

Toward the Revival of *Awqāf* *A Few Fiqhī Issues to Reconsider*

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ABSTRACT

The recent interest in *awqāf* marks a reversal of a trend of neglect of and even attacks on them that continued for almost a century in most Muslim countries. Rediscovering *awqāf* and attempting to enhance their role in social and economic development requires attention to several important issues in the *fiqh* of *waqf*, of which six are: 1) the principle of perpetuity versus temporality, 2) *waqf* of usufructs and financial rights, 3) public *waqf* versus posterity or private *waqf*, 4) *waqf* management, 5) the ownership of *waqf* and its legal entity, 6) and the special conditions of the *waqf* founder (*al wāqif*). This paper presents a few examples where there is a dire need to revise classical *fiqh* in areas that help promote the establishment of new *awqāf* and improve the benefits derived from existing ones. Many Muslim communities are rich in their inherited *awqāf* properties, if only their capital benefit ratios can be improved.

I. THE PRINCIPLE OF PERPETUITY VERSUS TEMPORALITY IN *WAQF*

When Al-Shafi'i in his "*Al-Umm*" mentioned that the Prophet (peace be upon him) invented the *waqf*, a concept with no precedent in all other nations, he was not aware that Egyptians, Greeks, and Romans had certain types or versions of *waqf*. Al-Shafi'i was certainly correct in his assertion if we look at some of the unique characteristics and scope of the Islamic *waqf*. One of the major points in this regard is the principle of perpetuity. Perpetuity in *waqf* means that once a property is dedicated as a *waqf* it remains so until the Day of Judgment—no one can change it later.ⁱ In contrast with perpetuity, some kinds of *waqf* are also recognized as temporal.

Perpetuity requires three conditions:

The property made *waqf* must be suitable for perpetuity either by nature, by its legal status, or by its accounting treatment. Land is the only property that is perpetual by nature. Perpetuity of a property is acquired by legal organization or legal status through equities in common stock perpetual companies. Accounting procedures may turn a given property into a perpetuity through the application of the principle of provision for capital consumption or provision for amortization.

The second condition relates to the will of the *waqf* founder. A perpetual *waqf* requires an explicit or implicit expression of will on the part of the founder to make it so. This condition was not fully elaborated in the classical *fiqh*. In fact, the Maliki School has the only group of jurists who explicitly accept temporality in *waqf* by virtue of the will of the founder. Even Malikis themselves do not accept temporality in a *waqf* for a mosque and they say that even if a *wāqif* (founder) decreed that his/her *waqf* for a mosque is temporal, the *waqf* is considered perpetual and the temporality condition is nullified.

This seems to grossly infringe on the desire and property rights of the founder without any legal or *shari'a* support for such a position. As expressed by the late Zarqa, everything in *waqf* is subject to *Ijtihad* and there is no single ruling in it that gained unanimity except that the *waqf* purpose must be benevolent (*Birr*). Apparently all schools of *fiqh*, including the Malikis (with respect to temporality in mosque *waqf*), did not anticipate cases in which there are real needs for temporal *waqf* in general as well as in mosques specifically.ⁱⁱ It may be interesting to note that the Malikis, who rejected temporality in mosque's *waqf*, accepted it if the founder is a lessee of a structure and he/she made his/her usufruct, owned by virtue of the lease contract into *waqf* as a mosque. However, it must be noted here that temporality in a *waqf* by a lessee is caused by the nature of the property not by the will of the founder.

It must also be noted that the perpetuity in *waqf* remains the rule and temporality the exception. Hence we go along with the majority of jurists who consider the *waqf* as essentially perpetual, and we believe that temporality in *waqf* requires an explicit expression in the founder's will.

The third condition for perpetuity is that the objective of *waqf* must be perpetual. Here, jurists talk about non-existence of the assigned beneficiary at the beginning, in the middle, or at the end of a *waqf* and they treat these

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cases in ways that finally fall under either annulling the *waqf* that has a non-existent objective or transforming it into the general objective of supporting the poor and needy on the assumption that there is always need for such an objective.

The importance of the principle of perpetuity in the *sharī'a* should be looked at in the light of the need, in all societies, to establish revenues/services-generating permanent assets devoted to social objectives. In other words, the perpetuity in *waqf* provides for capital accumulation in the third sector that, over time, builds necessary infrastructure for providing social services on a non-for-profit basis. Hence, perpetuity in *waqf* accounts for the accumulation of assets in the non-profit sector which is a first and necessary step for the growth of this sector in contrast with the profit-motivated sector and the government sector built on authority and law enforcement.

The principle of perpetuity is protected in the *sharī'a* by a series of rulings. Some of these relate to the prohibition of the disposition of the *waqf* asset through sale and other contracts and some relate to the transfer of *waqf* revenues from one objective to another in the event that the assigned objective cease to exist, so that the property remains in the domain of *waqf*.

However, little attention is given to the importance of temporality in *waqf*. In this regard, we must notice that all jurists, without exception, approve of the temporality of *waqf* if it comes from the nature of certain assets made into *waqf*. Regardless of the justification given by different schools of jurists, *waqf* of buildings, trees, horses, books, swords, slaves, etc. is accepted. They did not consider this *waqf* as non-perpetual on the claim that this is a *waqf* for the lifetime of the asset itself, i.e., in such kinds of property, perpetuity is given a non-perpetual meaning! The Malikis accept temporal *waqf* by the will of the founder. They also accept the *waqf* of usufructs, which may very often be temporal too.

The truth remains that all these properties only make a temporal *waqf* especially in that *waqf* is an object that relates to lives of societies and communities, and perpetuity in it cannot be measured in terms of life of horses or durability of trees and rugs. Recognizing this dilemma, Ibn Arafā, a Maliki, defines perpetuity of *waqf* in terms of “as long as the property lasts.” Many *fuqahā'* mention that *waqf* of mobile assets is a mere exception from the rule because it was done at the time of the Prophet (peace be upon him).

It is worth noticing that the accounting idea of forming provisions for capital consumption, which lead to accounting perpetuity, is a new one, early jurists were not aware of it. Temporality, which is decreed by the will of the founder, is not permitted by the majority of jurists, the Malikis are an exception, while temporality caused by the life span of those mobile assets that are considered by jurists for *waqf* is approved without calling it temporality.

Contemporary experiences of Muslim societies and communities indicate that temporality by will of the founder and by nature of certain objectives is part of social life as all societies need it as much as they need perpetuity and glorify it.

Contemporary Muslim jurists should reconsider this principle in terms of the basic distinction between *waqf* and ordinary *sadaqah*. If one looks at the sayings of the Prophet (peace be upon him) about *waqf*, one important characteristic can be derived. A *waqf* is made distinct from ordinary *sadaqah* by the repetitiveness of the benefits that come out of it. Therefore, any form of *sadaqah* that makes repeated payments to service its objective is a *sadaqah jariah* (running *sadaqah*): a *waqf*.

This “running” feature of *waqf* can be manifested in different forms. It may be shown in terms of pledging the income/usufruct of an asset for a period of time at the end of which the asset and its income/usufruct return to the founder. It may also be shown in terms of distributing both its income and parts of its asset over repeated installments to the beneficiaries. Hence, temporality comes from depletion of the asset. It may be manifested in terms of a perpetual asset that produces a repetitive flow of income or services, or in terms of a right granted to the beneficiary to receive periodically, at repeated intervals or when needed, a flow of mobile objects/usufructs. All are *waqf* and there is no need for excluding any of them from being a *waqf* without valid rationale or support from an original text.ⁱⁱⁱ

II. WAQF OF USUFRUCT AND FINANCIAL RIGHTS

Waqf of usufruct is known in the Maliki School but not the other schools of jurists. Contemporary life has many forms of usufructs that can be made into *waqf*, such as driving a car on a toll way or passing through a tunnel or bridge that has fees on it. Similar to that is the use of a parking lot given a *waqf* for two hours for the Eid prayers twice a year. These kinds of *waqf* need to be recognized by the contemporary *fiqh* as well as by the laws of *awqāf* in the Muslim countries and communities.

Most laws of *awqāf*, including those in Algeria, Jordan, Sudan, and India do not make any reference to the *waqf* of *manaḥi'* (usufruct). The recently proposed law of *waqf* in Kuwait recognizes both temporality and usufruct in *waqf*. It is still lingering between the government and parliamentary committees.

Financial rights are also not usually recognized in *waqf* by jurists and laws. Modern life has many kinds of these rights, some of which were known in the past but were not of much financial value. For instance, although authorship rights are non-transferable (because transferring them makes a lie) the right to publish and financially exploit the product of an author has become an important business in our days. The same was not known in the past. Patents and other rights related to the product of talents are also an important new dimension in contemporary life. These rights are not dealt with in our classical *fiqh*, so is the *waqf* of objects that have a repetitive character such as newspapers, magazines, and other periodicals. The products of film companies, educational software programs, and many other intangible properties are similar. All such rights and objects must be covered in the *awqāf* principle.

Under the existing *fiqh* and laws of *awqāf* in most Muslim countries and communities, one cannot, for instance, make a *waqf* of ten years' subscription to the *American Economic Review* to the benefit of a university library. It is true that civil laws in all these countries consider such an act a donation, but the laws of *awqāf* must give it privileges similar to those granted to other types of *awqāf*.

To complete the story of the *waqf* of rights and usufruct, it is worth while to mention the publication of classical works in *fiqh* and other subjects that is being done these days all over the world without any recognition of the financial right of the author by the publishers. There are many indications that Muslim writers throughout Islamic history were motivated by the Islamic tradition that prevents and prohibits withholding knowledge from others. They were thus always keen to make all their intellectual products available to users. This is equivalent to making their intellectual property a *waqf* to students, scholars, and other non-commercial users. The publishers of these works profiteer themselves from the share that is otherwise given to authors. This is an area where the laws of *awqāf* in the Muslim countries and communities must interfere to protect the right of writers important in the heritage from being exploited financially by publishers. This can be done, for instance, by stipulating that a percentage of the copies published must be given for free to libraries, mosques, schools, and other learning institutes. This, to a large extent, fulfills the main desire of the authors by making their works accessible to those who seek knowledge.

III. PUBLIC AND PRIVATE *WAQF*

From the point of view of the nature of the objectives of *waqf*, *waqf* may be divided into public and private. Public *waqf* is that which serves an objective of interest to the whole society or part of it. Its examples are *awqāf* for mosques, schools, orphanages, scientific research, the poor and needy, travelers, etc.

Private *waqf* is a *waqf* in which the beneficiaries are either specific persons or persons characterized by certain relations to the founder or any other specific person. The most common type of this *waqf* is *waqf* for the descendants of the founder. That is why this kind of *waqf* is usually called family or posterity *waqf*.

Posterity *waqf* is a pure invention of Muslims. It was created when the companions of the Prophet (peace be upon him), started making *awqāf en masse* following the footsteps of the second *khalifa*, 'Umar Bin Al-Khattab, and they added clauses in their *waqf* documents to the effect that the first or major beneficiary of the *waqf* should be the descendants of the founder.

The private *waqf* always spills over to the public since the private *waqf* have a clause assigning either a fraction of the revenues to a public cause or converting all of the private *waqf* to a public cause should the assigned beneficiaries cease to exist. Al-Shafi'i in his "*Al-Umm*" gave two empirical examples of private *waqf*, one of them was for his own son Abu al-Hassan, who was born to him in Egypt. In both, the *waqf* goes to the poor and the needy after its private objective ceases to exist.

In several Muslim countries, private *waqf* came under heavy attack from some disciples of the orientalis who criticized this type of *waqf* in the late 1800s. Several Muslim countries enacted laws that liquidate existing private *waqf* and prevented establishing new ones. This happened in both Egypt and Syria. Lebanon limited the private *waqf* to two generations only, after which a private *waqf* is subjected to liquidation to the benefit of the beneficiaries. These attacks were rightly justified by the huge amount of corruption that dominated the handling of *awqāf* all over the Muslim world but there was no reason for any discrimination between private and public *awqāf* on the basis of corruption. The fact is that the management of both types of *awqāf* was corrupt and most *awqāf* properties were either already stolen or very much abused. The solution could not be found in eliminating such a benevolent institution but in redesigning the approach to its management, as will be discussed later.

The private *waqf* in fact serves an important social objective as well as encourages economic growth. Properties left to posterity help provide additional income to descendants of the founder. They also help keep them off social welfare and *Zakah* recipient lists while, at the same time, such properties provide for a mechanism of capital accumulation through generations which is an important way for growth and development. This fact that was only recognized in the west, especially in the United States, over the past few decades where the use of family

trusts under different variants became very common and were granted several tax privileges. Moreover, it is known in Islamic *fiqh* that any *waqf* whose beneficiaries cease to exist turns into a *waqf* for the poor and the needy as this is considered a primary objective of the institution of *awqāf* itself. Hence, both *fiqh* and laws in Muslim countries should have dealt with the problems of corruption, fragmentation of beneficiaries and cost of locating beneficiaries in relation to the revenues in a more dynamic way that allows for the promotion of private *waqf* and for turning it into a *waqf* for the poor and needy over time instead of looking at it negatively.

IV. THE MANAGEMENT OF *AWQĀF*

A careful study of the Islamic *awqāf* and its *fiqh* as developed throughout centuries and a deep look into *sharī'a* rulings on *awqāf* and the different *fatāwā* in its regard in different Muslim cities and countries all point to the idea that Islamic *awqāf* is certainly not an invitation to the authority of the government to dominate the area of benevolent activities in society. To the contrary, from its beginning the establishment of *awqāf* was a clear representation of creating a third sector related to philanthropies that is kept away from both the profit-motivated behavior of individuals and the authority-dominated action of the government. 'Umar Bin Al-Khattab, during his reign as a khalifa, wrote the document of his famous *waqf*, which is considered the main source of *fiqh* on the issue. He appointed himself a manager, and after him a person from his family not his successor in *khilafa*. In the other *waqf* which was done at the time of the Prophet (peace be upon him) by 'Uthman, the *waqf* of the well of "Ruma" which supplies drinking water to al-Madina was also not put under the command of the government. It was managed virtually by the community with no government interference. The late Abu Zahrah mentions that many rulers and rich persons used to make *awqāf* in order to have their wealth escape potential persecution and confiscation by newcomers to power, and there was no mention in any book of *fatāwā* and *nawazil* of any single *waqf* in which the founder nominates the government as a manager of his/her *waqf*.

It seems that the first attempt by the government to manipulate *awqāf* took place during the period of the *Mamaliks*, at the time of Al-Zahir Bebars in Cairo. This attempt was received with extreme negativity and rejection by the *fuqahā'* and other Muslim scholars. It was withdrawn. The miraculous change came in our era where we find *awqāf* properties in almost every Muslim country run and managed by a branch of the government. Hence, instead of having a strong third sector independent of both the profit-making motivation and the power of the government, we end up with *awqāf* that works under the shadow of a corrupt and inefficient public sector.

This change began with the Ottoman *awqāf* law which was enacted around the middle part of the nineteenth century and which came as a drastic response to the dominant corruption in the management of *awqāf* as a result of abuse, neglect, and mistrust that enveloped a great majority of *awqāf* managers (*nuzzar*).

Yet, the Ottoman *awqāf* law was only a first step because it did not transfer all *awqāf* management to the hands of government. Nor did it eliminate the private *awqāf*. During the first half of the twentieth century *awqāf* laws were issued in almost all Muslim countries. These laws established a branch of government, called "Ministry of *Awqāf*" or General Directorate of *Awqāf* to manage *awqāf* properties like other branches of the public sector.

The government is a bad manager of economic enterprises. It is also a bad manager of benevolent projects. *Awqāf* properties, whether used directly for their objective or investment whose revenues are utilized in supporting the objective designated for them, are merely properties that belong to economic/benevolent activities in the society in which government represents a failing manager.

Several reform attempts started taking place in some Muslim countries to reform the management of *awqāf*. In Sudan, starting from 1987, a new organization was found under the name of the Public Corporation of *Awqāf*. 1993 witnessed the reorganization of the Ministry of *Awqāf* in Kuwait whereby a General Secretariat of *Awqāf* was created as an autonomous, though governmental, body to manage the *awqāf* in Kuwait. Qatar also remodeled its Ministry of *Awqāf* along similar lines.

Unfortunately, all these reforms could not touch the real problem; solutions suggested were only cosmetics and represent mere change of hands—a kind of intergeneration struggle, rather than a change in the concept of management.

In the Islamic legal system, *awqāf* represents an early version of the concept of corporation that was invented throughout the last three centuries and matured in the third quarter of the nineteenth century. In a way, economic corporations are no more than funds utilized to generate profit to their owners whereas *awqāf* properties are funds utilized for the benefit of their beneficiaries. There are numerous indications, at least from existing or surviving *awqāf* documents, that founders tended to always nominate a manager for their *awqāf* from their own vicinity or that of the property itself. Once we decide to respect the conditions of founders and avoid the government as a *nazir*, it can be established, on the basis of the surviving documents, that the intention of founders has always been in the direction of appointing local managers rather than the central government or its local branch.

Hence, in fulfillment of the will of the founders, in respect of the distinctive nature of the third sector or the non-profit sector of *awqāf*, in recognition of the tremendous failure of governments in managing economic and benevolent enterprises, and in realization of the need for distinguishing the style of management of *awqāf* from that of profit-motivated private-interest-seeking enterprises, the *awqāf* management should be run by local people who relate to the beneficiaries of *awqāf* as well as to the community in which *awqāf* properties represent an infrastructure capital for social work and social interests.

The management that is needed for *awqāf* is similar to that of economic corporations. It also involves, however, finding a way to elect a management board that relates to the beneficiaries and locality of the *awqāf* property. A new proposal recently submitted in the context of a study on the reform of *awqāf* in Saudi Arabia was based on the concept of creating *awqāf* management units that are selected from among concerned individuals and civil society organizations in the area where *awqāf* properties exist.

V. THE OWNERSHIP OF AWQĀF AND ITS LEGAL ENTITY

The differences of opinion among Muslim scholars on who owns *awqāf* property are well known. These opinions may be grouped in three. Does a *waqf* remain with the ownership of the founder and is it inherited from her/him by legal heirs? This is the view of Malik and many others. Does a *waqf* become owned by the beneficiaries? The leader of this opinion is Abu Hanifah among others. Is a *waqf* owned by God, the Almighty? Abu Yusuf, Al-Hassan, and Al-Shafi'i among others subscribe to this view.

These differences reveal an interesting fact. Ownership of *awqāf* was a question that puzzled Muslim scholars at a time when the concept of legal entity or legal personality, outside of natural persons, was not developed. Contemporary *awqāf* laws in Muslim countries and communities quickly assign a legal personality to *awqāf* and consider *awqāf* properties owned by that legal entity.

In fact, there are many *awqāf*-type properties that fall outside *awqāf* laws in all Muslim countries, simply because they come under the acts on non-profit organizations, be they educational, charitable, social, or otherwise. The laws of organizations in Muslim countries assign to an organization a legal entity that allows it to own both mobile and immobile properties. Many of these properties are certainly given to the organization on the basis of forming permanent capital to be used for servicing the objective of the organization, say a school building or land, or as a permanent source of income to the organization, as investments that generate revenues. These properties are no more than *awqāf*.

The concept of legal entity or corporation is a western one, which was developed in Western Europe and the United States over the last few centuries. A legal entity has its independent financial status. It also has the right to litigate and to be represented as well as represent others. There are many voices among legal scholars that call for a legal entity to be covered by criminal laws so that it can be put under guardianship, fined, and eliminated. Contemporary Muslim jurists usually accept this new concept of legal entity or corporation and include it in their studies and rulings.

It has always been argued that the concept of *waqf* comes very close to the manifestation of a legal entity as it has separate and independent financial personality (*thimmah*) of its own, not intermingled completely with that of its manager. The manager (*nazir*) is only a representative of the *waqf*. The relationships between them are very well elaborated in *fiqh*.

On the other hand, it is rarely questioned whether the concept of corporation and its legal entity does really suit the exact size of *awqāf*. The management of a corporation, with proper authorization from its constituency, the general assembly, can dispose of the assets of the corporation through sale, gifting, and other ownership transferring transactions. It can also liquidate the corporation and do away with all of its properties. The managers of *awqāf* are very restricted. In *awqāf*, properties are not considered owned by any human entity, individually or in groups, be it natural or judiciary. They cannot even give any of the *waqf* income to any philanthropic objective outside the assigned one. We have seen that many scholars consider God the owner of *awqāf*, and no one dares attribute to Him such kinds of transactions.

Thus, *awqāf* properties require a special kind of judiciary person, or an amended legal entity unlike other persons. The properties are either not to be disposed of by the owners, or the legal entity of *awqāf* should somehow be allowed to conduct certain contracts and legal actions only—those which relate to investment of assets and distribution of income and usufructs. However, it should not be allowed to take up other kinds of contracts and legal actions that infringe on the principle of perpetuity, continuous growth and further accumulation of *awqāf* properties, and the distribution prescribed by the founder.

The managers of *awqāf* are thus not similar to the managers of corporations in the scope of their authority. The dilemma referred to above of *awqāf* properties under the authority of judiciary entities that take the names of

non-profit organizations is exemplary. *Awqāf* under non-profit organizations can be liquidated, sold, and disposed of by actions within the scope of the proper authority of the management of these organization.

As a result of this confusion involving *awqāf*, corporations, and the place of *awqāf* as judiciary entities, the *awqāf* properties of Muslim communities in many countries live under continuous threat of mishandling of not only their usufruct or income. Properties of *awqāf*, including mosques, schools, and other properties assigned for community use by Muslims in the United States, Canada, most European countries, and South Africa, for example, are subject to all kinds of ownership-transferring contracts by the management, as well as to litigation by others for actions of the managers. The management of such properties can mortgage them or use them for loans. This exposes these properties to be repossessed by lenders, and managers can sell these properties and make other transactions that dispose of them. These properties can be liquidated by legal action due to the neglect of the managers. The corporations in whose form the organizations that own these properties appear are always vulnerable to litigation that threaten the public character of *awqāf* itself these countries.

VI. SPECIAL CONDITIONS OF THE *WAQF* FOUNDER

Classical *fiqh* adopted a slogan that became very famous over time: “The conditions of the *wāqif* are similar to the texts of the Legislator.” This indicates the value attached to the conditions of the *waqf* founder in *fiqh*.

Yet we find that the *fuqahā'* very often deviate from the spirit of this slogan and violate or disrespect conditions of the *wāqif*, as seen here already. There are many other examples of the same, as can be seen by a quick glance at the two Majallahs: Majallat al-Ahkam al-Adliyah of the Hanafis, and Majallat al-Ahkam al-Shar'iyah of the Hanbalis. For instance, the prevailing view in the classical *fiqh*, especially in the Maliki and the Hanbali, is that the *wāqif* is not permitted to make himself a beneficiary of the *waqf*. This is based on the presumption that making oneself a beneficiary contradicts the benevolent character of *waqf*, as if the Prophet (peace be upon him) did not consider making *Birr* to oneself a priority in the actions of *Birr*.

Another area where the conditions of the *wāqif* are not respected is the *wāqif*'s right to terminate the *waqf* and retrieve its property to themselves if they found that such a reversal is needed. This right is not accepted by any jurist except Abu Hanifah, with the provision that the *waqf* did not, in the meanwhile, gain perpetuity through a judicial action.

A third situation where the conditions of the *waqf* founder are not respected is where the objective of the *waqf* comes to an end at a certain point of time and the *wāqif* makes her/his *waqf* in such a way that its principal ceases to exist at the same time. An easy example of this is the supporting of orphans until they reach maturity.

In contemporary life filled with uncertainty and unpredictability about the future and where family and tribal mutual financial solidarity is lax, these three types of conditions become of great importance to the *waqf* founder. Many a *wāqif* would be encouraged to make *waqf* if they were assured that should they need the *waqf* funds at the time of retirement, old age, sickness or otherwise, they can be a prime beneficiary of their own *waqf*, or they can rehearse the action and come back to own and use the *waqf* assets and/or income. Additionally, allowing a *waqf* to end after fulfilling its objective encourages making *waqf* because it is a lower sacrifice to the *wāqif*. For instance, a \$1000 ten-year annuity with the depletion of its principal requires half the amount of principal for a perpetuity at an expected rate of return of 7%.

Contemporary *fiqh* and laws of *awqāf* in Muslim countries and communities must re-address the issue of special conditions set by the *waqf* founder and recognize the implications of the new reality of uncertainty and unpredictability about future income and future financial needs. This is especially true of three areas: the condition of benefiting the *wāqif* from their *waqf* and its income, the right to reverse the decision of making *waqf*, and the right to make a *waqf* that lapses with the lapse of its objective.

Practices in some Muslim countries accept the condition of self-beneficiary as in actual new *waqf* documents created in both Jordan and Saudi Arabia. The proposed new Act of *Awqāf* in Kuwait allows for the *wāqif* to reverse her/his decision on creating a *waqf*.

Finally, it should be noted that a balance between perpetuity and benevolent objectives for the public of a *waqf* on the one hand, and the special desires and conditions of the *wāqif* and the *wāqif*'s right to select a path that is most appreciated from their point of view on the other, must be drawn. This is to preserve the unique character of perpetuity in the Islamic *waqf* as a mechanism for providing a third non-profit benevolent sector in the economy and in the society at large with permanent and ever-increasing income-generating assets.

VII. CONCLUSION

It is clear that there is indeed a dire need to revise the classical *fiqh* in areas that help promote the establishment of new *awqāf* and improving the benefits derived from existing ones. It should be noted that Muslim societies and communities in many areas of the world are rich in their inherited *awqāf* properties. What remains to be done is improve their capital benefit ratios.

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- ⁱ That is perhaps why many Muslim jurists argued that a *waqf* property is owned by God, the Almighty.
- ⁱⁱ All Muslim communities today may need, one way or another, a temporary mosque for a certain period of time, either because of the mobility of Muslim communities in the Americas and Europe or because of the long period needed for building mosques, whether for collection of donations or for construction.
- ⁱⁱⁱ In a similar case regarding *ijāra*, Ibn Taymiyyah considers as a valid *ijāra* renting an asset that produces repeated mobile objects rather than usufruct. The example he gives is renting a well for its water and hiring a nursing woman for the milk she provides to a newborn baby.