

# **The Role of the Rule of Law in the Socio-Economic Development of Muslim Societies.**

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The rule of law, for the purpose of this paper, curbs arbitrary government power and ensures fairness, equality and justice in society.<sup>1</sup> Therefore no person or class of people are deemed above the law (as is still the case in many developing societies) and opportunities are not reserved for a certain segment of society or usurped by the rich and powerful. Dr. Thomas Fuller<sup>2</sup> enunciated the point succinctly in 1733 such:

“Be you never so high, the law is above you.”

I specifically refer to the description of the rule of law set out by the United Nations:

For the United Nations, the Rule of Law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.<sup>3</sup>

Using law to serve the aims of those in power, however benign such power may appear to be (as in the case of Singapore for instance) has no place under the rule of law. Likewise, the use of Brute force, no matter the temporary benefits such brute force brings about (China or Rwanda) is fundamentally against the rule of law. The rule of law must take root and be embraced by the society, evoking a general commitment to it by every member thereof. It is not an “imaginary” used by the government towards their equally imagined ends and imposed on the people. Likewise, the rule of law is not the sole prerogative of the government but requires the commitment of its citizens to it and the general maturation of the

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<sup>1</sup> Tom Bingham, *The Rule of Law*, Penguin Books, 2011.

<sup>2</sup> Quoted by Lord Denning MR in *Gouriet v Union of Post Office Workers* [1977] QB 729, at 762.

<sup>3</sup> Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, (UN Doc. S/2004/616), p.4.

society to the necessity and benefits of living according to the rule of law principles/norms.<sup>4</sup>

The rule of law thus creates stability and order built on legal checks on government and the maturation of a society into realising the wisdom and benefits of limiting power and embracing equality, fairness and justice. It also follows that in rule of law societies corruption, cronyism, nepotism etc. are not prevalent and do not impinge on the daily lives of individuals, to varying degrees, as it does for instance in Kenya, Indonesia, Malaysia, Bangladesh etc.

The Rule of law ensures government and the laws it makes serve the public good and facilitates equal opportunities. The requirement that the state conform to the rule of law puts substantial limits on governmental power which serves to protect citizens from arbitrary action or the imposition of unjust laws. *The “law” referred to in the rule of law concept is thus not whatever issues from legislatures and courts, but rather “ a particular kind of restraint on the use of force” or arbitrary power.*<sup>5</sup>

The absence of a proper and functioning concept of rule of law in any society is likely to create a rich few and a poor mass; we see this all over Africa and Asia where the government is not a government for the people but a private company of the elite. Inequality, inequity, lawlessness, injustice and social imbalance is rife thus creating a disabling environment for proper economic development. Many top executives have little credible education, and equally many highly educated are jobless. In many third world countries the poor have become faceless and the moral responsibility towards them tossed aside at the high cost of fracturing social harmony. Many developing societies are faced with the hard truth that the restoration of socioeconomic equilibrium is more economically expensive than sharing what the rich have with the have-nots.

Thus I turn to examine the role of the rule of law in the socio-economic development of Muslim societies. Many Muslim countries display a poor state of the rule of law, as we have defined it in this paper, despite the tendency to display a facade of democracy and constitutionalism. This is true for Malaysia, Indonesia, Egypt, Pakistan and Gambia, to name a few. It therefore struck me that there is no easy way of examining the role of the rule of law in Muslim societies because to investigate it through data and evidence presented by the very governments that display a lack of rule of law at the helm of most muslim societies, would be futile. To enquire into the rule of law directly through the Muslim society, that is through the people and private organisations, is also difficult either due to fear of speaking up or the limitations on free speech that would make any credible accounts through reports or publications, unavailable. It therefore seems that an effective way to enquire into the role of the rule of law in the socio-economic development of Muslim societies is to look at a quintessentially socio-economic institution, the

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<sup>4</sup> Barry Weingast, Why Developing Countries Prove so Resistant to the Rule of Law, chapter 2 in *Global Perspectives on the Rule of Law*, World Justice Program, 2009.

<sup>5</sup> Hayek, 1976: 55. Law is a system of rules and principles of justice “regulating the conduct of persons towards others, applicable to an unknown number of future instances and containing prohibitions delimiting boundaries or the protected domains of all persons and organised groups” (1979: 100).

*waqf*, and examine how the rule of law, or the lack thereof, affects the administration of the *waqf* in specific jurisdictions that could adequately demonstrate the issue.

Waqf (pl. *awqaf*) is a particularly interesting avenue to examine the effect of the rule of law on the socio-economic development of Muslim societies because, increasingly, the state has taken over the supervision and management of *awqaf* thus removing their management from the private sphere, as originally designated, and brought them into the public sphere. In this sense, *awqaf* differ from charitable endowments, foundations or trusts as established in the UK or throughout the common law world because though charitable trusts, foundations and endowments are regulated by government legislation, many of them have been incorporated and are privately administered by their respective board of trustees who are in turn accountable to their shareholders and stakeholders. This aspect of accountability and self-management is lacking in most *waqf* administration government bodies which makes having a robust rule of law essential to the proper management and administration of *awqaf* in most muslim societies. The exception is of course *awqaf* established in developed western societies with an already robust rule of law, like the UK. In countries like Saudi Arabia, Egypt, Yemen, India etcetera, vast properties designated as *waqf* are being mismanaged, misused, neglected and misappropriated by government bodies created to administer them. This is, in large part, due to corruption and the poor state of the rule of law in such countries. So we see that to solve one problem, private mismanagement of *waqf* properties, a much larger problem has been created by allowing government bodies to misappropriate and use *waqf* properties with little accountability to the founders of these *waqf* or to the public they are dedicated to, due to the poor rule of law conditions that allow these government bodies and agencies to operate without accountability.

The consequence of this has been to grossly harm the socio-economic conditions of the Muslim societies in all such countries and to discourage the dedication of properties as *waqf* because the founder no longer retains control over its management and the distribution of its benefits. This can be evidenced even in Singapore where corruption is very low, but because all *waqfs* must be registered and are managed by the state authority created to do so, Muslims in Singapore are reluctant to create *waqfs*. Similarly, even in countries where the administration of *awqaf* is highlighted as successful, the emphasis is on investing, maximising returns on, and utilising the *waqf* properties profitably. However, can we say that in doing so, these objectives are serving the socio-economic development of Muslims and benefiting the poor?<sup>6</sup> And can we really say that it is the rule of law rather than authoritarianism that is the reason for the touted success? A case study of *waqf* management in Singapore, for instance, proved difficult to undertake as key persons who work for government and public organisation are reluctant to speak frankly yet hint at the fact that the Singaporean government effectively usurped private *waqf* property in the name of “better management” and has

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<sup>6</sup> Norbert Oberaurer, “Fantastic Charities”: The Transformation of “Waqf” Practice in Colonial Zanzibar, *Islamic law and Society*, 2008, Vol.15, No. 3 pp 315-370.

engineered a “success” story to justify such usurpation whilst effectively disempowering and lowering the socio-economic welfare of Muslims in Singapore.

However, before we answer these questions, I must first set out for the reader what waqf is and what it entails.

## Waqf

Literally, waqf means detention. It stems from the Arabic root verb *waqafa*, which means 'to stop' or 'to hold'.<sup>7</sup> Under Islamic law, it refers to an institutional arrangement whereby the founder endows his property in favour of particular persons or objects. Such property is perpetually reserved for the stated objective/s and cannot be alienated by inheritance, sale, gift or otherwise. In the organisational structure of a waqf, there are three major parties. The founder is called the waqif, who creates a waqf either by writing or pronouncing his intention to make a waqf of his property in favour of the beneficiary or beneficiaries, called mawquf 'alayh, who, according to some jurists must be capable of owning property. A waqf can also be created for a specific purpose, e.g., promotion of religious education or the welfare of the needy and the poor. The third party is the administrator, called the mutawalli, who administers the waqf according to the conditions laid down by the founder. The qadi (judge) generally performed the duty of supervision over the waqf by keeping an eye on the administrator. This role may be played by specialised government bodies or agencies created to supervise the administration of Awqaf, as is the case in Malaysia. A specialised government department (diwan) to govern public awqaf also existed as early as the Umayyad dynasty (661-750 AD). As we will return to later, the purpose of supervision by the qadi/judge and the specialised government department is not to interfere with or usurp the role of administration of awqaf but simply to supervise, facilitate and ensure the rule of law is upheld. In fact, the supervisory role of the judge/qadhi over the mutawalli/administrator was an essence of the rule of law in operation in this quintessential socio-economic institution.

In early Islamic history, right from the time of Muhammad and when the first waqf was instituted, judges were renowned for their independence. It was the office of the qadhi / judiciary, that ensured and upheld the rule of law in society by keeping in check the Caliph / executive arm. The office of the qadhi also ensured that the Caliph /executive remained accountable to the people and facilitated the removal of such caliph in cases where they had lost the trust and loyalty of the people because it is essentially the judges or the “people of the law” who had the trust of the populace for the very reason that they upheld the law above all else. This was the rule of law in action.

Despite widespread government usurpation of power over awqaf in many Muslim societies, even in countries like India and Singapore that are not essentially Muslim countries, there is nothing in Islam to warrant a role of the government in awqaf beyond supervision and ensuring the stipulations of the founder and the

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<sup>7</sup> Al-Fayyumi, *Al-Misbah al-Munir* (Beirut: Dar al-Ma'arif, 1977); H. Wehr, *A Dictionary of Modern Written Arabic* (New York: Spoken Languages Services, Inc., 1976).

subsequent administration of awqaf are done in an environment where the rule of law is upheld. This would be similar to the common law of England operating to ensure Trusts are properly administered according to the wishes and stipulations of the Trustee. Monzer Kahf writes that the government did not play any role in the founding or administration of awqaf at the time of the prophet Mohammed or the four Caliphs that succeeded him. He opines that the government should have a very limited role in awqaf.<sup>8</sup>

More generally, however, waqf means “charitable endowment” or “charitable trust”. There is in fact credible evidence that the waqf influenced the creation of the charitable trust in England via the Franciscan Friars who interacted with the Middle East through Pilgrimages to the Holy Lands and, more generally, those who went there during the Crusades. In fact, the house of the scholars of Merton, now Merton College, Oxford University, was a simple unincorporated charitable trust, markedly similar to the Islamic waqf.<sup>9</sup> When waqf is used to mean “charitable trust”, it represents its public dimension and when it is used to mean “endowments” which resembles a will or a settlement, it leans towards the private dimension. Waqf is thus a legal institution with both public and private dimensions.<sup>10</sup> It has been described as the most important institution as pertains to the foundation of the Islamic civilisation.<sup>11</sup> For centuries, it pervaded the entire religious and socio-economic lives of Muslims. In fact, Colin Imber states that without public awqaf, Islam and Islamic society could have neither functioned nor survived.<sup>12</sup>

The institution of waqf is not mentioned in the Quran, which is considered the primary source of Shari'a.<sup>13</sup> However, the general verses that emphasise charity are taken to be the legal authority from the Quran for the validity of the waqf.<sup>14</sup> There are traditions of the Prophet and his companions that established the waqf

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<sup>8</sup> See Monzer Kahf, “Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider”, presented at the Harvard Forum on Islamic Finance and Economics, October 1, 1999, Harvard University.

<sup>9</sup> Monica Gaudiosi, “The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College”, *University of Pennsylvania Law Review*, 1988, Vol. 136, 1231.

<sup>10</sup> G.C. Kozlowski, *Muslim Endowments and Society in British India*, (Cambridge, CUP, 1985) pp 1-2.

<sup>11</sup> P.G. Hennigan, *The Birth of a Legal Institution: The Formation of the Waqf in Third Century AH Hanafi Legal Discourse* (Leiden: Brill, 2004) xiii.

<sup>12</sup> C. Imber, *Ebu's - su'ud; The Islamic Legal Tradition* (Edinburgh, EUP, 1997) 141-142.

<sup>13</sup> The derivatives of the word 'waqf' have been used in the Quran in these verses: Al-An'am: 27 & 30; Saba: 31; Al-Saffat 24.

<sup>14</sup> See, e.g., Al-'Imran: 92 and Al-Baqara: 177, 215, 267.

as sadaqa (charity) <sup>15</sup>. Although such traditions provided the basis for waqf law, the detailed law was developed by jurists on the basis of secondary sources of Islamic law such as qiyas (analogy), ijma (consensus), istihsan (juristic preferences), istishab (continuity) and urf (custom)<sup>16</sup> and reflects the socio-political developments of the time.

Generally, perpetuity, irrevocability, unconditionality and inalienability of waqf property are the four fundamental conditions for the validity of a waqf. The majority of jurists regard perpetuity as a mandatory condition for the validity of a waqf and only the Maliki school of thought allows for a temporary waqf.<sup>17</sup>

The vastness of the use and proliferation of the waqf institution is said to be due to the precarious nature of property rights in Islam and Muslim societies<sup>18</sup>. Firstly, the state was the legal owner of most of the land. Secondly, confiscation was a state policy to the extent that historians specifically mentioned the rulers who did not confiscate properties.<sup>19</sup> In these circumstances, the waqf provided a mechanism for the preservation of property for family members and removed the risk of its confiscation by rulers. By making a waqf of his property in favour of his family or some public cause, the founder divested himself of the legal ownership, as the legal ownership of Awqaf, according to majority of the jurists, ultimately resides in God.<sup>20</sup> Thus the substance of the waqf property ceased to be a subject of private property and as the waqf was legally a charitable institution whose rightful owner was God, the rulers could not lay their hands on it without invoking public anger.<sup>21</sup>

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<sup>15</sup> A Hadith also speaks of the Prophet Muhammad directing his Companion (and second successor to the caliphate) to establish a waqf and sets forth clearly many of the conditions of this form of charity. See Andrew White, BREATHING NEW LIFE INTO THE CONTEMPORARY ISLAMIC WAQF: WHAT REFORMS CAN FIGH REGARDING AWQAF ADOPT FROM THE COMMON LAW OF TRUSTS WITHOUT VIOLATING SHARĪ'AH? *Real Property, Probate and Trust Journal*, Vol. 41, No. 3 (Fall 2006), pp. 497-527.

<sup>16</sup> 13 W. Al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (11 vols., Dar al-Fikr, 2004) vol. 10, 7603; Mustafa Ahmad Al-Zarqa, *Ahkam al-Awqaf* (2nd edn., Dar Amar, 2010) 19-20.

<sup>17</sup> Heffening, *Wakf* in THE ENCYCLOPAEDIA OF ISLAM, 1096 (1928). Heffening points out that according to the Malikis the waqf can be revoked by the founder or his legal heirs.

<sup>18</sup> Shatzmiller, Maya. "Islamic Institutions and Property Rights: The Case of the 'Public Good' Waqf." *Journal of the Economic and Social History of the Orient*, vol. 44, no. 1, 2001, pp. 44-74. JSTOR, <http://www.jstor.org/stable/3632558>. Accessed 8 Sept. 2023.

<sup>19</sup> G. Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981) p. 40; B. Johansen, *The Islamic Law on Land and Tax Rent: The Peasant's Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluke and Ottoman Periods* (New York: Croom Helm Ltd., 1988).

<sup>20</sup> The majority of jurists, which includes Shafi'i, Ahmad ibn Hanbal and two disciples of Abu Hanifa, Abu Yusuf and Muhammad al-Shaybanī, hold that a waqf signifies the extinction of the ownership of the founder in the dedicated assets, which are detained in the implied ownership of God and their profits are applied for the benefit of mankind. Ibn al-Humam, *Sharh Fath al-Qadir 'aid al-Hidya* (Abd al-Razzaq Ghalib Mahdi (ed.), 10 vols, Dar al-Kutub al-'Ilmiyya, 2003) vol. 6, 187-191.

<sup>21</sup> M. Gil, "The Earliest Waqf Foundations", *Journal of Near Eastern Studies* 57 (1998) 125, 128.

As has been noted<sup>22</sup>, so important was the waqf to the provision of social services in early Islamic cultures that

[f]or centuries, the Muslim caliphates and states did not have departments or ministries to take care of “public works, roads, bridges, mosques, schools, libraries or hospitals, for the yields of [waqf] endowment properties used to cover those public needs.” As a micro example, Zubaidah, the wife of Caliph Harun al-Rashid, made waqf of all her wealth for the purpose of a road from Baghdad to Makkah.<sup>23</sup>

It is clear that vast portions of the Islamic Civilisation and Muslim societies were financed by individuals who made awqaf for essential public services and for the benefit of the poor, not by the rulers of the day. Philanthropy and civil society, in other words, were the life line of the Islamic Civilisation and Muslim societies. *A pertinent point of enquiry arises as to whether it is this legal sequestering of awqaf from the reach, control and usurpation of the state and its rulers, as explained above, that made it a flourishing institution underpinning and sustaining the Islamic civilisation and its societies for centuries?*

This implies that the rule of law in Muslim societies was generally lacking such that there was no protection for the rights and properties of private citizens. Alternatively, It also strongly indicates that the rules of waqf as they developed was an attempt to strengthen the rule of law in Muslim societies by providing a layer of protection for private citizens’ properties dedicated to public works. Consequently, this created a strong foundation for civil society and catered to the social welfare of the society independent of the benevolence or malevolence of the incumbent ruler/s. In this sense, the rule of law was indeed the element that ensured the flourishing of the waqf institution and thus the socio-economic welfare of Muslim societies.<sup>24</sup> This is evidenced by the fact that many waqfs were established by wealthy women who would have otherwise had no legal avenue or opportunity to establish such charitable endowments. Under Islamic law women as well as men could found awqaf. Given their economic handicap women had a greater need to preserve their assets and it thus became all the more pertinent for women to establish awqaf.<sup>25</sup> Reportedly, from the 15th through to the 18th Century anywhere between 10% to 50% of all awqaf were established by women.<sup>26</sup>

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<sup>22</sup> White, Andrew. “BREATHING NEW LIFE INTO THE CONTEMPORARY ISLAMIC WAQF: WHAT REFORMS CAN FIGHT REGARDING AWQAF ADOPT FROM THE COMMON LAW OF TRUSTS WITHOUT VIOLATING SHARĪ’AH?” *Real Property, Probate and Trust Journal*, vol. 41, no. 3, 2006, pp. 497–527. JSTOR, [www.jstor.org/stable/20785832](http://www.jstor.org/stable/20785832). Accessed 5 Apr. 2021.

<sup>23</sup> AbdulHassan M. Saddeq, “Waqf, Perpetual Charity and Poverty Alleviation”, 29 *Int’l J. Soc. Econ.* 135, 139 (2002).

<sup>24</sup> Monzer Kahf, “Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider” Paper presented at the Harvard Forum on Islamic Finance and Economics, 1st October, 1999, Harvard University, p 8-10.

<sup>25</sup> White, Andrew. “BREATHING NEW LIFE INTO THE CONTEMPORARY ISLAMIC WAQF: WHAT REFORMS CAN FIGHT REGARDING AWQAF ADOPT FROM THE COMMON LAW OF TRUSTS WITHOUT VIOLATING SHARĪ’AH?” *Real Property, Probate and Trust Journal*, vol. 41, no. 3, 2006, pp. 497–527. JSTOR, [www.jstor.org/stable/20785832](http://www.jstor.org/stable/20785832). Accessed 5 Apr. 2021.

<sup>26</sup> Timur Kuran, “The Provision of Public Goods under Islamic Law: Origins, Impact and Limitations of the Waqf System”, 35 *Law & Society Review* p. 841, at 860 (2001).

The fact that the awqaf ultimately belonged to God became all the more important so that the rulers could not lay hands on them or appropriate them as state properties. This element added another important layer of protection for the people in that their social welfare and the essential public services they depended on was not in turn dependent on the incumbent ruler but took a more independent and perpetual form embodied in the waqf thus shielding them from control by the incumbent rulers and from being gripped by the fear that generally ensues from such control.

Mention must be made to the fact that, altruistically, the *raison d'être* of dedicating properties or public services as waqf was the belief that serving the poor and the general welfare of society was serving God. However, the proliferation of waqf also became an effective avenue of asserting or perhaps increasing one's social status, currency and power in society that was not dependent on one's relationship to the rulers or ruling entities. By catering to the socio-economic welfare of the poor, one essentially was catering to one's own moral and social welfare because the trustees of awqaf held an esteemed and respected position in society. Ultimately, creating waqf was a means through which the rich accumulated power, cemented social status and spread their influence through provision of public services people relied upon<sup>27</sup>.

### **Rule of Law in Action?**

In England, before the evolution into a rule of law state, the King/Queen was deemed anointed by God and thus the people had to serve the King/Queen, who made law and were above the law. In Islam, it was the opposite. The rulers were supposed to serve the welfare of the people - or at the very least not harm them. And if the rulers did not fulfil their duties to the people, then they could be ousted and replaced. Those in power were accountable ultimately to God, and to the Ulama (effectively the legislature as they interpreted and made law), as repositories of the knowledge of God. As we have noted, at the height of the Islamic civilisation, it was the Ulama, not the rulers/heads of state, who were the most powerful element of society because they were the repository of the law of God, the keepers of the primary sources of Islam and to some extent, a secondary source of Islamic law.<sup>28</sup> This can be said to have been the rule of law in action. Checks and balances which required accountability to a law higher than the ones set out by the ruler and executive body.

Wael B Hallaq pin points the advent of the nation state as the death knell to the rule of law in Muslim societies. While it is true that the nation state as pertains to Muslim societies generally tend to disregard the rule of law, and the subjection of awqaf to the state machinery saw the rapid decline of waqf as a robust, public

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<sup>27</sup> Rajeswary Brown, *Islamic endowments and the land economy in Singapore: The genesis of an ethical capitalism, 1830–2007*, South East Asia Research, November 2008, Vol. 16, No. 3 (NOVEMBER 2008), pp. 343–403.

<sup>28</sup> See Khaled Abou El Fadl, *Islam and the Challenge of Democracy* (2004) 16.



service and philanthropic institution<sup>29</sup> the advent of the nation state was not what precipitated the decline of the rule of law in Islam; this had already set in long before.

There is evidence to connect the fact that with the fall of the rule of law within most Muslim societies, an institution that is instrumental to civil society and provision of social welfare independent of the state (waqf) would be usurped and otherwise quashed so as to maintain power among the incumbent rulers. This usurpation began in the Ottoman Empire as decay set in and after its downfall, it continued into the era of colonisation<sup>30</sup> and later by the very nation states who resisted colonialism, and gained independence.

Whether it be Yemen<sup>31</sup>, India<sup>32</sup> or Singapore<sup>33</sup>, an analysis of the state involvement and control of Awqaf management indicates a lack of rule of law in those societies through either outright corruption within the government and its institutions pervading society or through an overreaching of the state's bounds by deeming its citizens incapable of managing Awqaf properties properly. The taking over of awqaf properties and their management by the state is an indication that it has over stepped its role as government by taking over the management of a socio-economic institution traditionally managed by the founders of the Awqaf or the person/s they appointed and entrusted such management to. From its inception, and creation by Muhammad, to its hay day as a socio-economic institution to be reckoned with, the waqf was a private creation and the government had no role or involvement in its management.<sup>34</sup> Government involvement came much later<sup>35</sup>, with initial resistance and rejection during the period of the Mamalik, at the time of Al-Zahir bebars in Cairo. Government involvement was finally established in mid 19th Century by the Ottoman Awqaf law, which eventually saw the decline of the waqf institution, as the Ottoman Empire also collapsed due to corruption and the general lack of rule of law. During the first half of the 20th Century, Awqaf laws were issued in almost all Muslim countries, establishing a branch of government called "Ministry of Awqaf" which turned an otherwise independent waqf institution into one that works under the shadow of corrupt and inefficient public sectors.

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<sup>29</sup> See Monzer Kahf, "Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider", Presented at the Harvard Forum on Islamic Finance and Economics, 1 October, 1999, Harvard University.

<sup>30</sup> Norbert Oberauer, "Fantastic Charities": The Transformation of "Waqf" Practice in Colonial Zanzibar, <https://www.jstor.org/stable/40377970>, last accessed 08/09/23.

<sup>31</sup> Ayedh, Echchabi and Ihsan, "Waqf Accountability in Yemen: An Empirical Analysis", Qudus International Journal of Islamic Studies, Volume 6, Issue 2, August 2018.

<sup>32</sup> Aziz and Ali, "A Comparative Study of Waqf Institutions Governance in India and Malaysia", Intellectual Discourse, Special Issue, IIUM Press (2018) 1229-1246.

<sup>33</sup> Mohiddin, Hajjah, Mas, Noorani, Waqf Development in Malaysia and Singapore: A Comparative Study, Durham E-Thesis, 2015, Durham University. Available at <http://etheses.dur.ac.uk/11118/>, last accessed 02/03/2023.

<sup>34</sup> Monzer Kahf, Towards a Revival of Awqaf: A Few Fiqhi Issues to Reconsider, paper presented at the Harvard Forum on Islamic Finance and economics, October 1, 1999, Harvard University, USA.

<sup>35</sup> *ibid*, p 9.

Subsequent to state involvement in waqf, it ceased to be an institution that served the welfare of Muslim societies and the utility of awqaf were usurped to serve the needs of the state and the political rulers of the day.<sup>36</sup> The irony is inescapable: Waqf, an institution that was developed to avoid the usurpation of private property rights by the incumbent rulers/governments has now come full circle such that in almost all Muslim societies, the government seems to be usurping the right to manage, control and use properties that are in effect meant to serve the private interests trustees or the public welfare of the beneficiaries/people independent of the government.

It is my contention that this sharp decline at the hands of state control and supervision is symptomatic of a general lack of rule of law in Muslim societies that is reflected in the corruption and mismanagement of awqaf properties. The problem is not the advent of nation states but rather the failure of Muslim nations to incorporate or otherwise ensure the robust operation of the rule of law in their societies. This assessment is not a critique of Muslim societies per se but rather of what ensues from a lack of rule of law. Independent of Muslim nations and their governments, the lack of rule of law affects the socio-economic welfare of society by compromising and undermining the institution of waqf and its powerful civil society engendering effects. This is demonstrated by the historical case study of British colonial policies towards waqf in Zanzibar<sup>37</sup> and Singapore's current strong handed control over waqf properties.

The mismanagement of awqaf has vast negative consequences on the socio-economic development of Muslim societies by depriving Muslims and the society as a whole of the vast benefits awqaf traditionally contributed. Education, health, roads and public works, Art and recreation centres are all socio-economic aspects of development that awqaf played a major role in contributing towards. Corruption and mismanagement occurs either at the hands of the privately appointed administrators/mutawallis of the waqf property or at the hands of government agencies directly or indirectly responsible for the management of awqaf. Both instances provide direct evidence of the role the rule of law has on the socio-economic development of Muslim societies, in a negative way. A mature society based on the rule of law would create and have a functioning system that is well regulated and allows for the proper management of awqaf just as good companies, schools and universities are managed.

If Muslim societies enjoyed better states of rule of law in their countries and awqaf operated in environments that facilitated their thriving, through proper management without government control and restriction, Muslim societies would in turn enjoy higher levels of socio-economic development and would be less dependent on Aid, whether it be directly from their governments or international governmental bodies.

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<sup>36</sup> Ibid.

<sup>37</sup> Norbert Oberauer, "Fantastic Charities": The Transformation of "Waqf" Practice in Colonial Zanzibar, <https://www.jstor.org/stable/40377970>, last accessed 08/09/23.

