values, the economic enterprise is premised on the organization of livelihood for sufficiency rather than perpetual growth so as to ensure overall socio-economic equilibrium. In this respect, there are discernibly close conceptual, structural and functional connections between the socio-economic objectives of ITL and those of the civil economy (CE). By making intelligent use of these substantive connections between ITL and CE, one can then devise effective legal strategies to substantively revive the former by taking strategic advantage of the already existing legal framework governing the latter. Thus, alien aspects of ITL are discussed in terms of invisible structures serving as formal, socio-legal means toward organizing socio-economic sufficiency, with special reference to the institution of *waqf* (charitable endowment) as a case in point.

Keywords: Islamic transactional law, civil economy, *Waqf*, invisible structures, development

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1 Introduction

The main purpose of this article is to explore the potentialities and role of *fiqh al-mu'āmalah* (Islamic transactional law or ITL) and its underpinning axio-teleological concepts in reclaiming the “development” process. Of course, it is debatable whether it is appropriate to use the extremely value-laden term “development” in the Islamic context,¹ but nevertheless, we are certainly seeing an increasing application² (even *mis-application*³) of Islamic ethico-legal concepts in the restructuring of socio-economic relations throughout the Muslim world. In the wake of the 2007–2008 global economic and financial turmoil, it will be interesting and even fruitful to look critically at the Islamic value system to see what it can or cannot contribute towards rethinking development and the ends of the economic enterprise, including what it has to say about the moral economy (ME)⁴ that bestows meaning, direction and purpose to the material economy.

Rethinking economic development in the Islamic value system is a function of how it defines the nature, scope and end of the economic life. In the Islamic scheme of values, the economic enterprise is premised on the organization of livelihood for sufficiency (*kifāyah*) rather than perpetual financial or material growth (*takāthur*).⁵ In contemporary terms, the basic idea here is that what is in excess of sufficiency (economic surplus) is to be systemically reinvested or recycled back into the community at large so as to alleviate or preempt deficiency in some vulnerable and often marginalised sectors of the economy, thereby ensuring to the extent possible overall socio-economic equilibrium.

¹ Especially in the light of the incisive critique by Gilbert Rist, *Development: From Western Origins to Global Faith* (3rd ed., London: Zed Books, 2008); c.f. Yong-Shik Lee, *Reclaiming Development in the World Trading System* (2nd ed., Cambridge: Cambridge University Press, 2016).

² E.g., Mohamad Nazirwan, *The Dynamic Role and Performance of Baitul Maal Wat Tamwil: Islamic Community-Based Microfinance in Central Java* (PhD thesis) (Melbourne: Victoria University, 2015).

³ E.g., Adi Setia, *Freeing Maqāṣid and Maṣlaḥah from Surreptitious Utilitarianism*, Islamic Sciences (Winter 2016), for a few case studies of mis-application,

⁴ For a useful study, aspects of which need to be updated and extended, see Charles Tripp, *Islam and the Moral Economy: The Challenge of Capitalism* (Cambridge: Cambridge University Press, 2006).

⁵ See Adi Setia, *The Islamic Gift Economy: A Brief Statement*, Islamic Sciences (Winter 2015); idem, *The Meaning of 'Economy': Qaṣd, Iqtisād, Tadbir al-Manzil*, Islamic Sciences (Summer 2016); idem, *Farḍ al-Kifāyah, Mu'āmalah & the Commonwealth: Reconnecting Economics and the Economy to Communities*, Islamic Sciences (Summer 2013).

This idea of the *circulative economy* finds accord with what Herman Daly has called a *steady state economy*,⁶ or what others have called an *economy of enoughtness*.⁷ In this regard, salient aspects of ITL will be discussed in terms of *invisible structures*⁸ serving as formal, socio-legal means toward organizing socio-economic sufficiency, with special reference to the classical *waqf* (charitable endowment)⁹ structure as a case in point. Such appropriate invisible structures need not be formally or explicitly expressed in Islamic legal terms or contractual forms, especially given the current climate of widespread Islamophobia and its concomitant *shariaophobia*.

Therefore, it will also be insightful to look at *mu'āmalah* from within a socio-legal analytical framework.¹⁰ Given the discernible underpinning socio-moral objectives that ITL aims to realise, one can then go about looking at how a particular set of legal rules pertaining to a formal contract of transaction, say leasing or hiring (*ijārah*), or even straightforward sale and purchase (*bay'*), serves to protect and promote the social good even as it protects and promotes the individual interests of the two contracting parties. These socio-legal aspects of ITL are also brought into particular relief when we take a close look at the institution of *waqf* and how it connects to the social or *civil economy* (CE).¹¹

6 See the website, available at: <<http://www.steadystate.org/discover/definition/>>, accessed 9 May 2017; and Herman Daly, *From Uneconomic Growth to a Steady State Economy* (Cheltenham: Edward Elgar, 2014).

7 Rob Dietz and Dan O'Neill, *Enough is Enough, Building a Sustainable Economy in a World of Finite Resources* (San Francisco: Berrett-Koehler, 2012); Frank M. Roterling, *Needs and Limits: A New Economics for Sustainable Well-Being* (3rd ed., self-published on Lulu.com, 2010).

8 A social permaculture concept elaborated by Bill Mollison in the last chapter of his book, *Permaculture: A Designer's Manual* (Tagari, 1988), and appropriated here as a hopefully useful framework for analysis. The term refers to socio-legal and sustainable business structures to realise a socio-economy based on permaculture principles. See also Vint Lawrence, *Invisible Structures and the Evolution of Regenerative Financial Models*, available at: <<http://oly-wa.us/herbnwisdom/PDF/InvisibleStructures.pdf>>, accessed 03 May 2017.

9 A good historical and socio-economic overview of the *waqf* institution is Pascale Ghazaleh (ed.), *Held in Trust: Waqf in the Islamic World* (Cairo: American University in Cairo Press, 2011); a detailed study of its legal origins is Peter C. Hennigan, *The Birth of a Legal Institution: The Formation of the Waqf in Third Century A.H. Hanafi Discourse* (Leiden: Brill, 2004).

10 For example, as elaborated in David N. Schiff, *Socio-Legal Theory: Social Structure and Law*, 39 *The Modern Law Review*, no. 3 (May, 1976), 287–310. In the immediate context of this paper, socio-legal theory is relevant to lend support to the idea that law should properly be in the service of the wider interests of society rather than the narrow interests of the corporation or ruling party.

11 For example, see Habibollah Salarzahi, Hamed Armesh and Davoud Nikbin, *Waqf as a Social Entrepreneurship Model in Islam*, 5 *International Journal of Business and Management*, no. 7 (July 2010); and Thamina Anwar, *Waqf (Endowment): A Vehicle for Islamic Social*

By making intelligent use of these discernible conceptual, structural and functional connections between the two, one can then devise rather effective legal strategies to substantively revive the former, or take legal strategic advantage of the already existing legal framework governing the latter.¹²

2 *Mu‘āmalah* and ITL

With regard to the technical term ‘*mu‘āmalah*’ (lit. ‘transaction’),¹³ it is almost ubiquitously translated into English as Islamic “finance.”¹⁴ Given the extremely loaded modern term “finance,” one is pressed to argue that there is actually no such thing as an Islamic “financial” law as such. This is simply because in the Islamic experience, there is no financial or monetary economy that is conceived to be autonomous of, or even dominant over, the real, commercial economy of exchange of goods and services amongst people.¹⁵ Hence, the classical term

Entrepreneurship (Kuala Lumpur: IBFIM, 2017). As for the civil economy, a good overview is Marcello Palazzi, Pjotr Hesseling, Ronald Young and Paul Kloppenborg, *Beyond Market and State: The Civic Economy* (Amsterdam: Progressio Foundation, 1990); see also *Civil Economy: Efficiency, Equity, Public Happiness* (Oxford: Peter Lang, 2007); c.f. Adi Setia, *Waqf Civil Society & Civil Economy*, 18 AWQAF (2010), 13–38.

12 I have in mind in particular the detailed legal strategies in the last chapter of Bill Mollison’s classic book in regenerative land stewardship, *Permaculture: A Designers’ Manual* (Sisters Creek, Tasmania: Tagari, 2001), pp. 515–560. That chapter is aptly titled, “The Strategies of an Alternative Global Nation.”

13 In its broader, holistic sense, *mu‘āmalah* refers to proper behaviour and relationships between people, between people and their Creator, and between people and the rest of creation, and this understanding has been comprehensively expounded with deep social and spiritual insight by al-Ghazālī (d. 1111 CE) in his famed *Iḥyā’ ‘Ulūm al-Dīn* (Revival of the Sciences of Religion). In the context of this discussion, it refers to the ethical and legal norms governing proper transactions and interactions among people in the socio-commercial life of the community.

14 E.g., Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (Kluwer Law International, 2002).

15 Equating “*mu‘āmalah*” with “finance” has resulted in a systemic *financialization* of *mu‘āmalah*, namely, the transformation of classical *mu‘āmalah* contractual forms – which are basically *commercial* fiduciary instruments facilitative of largely direct trade and equity investments between people and businesses – into rent-seeking financial instruments of largely debt-based credit intermediation, and various forms of debt leverage and monetization through a process of reverse engineering or replication of the various financial products and services offered by the conventional banking and finance industry. For more elaboration, see Adi Setia, “Freeing *Maqāṣid* and *Maṣlaḥah* from Surreptitious Utilitarianism,” in *Islamic Sciences* (Winter 2016).

mu'āmalah cannot be even remotely equated with the modern term “finance,”¹⁶ especially if we want to systemically draw out the full spectrum of socio-economic meaning and praxis implicated by the former term.

Mu'āmalah (in both its commercial and its social aspects) is all about the real economy and real wealth (*māl*),¹⁷ not just money and what can be monetized.¹⁸ It is about socio-economic values, means and ends and how all these are to be integrated into a seamless organic whole and realised through the various business structures, contractual rules and fiduciary instruments embodying a very objective set of ethico-moral parameters so as to ensure *fair and equitable* exchange amongst all parties involved in business transactions.¹⁹ Such ethico-moral parameters also pertain to the imperative of promoting positive and preempting negative externalities.²⁰ Moreover, when it comes to the important issue of the nature, function and purpose of money, the Muslim jurists of old in their conceptual, ethical and legal thinking have always conceived of it as an instrument of *fair and equitable exchange*. Understood as such, money must then embody objective, formal features serving to realise that foundational functional objective.²¹

All these ethico-moral and legal parameters of ITL go into realizing the overriding *maqṣid* of *hiḏḏ al-māl*, which is the objective of preservation

16 Modern finance is characterized by its tendency to generate revenues and profits through various forms of financial intermediation even when such intermediation does not result in real growth in production; see *What's Wrong with Finance*, available at: <<https://www.economist.com/blogs/buttonwood/2015/05/finance-and-economics>>, accessed 10 October 2017, and Daniel Ramussen, “The Bankruptcy of Modern Finance Theory”, *American Affairs*, May 20 2017.

17 See Ibn Abī al-Dunyā, *Iṣlāḥ al-Māl*, Adi Setia (trans.), *The Restoration of Wealth* (Kuala Lumpur: IBFIM, 2017).

18 Hence, we find that the tendency today to translate “finance” as “*tamwīl*” (lit. “to bestow wealth”) in Arabic is gravely mistaken since it narrows the meaning of *māl*/wealth and reduces it to money and the monetary, whereas the term *māl* denotes also non-monetary forms of wealth, such as land, livestock, commodities, etc.

19 A short, useful overview of Islamic commercial law is Nicholas H. D. Foster, *Islamic Commercial Law: An Overview*, InDret (October 2006), available at: <<http://www.raco.cat/index.php/InDret/article/viewFile/122208/169328>>, accessed 3 May 2017; see also Christie S. Warren, “Commercial Law,” in *The Oxford Encyclopedia of the Islamic World*, available at: <<http://www.oxfordislamicstudies.com/article/opr/t236/e0156>>, accessed 3 May 2017.

20 A positive externality is a benefit accruing to a third party as a result of an economic transaction between a producer (1st party) and a consumer (2nd party), while a negative externality is a cost or harm borne by a third party due to that transaction despite having played no part in it.

21 Further elaboration in Adi Setia, *Trade, Commerce, Money and Market in the Islamic Experience: A Brief Overview*, 12 *Islamic Sciences*, no. 2 (2014).

of wealth.²² In the light of the above considerations, it is best to understand *mu'āmalah* from within a broad, socio-legal perspective rather than a narrow legalistic framework that is solely focussed on *contrived contractual formalism*, as is currently the case with the Islamic Banking and Finance (IBF) industry. For this and related reasons, I have opted to translate the key term *mu'āmalah* as Islamic transactional law, or ITL for short.²³

3 ITL and Islamic Banking and Finance

Formal translational accuracy aside, the importance of the socio-legal²⁴ perspective is further underlined when we take the trouble to look closely and critically into the well-recognized problem of IBF, which basically lies in its tendency to equate classical “*mu'āmalah*” with “finance.” This has led to an effective *financialization* of *mu'āmalah*, namely, the transformation of classical *mu'āmalah* contractual forms – which are basically fiduciary instruments facilitative of largely direct trade and equity investments between people and businesses in the *productive and commercial economy* – into rent-seeking instruments of largely debt-based credit intermediation. Such financial instruments include various stratagems of debt leverage and monetization²⁵ through a process of reverse engineering or replication of the various financial products and services offered by the conventional banking and finance industry.²⁶

²² For ITL in general in relation to the objective of wealth preservation, see Mohammad Hashim Kamali, *The Shariah Purpose of Wealth Preservation in Contracts and Transactions*, 8 *Islam and Civilizational Renewal*, no. 2 (2017).

²³ An alternative translation is Islamic Commercial Law (ICL), but there are formal, contractual aspects of *mu'āmalah* transactions (like *hibah* = gifting) that are not commercial in nature. The term *mu'āmalah* itself means literally inter-action, trans-action or cooperation. Some overviews of ITL are Muhammad Yusuf Saleem, *Islamic Commercial Law* (Singapore: Wiley, 2013); c.f. Abdullah Alwi Haji Hassan, *Sales and Contracts in Early Islamic Commercial Law* (Kuala Lumpur: The Other Press, 2007). See also the section on *mu'āmalah* in Nuh Ha Mim Keller, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law* (rev. ed., Amana, 1997); see also Mahmoud El-Gamal (trans.), *Financial Transactions in Islamic Jurisprudence*, 2 vols (rev. ed., Dasmascus: Dar al-Fikr, 2007).

²⁴ My thanks to Professor Salim Farrar for bringing to my notice the significance of this term.

²⁵ Such as *tawarruq* or monetization of an asset or commodity; see A. Ahmad Alkhomees, *A Critique of Creative Shari'ah Compliance in the Islamic Finance Industry* (Leiden: Brill, 2017), pp. 67–86; c.f. *Tawarruq* (Kuala Lumpur: Bank Negara Malaysia, 2015), available at: < http://www.bnm.gov.my/guidelines/05_shariah/PD_Tawarruq.pdf >, (accessed 31 October 2017).

²⁶ This includes, as pointed out by el-Gamal, using conventional banking technology for evaluating credit risk, ameliorating it with collateral, and benchmarking it to conventional

This rent-seeking behaviour²⁷ through legalistic “shari‘ah” arbitrage has gone to the extent of overriding the ethical, economic and social substance of the transaction due to narrow preoccupation with monetary profit-making. Hence, as many authors have pointed out, the end result is the paradox of Islamic finance actually becoming largely indifferent to, if not undermining outright, the Islamic moral, social and cultural economy underpinning ITL.²⁸ Such a socio-legal perspective will also go a long way to demonstrate that the various contractual forms in ITL have not been formulated by the classical legal scholars (*fuqahā’*) for their own sake (for it would make no sense formulating rules for rules’ sake), but, rather, for serving to *objectivize* the ethico-moral values of *consensual, trustworthy and fair exchange* and thereby to realize them in action to the furthest extent possible.²⁹ For instance, the well-known stringent proscription against *ribā* or usury has been shown to function as a prudential

interest rates. For a succinct account of the mechanisms of this transformation through financialization, see Yusuf Jha, *The Destructive Logic of Interest: The Fallacy of Perpetual Growth, with a Discussion of Reformist Action by Islamic Banks*, 5 *Islam and Civilizational Renewal*, no. 3 (2014), 409–429, especially, 12 ff.

27 Rent-seeking is the process of acquiring monetary gain without substantive participation or contribution to actual production of real goods and services; i. e. profiting without creating new wealth; for the case of Asia, see Mushtaq A. Khan and K. S. Jomo (eds.), *Rents, Rent-Seeking and Economic Development: Theory and Evidence in Asia* (Cambridge University Press, 2000). In the case of IBF, this rent-seeking behaviour consists in what el-Gamal has called “sharia’a arbitrage,” namely, the “extraction of fees simply for transforming a conventional product into one that seems to comply with the formal requirements of Islamic law while retaining all the economic features of that conventional product”; see Mohammad Fadel, *Riba, Efficiency, and Prudential Regulation: Preliminary Thoughts*, 8 *Wisconsin Law Journal*, no. 18 (2008), 656; see also Mahmoud A. El-Gamal, *Mutuality as an Antidote to Rent-Seeking Shariah Arbitrage in Islamic Finance*, 49 *Thunderbird International Business Review*, no. 2 (2007); and M. K. Hassan, *Islamic Finance: A System at the Crossroads?*, 49 *Thunderbird International Business Review*, no. 2 (2007).

28 The many incisive critiques of IBF include Harris Irfan, *Heaven’s Bankers: Inside the Hidden World of Islamic Finance* (London: Constable, 2014); Tarek el-Diwany, *The Problem with Interest* (3rd ed., London: Kreatoc, 2010), Yusuf Jha, *From Goldsmiths to Modern Banking: A Frank Look at the Money-Creation Process and Its Relevance to Islamic Banking*, 4 *Islam and Civilizational Revival*, no. 3 (2013); Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2006); Adi Setia, “Freeing *Maqāsid* and *Maṣlaḥah* from Surreptitious Utilitarianism,” in *Islamic Sciences* (Winter 2016), and Mehmet Asutay, *Conceptualising and Locating the Social Failure of Islamic Finance: Aspirations of Islamic Moral Economy vs the Realities of Islamic Finance*, 11 *Asian and African Area Studies*, no. 2 (2012), 93–113.

29 For this in the context of Islamic philosophy of law, see Abdessamad Belhaj, *The Ethical Thesis: Practical Reason in Islamic Legal Hermeneutics* (Budapest: Avicenna Institute of Middle Eastern Studies, 2015).

scheme of regulation to reinforce a public guarantee of a minimum distribution of basic goods, whereby narrow or immediate financial efficiency gains are voluntarily sacrificed as a matter of principle in order to serve socially desirable distributive goals.³⁰ Hence, the dictum here is always that *private gain must both be just and never be at the cost of public loss.*

4 ITL in Relation to Development

Coming back to the issue of development, a lot has been written recently about “microtrade”³¹ as a mechanism for promoting sustainable economic development in poor countries, and it should be worthwhile for research in that field to explore possible conceptual, ethical and even “legal cultural”³² and hence *legal structural* synergies between microtrade and ITL. The term “microtrade” is useful here and in line with the current focus on social enterprises³³ and benefit corporations³⁴ as constructive responses to “macrotrade” (aka, transnational corporations allied to the centralizing state in a marriage of convenience and

30 Paraphrasing Mohammad Fadel, *Riba, Efficiency, and Prudential Regulation: Preliminary Thoughts*, 8 Wisconsin Law Journal, no. 18 (2008); c.f. Mahmoud A. el-Gamal, *Mutuality, Reciprocity, and Justice within the Context of a Unified Theory of Riba and Gharar* (draft paper) (2014).

31 Microtrade is defined as international trade on a small scale, based primarily on manually produced products using small amounts of capital and low levels of technology available at a local level in lesser developed countries; see Yong-Shik Lee (ed.), *Microtrade: A New System of International Trade with Volunteerism Towards Poverty Elimination* (London: Routledge, 2013). Microtrade as a technical term is totally distinct from the term “microtrading” (also “micro trading,” “micro-trading,” or day trading), which refers to trading on the Forex using a micro-account by speculating on currencies and their exchange rate, but with lower transaction volumes than what is normally possible through the traditional Forex trading accounts, see <http://www.strategyforex.co.uk/article/micro-trading.html>, accessed 08 May 2017; the term may also refer to daytrading in securities, see Lawrence Black and Hawley Todd, *The Microtrading Revolution* (Microtrade, Inc., 1998).

32 See Colin Picker, “Microtrade and Legal Cultural Considerations”, in Yong-Shik Lee (ed.), *Microtrade: A New System of International Trade with Volunteerism Towards Poverty Elimination* (London: Routledge, 2013).

33 See for instance, B. Gidron and Y. Hasenfeld, *Social Enterprises: An Organizational Perspective* (Palgrave, 2012), especially the chapter therein by Kate Cooney, “Mission Control: Examining the Institutionization of New Legal Forms of Social Enterprise in Different Strategic Action Fields.”

34 See Rick Alexander, *Benefit Corporation Law and Governance: Pursuing Profit with Purpose* (San Francisco: Berrett-Koehler Publishers, 2017).

expedience), which tends to disempower communities from taking care of themselves socio-economically.³⁵

Now, the freedom to be empowered to take care of oneself and one's own – through, say, forging independent business networks (IBNs) – while beholden to none would dovetail very well with the notion of “development as freedom.”³⁶ People enjoy freedom to the extent they truly identify with the system of values underpinning and guiding the economy in which they find themselves earning their livelihoods. It follows then that people are, in some real sense, held in bondage to the extent that they find themselves working in or for a material economy largely disembedded from their belief, value and cultural system, i. e. from their ME. In the case of Muslims, al-Attas says the following regarding the true relationship between freedom, change, development and progress:

The concepts of ‘change’, ‘development’, and ‘progress’ presuppose situations in which we find ourselves confused by a commixture of the true and the false, of the real and the illusory, and become captive in the ambit of ambiguity. In such ambivalent situations, our positive action in the *exercise of freedom to choose for the better*, to accept what is good and relevant to our needs, to deliberate correctly in our judgement of needs, all the while maintaining our endeavour to return to the straight path and direct our steps in agreement with it—such endeavour, which entails change, is development; and such return, which consists in development, is progress.³⁷

In this respect, reviving ITL is of great relevance not only for Muslim communities and polities as an aspect of their “exercise of freedom to choose for the better,” but also to non-Muslims because of the shared socio-ethical values (or *ME*) underpinning both ITL and many aspects of current counter-economic thinking.³⁸ Moreover, it is well known that in the past, even in relatively recent, pre-modern history,³⁹ much of local, regional and world trade was structured in

³⁵ For a detailed case study, see the report on Sime Darby by Robert Lawrence Nyanh, *Multinational Corporations and Their Impact on Rural Community Rights to Land and Natural Resources: A Case Study of Sime Darby Oil Palm Plantation in Liberia*, Master's thesis (University of Italy, 2012).

³⁶ For a discussion, see Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).

³⁷ Syed Muhammad Naguib al-Attas, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: ISTAC, 2001), p. 39 (emphasis added).

³⁸ As expressed in the works of, inter alia, E. F. Schumacher, Herman Daly and Charles Eisenstein; see also, Wan Aimran, Aliff Basri and Adi Setia, *Engaging Structural Greed Today: Christians and Muslims in Dialogue*, Islamic Sciences (Summer, 2014).

³⁹ That is, before the rise of European hegemony in the world system.

terms of ITL or appropriated versions of it.⁴⁰ And also, ITL, when creatively rearticulated in the context of the current vibrant debate on the CE and ME, can be a very good discursive strategy for presenting a very positive aspect of the public face of Islam⁴¹ to non-Muslims. This can show them in practical “daily-bread” terms how Islamic socio-economic values rearticulated as the Islamic Moral Economy (IME)⁴² or the Islamic Gift Economy (IGE)⁴³ can actually be in the service of the common good of all.

5 Importance of the Socio-Economic History of Islam for Understanding ITL

The Qurʾān commands Muslims to take lessons from the (hi)stories of nations who have gone before them: “There is certainly advice (*‘ibrah*) in their stories for people who have intelligence.”⁴⁴ The great historian and socio-economic theorist, Ibn Khaldūn (d. 1406), titled his highly influential magnum opus as *Kitāb al-‘Ibar*, which translates as *The Book of Lessons*.⁴⁵ We also know that knowing the text is not enough, for we must also know the social and historical context in which the text is embedded, especially if we want to extract, revive and *properly* reapply the insights therein in the current context in corresponding areas of concern. Hence, it is simply not enough to know the formal, technical Islamic

⁴⁰ E.g. S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Protrayed in the Documents of the Cairo Geniza*, vol. 1, *Economic Foundations* (Berkeley: University of California Press, 2000); c.f. A. L. Udovitch, *At the Origins of the Western Commenda: Islam, Israel, Byzantium*, 37 *Speculum* (1962), 198–207. A. L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970); A. L. Udovitch, *Islamic Law and the Social Context of Exchange in the Medieval Middle East*, 1 *History and Anthropology* (1985), 445–465.

⁴¹ For a good discussion on “public Islam,” see Dale Eikelman and Armando Salvatore (eds.), *Public Islam and the Common Good* (Leiden: Brill, 2006).

⁴² Salah El-Sheikh, *The Moral Economy of Classical Islam: A FiqhiConomic Model*, 98 *The Muslim World* (January 2008); c.f. Lawrin Armstrong, *The Idea of A Moral Economy: Gerard of Siena on Usury, Restitution, and Prescription* (Toronto: University of Toronto Press, 2016).

⁴³ Adi Setia, *Mu‘āmalah and the Revival of the Islamic Gift Economy*, *Islam & Science* (Summer, 2011).

⁴⁴ Qurʾān, sūrah *Yūsuf*: 111.

⁴⁵ Ibn Khaldūn, *The Muqaddimah: An Introduction to History*, 3 vols, Franz Rosenthal (trans.) (Princeton, 1967); an online version, available at: <<http://marxistnkrumaistforum.files.wordpress.com/2013/11/the-muqaddimah.pdf>>.

legal (or *fiqh*) rules governing *waqf*⁴⁶ and other aspects of ITL, but we have also to know both the concrete historical contexts in which those rules were formulated and implemented as well as the contemporary contexts in which those rules – and the axiological precepts underpinning them – are to be creatively revived and operationalized again. Such *contextual sensitivity* is important not only for a critical understanding of *waqf* but also all other aspects of ITL, especially if the aim here is the creative revival in the current context of Islamic ethico-legal precepts, such as justice (*‘adl*) and magnanimity (*ihsān*) in the manner they pertain to *right livelihood and the common good*.⁴⁷

Because attention to history is so important for nurturing a nuanced, contextualized understanding, it goes without saying that it is imperative for intellectually responsible research into ITL to consider not only the formal transactional legal rules as such, but also Islamic socio-economic history, and how classical Muslim scholar-jurists have looked at the *meta-legal* relationship between the economic enterprise and the goals of the religious life in general.⁴⁸ Fortunately for the researcher with little or no background in Islamic studies, much useful, well-documented information in these socio-historical aspects of ITL is now easily available in many various learned books and scholarly articles.⁴⁹ Furthermore, it can also be said that if ITL is also to be understood in the context of engaging it with modern economics and finance, then one has also to have some degree of familiarity with western socio-economic institutions and their historical genesis and development. In addition, if one needs to see how ITL, to be revived, is to engage with modern commercial law based on shared notions of fair exchange, right livelihood and

⁴⁶ *Waqf* (pl. *awqāf*) is the formal institution of charitable endowment in Islam; a comprehensive historical and contemporary survey is Murat Cizakca, *Awqaf in History and Its Implications for Modern Islamic Economies*, 6 Islamic Economics Studies, no. 1 (November 1998), but I have grave reservations about putting *waqf* in the framework of Islamic banking as he suggests in his otherwise useful paper; see also his monograph, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present* (Istanbul: Bogazici University Press, June 2000).

⁴⁷ See *Right Livelihood & the Common Good: Three Classics from the Islamic Tradition*, Adi Setia and Mahdi Lock (trans.) (Kuala Lumpur: IBFIM, 2015); c.f. Herman Daly, et al., *For the Common Good: Redirecting the Economy toward Community, the Environment, and a Sustainable Future* (Boston: Beacon Press, 1994).

⁴⁸ For example, for the view of al-Ghazālī in this context, see Adi Setia, “al-Ghazālī on the Proprieties of Earning and Living: Insights and Excerpts from His *Kitāb Adāb Al-Kasb wa’l-Ma’āsh for Reviving Economies for Communities*,” Islamic Sciences (Summer 2013).

⁴⁹ See for instance, Gene W. Heck, *Islam, Inc.: An Early Business History* (Riyadh: King Faisal Center for Research and Islamic Studies, 2004).

the common good, then some familiarity or acumen with comparative law and comparative legal history,⁵⁰ as well as with the current vibrant internal debates amongst western economists on rethinking economics and the ends of the economic life, is also useful and even imperative.⁵¹

In the case of *waqf*, for instance, a study of its history will show that there was a “constant dialogue between the letter of *waqf* law and socio-economic requirements.”⁵² And as Dr. Aḥmad al-Qāsimī, a former *mudīr al-awqāf* (Director of Endowments) in Damascus, puts it, “the *waqf* was never the dead, unchangeable property described by the Orientalists as ‘*mainmorte*’.⁵³ Rather, *waqf* was a vital, central institution in Islamic society which adapted to the needs of the community in each epoch.”⁵⁴ And in the larger context of the historical development of the charitable trust in general, comparative historico-legal studies have shown much borrowing from aspects of *waqf* law in the modern trust.⁵⁵ Such statements are also applicable to many other aspects of ITL in general in the manner they have “dialogued” with the socio-economic common good and impacted in one way or another on many aspects of modern commercial law.⁵⁶

The extent to which the current ongoing revival of *waqf* in particular and ITL in general is to be a creative, anticipative, proactive and systemic one – instead

50 Such as shown in the many works of Professor Imran Khan Nyazee, namely, *Theories of Islamic Law: Methodology of Ijtihād* (Islamabad: International Institute of Islamic Thought & Islamic Research Institute, 1994); *Islamic Law of Business Organization: Partnerships* (Islamabad: International Institute of Islamic Thought, 1998); *Islamic Law of Business Organization: Corporations* (Islamabad: International Institute of Islamic Thought, 1998); and *Prohibition of Riba Elaborated* (Rawalpindi: Federal Law House, 2009).

Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Ḥaramayn in Ottoman Algiers* (Leiden: Brill, 1998), p. 141.

51 “One significant outcome of this intense internal debate is the critically very well received new economic textbook,” The Economy, available at: <<http://www.core-econ.org>>, accessed 11 October 2017.

52 Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Ḥaramayn in Ottoman Algiers* (Leiden: Brill, 1998), p. 141.

53 A French term, rooted in medieval church and fuedal history, which basically means “the incapacity of selling possessions or estates,” available at: <<http://en.wikipedia.org/wiki/Mortmain>> and “Mortmain,” *Catholic Encyclopedia* (New York: Robert Appleton Company, 1913).

54 Cited in Hoexter, *Endowments, Rulers and Community*, p. 141 n.127.

55 Monica Gaudiosi, *The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College*, 136 University of Pennsylvania Law Review, no. 1231 (1988); Zia Akhtar, *Charitable Trusts and Waqfs: Their Parallels, Registration Process, and Tax Reliefs in the United Kingdom*, 34 Statute Law Review, no. 3 (2013), 281–295.

56 See el-Gamal, *Islamic Finance*, 15–17; and J. Makdisi, *The Islamic Origins of the Common Law*, 77 North Carolina Law Review, no. 5 (1999).

of its current *mis*-expression in the socially irrelevant IBF⁵⁷ – will largely depend on the extent of our critical understanding of ITL socio-legal history, and the way that history is embedded in the larger socio-economic history of *both* Muslim and non-Muslim societies before the advent of European hegemony in the world system. In the case of *waqf* especially, many historical case studies have shown that it was an important operative economic dimension of civil society in Islam; i. e., *waqf* was, in the main (apart from other aspects of ITL), how civil society was actually practiced in Islam.⁵⁸ And correspondingly in the West, we find that the charitable trust was and is still a major instrument of civil society,⁵⁹ which is premised on autonomous, grassroots action to cater to and suffice the needs of the community.

Given the CE (or the *economy of civil society*),⁶⁰ then the larger question by which to frame our inquiry in this paper is, “What, precisely, are the transactional forms and structures business, trade, commerce, and finance will have to take to organize the civil economy that it might most effectively realize its vision of socio-economic well-being, and thereby the notion of development as freedom, and delivery from material impoverishment, societal breakdown and spiritual meaninglessness?” But, first, what is meant by ‘civil society’?

6 What Is ‘Civil Society’?

Without digging too deeply into the historical development of the concept, it suffices our purpose here to say that the word “civil” and its various cognates,

57 A very good critique of IBF is Mahmoud el-Gamal, *Islamic Finance: Law, Economics and Practice* (Cambridge: Cambridge University Press, 2006). To be fair, there is some serious work going on lately to reverse the social failure of IBF, such as Umar Moghul, *A Socially Responsible Islamic Finance: Character and the Common Good* (Palgrave, 2017).

58 See for instance, Miriam Hoexter *et al.*, (eds.), *The Public Sphere in Muslim Societies* (SUNY, 2002), especially, pp. 65 *et seq.*

59 For a discussion, see Matthew Turnour and Myles McGregor-Lowndes, *From Charity To Civil Society: Sketching Steps To An Alternate Architecture For The Common Law*, unpublished conference paper, available at: < https://s3.amazonaws.com/academia.edu.documents/30941166/07_Turnour_and_McGregor-Lowndes_From_Charity.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1508665982&Signature=LTYI3P2EBKNwOxLJu%2FCa18FKDoE%3D&response-content-disposition=inline%3B%20filename%3DFrom_Charity_To_Civil_Society_Sketching.pdf >, accessed 20 October 2017; see also Adam Pickering, “Philanthropy Infrastructure: A Boring Name for Which the Future of Civil Society Rests,” Charities Aid Foundation, available at: < <https://www.cafonline.org/about-us/blog-home/giving-thought/the-role-of-giving/why-philanthropy-infrastructure-matters> >, accessed 20 October 2017.

60 For a good discussion, see Adrian Pabst and Roberto Scazzieri, *The Political Economy of Civil Society*, Constitutional Political Economy (December 2012).

“city,” “citizen,” “civilization,” “civic,” etc., which are all derived from the Latin “civitas,” originally connote a relatively settled community of a significant size facilitative of relatively complex, organized socio-political and economic life. Such a community usually shares with neighbouring communities what Mollison calls a “bioregion,”⁶¹ which has a natural and identifiable boundaries,⁶² such as Zomia,⁶³ in mainland Southeast Asia. This is an essentially secular, humanist connotation without overt religious or transcendent undertones, since the basic underlying idea is that human beings are by nature rational, social and sensible enough to eventually come together and agree on some common good for mutual prosperity in the temporal life of this world. Thus, the term “civil society” simply refers to a group of people coming together on their own accord and shared sense of mutual responsibility and common values without or even despite the coercive power of the distant, centralizing state or the seductive power of the impersonal, profit-driven market.

In contrast, the corresponding term in Arabic, *al-mujtama‘ al-madani* (Malay, *masyarakat madani*) connotes, in addition, a religious, transcendent meaning, for the adjective *madani* comes from the noun *madīnah*, which literally means “the place where the religion is practiced,” i. e., practiced in both private devotion (*‘ibādah*) and public transaction (*mu‘āmalah*). For Muslims, this meaning was most fully realized in the city (*madīnah*) of the Prophet – Allāh bless him and grant him peace – and subsequent generations have always looked back to that time and that place and that society for eliciting intellectual and practical insights into the nature of the virtuous city (*al-madīnah al-fāḍilah*).⁶⁴

Thus, civil society must also mean for Muslims as referring to a society whose members, largely on their own accord, organize its private and public life according to Islamic religious norms which set the parameters of virtue and vice.

⁶¹ Bill Mollison, “Bioregional Organization”, in his *Permaculture: A Designers’ Manual* (2nd ed., Tagari, 2004), pp. 510–511.

⁶² That is, as opposed to arbitrarily imposed and hence unnatural political boundaries that split apart previously well integrated communities.

⁶³ See Nicolas Delalande, “Zomia, Land without State,” in *Books & Ideas*, available at: <http://www.booksandideas.net/Zomia-Land-Without-State.htmls>, accessed October 2017.

⁶⁴ Syed Muhammad Naqib al-Attas, “Islām: The Concept of Religion and the Foundation of Ethics and Morality”, in his *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: ISTAC, 2001), p. 43 n. 3; c.f. Muhsin Mahdi, *Alfarabi and the Foundations of Islamic Political Philosophy* (Chicago: University of Chicago Press, 2001). C.f. The useful discussion in Muhammad Khalid Masud, *Civil Society in Islam*, available at: <<http://www.maruf.org/?p=57>>. And for a study of the development of law in such a society, see Yasin Dutton, *The Origins of Islamic Law: The Qur’ān, the Muwaṭṭa’ and Madīnan ‘Amal* (Curzon, 1999); c.f. Umar Faruq Abdallah, *Mālik and Medina: Legal Reasoning in the Formative Period* (Leiden: Brill, 2013).

In other words, civil society in Islam is both a society of personal conscience and communal solidarity, in which its religious, intellectual, legal and social leadership is largely locally autonomous and serves their immediate concrete community rather than the distant, centralizing state or the manipulative, exploitative corporation.⁶⁵ If, according to the working definition given by the Center for Civil Society at the London School of Economics, “civil society refers to the arena of *uncoerced collective action* around shared interests, purposes and values,”⁶⁶ then such voluntary, autonomous collective action may involve institutional forms or *invisible structures* quite distinct from, but not necessarily in competition with, those of the impersonal, coercive state or profit-maximizing corporation.

Decentralized and localized civil societal institutions can even be seen to complement state structures within a framework of what can be called *institutional division of labour*, simply because there are public interests that are more effectively and efficiently left to local communities to figure out for themselves the most effective ways to attend to. Hence, civil society thrives when the state recognizes its limits in delivering public goods and keeping the public peace, and acts accordingly, such as by putting in measures to prevent *regulatory capture*⁶⁷ by corporate and political vested interests, and funding to endow autonomous community development trusts (CDT).⁶⁸ Moreover, compelling evidence on the ground has shown that in many cases top-down, state-imposed, centrally managed socio-economic development schemes, whether grandiose or modest in scope, have created more problems than solutions simply because they tend to ignore or overlook the complexities of local values, sensitivities, needs and ecosystems.⁶⁹

⁶⁵ See, e.g., Yasin Dutton, *The Origins of Islamic Law: The Qur’ān, the Muwaṭṭa’ and Madinan ‘Amal* (Curzon, 1999); Ovamir Anjum, *Politics, Law, and Community in Islamic Thought: The Taymiyyan Moment* (Cambridge: Cambridge University Press, 2012); c.f. Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity’s Moral Predicament* (Columbia University Press, 2012).

⁶⁶ See its *Report on Activities, 2005–2006*, available at: <http://eprints.lse.ac.uk/29398/1/CCSReport05_06.pdf>.

⁶⁷ The term “regulatory capture” refers to the situation where government agencies created to safeguard the public good are coopted by corporations or other special-interest groups to advance their commercial or political agendas; see Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge University Press, 2014); for the case of banking, see, Daniel C. Hardy, *Regulatory Capture in Banking* (IMF, 2006).

⁶⁸ For a discussion, see Laurence Demarco, “The Difference between Civil and Civic,” available at: <http://www.senscot.net/view_art.php?viewid=7318>, accessed 10 October 2017.

⁶⁹ James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condiiton Have Failed* (Yale University Press, 1999).

In this regard, we can see that in Islamic economic history the institution of *waqf* has been and shall continue to be the cornerstone of vibrant communities largely socio-economically autonomous, even aloof, from the centralizing political apparatus of the impersonal, or even “impossible state.”⁷⁰ *Waqf* allows creative space for communities to micro-manage their own socio-economic affairs in relative autonomy according to the divinely sanctioned ethical norms they believe in as a matter of both individual and communal conscience, as opposed to surrendering their collective responsibility to the disembedded state. Rather, the state should, by virtue of its central authority, focus on establishing and nurturing the macro-framework for this responsible autonomy within the context of community empowerment to be realized to the fullest extent possible. Civil society as operationalized in Islamic civilizational history has allowed for the fruitful integration of the mosque and the market, of the private and the public, of the spiritual and the material and of the individual and the communal.⁷¹ As a matter of fact, it can be said that civil society in Islamic history as expressed through the *waqf* institution was a living, existential realization of the ethico-legal precept of *farḍ al-kifāyah*, namely, the duty of sufficing the community *by members of that same community*, and furthermore, the precise parameters of this duty were objectively expressed and elaborated in the formal ethico-legal terms of ITL.⁷²

In such a society or community, the solidarity of the collective whole, through largely local self-government, is served and strengthened by the vocational diversity of individuals and families. Their respective distinct interests, livelihoods and aptitudes are seen as mutually complementary and reinforcing, such that each individual, personal good is realized through the very act of putting oneself in service to the common good of the collective whole. Thus, civil society is also the *vocational society*.⁷³ It is a society of *solidarity in diversity*, in which each member contributes their respective *good work*⁷⁴ to the common

70 Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2012).

71 On the idea of civil society in the Islamic context, see the excellent analysis by Mohammed A. Bamyeh, *Civil Society and the Islamic Experience*, ISIM Review, no. 15 (Spring 2005), 40–41, available at: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/16962/ISIM_15_Civil_Society_and_the_Islamic_Experience.pdf?sequence=1>, accessed 5 May 2017.

72 Adi Setia, *Fard Kifāyah, Mu'āmalah, and the Commonwealth: Reconnecting Economics and the Economy to Communities*, Islamic Sciences (Summer 2013), 83–96.

73 Karim Lahham, *The Vocational Society* (Abu Dhabi: Tabah Foundation, 2013).

74 E. F. Schumacher, *Good Work* (Jonathan Cape, 1979); c.f. Ron Schultz, *Creating Good Work: The World's Leading Social Entrepreneurs Show How to Build A Healthy Economy* (Palgrave, 2013).

good. This civil societal principle is equally applicable, both to societies in which Muslims constitute the majority of the population and in which they constitute a minority amongst other minorities (as is the case in Australia, New Zealand, South Africa, Singapore and elsewhere). Interestingly, two inter-faith dialogues held on opposite sides of the globe – Malaysia and England – on the nature of the common good in relation to the economic life have served to bear this point out.⁷⁵ In the context of the African experience, this common good ethos is well captured in the culture of *ubuntu*:

Ubuntu is the capacity in African culture to express compassion, reciprocity, dignity, harmony and humanity in the interests of building and maintaining community with justice and mutual caring. *Ubuntu*, an Nguni word from South Africa, speaks to our interconnectedness, our common humanity and the responsibility to each other that flows from our deeply felt connection. *Ubuntu* is consciousness of our natural desire to affirm our fellow human beings and to work and act towards each other with the communal good in the forefront of our minds.⁷⁶

Before we move on to the rest of the paper, it is important to make a clear distinction, like Laurence Demarco has done, between *civil* society and *civic* society.⁷⁷ Whereas civil society refers to personal or communal voluntary action undertaken without being under the direction of any authority exercising the power of either the state or the corporation, civic society refers to participation in diverse public-sector programmes initiated, controlled and directed by various agencies of the state. In the former case, the community initiates and owns the action, whereas in the latter case the state owns it, directly or indirectly. This distinction between the civic and the civil in reference to society extends too, I believe, to the economy, for the *civil economy* is one that is created, owned and directed by conscientious members of local, autonomous communities to suffice local needs that they themselves have identified; whereas the *civic economy*, in contrast, tends to involve, in many cases, -sector spending by the state to spur the local economy without real local partnership, much less ownership and

⁷⁵ For instance, see Wan Aimran, Adi Setia and Aliff Basri, *Engaging Structural Greed Today: Christians and Muslims in Dialogue*, Islam & Science (Summer, 2014); and “Interfaith Ethical Finance Roundtable at House of Lords”, Roundtable Proceedings, available at: <<http://www.ukifc.com/wp-content/uploads/2014/01/Sharia-IFC-Interfaith-Roundtable-Proceedings-WEB-2014.pdf>>.

⁷⁶ Barbara Nussbaum, *African Culture and Ubuntu: Reflections of a South African in America*, 17 Perspectives, no. 1 (2003), available at: <<http://barbaranussbaum.com/downloads/perspectives.pdf>>, accessed 20 October 2017.

⁷⁷ See the nuanced distinction made by Laurence Demarco, *The Difference between Civil and Civic*, available at: <http://www.senscot.net/view_art.php?viewid = 7318>, accessed 10 October 2017.

control.⁷⁸ But if in the course of further discourse the civic is understood in terms of the civil as outlined above, then obviously there will be no real need to be too pedantic and quibble over almost synonymous terminologies.

7 ITL and the Meaning of Economics and Economy

In this rather wide-ranging inquiry into the socio-economic substance of *waqf* and ITL in general, I think we may also do well to revisit briefly the meaning of the term “economy.” The word, of Greek provenance, originally means household management (Arabic, *tadbir al-manzil*), or the management of the family, as distinct from ethics (personal management = *akhlaq/tadbir al-sakhṣ/tadbir al-nafs*) and politics (management of the city = *siyāsah/tadbir al-madīnah*).

In household management, the overriding concern of the head of the household (or, better still, *homestead*) is the prudent management or stewardship of the resources and income and expenditure of the household so as to provide for the needs of all its members, humans and non-humans. In a typical homestead, relatively more concern is devoted to the care and provision of the needs of the disabled and the weak (babies, children, the elderly, the handicapped), while the less dependent and independent members (grown-ups and the able bodied) are pretty much left alone to fend for themselves and even expected to contribute to the overall economy and general well-being of the homestead.⁷⁹

⁷⁸ Hence, in general, I would opt for the line of thinking expressed in the two books by Luigino Bruni and Stefano Zamagni, *Civil Economy: Efficiency, Equity, Public Happiness* (Oxford: Peter Lang, 2007), and *Civil Economy: Another Idea of the Market* (Agenda Publishing, 2017), rather than in Thomas Doennebrink et al., *The Civic Economy: Opportunities and Challenges for European Cities* (The Hague: EUKN, 2015). For a good discussion that is also relevant to our line of thinking here, see Stefano Zamagni, *Reciprocity, Civil Economy, Common Good*, available at: <<http://www.ordosocialis.de/pdf/Zamagni/RECIPROCITY,%20CIVIL%20ECONOMY.pdf>>, accessed 10 October 2017.

⁷⁹ Whereas a household normally refers to a house and its family occupants as a unit, a homestead in contrast has a wider, more self-sufficient socio-economic connotation and refers to the extended family’s homeground, which consists of the house itself (or houses), surrounding farmland, and outbuildings. For a good book on modern homesteading which fits nicely into our notion of the civil economy, see Ben Falk, *The Resilient Farm and Homestead: An Innovative Permaculture and Whole Systems Design Approach* (Chelsea Green, 2013); further discussion in Yassine Essid, *A Critique of the Origins of Islamic Economic Thought* (Leiden: Brill, 1995); see also, Adi Setia, *Ja’far ibn ‘Alī al-Dimashqī on Community, Money, and Prudent Management in Trading and Spending: Four Excerpts from His Kitāb al-Ishārat ilā Maḥāsīn al-Tijārah*, *Islam & Science* (Summer 2011), 11–32.

Now, the city and the country as a whole can be seen as an extended homestead in which the head is called the (central or local) government, and the same principle of relatively more concern for the weak (i. e. the poor and the disadvantaged of the population) applies here as well. Through *waqf*, we have a largely decentralized, community-based economic system, called the “market-welfare”⁸⁰ system. In such a system, the prime concern was ultimately the provisioning out of private commercial surplus for public services and for the needs of the poor and disadvantaged, thus realizing the true purpose of “economics” as a science, and of the true meaning of the “economy” as an extended homestead, which ultimately entails the stewardship of the earth conceived as the overarching *macro-homestead*.

An awareness of this original meaning and purpose of economics and the economy, *namely an economics and an economy of the common good*, would lead to a systemic re-definition of economics away from the standard neoliberal capitalistic one of scarce natural resources chasing after unlimited human wants,⁸¹ which, needless to say, is a contradiction in terms, for *how can what is scarce chase after and catch up with what is unlimited?* This conventional, dogmatic and untenable definition in effect renders economics not only the “dismal” but also the *impossible science*. Rather, instead of scarcity, we shall have abundance and plenitude,⁸² and instead of unlimited wants, we shall have the satisfaction of living and sufficing within our means. This and other considerations thus lead us to the alternative definition of economics (i. e. the science that studies the economy) proposed here:

Economics is the study of the provisioning and sharing, by mutual giving and receiving,⁸³ of natural and cultural abundance for realising material and spiritual well-being.

80 Relli Shechter, *Market Welfare in the Early-Modern Ottoman Economy: A Historiographic Overview with Many Questions*, 48 *Journal of the Economic and Social History of the Orient*, no. 2 (2005), 253–276. He says (on page 254): “By welfare through the market (or market-welfare), I mean an economic system that partially stifled competition (and efficiency/growth) for the sake of economic stability and a certain level of equity for those established within its boundaries.”

81 This basic definition, which is focused on the concept of scarcity, and expressed in various formulations by subsequent economists has been influential since Lionel Robbins proposed it in 1932; see Lionel Robbins, *An Essay on the Nature and Significance of Economic Science* (London: Macmillan, 1932), p. 15. For a good critique, see Charles Eisenstein, *Permaculture and the Myth of Scarcity*, available at: <<http://charleseisenstein.net/permaculture-and-the-myth-of-scarcity/>>, accessed 10 May 2017.

82 For a good elaboration, see Wolfgang Hoeschele, *The Economics of Abundance: A Political Economy of Freedom, Equity and Sustainability* (Gower, 2010); c.f. Juliet B. Schorr, *Plenitude: The New Economics of True Wealth* (Scribe, 2010).

83 Here, the terms “giving” and “receiving” are meant in a specific technical sense, for even market exchange is, from the Islamic ethico-legal point of view or analysis, is basically a form of

This definition implicitly describes what is meant by “economy” as social reality, for a true economy is essentially constituted by these multifarious activities of provisioning and sharing in order to sustain the common good of any community or society. Such a definition, which also describes in a nutshell the meaning, scope and purpose of what we call the IGE, is conceptually rooted in and derived from classical Islamic philosophical, ethical and legal thinking about all aspects of socio-economic life: charity, trade, commerce, money, contractual transactions, earning and livelihoods. This thinking, which renders economic theory as a function of social theory, is situated within the socio-axiological framework of the imperative of symbiosis between individual good and common good, or *the cultivation of right livelihood for the common good*. This classical thinking is well summarized by Imām al-Ghazālī in his *Kitāb Ādāb al-Kasb wal-Ma‘āsh*, recently translated as *The Book of the Proprieties of Earning and Living*.⁸⁴ It is interesting to note that this classical Islamic understanding of economics and the economy as something embedded within a larger *theory of social reality* dovetails very well with the growing concern in the West for re-embedding the market into a transcendental ethico-moral framework. This ethical, moral and socio-ontological concern is quite evident in the works of notable thinkers such as E. F. Schumacher (*Small is Beautiful*),⁸⁵ Tony Lawson (*Economics and Reality*)⁸⁶ and lately and most notably, Charles Eisenstein (*Sacred Economy*).⁸⁷

It would follow then from this *socio-ontological* redefinition of economics that the measure of economic prosperity and well-being will definitely cease to be the gross domestic product (GDP). The GDP measures prosperity in terms of only linear financial growth even when that growth consists in much misallocation of human, monetary and material resources into unproductive and counterproductive enterprises and activities, which bring along with them their attending negative externalities whose mitigation in turn contributes to more growth. The current mass obsession with GDP promotes economic policies that spend money in solving a problem only to generate ten

mutual giving and receiving of beneficial goods and services of relevance and value, the very essence of a “gift,” but in this case with relatively immediate consideration.

84 Adi Setia (trans.), *The Book of the Proprieties of Earning and Living* (Kuala Lumpur: IBFIM, 2013).

85 E. F. Schumacher, *Small is Beautiful* (Harper, 1989), available at: <http://sciencepolicy.colorado.edu/students/envs_5110/small_is_beautiful.pdf>.

86 Tony Lawson, *Economics and, Reality* (London: Routledge, 1997).

87 Charles Einstein, *Sacred Economy: Money, Gift and Society in the Age of Transition* (Evolver, 2011), available at: <<http://sacred-economics.com/wp-content/uploads/2012/01/sacred-economics-book-text.pdf>>.

new problems whose solutions in turn require new policies requiring new spending. Thus, the GDP grows even if the economy consists of not much more than the sordid enterprise of repeatedly digging holes in the ground and filling them without erecting on it anything of real, lasting benefit or value. Hence, the criticism that “as the GDP increases, well-being does not necessarily increase along with it. We cannot assume that things are getting better (improved life conditions) just because more money is spent!”⁸⁸ Or as Paul Hawken puts it, “At present, we are stealing the future, selling it in the present, and calling it GDP.”⁸⁹

We therefore have a real need to systemically improve and enlarge the “accounting lens” and even create new ones in order to obtain a clear, unblinkered view of the non-monetary and non-market dimensions of wealth, prosperity and well-being. Among these newly created and enlarged lens are (i) Fordham Index of Social Health,⁹⁰ (ii) Genuine Progress Indicator,⁹¹ (iii) United Nations Human Development Index,⁹² (iv) Gross Sustainable Development Product,⁹³ (v) Gross Environmental Sustainable Development Index,⁹⁴ (vi) Index of Sustainable Economic Welfare, or Green National Product,⁹⁵ and (vii) Gross National Happiness Index.⁹⁶ A revival of ITL in the framework of IGE could very well generate in the near future a measure of socio-economic well-being and prosperity that critically appropriates,

88 See, *Alternatives to the GDP*, available at: <http://www.consultmcgregor.com/documents/resources/GDP_and_GPI.pdf>, accessed 10 October 2017.

89 Cited in Ida Kubizski, *Beyond GDP: Are there better ways to measure economic well-being*, available at: <<http://theconversation.com/beyond-gdp-are-there-better-ways-to-measure-well-being-33414>>, accessed 12 October 2017.

90 <<http://iisp.vassar.edu/ish.html>>, accessed 13 October 2017.

91 Philip A. Lawn and Matthew Clarke, *Measuring Genuine Progress: An Application of the Genuine Progress Indicator* (Nova Science, 2006).

92 <<http://hdr.undp.org/en/content/human-development-index-hdi>>, accessed 13 October 2017.

93 See, *Alternatives to the GDP*, available at: <http://www.consultmcgregor.com/documents/resources/GDP_and_GPI.pdf>, accessed 10 October 2017.

94 See, *Alternatives to the GDP*, available at: <http://www.consultmcgregor.com/documents/resources/GDP_and_GPI.pdf>, accessed 10 October 2017.

95 Clifford W. Cobb and John B. Cobb, *The Green National Product: A Proposed Index of Sustainable Economic Welfare* (University Press of America, 5 April 1994).

96 A paper evaluating some of these alternatives is Richard W. England and Jonathan M. Harris, “Alternatives to Gross National Product: A Critical Survey”, in *Human Wellbeing and Economic Goals* (Washington, DC: Island Press, 1998).

integrates and adds to the many salient insights of these and other relevant alternatives to the GDP.⁹⁷

8 *Mu‘āmalah, Waqf and the Civil Economy*

Much detailed, useful research has also been done on various expressions of civil society in the historical (and even pre-historical⁹⁸) experience of diverse civilizations, cultures and even tribal societies.⁹⁹ In the modern context, discussions about civil society have also led to considerations of alternative socio-economic frameworks to the presently dominant neoliberal capitalistic set-up in which state and regulatory capture, and manipulated market forces¹⁰⁰ geared toward overly individualistic private gain are given undue preference over communal, non-market¹⁰¹ mechanisms of socio-economic solidarity.¹⁰² And even when it comes to the market, market exchange and the marketplace in civil society, insofar as it is embedded in the socio-legal culture of the community, it is less a market of consumption than a *market of character*. In such a socio-culturally embedded market, long-term conviviality¹⁰³ dominates over narrow utility,¹⁰⁴ as we find, for example, in the case

97 See also Marc Fleurbaey, Didier Blanchet, *Beyond GDP: Measuring Welfare and Assessing Sustainability* (Oxford: Oxford University Press, 2013); Philipp Schepelmann Yanne Goossens Arttu Makipaa (eds.), *Towards Sustainable Development Alternatives to GDP for Measuring Progress* (Wuppertal Institute, 2010); and *Indicators of Sustainable Development: Guidelines and Methodologies* (United Nations, 2007).

98 For example, Karla Simon, *Civil Society in China: The Legal Framework from Ancient Times to the “New Reform Era* (Oxford University Press, 2013); Ahmed N. A. Hassin, *Tribes as Civil Society Organisations: The Case of Iraq*, 7 *Journal of International Scientific Publications: Language, Individual & Society*, Part 1 (2013), 19–32; c.f. Marshall Sahlins, *Stone Age Economics* (Aldine, 1974); also John Gowdy (ed.), *Limited Wants, Unlimited Means: A Reader on Hunter-Gatherer Economics and the Environment* (Island Press, 1997).

99 For example, the book series published by Tufts University Press, *Civil Society: Historical and Contemporary Perspectives*, available at: <<http://www.upne.com/series/CSS.html>>, accessed 11 March 2017.

100 Stephen Craig Pirrong, *The Economics, Law and Public Policy of Market Power Manipulation* (Springer, 2012).

101 Non-market is not anti-market; it is simply *outside* or autonomous of the market.

102 See Bruce R. Sievers, *Civil Society, Philanthropy, and the Fate of the Commons* (Tufts University Press, 2010).

103 For a classic discussion see Ivan Illich, *Tools for Conviviality* (Marion Boyars, 2001).

104 Petur O. Jonsson, *On Utilitarianism vs Virtue Ethics as Foundations of Economic Choice Theory*, 27 *Humanomics*, no. 1 (2011); Luigino Bruni and Robert Sugden, *Reclaiming Virtue Ethics for Economics*, 27 *Journal of Economic Perspectives*, no. 4 (Fall 2013), 141–164; Darrin W. Snyder

of the rise of IBNs or alliances¹⁰⁵ and local exchange trading systems (LETSs).¹⁰⁶

Waqf studies have consistently demonstrated that the Islamic economic system is inherently and self-consciously civil societal in nature, geared toward socio-economic equity (*'adl*) and magnanimity (*ihsān*) for the common good, whereby private interest (*maṣlaḥah nafsiyyah*) is seamlessly integrated into the larger public interest (*maṣlaḥah 'āmmah*) leading to what may be called an *economy of the common good*. In this regard, I like to cite at length a good summary of the principle and practice of *waqf*:

Waqf, the Islamic endowments system, is a good example of a socio-economic apparatus that could cross the boundaries between the civil, the social, the economic and the political in different Islamic contexts. Literally, Waqf means money restricted to specific purposes, so it cannot be redirected by a governmental authority for any other use. Until the mid-twentieth century, Waqf, which dates back to the rise of Islam, was a major civil society institution in the Arab region. It represents an individual's donation for public purposes. Islamic jurisprudence gave this money full civil, legal and political protection. Endowments mushroomed to serve the needs of society and provide it with capital that would keep it empowered vis-à-vis the state. Waqf is rooted in the teachings of the Prophet Muhammad, who said that the dead can still be rewarded by Allah in numerous ways; for example, if their pious children prayed for them, or the dead person bequeathed knowledge of benefit to humankind, or she or he allocated money to serve public purposes. It became common to dedicate Waqfs to the memory of one's parents, a practice that helped turn death into a constructive force for civil action. These funds were directed to all spheres of social welfare and addressed the needs of society in every domain. *Waqfs were the result of individual will, which turned metaphysical notions of life after death into a motivation for civil action, initiated and implemented by the people.* Islamic jurists and courts maintained the independence of Waqfs from the state-dominated political sphere. This in turn, helped the balance of power, because the judiciary was funded by the Waqf and therefore remained independent from the state. Waqf supported progressive social and environmental causes, including, for example, shelters for women subjected to domestic violence, building of schools and hospitals, assistance to the poor, orphans and elderly,

Belousek, *Market Exchange, Self-Interest, and the Common Good: Financial Crisis and Moral Economy*, 13 *Journal of Markets and Morality*, no. 1 (2010); and Samuel Bowles, *The Moral Economy: Why Good Incentives are No Substitute for Good Citizens* (New Haven: Yale University Press, 2016).

105 Emily M. Weitzenboeck, *A Legal Framework from Emerging Business Models: Dynamic Networks as Collaborative Contracts* (Edward Elgar, 2012); c.f. Anthony Flaccavento, *Building a Healthy Economy from the Bottom Up: Harnessing Real-World Experience for Transformative Change* (University Press of Kentucky, 2016); and the American Independent Business Alliance, available at: <<https://www.amiba.net/>>, accessed 12 October 2017.

106 *The LETS System Design Manual*, available at: <<http://archive.lets.net/gmlet/design/dm1%5E3.html>>, accessed 12 October 2017; Bernard Lietaer and Jacqui Dunne, *Rethinking Money: How New Currencies Turn Scarcity into Prosperity* (Berret Koehler, 2013).

the provision of clean water, cleaning of streets, care for abandoned animals and seed for birds in public squares. Waqf institutions supported Muslim civil society from Morocco to India and Indonesia, offering a model of combined religious and civil associations, which was adopted by Christian and Jewish communities within the Muslim world.¹⁰⁷

Given that the dominant neoliberal capitalist system¹⁰⁸ with its mindless obsession with never-ending financial growth¹⁰⁹ is systemically anti-civil societal in nature, current *waqf* discourse amongst Muslim intellectuals and activists dovetails very well with the growing discourse in the West on alternative economic paradigms that put people and communities and their ecosystems back into the center of socio-economic thinking and planning.¹¹⁰ *Waqf* thinkers and those wanting to revive ITL in the current context would find it fruitful to familiarize themselves with the thinking and with the thinkers and activists behind the rise of this new “common good” economic agenda¹¹¹ in the West. They would need to find common word and common ground with them, especially given the fact that the *waqf* system in history has also been cross-denominational and cross-cultural; *waqfs* have been set up by and for non-Muslims.¹¹² Given what we know about *waqf* and its operationalization in vibrant, cosmopolitan Islamic societies prior to

107 See Ibrahim El-Bayoumi Ghanem, “Islamic Waqf: Recapturing the Spirit of the Common Good”, in Helmut K. Anheier, Marlies Glasius and Mary Kaldor (eds.), *Global Civil Society, 2004/5* (Sage, 2005); emphasis added. For ITL in general, see Adi Setia and Mahdi Lock (trans.), *Right Livelihood and the Common Good: Three Classics from the Islamic Tradition* (Kuala Lumpur: IBFIM, 2013).

108 Islam is for capital without being capitalist, just as it is for the social without being socialist, but nevertheless, it can be said that Islam integrates and harmonizes the capitalistic and socialistic aspects of the economy. This should be stated lest readers read this article as a diatribe against private capital and enterprise.

109 The Australian economist, Clive Hamilton, calls it the growth fetish and affluenza; see his *The Growth Fetish* (Allen & Unwin, 2003); and *Affluenza: When Too Much is Never Enough* (Allen & Unwin, 2006).

110 Birgit Daiber and François Houtart (eds.), *A Postcapitalist Paradigm: The Common Good of Humanity* (Brussels: Rosa Luxemburg Foundation, 2012); for the case of the economics of agriculture, see the important book by Thomas A. Lyson, *Civic Agriculture: Reconnecting Farm, Food, and Community* (Tufts University Press, 2004).

111 Such as Herman Daly and John B. Cobb Jr., *For The Common Good: Redirecting the Economy toward Community, the Environment, and a Sustainable Future* (Beacon Press, 1994); c.f. Bruce Watson, “Can We Create an Economy for the Common Good”, *The Guardian*, 6 January 2014, available at: <<http://www.theguardian.com/sustainable-business/values-led-business-morals-economy-common-good>>. See also *Economy for the Common Good*, available at: <<https://www.ecogood.org/en>>.

112 Paul Stibbard et al., *Understanding Waqf in the World of the Trust*, 18 *Trust and Trustees*, no. 8 (2012), 785–810 (<<http://beneficgroup.com/blog/wp-content/uploads/2012/09/Understanding-the-Waqf-in-the-World-of-the-Trust.pdf>>); see also the good overview by Samiul Hasan, “Wakfs

the age of global European hegemony,¹¹³ the people now actively involved in the ongoing revivification and revitalization of *waqf* will have to think carefully and systematically about the nature of the macro-economic system implied and entailed by the institution of *waqf* and in which it is to be embedded.

We need to ask ourselves whether we want to take either a narrow or comprehensive view about *waqf* by posing pertinent questions such as: (i) does *waqf* serve merely as a superficial, formal legalistic alternative to the modern western secular institution of the charitable trust?; (ii) can *waqf* provide a systemic/structural alternative to neoliberal privatization?¹¹⁴; or (iii) does *waqf* entail a macro-economic framework called the gift or civil economy¹¹⁵ which runs counter to the global dominance of neoliberal financial capitalism¹¹⁶ lead by free floating, rootless transnational corporations largely disembedded from the material livelihoods, moral concerns and cultural sensitivities of local communities?

If we take the narrow view, then *waqf* will only be of technical, legalistic interest, only a “hollow pragmatism,” and a formal, operational variance, for the most part, to the secular charitable trust, which itself is largely an *ad hoc* appendage to an overarching neoliberal macro-economic framework,¹¹⁷ having

(Waqfs)”, in Helmut K. Anheier *et al.* (eds.), *International Encyclopedia of Civil Society* (Springer, 2010), pp. 1630–1633, especially p. 1632.

113 Janet Abu-Lughod, *Before European Hegemony: The World System, A.D. 1250–1350* (Oxford, 1991).

114 For the case of Malaysia, see Jeff Tan, *Privatization in Malaysia: Regulation, Rent Seeking and Policy Failure* (Routledge, 2008); see also A. H. Schwartz, *The Politics of Greed* (Rowman and Littlefield, 2006); also, Nik Heynan *et al.* (eds.), *Neoliberal Environments: False Promises and Unnatural Consequences* (London: Routledge, 2007).

115 Luigino Bruni and Stefano Zamagni, *Civil Economy: Another Idea of the Market* (Agenda Publishing, 2017); *c.f.* Marcello Palazzi *et al.*, *Beyond Market and State: The ‘Civic’ Economy*, available at: <<http://www.progressiofoundation.org/documents/NewPCES1.pdf>>. See also the book, Anna Levy *et al.*, *A Compendium for a Civic Economy: What the Big Society Should Learn from 25 Trailblazers* (London, 2011), available at: <http://library.uniteddiversity.coop/Money_and_Economics/Compendium_for_the_Civic_Economy.pdf>.

116 In the context of a nation like Malaysia, economic neoliberal policies often take the form of what is called “crony capitalism”; see “Our Crony Capitalism Index”, *The Economist*, 15 March 2014, available at: <<http://www.economist.com/news/international/21599041-countries-where-politically-connected-businessmen-are-most-likely-prosper-planet>>.

117 Mary-Beth Raddon, “Neoliberal Legacies: Planned Giving and the New Philanthropy”, in *Studies in Political Economy*, 81 (Spring 2008); Michael Givel, *Modern Neoliberal Philanthropy: Motivations and Impact of Pfizer Pharmaceutical’s Corporate Social Responsibility Campaign*, 34 *Third World Quarterly*, no. 1 (2013); and, especially, Behrooz Morvaridi, *New Philanthropy and Social Justice: Debating the Conceptual and Policy Discourse* (Policy Press, 2016).

little or nothing to do with the ethos of autonomous, community-based philanthropy in which social welfare and communal solidarity are actually served rather than undermined by the market.¹¹⁸ If we take the comprehensive or holistic view, then we will have to situate *waqf* within the larger context of *integrative* Islamic economic ethics and *mu'āmalah* (science of transactions).¹¹⁹ In other words, we have to adopt a holistic vision of *waqf* as an integral component of a comprehensive alternative socio-economic package. We cannot take *waqf* without taking along with it the total ecosystemic package in which it is inextricably embedded, just as we cannot separate the frog from the ecology of its pond. If we do that, then we reduce *waqf* to a soulless technical, legalistic form without realizing its profound moral and socio-economic substance, and hence the change from the secular charitable trust to Islamic *waqf* will largely be simply a change in name and not in content. If this were to happen, then we shall only be repeating the mistake of IBF in its systemic preference for the legalistic contractual forms over the substance of socio-economic equity and well-being,¹²⁰ and thereby allow ourselves to be complicit in rendering wide open the door toward the financialization of *waqf*. Already we are seeing throughout the world some very aggressive, well-orchestrated moves by the overly innovative, unabashedly self-serving IBF industry to transform *waqf* (especially cash *waqf*) into yet another of its many rent-seeking financial “products.”¹²¹

We are not saying that the form is not important, for indeed it is. We are saying that the legalistic contractual forms *must not* be contrived, self-ser-

118 In economic neoliberalism, charity is an afterthought, to be compelled by the state through taxes, or so-called CSR (corporate social responsibility), whereas in the Islamic Gift Economy, charity (or rather, being charitable) is a salient aspect of and intrinsic to socio-economic exchange, and this undermining happens when markets are manipulated to subvert community solidarity and cultural identity. For some good discussions, see Mark Martinez, *The Myths of the Free Market: The Role of the State in a Capitalist Economy* (Kumarian, 2009); and Kenneth Friedman, *Myth of the Free Market* (Algora, 2003). Both Muslims and non-Muslims will have to revisit the concept and practice of the market, as well as pre-modern globalization in Islamic history, but that's another story, but see Darrin W. Snyder Belousek, *Market Exchange, Self-Interest, and the Common Good: Financial Crisis and Moral Economy*, 13 *Journal of Markets & Morality*, no. 1 (Spring, 2010).

119 See Adi Setia, *Mu'āmalah & the Revival of the Islamic Gift Economy*, *Islam & Science* (Summer 2011).

120 On IBF's preference for legalistic contractual forms over socio-economic substance see the careful discussion in Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2009).

121 Magda Ismail Abdel Mohsin, *Cash Waqf: A New Financial Product* (Pearson, 2009).

ving stratagems (*hiyal*),¹²² but be in accord with the true nature and purpose of the transactions involved, and therefore be truly in the service of and expressive of the underlying socio-economic and ethico-moral objectives. In other words, formal *Fiqh* (jurisprudence) serves the substantive *Ādāb* (ethics) and *Maqāṣid* (objectives) of the Shari'ah (revealed Law). Conversely, this means that many aspects of *waqf* can be revived in substance if not in name by taking *structural advantage* of the relevant secular laws and regulations governing foundations, charitable trusts and the *economic third sector* or *social economy* in general.¹²³

9 Invisible Structures for the Revival of *Waqf* and ITL

Taking a leaf from the social permaculture notion of “invisible structures,”¹²⁴ a *waqf* organization can be viewed, structurally and operationally, as a *private enterprise for the public good*, in which private wealth is freely and irrevocably set aside as capital to be prudently invested or deployed in some commercial enterprise in order to generate revenue or usufruct therefrom, which is then used to realize some predetermined social or charitable objectives. Due to its socially oriented, public interest purpose, *waqf* and ITL in general can and should be situated macro-economically in what is now referred to as the *social economy* or *the third sector*,¹²⁵ which is the intermediate socio-political and economic space between the centralizing state and the profit-maximization market. This *long-term strategic situating* of *waqf* and ITL in the social economy will help it to take advantage of certain legal forms and organizational structures already established therein that are most amenable for its *substantive* revival in both Muslim-majority and Muslim-minority countries.

122 For some studies on *hiyal*, see Muhammad Imran Ismail, *Legal Stratagems (hiyal) and Usury in Islamic Commercial Law* (PhD thesis) (University of Birmingham, 2010); and Muhammad Akram Khan, “A Trajectory of Legal Tricks (*Hiyal*)”, *id.*, *What is Wrong with Islamic Economics: Analysing the Present State and Future Agenda* (Edward Elgar, 2013).

123 Antonella Noya and Emma Clarence (eds.), *The Social Economy: Building Inclusive Economies* (OECD, 2007); David Billis, *Hybrid Organizations and the Third Sector: Challenges for Practice, Theory and Policy* (Palgrave, 2011).

124 Elaborated in detail in Bill Mollison, *Permaculture: A Designer's Manual* (Tagari, 2004), see especially Chapter 14 on “Strategies for an Alternative Global Nation.”

125 Antonella Noya and Emma Clarence (eds.), *The Social Economy: Building Inclusive Economies* (OECD, 2007); David Billis, *Hybrid Organizations and the Third Sector: Challenges for Practice, Theory and Policy* (Palgrave, 2011).

A widely accepted definition of the social economy posits it as including all economic activities conducted by enterprises, primarily co-operatives, associations and mutual benefit societies, whose ethics convey the following principles:

1. Placing services to its members or to the community ahead of profit (hence profit is seen as financial means to social ends).
2. Autonomous management (i. e. not directed or controlled by any state or corporate agencies).
3. A democratic decision-making process (through, say, community stakeholders' representations on the board).
4. The primacy of people and work over capital in the distribution of revenues (i. e. hence, the focus is not capital accumulation for its own sake but reinvestment into furthering the common good).

Defined as such, it can also include conventional for-profit companies as well as various forms of common-ownership companies (COCs),¹²⁶ as well as other *socially innovative* business organizations,¹²⁷ which have a formal public interest clause in their shareholders' agreements, memoranda of associations or corporate charters, including various business structures that now come under the category of *social enterprise*. According to one of the more useful definitions for our purpose here, the term "social enterprise" is understood to refer to:

any private activity conducted in the public interest, organised with an entrepreneurial strategy and whose main purpose is not the maximization of profit, but the attainment of certain economic and social goals, and which, through the production of goods and services brings innovative solutions to problems such as social exclusion and unemployment.¹²⁸

Dr. Thamina Anwar has recently published a wide-ranging doctoral study which attempts to revive *waqf* by situating it within this understanding of the structure and purpose of social enterprise.¹²⁹

¹²⁶ Such as the Scott Bader company, available at: <<http://www.scottbader.com/>>, accessed 13 May 2017.

¹²⁷ Jack Quarter, *Beyond the Bottom Line: Socially Innovative Business Owners* (Praeger, 2000).

¹²⁸ Francois Bruard and Sophie Larivet, *Social Enterprises: Definitions and Boundaries*, paper presented at the ANSER Conference, 2011, available at: <<http://www.anser-ares.ca/files/conf11/papers/Brouard-Larivet.pdf>>, accessed 12 May 2017; see also Janelle A. Kerlin (ed.), *Social Enterprise: A Global Comparison* (Medford, CN: Tufts University Press, 2009).

¹²⁹ Thamina Anwar, *Waqf (Endowment): A Vehicle for Islamic Social Entrepreneurship* (Kuala Lumpur: IBFIM, 2017), originally a PhD thesis (Kwala Zulu Natal University, South Africa) jointly supervised by Dr. Adi Setia of Malaysia and Professor Suleiman Dangor of South Africa.

These private entrepreneurial activities in the public interest – which may involve various forms of private–public partnership initiatives¹³⁰ – include community-interest companies,¹³¹ community-supported agriculture (CSA),¹³² COCs,¹³³ ethical investment funds,¹³⁴ social impact investment funds (SIFs),¹³⁵ public or community banking,¹³⁶ basic income grant schemes,¹³⁷ community

130 For a review, see Carsten Greve and Graeme Hodge, *The Challenge of Public–Private Partnerships: Learning From International Experience* (Edward Elgar, 2005).

131 For a good legal discussion, see Beate Sjafell and B. J. Richardson (eds.), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge: Cambridge University Press, 2015), 293 *et seq.*

132 Elizabeth Henderson and Robyn Van En, *Sharing the Harvest: A Citizen's Guide to Community Supported Agriculture* (White River Junction, VT: Chelsea Green, 2007).

133 For a nuanced conceptual discussion of the term and its contrast to ‘collective-ownership’ see Randall G. Holcombe, *Common Property in Anarcho-Capitalism*, *Journal of Libertarian Studies* (Spring 2005); see also James DeFillipis, *Unmaking Goliath: Community Control in the Face of Global Capital* (London: Routledge, 2004); for a detailed case study, see Susanna Hoe, *The Man Who Gave His Company Away: A Biography of Ernest Bader, Founder of the Scott Bader Commonwealth* (London: William Heinemann, 1978); see also E. F. Schumacher, *The Scott Bader Commonwealth*, available at: <http://www.cesc.net/adobeweb/scholars/schumacher/scott_bader.pdf>, accessed 12 May 2017.

134 John Hancock, *An Investor's Guide to Ethical & Socially Responsible Investment Funds* (London: Kogan, 2005); see also William Ransome and Charles Samford, *Ethics and Socially Responsible Investment: A Philosophical Approach* (London: Routledge, 2016).

135 By Antony Bugg-Levine and Jed Emerson, *Impact Investing: Transforming How We Make Money While Making a Difference* (Hoboken, NJ: Wiley, 2011).

136 Modelled on say the WIR Bank of Switzerland, JAK Members Bank of Sweden, Iana Financial of Canada <<http://ianafinancial.org/>> or Perhimpunan Baitul Maal Wat Tamwil (PBMT) of Indonesia <<http://pbmtsv.com/>>. See also, “60 Years WIR Business Circle Cooperative -Origins and Ideology”, *WIR Magazine* (September 1994), available at: <<http://web.archive.org/web/20061017101214/http://www.reinventingmoney.com/wirbusiness.php>>, accessed 12 May 2017; Mark Anielski, *The JAK Members Bank, Sweden: An Assessment of Sweden's No-Interest Bank* (Edmonton: Anielski Management, 2004), available at: <<http://www.anielski.com/Documents/The%20JAK%20Bank%20Report.pdf>>, accessed 12 May 2017; see also in general, Faisal M. Atbani and Cristina Trullols (eds.), *Social Impact Finance* (Palgrave, 2014); and Margrit Kennedy, Bernard Liettaer and John Rogers, *People Money: The Promise of Regional Currencies* (Triarchy Press, 2012).

137 M. Murray and C. Pateman, *Basic Income Worldwide: Horizons of Reform* (Palgrave, 2012); Philippe Van Parijs and Yannick Vanderborght, *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (Harvard University Press, 2017); Josh Kaufmann, *BIG Hopes, BIG Questions: Namibia's Basic Income Grant*, *Journal of Civil Society and Social Transformation* (January 2010).

open and free markets,¹³⁸ IBNs,¹³⁹ community land trusts (CLTs),¹⁴⁰ socially responsible investment funds (SRIFs), social cooperatives,¹⁴¹ social venture capital firms, ethical social crowdfunding,¹⁴² interest-free loans organizations,¹⁴³ community *baytul-māl*,¹⁴⁴ family investment fund,¹⁴⁵ CDTs¹⁴⁶ and so on and so forth.

Given the substantive overlap between *waqf* and the structures and objectives of various types of social enterprises, and public interest trusts and foundations in the social economy, it should be easy in principle to revive *waqf* in terms of the social economy even in countries where there is no formal legal space for the institution of *waqf* as such. What is important here is *creative and critical appropriation of any substantively compatible conventional legal structure* in the service of a set of predetermined socio-religious objectives even if such a

138 For example, <<http://www.marketsandcommunity.com.au/>>, accessed 12 May 2017; <<http://www.brightonopenmarket.co.uk/>>, accessed 12 May 2017; and also <www.freemarket.co.za>, accessed 12 May 2017.

139 For example, <<http://businessjunction.co.uk/about>>; <<http://independentbusinessnetworkinc.com/about-us/>>; <<https://www.farmersbusinessnetwork.com/about>>; and <<http://www.iib.ws/history.asp>>, accessed 12 May 2017.

140 David Harper, *The Community Land Trusts: Affordable Access to Land and Housing* (Nairobi: UN-Habitat, 2012); Gabriel Metcalf, *Democratic by Design: How Carsharing, Co-ops, and Community Land Trusts Are Transforming America* (New York: St Martin, 2015); Diana Leafé Christian, *Creating a Life Together: Practical Tools to Grow Ecovillages and Intentional Communities* (New Society, 2004); and John Emmeus Davis, *The Community Land Trust Reader* (Lincoln Institute of Land Policy, 2010).

141 Antonio Thomas, *The Rise of Social Cooperatives in Italy*, 15 *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, no. 3 (September 2004); Pat Conaty, *Social Cooperatives a Democratic Co-production Agenda for Care Services in the UK* (Manchester: Cooperatives UK, 2014); Carlo Borzaga et al., *Europe in Transition: The Role of Social Cooperatives and Social Enterprises*, Euricse Working Papers, no. 69/14 (2014).

142 For example, Ethis Crowd Funding, available at: <<https://www.ethiscrowd.com/>>, accessed 12 May 2017.

143 For example, Jewish Free Loan Association, available at: <<https://www.jfla.org/>>; and Iana Financial, www.ianafinancial.org>, accessed 12 May 2017.

144 For example, Perhimpunan Baitul Maal wat Tamwil, available at: <www.pbmtsv.com>, accessed 12 May 2017.

145 Joshua Kennon, *How Families Can Invest Together with an LLC*, available at: <<https://www.thebalance.com/how-families-can-invest-together-with-an-llc-357529>>, accessed 12 May 2017.

146 For an overview in the UK context, see Andy Perkin, *Community Development Trusts*, available at: <<http://webarchive.nationalarchives.gov.uk/20110118143415/>> <<http://www.cabe.org.uk/files/udss2009-andyperkin.pdf>>, accessed 14 October 2017; see also the website of the Development Trusts Association of Scotland, available at: <<http://www.dtascot.org.uk/content/what-is-a-development-trust>>, accessed 15 October 2017. For the US context, see The Community Development Trust, available at: <<https://www.cdt.biz/about-us/our-mission/>>, accessed 15 October 2017.

set-up is not formally or legally a *waqf* or technically ITL structured. By taking a leaf out of Bill Mollison's exposition of the concept of "invisible structures,"¹⁴⁷ *waqf* activists can and should be more creative in recognizing and taking strategic advantage of the relative merit and complementary nature of various relevant organizational forms (either conventional or rooted in the *fiqh* of *mu'āmalah*) and blend them together into hybrid yet organic interlocking forms to optimize the overall socio-economic efficiency of their respective operations while keeping themselves on the right side of both religious and secular commercial and financial laws.

Therefore, as argued towards the end of Section 8, the absence of formal legal space for the setting up of *waqf* in its classical juristic form in either Muslim or non-Muslim countries is actually, in itself, not a big impediment for founding substantively *waqf-like* or, in general *ITL-like*, socio-commercial enterprises by using the above *hybrid forms* for which the formal legal structures are already well established and tested in many Muslim and non-Muslim countries. The following section elaborates further on this approach of critical appropriation of the relevant conventional legal structures to serve the socio-religious objectives of *waqf* in particular and ITL in general.

10 ITL and IGE

The ITL exchange framework (IEF) can be rearticulated in the broader, meta-legal terms of the IGE,¹⁴⁸ which conceptually, structurally and operationally integrates the *adab*, *maqāsid* and *fiqh* of *mu'āmalah* into a single ecosystemic exchange as constituting *mu'āmalah* proper, and rejects any attempt, witting or unwitting, to segregate or fragment the total ecosystemic whole or reduce it to some merely formal, legalistic aspects of the whole. Hence, IGE seeks to avoid the many pitfalls of IBF which basically consist in its taking the contractual forms of classical *mu'āmalah* out of their original ethico-moral and socio-religious parameters and pressing these subsequently *hollowed-out* forms into serving the usurious banking system of rentier, financial capitalism,¹⁴⁹ thereby

147 Bill Mollison, *Permaculture: A Designer's Manual* (Tagari, 2004), Chapter 14 on "Strategies for an Alternative Global Nation," particularly the section on "Trusts and Legal Strategies," 515–519.

148 Already defined in Section 4 above on the meaning of economy. Most of the articles on the IGE are published in the *Canadian Journal of Islamic Sciences*, available at: <<http://cis-ca.org/islamscience1.php>>; see also its new website www.islamicgifteconomy.org, which is still under construction.

149 Larry Neal, *The Rise of Financial Capitalism: International Capital Markets in the Age of Reason* (Cambridge University Press, 1990); c.f. Christian Marazzi, *The Violence of Financial Capitalism*

robbing them *not only* of their original, substantive meaning and purpose, but corrupting these very forms *as well*.

A recent significant attempt has been made to realign IBF with the IME,¹⁵⁰ but in order to really succeed, such attempts will need to very systemically *redefine* the meaning, function and purpose of banking so as to bring it in harmony with the principle and practice of the institution of *bayt al-māl*, or public treasury¹⁵¹ in Islam. Banking systemically reconstituted in the framework of the *bayt al-māl* concept has indeed lead in principle and practice to non-monopolistic, decentralized, locally initiated, owned and controlled *community public treasuries* in the form of community-interest-free savings, loans and investment funds. Such was the case with the original, successful experiment in Islamic banking, namely, the Mit Ghamr Village Bank in Egypt back in the 1960s,¹⁵² and with the highly decentralized yet highly networked community micro-investment cooperatives associated and coordinated under the aegis of the Perhimpunan Baitul Maal wat Tamwil in Indonesia.¹⁵³

Due to its holistic approach, instead of seeing the various distinct *mu'āmalah* contractual forms in isolation and segregation from one another, the IGE sees them as structurally and functionally overlapping and complementary or even *mutually implicative and reinforcing*. Hence, one ITL contractual form can or should be used

(Semiotexte, 2011). To put it briefly, in contrast to industrial and commercial capitalism where profits are based on the production and exchange of goods and services in the real economy, financial capitalism accumulates surplus through rentier financial intermediation and the buying and selling of a diverse variety of financial instruments.

150 Umar F. Moghul, *A Socially Responsible Islamic Finance: Character and the Common Good* (Palgrave, 2017).

151 *Bayt al-māl* (lit. “house of wealth”) is the public treasury responsible for the management of public revenues for the public good; for its relation to social welfare, see, S. H. Azmi, *Traditional Islamic Social Welfare: Its Meaning, History and Contemporary Relevance*, 35 *Islamic Quarterly*, no. 3 (1991).

152 “An Early Experiment: Islamic Banking”, in Khurshid Ahmad, Khalid Rahman and Zahed A. Valie, *Elimination of Riba*, republished in *IslamicBanker*, available at: <<https://islamicbanker.com/education/early-experiment-islamic-banking>>, accessed 23 October 2017; and “Mit Ghamr Village Bank”, in A. W. Mullineux and Victor Murinde (eds.), *Handbook of International Banking* (Edward Elgar, 2003), 192–193.

153 See the presentation by the CEO of PBMT Ventura, Saat Suharto, *The Role of BMT in The Development of Productive Community in Indonesia*, available at: <<http://www.irti.org/English/Research/Documents/Conferences/IDB-AM-41/The%20Role%20of%20BMT%20in%20the%20Development%20of%20Productive%20Community%20in%20Indonesia.pdf>>, accessed 23 October 2017; and Jamil Abbas, General Manager of PBMT Social Ventures Ltd., *BMT: The Indonesian Model of Islamic Microfinance, and the Importance of a Union in Supporting the Growth of Islamic Microfinance Institutions in the Country*, available at: <<https://www.kliff.com.my/wp-content/uploads/2014/11/Jamil-Abbas-Genera.pdf>>, accessed 23 October 2017.

in tandem with another to preserve or augment resources and optimize efficiency and sustainability over the medium to long term. The following are some examples in outline to illustrate how the IEF may work in practice:

- (i) Integrating gifts, grants and donations into *waqf*
Charitable donations (*ṣadaqah*), gifts (*hibah*, *hadiyah*) and grants (*‘aṭā’*) once given belong to and pass into the ownership and control of the receiving person or institution, and a portion of that can be regularly set aside as *capital* funds for investing into setting up a revenue-generating business based on *waqf* principles and rules, or some other form of social enterprise. For example, a mosque or a charity or a school or an orphanage can regularly set aside a certain percentage of its donation revenue as seed capital to set up a *waqf* shop on its compound which can then be rented out to independent community businesses at a profitable yet below the normal market rental or leasing rate. This rate is *marked to below the market* so as to incentivize, motivate and promote local economic activities and support community-owned enterprises.
- (ii) Integrating *zakāt* (obligatory alms) and *waqf*
Zakāt should as far as possible be given out as seed capital to recipients with business acumen to start their own income-generating enterprises so that in that way they can be taken off the *zakāt* list of, say, the following year. When, for instance, a *zakāt* recipient has the aptitude to start a neighbourhood bakery, then the seed capital for that venture can be provided out of *zakāt* funds, while a *waqf* business centre can provide basic business management training as well as lease out at a reasonable yet affordable rate its commercial premise for the bakery.
- (iii) Transforming cash *waqf* into property, land and real asset *waqf*
Due to the inherent *gharārī* (risky and speculative) nature of the current fiat money system¹⁵⁴ leading to the depreciation of the value of cash *waqf* through inflation and quantitative easing,¹⁵⁵ it should be prudent to transform through *istibdāl*¹⁵⁶ the cash or liquid corpus into some real productive asset which can itself appreciate in monetary value over time while also generating revenue and/or usufruct on a regular basis.

¹⁵⁴ Ahamed Kameel Mydin Meera, *Part 1: Seigniorage of Fiat Money and the Maqasid al-Shari‘ah: the Unattainableness of the Maqasid*, 22 *Humanomics*, no. 1 (2006); *id.*, *Seigniorage of Fiat Money and the Maqasid al-Shari‘ah: The Compatibility of the Gold Dinar with the Maqasid*, 22 *Humanomics*, no. 2 (2006).

¹⁵⁵ Imad A. Moosa, *Quantitative Easing as a Highway to Hyperinflation* (World Scientific, 2013).

¹⁵⁶ This refers to the transformation of the original *waqf* asset form into another form of equivalent value.

For example, the cash from a cash *waqf* can be used to buy or invested in a herd of goats to produce milk, cheese or meat, transformed into capital equipment for production or manufacturing, or shophouses to be leased out to local businesses.

(iv) Integrating *waqf* and social crowd-funding

Most people *qua* individuals do not have the means to make a sizable *waqf* like endowing a whole building or a hectare of land costing in the thousands or millions of dollars, but people *qua* community having a common socio-ethical vision can together crowd *waqf* or crowd endow a piece of land or a block of shophouses for some predetermined public interest objectives. This can be called the fractional endowment or fractional-*waqf* approach (facilitated through say *waqf* crowd-funding) in which a piece of property valued at one million dollars can be divided into equal portions of 1000-dollar or 100-dollar parcels and members of the community or the public at large can be invited to endow a parcel or two until the whole property is bought up by the community *waqf* trust and thus collectively endowed by all the individuals and even institutions that have contributed the *waqf* funds.¹⁵⁷

(v) Integrating *waqf* and *ijārah* (leasing, renting)

This usually happens when a *waqf* property (land, buildings, equipment, vehicles) is leased out to individuals or businesses to generate revenue. Such a *waqf* can be critically modelled on the relevant socio-permaculture strategies elaborated at some length by Bill Mollison in the last chapter of his book, *Permaculture: A Designers' Manual*.¹⁵⁸ For example, a community *waqf* leasing service can “run a leasing service for seldom-used items of capital equipment (photocopiers to trucks) which individuals and businesses do need on occasion.”¹⁵⁹ Also, a social enterprise may set up a public interest trust or *waqf* in which ownership of its properties and capital equipment can be vested, and which then in turn generates income by leasing out the same to that social enterprise and other businesses and individuals in the community.¹⁶⁰

¹⁵⁷ For an analysis, see Nur Aqidah Suhaili Mohd Rizal Palil, *Crowdfunding: A Collaborative Waqf Based Internet Platform*, 11 International Journal of Business, Economics and Law, no. 5 (December 2016); for a recent example of such an initiative see, J. D. Alois, *World's First Islamic Endowment Crowdfunding Platform Launched*, Crowdfund Insider, available at: <<https://www.crowdfundinsider.com/2016/08/88684-worlds-first-islamic-endowment-crowdfunding-platform-launched/>>, accessed 23 October 2017.

¹⁵⁸ Bill Mollison, *Permaculture: A Designers' Manual* (2nd ed., Tagari, 2004), pp. 505–560.

¹⁵⁹ *Ibid.*, p. 542.

¹⁶⁰ More details in *ibid.*, “Trusts and Legal Strategies,” pp. 515–519.

- (vi) Integrating *waqf*, *mushārah*¹⁶¹ and *farā'id*¹⁶² or *mīrāth*¹⁶³
Valuable landed property like farmland very often gets fragmented and quickly sold off by heirs for cash when they receive their respective shares of it through the Islamic law of inheritance (*mīrāth*). In many ways, this state of affairs can be detrimental over the medium to long term to the economic and social well-being of the extended family or even the local community as a whole. To overcome this danger of the loss of local property to outsiders and land speculators, the heirs can come together and agree to set up a family-owned joint venture or business partnership company based on the principles and rules of *mushārah* (business partnership) and vest their respective shares of the inheritance as share capital in this family company which can then be professionally managed to generate revenue and increase the value of the company assets over time. Such a company can also be based on a family *waqf trust* structure, *waqf common-ownership* structure or family social enterprise structure and can include agreement clauses to annually set aside a certain percentage of net revenues for the benefit of other family members who are not heirs to the inherited property or partners in the family company.
- (vii) Integrating *waqf* and *salam*
If the *waqf* is farmland, then a CSA funding structure compatible with the *salam* contract (advance payment contract)¹⁶⁴ can be a way to raise operating or working capital for the farmer to raise the next crop of rice or wheat or to expand the acreage for cultivation. In this arrangement, the *waqf* farm receives prepaid commissions or subscriptions from customers by which they in return receive at a specified future date their corresponding allotments of the anticipated harvest or produce.
- (viii) Integrating *waqf* and *istiṣnā'*¹⁶⁵
Similarly, if the *waqf* consists of capital equipment or machinery (say in a *waqf* carpentry workshop) then the *istiṣnā'* (contract manufacturing) funding structure can be an effective way to raise operation or working capital to begin production or manufacturing. In this

161 Business partnership.

162 Legally appointed fixed shares in an estate given to certain categories of heirs according to the Islamic law of inheritance.

163 The Islamic law of inheritance; for a detailed exposition, see A. Hussain, *The Islamic Law of Succession* (Darussalam, 2005).

164 Or prepaid forward sale contract; see el-Gamal, *Islamic Finance*, pp. 81–83.

165 Commission to manufacture, see el-Gamal, *Islamic Finance*, pp. 90–91.

arrangement, the workshop gets a prepaid commission to supply office furniture to a school or business at a predetermined future date.

(ix) Integrating *waqf* and community banking

Given the profit-maximization focus and the consequent *social failure* of IBF, *waqf* organizations and other social enterprises in a region may do well to band together to set up and invest their surplus funds into their own *waqf* community bank, or *waqf* social bank,¹⁶⁶ to be invested into each other's projects or some other social business enterprises, like affordable housing or a community vocational college. Such a *waqf* social bank can draw some insights for its establishment by taking a critical look at the robust ethical banking, public banking¹⁶⁷ and social banking¹⁶⁸ movements in Europe and America, and integrates *waqf*, *wadī'ah* (depository), *mushārahah* (*partnership*), *muḍārabah* (passive venture capital), payment transfer (*hiwālah*) and *wakālah* (agency) in its operational structure. Such a *waqf* bank would in effect be a revival of the Islamic institution of *baytul-māl* (public treasury) at the community level.¹⁶⁹ If a single *waqf* institution or a network of *waqf* organizations does not have the capacity to set up its own *waqf* community bank, then at the very least they should bank, if at all, with an ethical or social bank rooted in the community and directed to sufficing the needs of the local economy.¹⁷⁰

11 Some Viable *Waqf* Projects

To realize in practice the vision outlined above, what follows are brief proposals in broad outlines of some viable *waqf* projects, the further justification and elaboration of which in any detail will have to be left to a future, more technical

¹⁶⁶ Mohammad Tahir Sabit Haji Mohammad, *Towards an Islamic Social (Waqf) Bank*, 2 International Journal of Trade, Economics and Finance, no. 5 (October 2011).

¹⁶⁷ See the work of the Public Banking Institute in the US; <www.publicbankinginstitute.org/>, accessed 12 May 2017.

¹⁶⁸ Olaf Weber and Sven Remer, *Social Banks and the Future of Sustainable Finance* (London: Routledge, 2011).

¹⁶⁹ Modelled on say the Indonesian Baitul Mal wa al-Tamwil, see Sirojudin and James Midgley, "Grassroots Social Security in Indonesia: the Role of Islamic Associations", in James Midgley and Mitsuhiro Hosaka (eds.), *Grassroots Social Security in Asia: Mutual Aid, Microinsurance and Social Welfare* (London: Routledge, 2011), 123–136.

¹⁷⁰ Again, many of the relevant strategies for bringing about monetary and financial resilience at the local level can be found elaborated in Mollison, *Permaculture*, section on "Money and Finance," pp. 533–545.

paper with specific references to relevant case studies. Please note that most if not all of these proposals can be creatively modelled on corresponding civil societal initiatives undertaken by non-Muslims in many parts of the world,¹⁷¹ and critically appropriated into the *waqf* framework, *even if* the projects resulting therefrom may not necessarily be formally and legally called *waqfs* in modern common law and civil law.

(a) *Waqf* Islamic Mint

This is for the purpose of minting Islamic gold dinar and silver dirham coins in accordance with the concept, function and purpose of money (*mafhum al-naqd*) as expounded by the classical jurists of Islam (such as al-Maqrīzī¹⁷² and al-Dimashqī¹⁷³) as a public interest project, and thereby preempt vested interests from overly profiteering from the current revival of interest among both Muslims and non-Muslims to return to a physical bimetallic (gold and silver) money system.¹⁷⁴ Such a project will also spur research amongst legal scholars and economists to look at alternative money systems which may not be necessarily based on gold and silver,¹⁷⁵ insofar as money is conceived as something of intrinsic value so as to serve as an instrument of fair exchange and thereby it needs to incorporate a set of *objective features* realizing that foundational functional role.¹⁷⁶

(b) *Waqf* Free and Open Market

Suitable and strategic locations in urban or rural areas can be endowed to provide space for the setting up of commercial and trading markets accessible to local entrepreneurs and the poor for free (without any charges) for them to engage in trading or offering services. Such a project will revive the concept and rules of the free, open and ethical market

¹⁷¹ For some of these initiatives, see Bill Mollison, *Permaculture*, pp. 505–560.

¹⁷² Hiroshi Kato, *Reconsidering al-Maqrīzī's View on Money in Medieval Egypt*, available at: < <https://hermes-ir.lib.hit-u.ac.jp/rs/bitstream/10086/26474/1/chichukai0002100330.pdf> > , accessed 20 October 2017; *c.f.* John Meloy, *The Merits of Economic History: Re-Reading al-Maqrīzī's Ighāthah and Shudhūr*, 7 *Mamluk Studies Review*, no. 2 (2003).

¹⁷³ Ja'far ibn 'Alī al-Dimashqī, *al-Ishārah ila Maḥāsīn al-Tijārah*, Adi Setia (trans.), *The Indicator to the Virtues of Commerce* (Kuala Lumpur: IBFIM, 2017).

¹⁷⁴ Ahamed Kameel Mydin Meera, *The Islamic Gold Dinar* (Kuala Lumpur: Pelanduk, 2002); *c.f.* Nathan Lewis, *Gold: The Once and Future Money* (Wiley, 2007).

¹⁷⁵ Such as on some other commodities of intrinsic value like wheat or oil agreed upon by members of the exchange community; this is most applicable to local community exchange or when access to silver and gold is limited or too expensive.

¹⁷⁶ Ahamed Kameel Mydin Meera (ed.), *Real Money: Money and Payment Systems from an Islamic Perspective* (Kuala Lumpur: IIUM Press, 2009); and Ahamed Kameel Mydin Meera, *The Islamic Gold Dinar* (Kuala Lumpur: Pelanduk, 2002).

(*aḥkām al-sūq*)¹⁷⁷ in Islam.¹⁷⁸ Such *waqf* markets can also be set up in tandem with the setting up of *waqf* commercial properties (e.g. shop-houses or artisanal workshops), which can be rented out at very reasonable rates to small community businesses and start-ups, thereby leading to the rise of independent business networks in local communities.¹⁷⁹ Projects for establishing mosques and Islamic centres in towns and cities can even incorporate such open market spaces on their premises, and there is no reason to see why mosques and neighbouring churches cannot cooperate in setting up free, open and ethical market spaces on their premises and properties in the community.¹⁸⁰

(c) *Waqf* Artisanal Workshops

For example, a mosque, a school, community college or orphanage can set up its own in-house *waqf* artisanal workshops or small factories producing high value and high margin organic artisanal bread, soap or cosmetics, thereby earning the revenues to run its operation and maintain its premises. Such workshops can be critically modelled on similar enterprises run by enterprising monks and nuns in some monastic orders in France.¹⁸¹ They can also generate revenue by conducting artisanal classes and courses for interested people in the community as well as for tourists and visitors.

(d) Family *Waqf*¹⁸²

Such a *waqf* will ensure that family wealth in the community is retained within the community at large; and, especially, the one third of the estate that is allowed to be bequeathed can be bequeathed to such a *waqf*. Such a family *waqf*, trust or foundation can integrate the rules of *waqf*, *mīrāth* and *mushārah* or *muḍārah* in its operations. However, it has to be structured to benefit all members of the extended family so that it does not

177 For a good study, see Ahmad Ghabin, *Ḥisba, Arts and Craft in Islam* (Wiesbaden: Otto Harrassowitz, 2009), especially the chapter on “Market Inspection in Early Islam”, pp. 31–40.

178 Adi Setia, *Trade, Commerce, Money, and Market in the Islamic Experience: A Brief Overview*, Islamic Sciences (Winter, 2014).

179 Emily M. Weitzenboeck, *A Legal Framework from Emerging Business Models: Dynamic Networks As Collaborative Contracts* (Edward Elgar Publishing, 2012).

180 See UNRIBA in Malaysia, available at: < <http://unriba.org/>, and the Free Market project in South Africa >, www.freemarket.co.za.

181 See Karine Albertazzi, “Monks and nuns make big business in France”, AFP News, 22 October 2017.

182 For a relevant discussion, see Tunku Alina Alias, “The Gift Economy: Waqf in the Islamic World Today,” especially the section on family *waqf*, in M. Kabir Hassan and Mervyfl K. Lewis (eds.), *Handbook on Islam and Economic Life* (Edward Elgar, 2014).

exclude non-heirs or other vulnerable members such as women, in-laws, orphans or stepchildren from receiving benefits. In this regard, the concepts of “family” and “kinship” will need to be understood properly and creatively in the light of the divine injunction to “give to the near of kin.”¹⁸³

(e) *Waqf* Community Land Trust.¹⁸⁴

CLTs are principally set up to overcome the problem of high land prices for affordable urban and suburban homes, and sustainable agriculture. It can also be an effective framework for revitalizing old abandoned farmlands, rural homesteads and inner city neighbourhoods.¹⁸⁵

(f) *Waqf* Community Development Trust

Such *waqfs* can be creatively modelled after the various CDTs that have been set up in Wales, Scotland and England.¹⁸⁶ CDTs are set up, managed and owned by local communities to generate income through various social enterprises, including asset ownership. Profits are then reinvested in the community “to achieve the sustainable regeneration of a community or address a range of economic, social, environmental and cultural issues within a community,” such as “running the local shop and post office, developing play park and recreational facilities, managing a housing development, developing renewable energy projects such as wind farms, managed workspaces, setting up training programmes, running childcare or youth services, preserving the local heritage, restoring and conserving historic buildings, countryside ranger service, running the village petrol pump, a multi purpose arts and crafts centre, property development, tourism,

¹⁸³ Qur’ān, *al-Nūr*: 22.

¹⁸⁴ For a discussion, see Yusuf Jha, *Facilitating Affordable Housing in the UK Market through Socially-Oriented Islamic Financial Institutions*, 5 *Islam and Civilisational Revival*, 4 (2014).

¹⁸⁵ See further relevant discussions in David Harper, *Community Land Trusts: Affordable Access to Land and Housing* (Nairobi: UN-HABITAT, 2012); also Siraj Sait dan Hilary Lim, *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: Zed Books, 2006); also, Bernadette Baird-Zars, Rana Amirtahmasabi dan Abdulla Darrat, *Unlocking Islamic endowments of land (waqf) for poverty alleviation: findings from a multicountry survey of contemporary waqf administration and management*, available at: <<https://drive.google.com/file/d/0B6TTpIE4Te7vSkI5ZmI0N2RwZXc/view>>, accessed 13 May 2017; *c.f.* *Community Land Trusts Models and Coops from around the World*, Rioonwatch, available at: <<http://www.rioonwatch.org/?p=25423>>, accessed 15 October 2017 and its sister, legal advisory document, *Advice on the potential of community land trusts to create affordable housing in Rio de Janeiro*, available at: <http://catcomm.org/wp-content/uploads/2016/10/Freshfields_Memo_09-01-14_final.pdf>, accessed 15 October 2017.

¹⁸⁶ See, for instance, Scottish Community Alliance or Local People Leading, available at: <<http://www.localpeopleleading.co.uk/>>, accessed 20 October 2017.

environmental improvements, childcare, furniture recycling, running a sports centre, commercial forestry and woodland management.”¹⁸⁷

(g) *Waqf* Academy, Research & Advisory (WARA)

Waqf organizations can work together to set up, say, an independent *Waqf* Academy, Research & Advisory (WARA)¹⁸⁸ body to create, design and offer certificate and diploma courses on all aspects of *waqf* law and economics, undertake commissioned research and provide professional advisory services pertaining to all aspects of *waqf* establishment, management, policy, regulation, governance and auditing. Such a body can and should of course constructively engage with all the current rethinkings of economics (as science) and the economy (as reality), especially those pertaining to the social economy and related issues. Structurally and operationally, it should be initiated, managed and controlled by informed, learned, experienced and responsible members of local communities and be autonomous of the state, big corporations and IBF, though the state can be lobbied to put into place appropriate legislation to provide the necessary regulatory or monitory oversight wherever such oversight is warranted in the interest of the public good. In Muslim countries, such oversight can be put under the purview of the office of the *qāḍī* (Islamic magistrate or judge) within the overall legal framework of the existing Shari’ah court system. In non-Muslim countries, the Muslim community may need to set up their own community self-regulatory body that can be accorded legal recognition by the state through the existing legal framework for the governance of religious community organizations.

12 Concluding Remarks

There is a saying of profound implication by al-Ḥārith ibn Asad al-Muḥāsibī (d. 243/857) in his book, *Scrupulousness and the Pursuit of Livelihoods*¹⁸⁹;

Livelihoods are not corrupted by the oppressive governance of rulers, but they are only corrupted by abandoning the practice of jurisprudence and the cultivation of knowledge.¹⁹⁰

¹⁸⁷ For example, such as the work of the Development Trust Association of Scotland, available at: <<http://www.dtascot.org.uk/content/what-is-a-development-trust>>, accessed 15 October 2017.

¹⁸⁸ Such as the *Waqf* Academy set up by the National Awqaf Foundation of South Africa, available at: <<http://waqfacademy.org/>>, accessed 15 October 2017.

¹⁸⁹ Adi Setia (trans.), *Scrupulousness and the Pursuit of Livelihoods* (Kuala Lumpur: IBFIM, 2017).

¹⁹⁰ *Ibid.*, p. 73.

One pertinent reading of that statement that is of particular relevance to our discussion on the economics of civil society is that ordinary people and communities cannot really rely too much on the top-down initiatives of state governments when it comes to bringing back sanity, meaning and sense of positive purpose into their socio-economic life. People restore their livelihoods and their commonwealth to the extent they take personal and communal responsibility for learning, understanding and putting to practice the ethico-moral principles and legal rules of socio-economic transactions upon which their communities are glued together.

The Islamic socio-legal perspective would say that law reflects society before it reflects the state, and that *as you are you shall be ruled over*. This outlook on the desirability of communal autonomy seems to square pretty well with much of what is going on in current counter-economics thought and activism, as well as with some critical rethinkings of the state–community relationship,¹⁹¹ including various strands in the libertarian political philosophy of small government and the minimal state.¹⁹² All the alternative structures mentioned or alluded to in this paper have been thought out and applied in one way or another with varying degrees of success (and failures too) by people and communities coming together, taking responsibility and taking action for overcoming their own predicament, and along the way many were successful in garnering state recognition¹⁹³ and even corporate support for their cause.¹⁹⁴

191 For instance, the many works of James C. Scott, such as *Against the Grain: A Deep History of the Earliest States* (Yale University Press, 2017); *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1999); *Two Cheers for Anarchism: Six Easy Pieces on Autonomy, Dignity, and Meaningful Work and Play* (Princeton University Press, 2014) and *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Yale University Press, 2010). For the particular context of Islam, see Wael b. Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicament* (Columbia University Press, 2012).

192 See, for instance, Carla Howell and Michael Cloud, *Why Small Government is Beautiful*, Center for Small Government, available at: <<http://www.centerforsmallgovernment.com/whysgib.htm>>, accessed 29 October 2017.

193 As in the case of the JOBS Act in the United States, which, inter alia, legalized equity crowdfunding; see Marielle Segarra, *The JOBS Act: Crowdfunding and Emerging Businesses*, CFO.com, available at: <<http://ww2.cfo.com/growth-companies/2013/10/the-jobs-act-crowdfunding-and-emerging-businesses/>>, accessed 10 January 2017; and William Michael Cunningham, *The JOBS Act: Crowdfunding Guide for Small Businesses and Startups* (2nd ed., Apress, 2016).

194 In which case alternative corporate structures can and have been established, as in the case of the Scott Bader Company, available at: <<http://www.scottbader.com/about-us/11/our-history>>, accessed 20 October 2017. See also Susanna Hoe, *The Man Who Gave His Company Away: A Biography of Ernst Bader, Founder of the Scott Bader Commonwealth* (Heinemann, 1978); c.f. *Alternative Corporate Structures for Socially Conscious Startups*, Legal Services Link,

So, that statement of al-Muḥāsibī is actually very self-empowering and points to the fact that transformative political will at the very top has its seeds and roots way down, deep in the equally transformative intellectual vision and moral mission on the ground. We may end this rather longish and rambling discussion with another compelling statement of al-Muḥāsibī which shows with compelling clarity what precisely does the end of the socio-economic life consist in:

When you wish to go to your market or do something for your livelihood, or take up a craft or become a business agent or engage in some other vocations in order to seek the licit and to imitate the practice of Allāh's Messenger—Allāh bless him and grant him peace—and to seek recompense for yourself and your dependents, to earn provision for them, and in order to be independent of people while showing compassion to brethren and neighbours, and to pay the obligatory alms and discharge every obligatory right, then hold out hope through these efforts that you shall meet Allāh—glorified and exalted be He—while your countenance is as the moon on the night when it is full.¹⁹⁵

available at: <<https://www.legalserviceslink.com/blog/alternative-corporate-structures-for-socially-conscious-startups-infographic>>, accessed 20 October 2017.

¹⁹⁵ *Scrupulousness and the Pursuit of Livelihoods*, p. 54.

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