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ZAKAT: DRAWING INSIGHTS FOR LEGAL THEORY AND ECONOMIC POLICY FROM ISLAMIC JURISPRUDENCE

Russell Powell^{*}

I. INTRODUCTION

The rapid development of complex income taxation and welfare systems in the 20th century might give the impression that progressive wealth redistribution systems are uniquely modern. In fact, religious systems that provided similar mechanisms for addressing economic injustice and poverty alleviation are centuries old. Judaism and Christianity adopted the tithe as a ten percent marginal tax on income, and both traditions developed pathways for redirecting revenue to the poor. For some people, tithes and offerings to charitable organizations for the poor remain religious obligations. Religiously motivated charitable giving is demonstrably significant in the funding of charities meeting the needs of the poor in the United States.¹ A tradition similar to the tithe also developed in Islamic practice and jurisprudence. Zakat (sometimes transliterated as *zakah* in English) is the obligation of almsgiving

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^{*} Editors Note: All translations of source documents were performed exclusively by the Author and the *Pittsburgh Tax Review* does not warrant the accuracy, reliability, or timeliness of any information translated by the Author.

1. Arthur C. Brooks, *Religious Faith and Charitable Giving*, POL'Y REV., Oct. & Nov. 2003, at 39, 39, 43, 49:

[R]eligious people are 33 percent of the population but make 52 percent of donations and 45 percent of times volunteered. Secular people are 26 percent of the population but contribute 13 percent of the dollars and 17 percent of the times volunteered [M]uch charitable activity is harmonious with social advocacy and functions in partnership *with* government.

Id.

within Islam.² It is the Third Pillar of Islam and is a requirement for all believers.³

In the early development of the Islamic community, zakat was collected as a tax by the state, and the funds were distributed to defined needy groups.⁴ Unlike some earlier vehicles for wealth redistribution (such as the Year of Jubilee in the Jewish Torah), this proto-tax and welfare system was not merely aspirational; it was legally enforced using the power of the state.⁵ Two innovations make zakat relevant for modern legal scholars. The first innovation was a progressive element in the calculation. A base amount of wealth and income was exempt from taxation (*nisab*).⁶ This amount was presumed to meet basic living expenses.⁷ The second innovation was the taxation of the most common form of income in a largely agrarian society (crops and livestock) along with a tax on gross wealth which was not actively invested (cash, precious metals, etc.).⁸ Muslim communities mobilized vast zakat resources to meet the needs of the poor, complemented by the growth of *awqaf* (the plural form of *waqf*, a form of trust or endowment).⁹

Although many insights related to zakat will only have application within predominantly Muslim jurisdictions, the traditional jurisprudence and the

2. ENCYCLOPAEDIA OF ISLAM (C.E. Bosworth ed., 2004) ("The obligatory payment by Muslims of a determinate portion of specified categories of their lawful property for the benefit of the poor and other enumerated classes or, as generally in Quranic usage, the portion of property so paid.").

3. JOHN L. ESPOSITO, ISLAM: THE STRAIGHT PATH 92 (1988) ("This is not regarded as charity, since it is not really voluntary but instead is owed, by those who have received their wealth as a trust from God's bounty, to the poor.").

4. I MARSHALL G.S. HODGSON, THE VENTURE OF ISLAM: CONSCIENCE AND HISTORY IN A WORLD CIVILIZATION: THE CLASSICAL AGE OF ISLAM 97, 98 (1985).

5. *Id.* at 98, 287.

6. ENCYCLOPAEDIA OF ISLAM, *supra* note 2, at 411:

Zakat is due on property only if a minimum quantity is held, e.g. five camels. The zakat payable increases with the amount of property held, and where, as in the case of livestock, such increases in the property subject to zakat are not pro-rata, but set at discrete increments, each of these increments represents a further *nisab*, with eleven such *nusub* [pl. of *nisab*] in the most complex case, that of camels. The amount of property below the first *nisab* and between each subsequent *nisab* is termed *waks/wakas*. It is generally held that no zakat is due on the *waks* between the *nusub* Thus the one sheep or goat due on nine camels (the second *nisab* being ten) is in fact due on only five, the four additional camels being *waks*, and should four of the nine perish after zakat is due, there will be no proportionate reduction in the amount of zakat to be paid.

Id. (citations omitted).

7. ECONOMICS OF ZAKAH: A BOOK OF READINGS 20 (Monzer Kahf, ed., 1997) ("The amount of *nisab* must be over and above what is required to satisfy basic needs and to pay immediately due debts.").

8. *Id.* at 19–20.

9. Timur Kuran, *The Provision of Public Goods Under Islamic Law: Origins, Impact, and Limitations of the Waqf System*, 35 LAW & SOC'Y REV. 841, 845–46 (2001).

history of zakat systems has implications for broader legal theory, especially with regard to taxation and benefits. In particular, zakat provides an argument for combining a wealth tax with a modest income tax, made progressive by exempting amounts needed for basic living. It also supports the theoretical tax and property argument elaborated by Murphy and Nagel that property rights are in post-tax rather than pre-tax income.¹⁰

A number of contemporary Islamic scholars reject the identification of zakat as a form of tax and welfare.¹¹ They argue that the identification with secular legal systems robs zakat of its religious and moral power.¹² In most contexts, a direct comparison between contemporary tax and welfare regimes is inapt and unnecessary. When zakat is legally enforced by statute, however, it would seem to be an appropriate subject for analysis as a system of taxation and welfare law.

Recognizing the complexities related to religious context, this paper will consider the implications of legally mandatory zakat as a form of taxation and welfare. Section II begins with a thorough evaluation and synthesis of traditional Islamic jurisprudence related to zakat. Section III will identify three broad approaches to zakat adopted by modern Muslim nations, with particular emphasis on ways that zakat is institutionalized legally. Section IV will present empirical studies and analysis of the correlation of the three approaches to zakat described in Section III with (1) individual income and (2) wealth stratification. Section V will make observations and policy recommendations related to zakat in its Islamic context based on the qualitative analysis in Section III and the empirical findings in Section IV. Section VI will consider the implications of zakat jurisprudence for law and economic theory outside of the Islamic context.

10. See generally LIAM MURPHY & THOMAS NAGEL, *THE MYTH OF OWNERSHIP: TAXES AND JUSTICE* (2002) (Murphy and Nagel's core claim is that pre-tax income cannot be a moral basis for the measurement of the fairness of tax policy. Their claim is that the ultimate social justice of the entire economic system is the only proper end, of which taxation is a part. Thus taxation and the equity thereof can only be measured against the resulting end.).

11. See, e.g., SJIDUR RAHMAN SIDDIQUI, *STUDIES IN ISLAMIC JURISPRUDENCE: ZAKAT AND TAX* 119 (2006) ("There is no resemblance between zakat and tax . . .").

12. *Id.* at 81 ("Zakat is an 'Ibadah [act of worship] like Salat (five time obligatory prayers).").

II. CLASSICAL JURISPRUDENCE OF ZAKAT

Zakat may be translated literally as “purity” or, in its verbal form, “to be pure.”¹³ In its Quranic context, zakat is typically translated as “alms,” which Webster’s defines as “[a]nything given gratuitously to relieve the poor, as money, food, or clothing; a gift of charity.”¹⁴ Traditionally, alms are given out of compassion, with the acknowledgment of economic inequality, and the desire to fulfill a religious duty.¹⁵ Alms in the Christian and Jewish traditions might include both the tithe (a required contribution) and voluntary offerings.¹⁶ The Arabic word “*sadaqa*” is used in the Quran as a synonym for zakat; however, it often refers to the broader concept of charitable offerings.¹⁷ Although some overlap will be noted, for clarification purposes, zakat will generally refer to alms as a pious requirement and *sadaqa* will refer to optional voluntary offerings, consistent with typical Quranic and jurisprudential understandings. This section will examine the origin and apparent purposes of zakat, with particular attention given to the Quran, *Sunna* (tradition of the Mohammad), and classical Islamic jurisprudence. The latter part of this section will consider later movements.

A. *Wealth Redistribution as Pious Duty*

Zakat is the Third Pillar of Islam and a requirement for Muslims.¹⁸ It is rooted in a particular anthropology that understands human beings as stewards of creation. All property ultimately belongs to God, but human beings are charged with managing the earth and their individual property as trustees.¹⁹

13. Suliman Bashear, *On the Origins and Development of the Meaning of Zakat in Early Islam*, 40 ARABICA 84, 87–94 (1993).

14. WEBSTER’S REVISED UNABRIDGED DICTIONARY 42 (1913 ed.).

15. See ESPOSITO, *supra* note 3, at 92.

16. See Donald R. Price & Mark C. Rahdert, *Distributing the First Fruits: Statutory and Constitutional Implications of Tithing in Bankruptcy*, 26 U.C. DAVIS L. REV. 853, 853–54, 854 n.2 (1993) (“[I]t was the obligation of the farmer to give the ‘first fruits’ of the harvest, the obligation of the herder to give a portion of the flock and so on [T]he obligation once thought of as a portion of the harvest is now regarded in terms of a portion of income. From Judeo-Christian Biblical sources, where the tradition dates back to the time of Jacob, we know of this belief as an obligation to ‘tithe’.”).

17. ESPOSITO, *supra* note 3, at 34.

18. See *id.* at 90–92. The other Pillars are confession of faith (*shahada*), prayer (*salah*), fasting during Ramadan (*sawm*), and pilgrimage (*hajj*). *Id.*

19. See THE QURAN, *Surah* 57:7.

Although ownership gives the owner rights to use, develop, and dispose of property, the poor have some sort of claim on the property of the wealthy.²⁰ Hoarding is specifically condemned because it keeps productive assets from being invested and grown in the community.²¹ Therefore, ownership of property carries with it attendant duties to use it wisely and productively both for the benefit of the owner and the rest of the community.²² Zakat represents a concrete manifestation of the obligation to keep property in productive uses and to distribute a portion to others for the common good.²³ The mechanics of this system are found in the Quran and are elaborated in the *Sunna* and Islamic legal treatises.

B. Primary Sources for Zakat Rules

The primary sources for the jurisprudence of zakat are the Quran and the traditions of the Prophet or *Sunna* found in collections of *hadith* (sayings attributed to Mohammad).²⁴ Both sources have a variety of references to zakat and a broader, though related, notion of *sadaqa*.²⁵ The sources are then interpreted by the classical jurists, particularly al-Ghazali.²⁶ There is some

20. See *id.* at Surah 70:24–25. This notion seems to resemble the notion of the “preferential option of the poor” found in Catholic social thought. See Russell Powell, *Theology in Public Reason and Legal Discourse: A Case for the Preferential Option for the Poor*, 15 WASH. & LEE J. CIV. RTS. & SOC. JUST. 327 (2009).

21. See THE QURAN, Surah 9:34–35. This seems consistent with the teaching of Jesus regarding savings and investment in Christianity. See *Matthew* 25:14–30. (The parable tells of a master who was leaving his home to travel, and before going gave his three servants different amounts of money. On returning from his travels, the master asked his servants for an account of the money given to them. The first servant reported that he was given five talents, and he had made five talents more. The master praised the servant as being good and faithful, and gave him more responsibility because of his faithfulness. The second servant said that he had received two talents, and he had made two talents more. The master praised this servant in the same way, giving him more responsibility. The last servant who had received one talent reported that knowing his master was a hard man, he buried his talent in the ground for safekeeping, and therefore returned the original amount to his master. The master called him a wicked and lazy servant, saying that he should have placed the money in the bank to generate interest. The master commanded that the one talent be taken away from that servant, and given to the servant with ten talents.)

22. See YUSUF AL-QARDAWI, *FIQH AZ-ZAKAT: A COMPARATIVE STUDY* 79–104 (1999).

23. See ABDUL AZIZ BIN MUHAMMAD, *ZAKAT AND RURAL DEVELOPMENT IN MALAYSIA* 79–101 (1993); see *id.* at 8–30 (on zakat and the ethics of redistribution of income and wealth in Islam).

24. NOEL J. COULSON, *A HISTORY OF ISLAMIC LAW* 55–61 (1964).

25. See, e.g., Bashear, *supra* note 13.

26. See discussion *infra* Part II.B.3.c.

diversity among the four Sunni schools of legal thought that will be noted.²⁷ *Shi'i* jurisprudence developed unique understandings for zakat, linking it to the Imamate and the clerical establishment.²⁸ Contemporary legal scholars understand this body of thought in ways that range from the literal to the revisionist.

1. *Quranic Bases*

As a pious duty, zakat is often paired with prayer (*salah*) in the Quran.²⁹ The Quran contains 32 references to zakat.³⁰ A majority of these references are attributed to the Medinan period,³¹ a period that represented Muhammad's ministry after the flight of the Hijrah and tended to address more of the practical concerns of organizing a burgeoning community.³² Although zakat is identified with prayer and piety throughout the Quran, there is a shift from voluntary to compulsory participation in the Medinan period.³³ This move is consistent with the needs of Muslim Medina as a growing spiritual, political, and economic community.³⁴ The revelations from Mecca established general principles of stewardship and charity, and the Medinan passages transformed these principles into rules that applied within the Muslim polity.³⁵

27. The Sunni schools of jurisprudence include the Hanafi, the Maliki, the Shafi, and the Hanbali. The Imami *Shi'i* school of jurisprudence is the Jafari. BERNARD G. WEISS, *THE SPIRIT OF ISLAMIC LAW* 11–14 (1998).

28. See generally Norman Calder, *Zakat in Imami Shi'i Jurisprudence, from the Tenth to the Sixteenth Century A.D.*, 44 *BULL. OF THE SCH. OF ORIENTAL & AFR. STUD.* 468 (1981). The Imamate is the religio-political structure of governance within Shi'I Islam based on descent from the family of Muhammad, and Ali in particular. It is distinguished from the institution of the Caliphate within Sunni Islam. *Id.*

29. See, e.g., THE QURAN, *Surah* 2:43, 83; 4:77.

30. See THE QURAN, *Surah* 2:43, 83, 110, 177, 277; 4:77, 162; 5:12, 55; 7:156; 9:5, 11, 18, 71; 18:81; 19:13, 31, 55; 21:73; 22:41, 78; 23:4; 24:37, 56; 27:3; 31:4; 33:33; 41:7; 58:13; 73:20; 98:5.

31. See C. SNOUCK HURGRONJE, *La Zakat*, in *OEUVRES CHOISIES—SELECTED WORKS* 150, 150 (G.H. Bousquet trans., 1957); see also THE QURAN, *Surah* 2:43, 83, 110, 177, 277; 4:77, 162; 5:12, 55; 9:5, 11, 18, 71; 22:41, 78; 24:37, 56; 33:33; 58:13; 98:5.

32. See ABDULLAH AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW* (1996); see also THEODOR NOLDEKE, *GESCHICHTE DES QORANS* (2d ed. 1981).

33. See THE QURAN, *Surah* 30:39 (an example of encouraged zakat); see also *id.* at 2:110 (an example of mandatory zakat).

34. See HODGSON, *supra* note 4, at 181.

35. See 4 ABDALHAH AL-SHEIKH, *OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD* 366–67 (2001).

As previously mentioned, the term *sadaqa*, which literally refers to truth and righteousness, is also translated as offering or alms.³⁶ It is used more broadly in the Medinan passages to refer to all charitable offerings (including zakat).³⁷ In the Quranic context, it is presumed to include mandatory alms (zakat).

The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and [for] the wayfarer; a duty imposed by Allah. Allah is Knower, Wise.³⁸

This passage is important in jurisprudence as it identifies eight proper beneficiaries of zakat, even though it uses the word *sadaqa* for offerings and alms. The first group of recipients is the poor (*fuqara'* in Arabic), those who are in material need.³⁹ The second group of recipients, the needy (*masakin* in Arabic), are similar.⁴⁰ Although some scholars have treated these two groups as synonymous, a more traditional view of the list in this passage is that it describes an order of priority, so that the poor take priority over the needy.⁴¹ Some jurists came to a different conclusion and found that the needy (*masakin*) have priority over the poor.⁴²

The third category of recipients is “those who collect them.” This has been interpreted as an allocation to cover the cost of collecting and distributing alms.⁴³ Historically, when zakat was collected by Muslim states as a tax, this category was used to justify state administrative costs.⁴⁴

The fourth category of recipients is “those whose hearts are to be reconciled.” It is not clear whether the hearts of this group are fully reconciled

36. See ENCYCLOPAEDIA OF ISLAM, *supra* note 2, at article on “Sadaqa” (“has among its meanings that of voluntary alms, often referred to in Islamic literature as . . . ‘alms of spontaneity,’ or . . . ‘alms of supererogation,’ in distinction to obligatory alms, frequently also termed sadaqa, but more commonly known as zakat.”).

37. WILLIAM MONTGOMERY WATT, MUHAMMAD AT MEDINA 372 (2d ed. 1981).

38. THE QURAN, *Surah* 9:60.

39. HANNA E. KASSIS, A CONCORDANCE OF THE QUR’AN 431 (1983).

40. See ENCYCLOPAEDIA OF ISLAM, *supra* note 2, at article on “Miskin.”

41. *Id.*

42. See *id.* (The normative interpretation of the Maliki school of jurisprudence is that the needy have priority over the poor.)

43. See KASSIS, *supra* note 39, at 266.

44. See discussion *infra* Part II.B.2 (discussing zakat under Abu Bakr and modern states that collect zakat as a mandatory tax).

or in the process of reconciliation.⁴⁵ Thus, one interpretation would include only members of the Muslim community (possibly recent converts).⁴⁶ Another would include those who are sympathetic to Islam, but are not yet believers.⁴⁷ This second interpretation has been used to justify financial support for missionary activities and for potential converts.⁴⁸

The fifth and sixth rightful recipients are captives (*al-riqab*) and debtors (*al-gharimin*). The freeing of captives likely refers to ransoming prisoners captured in war or the purchasing of a slave's freedom.⁴⁹ Although debtors may include those who are enslaved, it may include others who are burdened by debt.⁵⁰

The seventh category of zakat recipients is "for the cause of Allah." Historically, this was used to support those who served as warriors for the defense of Islam.⁵¹ However, in the absence of a limiting hermeneutic in the *fiqh* (jurisprudence) literature, it could be used for a wide range of activities that support this broad purpose.

The final category of recipients is the "wayfarers." This seems to justify expenditure of zakat monies to support travelers.⁵² It may even apply to wealthy travelers if they do not have access to their wealth.⁵³

2. Clarification in the Sunna

The *Sunna* of the Prophet (as recorded in *hadith* collections) provides context for interpreting the Quran and supplies a large number of legal standards.⁵⁴ All of the major *hadith* collections contain reference to zakat.⁵⁵

45. See KASSIS, *supra* note 39, at 138.

46. See THE QURAN, *Surah* 9:60 (Yusef Ali trans.) ("those whose hearts have been recently reconciled").

47. See *id.* (Pickthall trans.) ("here reconciliation is not completed").

48. See, e.g., discussion of zakat in Libya *infra* Section III.C.3.

49. See Bernard Freamon, *Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence*, 11 HARV. HUM. RTS. J. 1, 43 (1998).

50. ABU HAMID AL-GHAZALI, MYSTERIES OF ZAKAT 65 (Nabih Amin Faris, trans., 1974) (Al-Ghazali limits the amount that a debtor may receive to the extent of indebtedness in a separate discussion from manumission payments.).

51. See, e.g., *id.* at 62.

52. NICOLAS PRODRONON AGHNIDES, MOHAMMEDAN THEORIES OF FINANCE 527 (1916).

53. See, e.g., AL-GHAZALI, *supra* note 50, at 63.

54. WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL

Sahih al-Bukhari and Sahih Muslim's collections are the most authoritative within most Sunni jurisprudence, but Abu Dawud, al-Tirmidhi, Ibn Majah and al-Nasa'i all contain sayings related to zakat.⁵⁶ The works of the four founding Sunni jurists also contain important *Sunna* references, but they will be addressed more specifically in the section on classical *fiqh*. The main issues addressed by the *Sunna* are the spirituality of zakat, proper distribution, legitimate recipients, the relationship between the rich and the poor, zakat as alms, and prohibitions against begging.⁵⁷ This analysis will focus on sayings related to the calculation, collection, and distribution of zakat. Although a number of the *hadith* cited are found in multiple sources, this section will reference Sahih al-Bukhari unless a particular reference is not found in that collection.

The first element critical to calculating zakat is *nisab*, an amount exempt from calculation and meant to represent basic living costs.⁵⁸ To the extent that the law of zakat exempts basic living costs, it has at least one progressive characteristic as a tax. In particular, Sahih al-Bukhari describes the *nisab* as property worth less than five *uqiyas* of silver (about 143.3 grams), five camels, or less than five *wasqs* (about 180 kg) of food.⁵⁹

There are a number of rates for zakat. Crops from irrigated land are subject to a 5% tax.⁶⁰ Crops that do not require irrigation are taxed at 10%.⁶¹ Found buried treasure,⁶² ambergris, and pearls are subject to a 20% zakat.⁶³ These categories seem to represent something like income in an agricultural society reliant on cultivation. The main default rate for all other taxable goods is 2.5% of the value.⁶⁴ For short-lived goods like livestock, this may function as a form of income tax as it does for crops. For durable goods, this functioned as a kind of wealth tax designed to encourage active business investment in production and trade. In *Hadith* 1463 and 1464, al-Bukhari exempts slaves and

AL-FIQH 10–15 (1997) (a clear account of the origin and early development of Sunna).

55. YUSUF AL QARADAWI, 1 FIQH AL ZAKAH 69–75 (1999).

56. *Id.*

57. *Id.*

58. See, e.g., 2 SAHIH AL BUKHARI, THE TRANSLATION OF THE MEANINGS OF SAHIH AL BUKHARI, 275–338 (Dr. Muhamad Muhsin Khan trans., 1997).

59. *Id.* at 876–1772.

60. *Id.* at 1483.

61. *Id.*

62. *Id.* at 336.

63. *Id.* at 335.

64. *Id.* at 1454.

horses.⁶⁵ The exemption of slaves would be consistent with the policy of encouraging investment in production. However, the exemption of horses seems inconsistent with the general application of zakat to livestock.⁶⁶ This *hadith* was later contradicted by Abu Hanifa, the founder of Hanafi jurisprudence, who analogized that horses ought to be treated as other livestock.⁶⁷

With regard to zakat collections, the *Sunna* does document the authorization of intermediaries within the early Muslim community.⁶⁸ The most important *hadith* authorizing the community enforcement of zakat payment is traced to Abu Bakr, the first Caliph, who justified the use of force in collecting zakat from tribes refusing to pay.⁶⁹ Abu Bakr identifies zakat directly with prayer, implying that one who refuses to pay zakat is not truly Muslim: "I will fight those who differentiate between prayer and zakat."⁷⁰ So, from the period of the first caliphate, there is precedent for the mandatory payment of zakat to the central government, which then distributed it.

3. Classical Fiqh

*Ijtihad*⁷¹ is the art of interpretation within Islamic jurisprudence ("*Ilm al-Usul al-Fiqh*"),⁷² the process of seeking to form correct legal opinions through reasoning from the Quran and the *Sunna*. Whenever there was no clear text on a particular issue, jurists used methods of analogy and consensus and, depending upon the school of thought, custom, public policy analysis, necessity, and judicial discretion to reach a decision consistent with Quranic principles.⁷³

65. *Id.* at 1463–64.

66. *Id.* at 1454 (requires the normal payment of zakat on livestock (1/40)).

67. See YASIN DUTTON, *THE ORIGINS OF ISLAMIC LAW: THE QU'RAN, THE MUWATTA' AND MADINAN AMAL* 146–48 (1999) (discussion of Abu Hanifa's opinion on paying zakat on horses).

68. See, e.g., AL BUKHARI, *supra* note 58, at 1496.

69. See AL-QADAWI, *supra* note 22, at 31–33 (Abu bakr on enforcing zakat).

70. AL BUKHARI, *supra* note 58, at 1400.

71. AN-NA'IM, *supra* note 32, at 27.

72. Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origins and Elements*, 7 J. OF ISLAMIC L. & CULTURE 27, 36 (2002).

73. See HALLAQ, *supra* note 54, at 75–95.

a. Hanafi

Hanafi jurisprudence, like all the other schools of Islamic *fiqh*, relies primarily on the text of the Quran. The *Sunna* of the Prophet (as recorded in *hadith*) provides context for Quranic interpretation and supplies a large number of legal standards. By the eleventh century, Hanafi jurists had developed an extensive corpus of legal treatises that analogized from the text of the Quran and *hadith*.⁷⁴ Their use of interpretive techniques in the classical period was broad and expressly allowed for judicial discretion.⁷⁵ As mentioned earlier, horses are subject to zakat under certain circumstances (most clearly in Hanafi jurisprudence by analogy), even though they are specifically exempted in a Quranic reference.⁷⁶

While they expanded the class of wealth subject to zakat, Hanafi jurists narrowed the class of those who might receive zakat.⁷⁷ In particular, the class of “those whose hearts are to be reconciled” did not apply once Islam was firmly established.⁷⁸ The significance of these positions is a willingness to construe the intent of zakat broadly, without being bound by textual (particularly *hadith*) standards that are incongruous with social and economic circumstances. As a result, perhaps more than any of the other Sunni schools, the Hanafi tradition is most amenable to a modern reimagining consistent with the spiritual and redistributive purposes of zakat.

Hanafi *fiqh* identifies three categories of zakatable property: livestock, crops, and gold/silver/trade goods.⁷⁹ Although government authorities may collect zakat, they are limited to forcibly collecting “visible” property (generally livestock and crops).⁸⁰ Zakat beneficiaries include the categories listed in Surah 9:60, with an emphasis on the poor, needy, wayfarers, and debtors within the Muslim community.⁸¹ The Hanafi scholar Abu Yusuf

74. See generally FAZLUR RAHMAN, *ISLAM AND MODERNITY: TRANSFORMATION OF AN INTELLECTUAL TRADITION* (1982) (Rahman describes his “double movement” theory of Qur’anic exegesis in relationship to traditional *fiqh*).

75. See the discussion of *istihsan* in HALLAQ, *supra* note 54, at 107–11, 130–32.

76. See DUTTON, *supra* note 67.

77. *Id.*; see, e.g., AGHNIDES, *supra* note 52, at 458 (Abu Yusuf excluded non-Muslims as appropriate recipients of zakat.).

78. See generally QARADAWI, *supra* note 55.

79. *Id.*

80. See AGHNIDES, *supra* note 52, at 527 (discussing differences in the treatment of visible property).

81. *Id.*

specifically excludes non-Muslims as possible zakat beneficiaries.⁸² Donors may not give in ways that benefit themselves.⁸³ As a transfer of ownership, proceeds must go to proper beneficiaries rather than to public purposes such as the building of mosques.⁸⁴ Abu Yusuf also recommended the appointment of a reliable man to oversee all offerings (including zakat).⁸⁵ Given this concern for the effective administration of zakat, collectors of zakat receive priority in the receipt of their share.⁸⁶

b. Maliki

The Maliki School of jurisprudence places a distinct emphasis on traditions and rules attributed to the early Muslim community in Medina.⁸⁷ The treatise, *Al-Muwatta*, by Malik Ibn Anas contains a significant treatment of zakat.⁸⁸ Unlike the other Sunni schools, the Malikis allowed zakat to be imposed upon non-Muslims.⁸⁹ Along with the Shafis, the Malikis view the beneficiaries of zakat as having an actual *in rem* property right.⁹⁰ Unlike Hanafi jurisprudence, Maliki jurisprudence considers all zakatable property to be subject to government collection (with no regard for whether property is “visible” or not).⁹¹ Authorities also have broader discretionary power to distribute zakat proceeds appropriately.⁹² Combined, these elements provide a strong basis for state collection of zakat for support for the poor.

82. See generally ABU YUSUF, KITAB AL-KHARAJ (Abid Ahmad Ali trans., 1979); see also 3 A. BEN SHEMESH, TAXATION IN ISLAM: ABU YUSUF’S KITAB AL-KHARAJ 35–143 (1969).

83. AGHNIDES, *supra* note 52, at 458.

84. *Id.* at 456–57.

85. NORMAN CALDER, STUDIES OF EARLY MUSLIM JURISPRUDENCE 154 (1993).

86. *Id.*

87. See COULSON, *supra* note 24, at 43–47 (describing the jurisprudence of Imam Malik IBN Anas).

88. See IMAM MALIK IBN ANAS, AL-MUWATTA OF IMAM MALIK IBN ANAS: THE FIRST FORMULATION OF ISLAMIC LAW 93–110 (Aisha Abdurrahman Bewley trans., 2001).

89. *Id.* at 109 (“Umar ibn al-Khattab used to take a twentieth from the cereals and olive oil of the Nabatean Christians, intending by that to increase the supply to Madina. He would take a tenth from pulses.”).

90. See generally Powell, *supra* note 20.

91. See AGHNIDES, *supra* note 52, at 527.

92. See IMAM MALIK IBN ANAS, *supra* note 88, at 103 (“The position with us concerning the dividing up zakat is that it is up to the individual judgment of the man in charge.”).

c. Shafi

In his book, *Al-Risalah*, Muhammad ibn Idris al-Shafi'i, who studied in Medina under Malik ibn Anas,⁹³ was the first jurist to systematically record the general rules of interpretation, which consider analogy and consensus to be explicitly secondary sources of jurisprudence, subordinate to the Quran and *Sunna*.⁹⁴ The Shafis do not view debt as any sort of adjustment or limitation on the amount of zakat owed.⁹⁵ Although the Shafis adopt the Hanafi distinction between "visible" and "non-visible" goods, nearly all goods are considered "non-visible," thus removing them from the collection authority of the government.⁹⁶

Although al-Ghazali wrote within the Shafi *fiqh* tradition, his book, *The Mysteries of Almsgiving*, is an important source with broad influence beyond the realm of sectarian legal scholarship.⁹⁷ The first section of the book addresses the calculation of zakat.⁹⁸ The categories of possessions subject to zakat are livestock, gold/silver, trade goods, buried treasure or mineral wealth, and crops.⁹⁹ As described earlier, some of these categories have fixed rates of zakat.¹⁰⁰ However, the rate applied to livestock, trade goods, and crops is more complicated. Under the presumption of an annual planting season, zakat is annually owed on crops when mature and ready for market.¹⁰¹ Except for buried treasure, a certain base level of ownership (*nisab*) is exempted from zakat.¹⁰² In general, zakat is to be paid in kind.¹⁰³

93. HODGSON, *supra* note 4, at 327.

94. See COULSON, *supra* note 24, at 53–61 (describing the role of al-Shafi'i as "the father of Muslim jurisprudence").

95. See, e.g., ABU HAMID AL-GHAZALI, *THE MYSTERIES OF ALMSGIVING* 6 (Nabih Amin Faris trans., 1974) ("[M]ortgaged livestock are liable to the zakat because the owner himself has been responsible for the sequestration."). "It is also due on the debt of a solvent person capable of paying his debt." *Id.* at 11.

96. See AGHNIDES, *supra* note 52, at 526–27.

97. AL-GHAZALI, *supra* note 95.

98. *Id.* at 5–16.

99. *Id.* at 5. Note that Al-Ghazali also considers food used to break the Ramadan fast as a category of zakat, but this form of zakat is separate from the annual zakat on possessions, which is the central concern of this article.

100. *Id.* at 11 (As in all of the other schools of jurisprudence, the Shafi'i School fixes the rate of zakat on gold and silver at 2.5%).

101. *Id.* at 10–11 ("The zakat is due at the time when the fruits become ripe and the grains harden; it is actually collected after the crop has been dried and sifted.").

102. *Id.* at 13.

103. *Id.* at 19 ("That no substitute based on the value of the zakat be offered in its stead . . . [T]hus silver will not take the place of gold, nor gold the place of silver, even though the substitute may exceed that

The second section of *The Mysteries of Almsgiving* identifies three important standards for paying zakat. First, payment should be made promptly.¹⁰⁴ This is particularly true for crops that could decompose.¹⁰⁵ Second, zakat should be paid where the owner lives because the poor have a claim to wealth produced in their community.¹⁰⁶ Third, zakat funds are to be divided equally among appropriate groups of beneficiaries.¹⁰⁷ Beneficiaries include the eight found in *Surah* 9:60; however, the classification of “the cause of Allah” is explicitly replaced with a reference to warriors.¹⁰⁸ Consistent with the redistributive values reflected in zakat, al-Ghazali emphasizes the categories of the poor and needy, whom he defines as those unable to make any living and those who do not earn enough to cover their living costs, respectively.¹⁰⁹ However, Shafi jurisprudence generally requires equal distribution to the applicable beneficiary categories in order to avoid human discretion in the allocation process. Significantly, both the acts of giving and receiving zakat are considered in a spiritual context, which is consistent with the understanding that such acts are related to worship, like prayer.¹¹⁰

d. Hanbali

Ahmad ibn Hanbal was born in Rabī in 780, and was influenced by the work of Imam Shafi’ī (whom Hanbal is reputed to have met once) as well as prominent Maliki scholars.¹¹¹ His jurisprudence emphasized a literal reading of the Quran and *hadith*, limiting the use of analogy and other interpretive sources which tended to increase judicial discretion and innovation.¹¹² According to the Hanbalis, zakat liability does not apply to debt owed on gold, silver, or trade goods in order to avoid the situation in which a person might otherwise owe zakat even when his actual net worth does not exceed the *nisab*.¹¹³

for which it is substituted.”).

104. *Id.* at 18–19.

105. *Id.*

106. *Id.* at 23.

107. *Id.* at 23–25.

108. *Id.* at 23–24.

109. *Id.* at 56–58.

110. *See, e.g., id.* at 25–27 (with regard to giving zakat), 64–73 (with regard to receiving zakat).

111. For an article on Ahmad ibn Hanbal, see *ENCYCLOPAEDIA OF ISLAM*, *supra* note 2, at 272.

112. *See* COULSON, *supra* note 24, at 71–73.

113. *See* *ENCYCLOPAEDIA OF ISLAM*, *supra* note 2, at 415 (discussing “Debts” in section ix).

5. Historical Disjunction

One challenge to the continued development of *fiqh* was the notion of the “closing of the gates of *ijtihad*.” There is a shift in the nature of legal discourse starting in the tenth and eleventh centuries from reliance on judicial interpretation (at least in the form of innovation) to a reliance on prior precedent and “imitation” (*taqlid*).¹¹⁴ As a theoretical matter, the extensive body of manuals and opinions collected by this time made the continued development of legal doctrine seem unnecessary. Although legal discourse did not disappear, it was contextualized differently, so that calls for a return to the overt exercise of *ijtihad* remain controversial for some scholars.¹¹⁵

6. Later Juridical Movements

The “modernist” approach is perhaps best represented by Sayyid Ahmed Khan, a major Muslim thinker and reformer in nineteenth century India.¹¹⁶ Like Muhammad Abduh in the Arabic-speaking world, he advocated a reexamination of *ijtihad*—a new hermeneutic.¹¹⁷ His writing and the institutions he founded (most famously, Aligarh Muslim University) shaped generations of Muslims under British colonial rule; his modernist approach to jurisprudence had a profound impact on Islamic legal thought by opening legal discourse to new interpretations and the implications of science.¹¹⁸

Another modern trend in a number of Muslim countries has been to consider state law an expression of Islamic law.¹¹⁹ This is true to some extent in diverse jurisdictions such as Egypt, Pakistan, and Iran. As this trend coalesces, it seems to create a new sort of Islamic discourse that has legitimacy

114. See Mohammad Fadel, *The Social Logic of Taqlid and the Rise of the Mukhtasar*, 3 ISLAMIC LAW AND SOC'Y 193, 193 (1996) (for a highly nuanced treatment of the development of *taqlid*).

115. See HALLAQ, *supra* note 54, at 43–47.

116. See 3 MARSHALL G.S. HODGSON, *THE VENTURE OF ISLAM: CONSCIENCE AND HISTORY IN A WORLD CIVILIZATION, THE GUNPOWDER EMPIRES AND MODERN TIMES* 334–35 (1985).

117. See SIDDIQUI, *supra* note 11, at 55–56.

118. *Id.*

119. See generally CLARK B. LOMBARDI, *STATE LAW AS ISLAMIC LAW IN MODERN EGYPT: THE INCORPORATION OF THE SHARI'A INTO EGYPTIAN CONSTITUTIONAL LAW* (2006) (finding three approaches to deriving Islamic legal norms: traditional *fiqh*, utilitarian neo-*ijtihad*, and comparative neo-*taqlid*).

as an expression of the traditions, as a new form of *ijtihad*, or as valid application of precedent (*taqlid*).¹²⁰

C. Legacy Outside of the Muslim Context

Outside of the religious context, the traditional jurisprudence of zakat made significant contributions to theories of tax and distribution. It proposes what amounts to a wealth tax combined with a modest income tax, made progressive with an exemption for basic living costs. Although we do not know details relating to the efficiency of this system in the early history of the Muslim community, we know that it was enforced relatively widely for the first few centuries of Islam.¹²¹ The second generalizable principle in the jurisprudence of zakat is the theory of both property and social justice that ownership rights do not apply to pre-zakat (tax) income. Beneficiaries of zakat have an actual property right in the wealth of the rich to the extent of zakat. This could be analogized to a right of the poor to benefits funded by taxes, and would argue against the libertarian notion of ownership rights in pre-tax income.¹²² These ideas will be further explored in Section VI below.

III. MODERN STATE APPROACHES TO ZAKAT

The modern civil codes of predominantly Muslim nations take a wide variety of approaches to zakat. The most common approach is to ignore it altogether.¹²³ Another approach is for the government to establish entities to collect and distribute voluntary zakat contributions, typically in the interest of transparency and accountability. The third approach is to collect zakat as if it were a tax and to distribute it as an analog to welfare. There are a variety of permutations to the actual rules for these sorts of zakat statutes, though all are ostensibly justified according to classical *fiqh* in some sense.

120. *Id.*

121. See Kuran, *supra* note 9, at 845.

122. See generally MURPHY & NAGEL, *supra* note 10, at 31–36.

123. See *infra* app. A.

A. No Place for Zakat

Of the forty predominantly Muslim countries, twenty-four do not institutionalize zakat.¹²⁴ This is true for Turkey which, in the early history of the Turkish Republic, intentionally established a secular legal system based on European civil codes.¹²⁵ However, it is also true for a number of countries that actively incorporate elements of traditional Islamic law into their modern codes, in areas such as family law, inheritance, and even banking.¹²⁶ This is clearly a more complex issue for countries that have decided to incorporate aspects of Islamic *fiqh* into their legal systems.

Which elements of traditional zakat jurisprudence are included in modern statutes, why, and in what ways? In many cases, a state-enforced system would duplicate taxation (VAT, income, etc.) and benefits programs established in the last century according to European and North American models. Perhaps ironically, there is evidence that countries with no legal rules regarding zakat in some cases have higher giving rates than those that do.¹²⁷ According to one study, in 2004, 69% of Turks gave zakat, while only 60% of Pakistanis did (living in a country that makes zakat mandatory).¹²⁸ This difference might be explained by relative wealth. It is likely that a smaller percentage of Pakistanis are obliged to give zakat, either according to classical *fiqh* or their own laws due to the exemption of *nisab*.¹²⁹ In any case, zakat contributions tend to represent a small percentage of GDP regardless of whether they are required by law.¹³⁰

124. *Id.*

125. See BERNARD LEWIS, *THE EMERGENCE OF MODERN TURKEY* 402–04 (1961) (historical role of secularism in the early Turkish Republic); see also Adrien Katherine Wing & Ozan O. Varol, *Is Secularism Possible in a Majority-Muslim Country?: The Turkish Example*, 42 TEX. INT'L L.J. 1, 5–7 (2006).

126. See LOMBARDI, *supra* note 119, at 270–74; see generally Sherman Jackson, *Shari'ah, Democracy, and the Modern Nation-State: Some Reflections on Islam, Popular Rule, and Pluralism*, 27 FORDHAM INT'L L.J. 88 (2003) (regarding important arguments for the compatibility of Islamic jurisprudence and state law).

127. See Riaz Hassan, *Giving and Gaining: Philanthropy and Social Justice in Muslim Societies*, LAHORE J. POL'Y STUD. (2007).

128. *Id.*

129. *Id.*

130. *Id.* (listed amounts for Turkey as US\$ 214 million and Pakistan as 4 billion Rupees.)

B. Facilitating Collection and Distribution of Zakat

In the absence of zakat laws, alms are given on a voluntary and decentralized basis.¹³¹ There is some economic evidence that voluntary giving to local groups or individuals favors certain categories of beneficiaries, for example, those with a relationship to the giver, and that this pattern of giving tends not to provide for sufficient redistribution of wealth to alleviate systemic poverty.¹³² For this reason, and a number of others related to transparency and accountability, some nations have established government-supported entities to receive and distribute voluntary zakat contributions. This approach has garnered more support after 9/11, when investigations of some Islamic charities revealed charitable gifts to entities related to organized “terrorist” activities.¹³³ Both Muslim governments and individual donors recognized the value in ensuring that zakat was administered consistent with its religious purposes and with sufficient levels of disclosure to satisfy donors.¹³⁴ Egypt, Jordan, Kuwait, Iran, Bangladesh, Bahrain, Lebanon, Qatar, the UAE, Indonesia, and Oman all have some form of centralized zakat collection and distribution with varying degrees of governmental oversight and involvement.

1. Egypt

Although Egypt has not institutionalized zakat as a mandatory tax, Nasser Social Bank of Egypt has a large Department of Zakat.¹³⁵ Nasser Social Bank was established pursuant to Law No. 66 of 1971 as a financial institution reporting to the Ministry of Insurance and Social Affairs.¹³⁶ It aims to expand the social solidarity base by granting soft loans and aid to those in lower income brackets.¹³⁷ It works with thousands of local committees to collect and

131. *Id.*

132. ANDY AGUNG PRIHATNA, *MUSLIM PHILANTHROPY: POTENTIAL AND REALITY OF ZAKAT IN INDONESIA: SURVEY RESULTS IN TEN CITIES* 67–70 (Kumiawati ed., 2005).

133. See, e.g., Barnett F. Baron, *The Treasury Guidelines Have Had Little Impact Overall on U.S. International Philanthropy, But They Have Had a Chilling Impact on U.S.-Based Muslim Charities*, 25 *PACE L. REV.* 307, 315–16 (2005).

134. See PRIHATNA, *supra* note 132, at 67–70.

135. *ECONOMICS OF ZAKAH*, *supra* note 7, at 36.

136. Law No. 66 of 1977 (Egypt) (establishing the Nasser Social Bank).

137. See Egypt State Info. Serv., *2006 Yearbook*, http://www.sis.gov.eg/En/ListTemplate.aspx?Category_ID=869.

distribute zakat funds.¹³⁸ The bank has served as an established model for other countries interested in centralizing zakat administration.¹³⁹ During its 2004-2005 fiscal year, the bank invested over one billion Egyptian Pounds.¹⁴⁰ Zakat proceeds for the same period equaled approximately 110 million Egyptian Pounds¹⁴¹ and rose to 128 million the following year.¹⁴² According to one survey, 89% of Egyptians gave zakat in 1998.¹⁴³

Although rumors occasionally surface indicating government plans to legally enforce zakat contributions, such proposals have been met with widespread opposition even from the *ulema* (the community of Islamic scholars).¹⁴⁴ The Islamic Research Centre of Al-Azhar University (the world's oldest university and the most important historical center in Islamic scholarship) recently issued a *fatwa* (legal opinion) ruling that the Egyptian government should pay 20% zakat (the traditional amount for mineral deposits) on its oil and gas sales.¹⁴⁵ This could amount to more than two billion dollars that would be redistributed largely to the poor.¹⁴⁶ This *fatwa* seems to indicate both that poverty is an increasingly important political problem in Egypt and that Islamic legal scholars are open to creative new applications of traditional *fiqh* as a source of moral suasion.

2. Jordan

The Zakat Act in Jordan was passed in 1978 and established a Zakat Fund under the Ministry of Awqaf.¹⁴⁷ Jordan officially encourages contributions to the Zakat Fund and such contributions are deductible from income for tax

138. *Id.*

139. ECONOMICS OF ZAKAH, *supra* note 7, at 36.

140. See Egypt State Info. Serv., *supra* note 137.

141. *Id.*

142. *Id.*

143. Hassan, *supra* note 127.

144. See Mona el-Nahhas, *Who's the Poorer?*, AL-AHRAM WKLY. ONLINE, Jan. 24-30, 2002, <http://weeklyahram.org.eg/2002/570/eg4.htm>. Even Tantawi from Al-Azhar suggested that direct government control and enforcement of zakat would be fraught with inefficiencies and would encourage evasion and corruption.

145. Maya El Kaliouby, *Egypt Fatwa Orders Oil Money for the Poor*, MIDDLE EAST TIMES, July 31, 2008, available at http://www.metimes.com/Politics/2008/06/15/egypt_fatwa_orders_oil_money_for_the_poor.htm.

146. *Id.*

147. Zakat Act of 1978 (Jordan).

purposes.¹⁴⁸ No more than 10% of zakat funds can be used for administrative purposes (although salaries can be paid by the Ministry itself).¹⁴⁹ In 2007, the Zakat Fund received more than 2.5 billion Jordanian Dinars (approximately US\$ 3.5 billion).¹⁵⁰

3. Kuwait

In Act No. 5 of 1982, Kuwait established the Zakat House, which receives voluntary zakat contributions along with an annual government grant.¹⁵¹ As in Jordan, the Kuwaiti zakat administration is affiliated with the Ministry of Awqaf.¹⁵² All administrative costs are internalized within the ministry.¹⁵³ Kuwait has recently moved toward mandatory enforcement of zakat, but only for local public and shareholding companies, which pay zakat at the rate of one percent of net profit.¹⁵⁴ Since this change is only now coming into force, this article will consider Kuwait a voluntary zakat jurisdiction to reflect the historic data that is currently available.

4. Iran

Iran is the only *Shi'i* jurisdiction that this article addresses with any particularity. *Shi'i* rules for alms (zakat and the related tax of *khoms* in *Shi'ism*) require zakat on certain goods and a donation of 20% of income that will be distributed by the Imam or his proxy (the *ulema* in the case of modern Imami *Shi'ism* found in Iran).¹⁵⁵ Zakat (here referring to zakat and *khums*, or

148. Zakat Act of 1978 amended 1982 (Jordan).

149. *Id.*

150. The Zakat Fund of Jordan, <http://www.zakatfund.net/cutenews/news.php> (last visited Jan. 9, 2010).

151. Law No. 5 of 1982 (Kuwait) (concerning the establishment of the Zakat House); see also ECONOMICS OF ZAKAH, *supra* note 7, at 36–37.

152. Act No. 5 of 1982 (Kuwait); see also Kuwait Zakat House, http://www.zakathouse.org.kw/AxCMSwebLive/ar_index.cms.

153. ECONOMICS OF ZAKAH, *supra* note 7, at 37 (“[A]s the House is affiliated to the ministry of Awqaf and Religious Affairs all its administrative expenditures are carried out by the general budget of the government.”).

154. Law No. 46 of 2006 (Kuwait) (on zakat); Ministerial Res. No. 58 of 2007 (Kuwait).

155. See ZIBA MIR-HOSSEINI, ISLAM AND GENDER: THE RELIGIOUS DEBATE IN CONTEMPORARY IRAN 12 (1999).

giving of the fifth, in *Shi'ism*) was viewed as a moral rather than a legal obligation by the revolutionary government. Although controversial at the time, the late Ayatollah Khomeini reinstated the Iranian income tax during the Iran-Iraq War after having earlier overturned it as un-Islamic.¹⁵⁶ Particularly during the war, the income tax was justified on the basis of necessity (*zarura*).¹⁵⁷ Zakat thus remains a pious, though legally unenforced, duty.

According to 1998 survey information, 44% of Iranians paid zakat.¹⁵⁸ Alms are generally received by "*bonyads*," which are religious or charitable foundations. The largest *bonyad*, *Bonyad-e Mostazafin*, supports the family members of martyrs and has \$12 billion in assets and employs 400,000.¹⁵⁹ *Bonyads* in Iran are estimated to control about 40% of the non-oil wealth of the country.¹⁶⁰

5. Bangladesh

Bangladesh founded its Zakat Fund according to the Zakat Fund Ordinance in 1982.¹⁶¹ It is authorized to receive and distribute zakat contributions.¹⁶² As in Jordan, contributions are deductible from income tax.¹⁶³ The Board of the Zakat Fund consists of ten Islamic law scholars appointed by the government, the Secretary of the Religious Affairs Division, and the Director-General of the Islamic Foundation.¹⁶⁴ The Zakat Fund is currently providing medical care to poor children; giving scholarships to poor but meritorious students; distributing rickshaws, vans, sewing machines, cattle, and poultry to help alleviate poverty; building homes for the homeless; assisting small businesses with start-up capital; and providing disaster relief to stricken areas.¹⁶⁵

156. HOMA OMID, *ISLAM AND THE POST-REVOLUTIONARY STATE OF IRAN* 141 (1994) ("Payment of such taxation is a religious duty. Just as the Muslims have an obligation to pay their religious dues, so they must also pay their national taxes to the Islamic government.").

157. *Id.*

158. See Hassan, *supra* note 127.

159. ROBIN WRIGHT, *THE LAST GREAT REVOLUTION* 278 (2000).

160. *Id.*

161. See Ordinance No. VI of 1982 (Bangl.).

162. *Id.* § 3.

163. *Id.* § 13.

164. *Id.* § 5.

165. BANGLADESH HIGH COMM'N, *Canberra Notice* (2008), <http://www.bangladoot-canberra.org/media/pdf/OldNotices/Notice%2016.pdf>.

6. Bahrain

Bahrain established a zakat law similar to that of Jordan's in 1979.¹⁶⁶ In 2003, the Zakat Fund had dropped to almost nothing as donors chose to contribute to other entities.¹⁶⁷ With mounting pressure to fund public programs, Bahrain established a mandatory 1% "social insurance tax" on income in 2007 to help fund unemployment benefits.¹⁶⁸ Significantly, this tax has not been identified as a form of zakat, and this has drawn criticism as an un-Islamic form of taxation.¹⁶⁹ Like Kuwait, Bahrain will be analyzed as a voluntary zakat jurisdiction because the recent changes are not reflected in the historic economic data analyzed in Section IV.

7. United Arab Emirates

The United Arab Emirates ("UAE") has a Zakat Fund similar to those found in Jordan, Kuwait, Bangladesh and Bahrain.¹⁷⁰ Along with Kuwait and Bahrain, the United Arab Emirates has considered instituting an income tax which might include a zakat component.¹⁷¹ The UAE's Zakat Fund has a board of directors formed under the chairmanship of the Minister of Justice, Islamic Affairs and Endowments.¹⁷² The board has the power to set general fund policy and approve distribution amounts, and also to remind Muslims of the zakat duty and urge them to pay zakat.¹⁷³ The fund's sources of revenue are amounts which Muslims voluntarily pay to the fund, contributions from other entities, a budget allotment from the UAE's general budget, and amounts generated by

166. Decree Law No. 8 of 1979 (Bahr.) (establishing the Zakat Fund).

167. See Mohammed ALAI A'Ali, *Bahrain: Zakat Coffers Empty*, GULF DAILY NEWS, Nov. 12, 2003.

168. Social Insurance Tax of June 2007 (Bahr.); see also ASS'N OF INT'L LIFE OFFICES, EXPATRIATE FINANCIAL GUIDE TO BAHRAIN (2008).

169. *Bahrain's Income Tax, First in Gulf, Sparks Opposition*, KHALEEJ TIMES, June 26, 2007, available at http://www.khaleejtimes.com/DisplayArticle.asp?xfile=/data/business/2007/June/business_June839.xml§ion=business.

170. See Federal Law No. 4 (2003) (U.A.E.); see also Talal Malik, *GCC Can Rake Billions in Zakat, Income Tax*, ARABIAN BUS., Sept. 12, 2007, available at <http://www.arabianbusiness.com/property/article/500208-gcc-can-rake-billions-in-zakat-income-tax>.

171. Malik, *supra* note 170.

172. Federal Law No. 4, *supra* note 170, art. 9.

173. *Id.* art. 10.

the fund's own activities.¹⁷⁴ Distribution of zakat funds is limited strictly to the eight categories mentioned in the Quran.¹⁷⁵

8. Lebanon

Lebanon has a zakat fund similar to that in Jordan.¹⁷⁶ It receives and distributes zakat donations.¹⁷⁷ Although the majority of the population in Lebanon is Muslim, the community is highly fragmented and the current constitution preserves disproportionate Christian representation in the *Majlis* (Parliament) and senior government positions.¹⁷⁸

9. Indonesia

Indonesia is unique in a number of ways. First, along with Malaysia, it is far removed from the core of the Arab Middle East. Second, Islam came to the region somewhat later and as part of a religious phenomenon with relatively less political entanglement.¹⁷⁹ Third, according to surveys, Indonesia has the highest rate of zakat giving among surveyed nations at 94%, with the rate even higher for those with higher education, even though zakat is not mandatory.¹⁸⁰

Indonesia has established governmental organizations to collect and distribute zakat and regulates all private zakat collection and distribution;¹⁸¹ Regional "BAZ" are semi-autonomous zakat agencies that collect and distribute contributions.¹⁸² They compete (often unfavorably) with a variety of

174. *Id.* art. 5.

175. Zakat Fund, United Arab Emirates, *Categories of Zakat Recipients*, <http://www.zakatfund.net/en/eCategories-of-zakat.php>.

176. See Lebanon's Zakat Fund, <http://www.zakat.org.lb/> (last visited Nov. 1, 2009).

177. *Id.*

178. See Chibli Mallat, *On the Specificity of Middle Eastern Constitutionalism*, 38 CASE W. RES. J. INT'L L. 13, 41–42, 51–53 (2006) (addressing the challenge of stability and institution building in fragmented societies, using Lebanon as an example).

179. 2 MARSHALL G. S. HODGSON, *THE VENTURE OF ISLAM: CONSCIENCE AND HISTORY IN A WORLD CIVILIZATION: THE EXPANSION OF ISLAM IN THE MIDDLE PERIODS* (1985).

180. See Hassan, *supra* note 127.

181. Law of Zakat Management No. 38 (1999) (Indon.).

182. See Taufik Abdullah, *Zakat Collection and Distribution in Indonesia*, in *THE ISLAMIC VOLUNTARY SECTOR IN SOUTHEAST ASIA* 59–61 (Inst. of Se. Asian Studies ed., 1991).

other charities and direct giving.¹⁸³ Ministry of Religion Decision No. 581/1999 specifically addressed the role of governmental BAZ and nongovernmental zakat collectors known as LAZ.¹⁸⁴ Contributions are deductible up to 2.5% of net income.¹⁸⁵ Although the percentage of zakat funds collected by BAZ went from 4% in 2000 to 9% in 2004, these governmental organizations still account for a small portion of overall zakat funds, most of which go to local individuals and mosques.¹⁸⁶

10. Oman

Direct taxation in Oman is limited.¹⁸⁷ Zakat payment, although not mandatory, is administered by the Ministry of Religious Affairs and Endowments.¹⁸⁸ Zakat funds are distributed to “eligible recipients,” and the funds also pay for printing copies of the Quran and distributing religious works to mosques, students, and other individuals.¹⁸⁹

C. Zakat as Tax and Welfare

There are a number of predominantly Muslim countries that enforce collection of zakat: Saudi Arabia, Pakistan, Libya, Sudan, Malaysia and Yemen. The standards for each system vary greatly though all claim legitimacy as rooted in traditional *fiqh*.

183. PRIHATNA, *supra* note 132, at 67–70.

184. *Id.* at 21–23.

185. Decision of Director General of Tax No. KEP-163/PJ/2003 (2003) (Indon.).

186. See PRIHATNA, *supra* note 132, at 22.

187. Malik, *supra* note 170.

188. *Id.*

189. See Ministry of Information, Sultanate of Oman, *Oman 2002–2003, Awqaf and Religious Affairs*, <http://www.omanet.om/english/oman2004/AWQAF%20AND%20RELIGIOUS%20AFFAIRS.asp> (last visited Nov. 1, 2009).

1. Saudi Arabia

Saudi Arabia has the oldest statutory system of zakat collection. It is even listed as a sort of constitutional requirement in the Saudi Basic Law.¹⁹⁰ The most recent version of the law provides that all Saudi and Gulf Cooperation Council Nation citizens and companies, who conduct business in the Kingdom of Saudi Arabia in commercial goods, pay zakat at the rate of 2.5%.¹⁹¹ Zakat payers are required to file a declaration showing zakatable goods, properties, cash, and profits.¹⁹² A financial officer reviews the declaration and then informs the zakat payer of the amount of zakat that is owed.¹⁹³ Although the traditional zakat for crops and livestock is still collected, the regulations focus on accounting details for calculating zakatable worth on cash, investments, and real estate.¹⁹⁴

2. Pakistan

One of the chief components of Zia ul Haq's Islamization program for Pakistan was the compulsory collection of zakat under the Zakat and Ushr Ordinance of 1980 (the "Ordinance").¹⁹⁵ At least one earlier attempt was made to institutionalize zakat payment in the 1950's.¹⁹⁶ A commission suggested that the government ought to collect zakat.¹⁹⁷ For a brief time, "zakat tickets" could be purchased at post offices, and the proceeds were to be distributed to appropriate beneficiaries.¹⁹⁸ This earlier program was not continued, primarily due to lack of participation.¹⁹⁹ Pakistan's zakat system has been studied by a

190. Saudi Basic Law art. 21 (Saudi Arabia) ("Zakat . . . shall be levied and dispensed to its legitimate beneficiaries.").

191. See Decree No. 61/5/1 of 5/1/1383 H (28/5/1963 CA) (Saudi Arabia) (on Zakat). It is further elaborated by Ministerial Res. No. 393 art. 6 of 6/8/1370 H (13/5/1950 CA) (Saudi Arabia).

192. Ministerial Res. No. 393, *supra* note 191, art. 8.

193. *Id.* art. 9.

194. *Id.* arts. 5–6.

195. Zakat and Ushr Ordinance of 1980 (Pak.).

196. Parvez Ahmad Butt, *Pakistan, in* INSTITUTIONAL FRAMEWORK OF ZAKAH: DIMENSIONS AND IMPLICATIONS 379, 380 (Ahmed Abdel-Fattah el-Ashker & Muhammad Sirajul Haq eds., 1995) [hereinafter INSTITUTIONAL FRAMEWORK OF ZAKAH].

197. TANZIL UR-RAHMAN, INTRODUCTION OF ZAKAT IN PAKISTAN 8 (1981); see also *Notes of the Quarter: Zakat in Pakistan*, 45 MUSLIM WORLD 204, 205 (1955).

198. UR-RAHMAN, *supra* note 197, at 9.

199. *Id.*

number of scholars over the past 25 years, so data and commentary are more readily available than for most other jurisdictions.

As a tax, zakat was initially intended to provide a redistributive mechanism that might alleviate poverty within Pakistan; however its present role as a part of Islamization does not depend on its pragmatic value as a tax. Historically, it had been enforced at the state level by the Moghul Empire and was incumbent upon all Muslims.²⁰⁰

Data suggests that prior to passage of the Ordinance, only 5% of Pakistanis actually practiced zakat.²⁰¹ State enforced income taxes were also evaded on a wide scale, so one aim of Islamization in this area was to increase buy-in for redistributive tools by rooting them in Islam.²⁰² In fact, the Ordinance did receive support from such key religious leaders as Maulana Maududi, Shaikh Mahmud Ahmad and Khurshid Ahmad Naqui.²⁰³ However, from the beginning there was vocal opposition, particularly from non-Sunni communities.²⁰⁴

The most obvious mechanism for enforcing zakat in Pakistan relies on banks and other depository institutions to transfer appropriate contributions based on deposits (these are often referred to as First Schedule Zakat funds) on an annual record date, the first day of Ramadan.²⁰⁵ Zakat is taken at the rate of 2.5% over the *nisab*, which is considered the current value of 612.3 grams of silver.²⁰⁶ In 1980, this amount was calculated to be 2000 rupees.²⁰⁷ The advantage of this system is that it lowers collection costs by putting the onus on depository institutions to calculate and forward zakat, which can essentially be automated. One consistent disadvantage has been the phenomenon of massive withdrawals immediately before the announced date of zakat calculation and transfer.²⁰⁸

200. Ann Elizabeth Mayer, *Islamization and Taxation in Pakistan*, in *ISLAMIC REASSERTION IN PAKISTAN* 67 (Anita M. Weiss ed., 1986).

201. Grace Clark, *Pakistan's Zakat and Ushr System from 1979 to 1999*, in *PAKISTAN 2000*, at 141 (Charles H. Kennedy & Craig Baxter eds., 2000).

202. Mayer, *supra* note 200, at 67.

203. Clark, *supra* note 201, at 141 (explaining Pakistan's zakat and Ushr as a Welfare System).

204. *Pakistan: Islamic Taxes*, *ASIAN RECORDER*, July 29–Aug. 4, 1980, at 15578.

205. Zakat and Ushr Ordinance of 1980, *supra* note 195, ch. 1, § 2 (xxxii).

206. *Id.*

207. Mayer, *supra* note 200, at 67 (regarding Islamization and taxation in Pakistan).

208. See, e.g., Mohiuddin Aazim, *Rush for Cash Withdrawal Recedes: Zakat Deduction*, *DAWN*, Nov. 8, 2002, available at <http://www.dawn.com/2002/11/08/eb1.htm> ("Rs12–15 billion used to flow out of the system on the eve of Ramazan, though the bulk of it would flow in back to the system after a couple of weeks").

The second form of zakat under the Ordinance is *ushr*, or a 5% zakat on agricultural goods (described as Second Schedule Zakat funds).²⁰⁹ Although the law sets forth the class of people who are subject to contributing zakat, the Revenue Department of Provincial Governments have not been assessing zakat on crops in accordance with the statute.²¹⁰ In fact, as with traditional voluntary zakat, amounts over 5% required by *fiqh* (such as for crops from unirrigated land), may be paid directly to the appropriate beneficiaries without an intermediary.²¹¹ Alternatively, it may be paid to local zakat committees.²¹²

Zakat funds are managed at the federal, provincial and local levels.²¹³ First Schedule Zakat is received at the federal level and is then distributed to provincial committees.²¹⁴ Some of this money is used for provincial level projects, but most is directed to local committees who distribute first schedule zakat funds in addition to collecting and distributing second schedule zakat funds.²¹⁵ Federal zakat administration expenses are paid by the government. Local zakat committee costs are borne locally and are limited to 10% of collected zakat.²¹⁶ Many responsibilities at the local level are shared by volunteers in order to limit costs.²¹⁷

There are three oft-repeated religious criticisms of the Ordinance. The first concerns the category of persons required to pay zakat. It has been argued that zakat's application to corporations has no precedent in Islamic *fiqh* and that the collection of zakat from the accounts of minors conflicts with Hanafi *fiqh*, which is dominant in the region.²¹⁸ Second, distribution has been criticized. Since zakat monies are used to fund community programs, it is possible that donors might benefit from their own contributions in violation of traditional *fiqh*.²¹⁹ Also, the emphasis on meeting the needs of the poor might limit access

209. Zakat and Ushr Ordinance of 1980, *supra* note 195, ch. 3.

210. RELIGIOUS AFFAIRS MINISTRY OF PAKISTAN, ZAKAT COLLECTION AND DISTRIBUTION SYSTEM 4–5 (2005), available at <http://www.pakistan.gov.pk/ministries/religious-affairs-ministry/media/zakatCollectionandDistributionSystem.doc>. Interestingly, two provinces have not received any zakat on crops (*ushr*) since 2000—not even voluntary contributions. The remaining two provinces collected miniscule amounts during this period, which might be attributed to voluntary contributions.

211. See Zakat and Ushr Ordinance of 1980, *supra* note 195, ch. 4, § 6.

212. *Id.*

213. *Id.* ch. 5.

214. See *id.* ch. 4, § 7.

215. *Id.* ch. 5, § 18.

216. *Id.* ch. 4, § 8b.

217. See Clark, *supra* note 201, at 144 (examining Pakistan's Zakat and Ushr system from 1979–1999).

218. Mayer, *supra* note 200, at 68.

219. See, e.g., Malik *supra* note 170 (donors may not receive back their offerings).

by other legitimate potential beneficiaries of zakat.²²⁰ The third category of religious criticism has focused on the collection of zakat, in particular when the default system conflicts with particular rules of legal schools. This is most obvious among *Shi'a* who objected to enforcement of zakat standards that are inconsistent with *Shi'i fiqh*.²²¹ An amendment to the Ordinance responded to this problem by allowing *Shi'a* to opt out of the system and exempt their accounts from mandatory withdrawal.²²² Some Sunni Muslims criticized this move on equality grounds, and gained the right to claim exemption in 1999, in the Pakistani Supreme Court.²²³

3. Libya

Libya's Zakat Act was issued in 1971.²²⁴ Unlike some other similar acts, zakat is collected on livestock and crops, but not on monetary assets.²²⁵ A General Directorate for Zakat collects contributions, but they are distributed by the Social Welfare Department of the Libyan government.²²⁶ Of the proceeds, 50% are dedicated to supporting the poor and needy, and no more than 10% can support the costs of the Directorate.²²⁷ Thirty percent of funds are allocated to the Organization of Islamic Call, which supports Libyan promotion of Islam outside the country.²²⁸ This allocation is intended to cover the Quranic zakat categories of "those whose hearts are to be reconciled" and "for the cause of Allah."²²⁹

220. Mayer, *supra* note 200, at 68.

221. *Id.* at 72.

222. *Id.* at 71–73.

223. See *Pakistan v. Farzana Asa*, Supreme Court of Pak., 9 Mar. 1999 (Pak.).

224. Act No. 89 of 1971 (Libya).

225. See *ECONOMICS OF ZAKAH*, *supra* note 7, at 31.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* at 31–32.

4. Sudan

Sudan affirms governmental authority to enforce zakat both in the 1998 Constitution and the 2005 Transitional Constitution.²³⁰ The shift from colonial systems of taxation to zakat was expected to eliminate the need for additional taxes.²³¹ The first step in this experiment began with the zakat law of 1980, which provided for voluntary payment to a state-managed “Zakat Fund.”²³² Participation was made mandatory in 1984.²³³ Zakat is collected on invested wealth and cash income.²³⁴ However, zakat on trade and agricultural products accounts for the largest portions of the amount collected, representing respectively 36% and 42%.²³⁵ Zakat is distributed to the eight categories named in the Quran, with the largest portion in 2003, 61%, being paid to the poor and needy.²³⁶ Of this amount, 40% was paid directly in cash.²³⁷ Another 14.5% goes to the zakat collectors, with smaller portions paid “in the way of Allah,” in administrative fees, to the indebted, to “the reconciled,” and to the wayfarer.²³⁸ The category “in the way of Allah” has been extended to include many types of charity, including clinical services at hospitals, digging wells and constructing canals, settlement of nomads, and placement of refugees.²³⁹ In 2003, money paid “to the wayfarer” helped return Sudanese nationals stranded in Yemen, Iraq, Syria, and Lebanon.²⁴⁰

5. Malaysia

Malaysia is unique among zakat-enforcing nations in two ways. First, zakat is enforced within the federal system at the state level by State Islamic

230. The Constitution of the Republic of the Sudan art. 10 (1998).

231. See Mohammad Ibrahim Mohammad, *The Sudan*, in INSTITUTIONAL FRAMEWORK OF ZAKAH, *supra* note 196, at 420–21.

232. *Id.* at 419–21.

233. *Id.* at 421–22.

234. THE REPUBLIC OF SUDAN, CHAMBER OF ZAKAT, START AND PERFORMANCE OF ZAKAT, 1, 2 (2003), www.zakat-chamber.gov.sd/download/ZAKAT_STATE.doc (last visited Dec. 21, 2009).

235. *Id.* at 2–3.

236. *Id.* at 4.

237. *Id.*

238. *Id.*

239. *Id.* at 5.

240. *Id.*

Affairs Councils, and there is significant diversity in interpretation and practice.²⁴¹ Second, regional systems have existed since the colonial period, when earlier, more informal systems were institutionalized under British rule.²⁴² Over the last 18 years there has been an effort to streamline and harmonize these systems, but enforcement power remains at the state level.²⁴³

Zakat administration in Malaysia has struggled with two challenges. The first is not unique to Malaysia or even to zakat; that is the challenge of monitoring and enforcing payment.²⁴⁴ Modern accounting systems have provided some advantages in government access to information regarding zakatable goods.²⁴⁵ However, because state zakat agencies do not have the powers of the federal tax authorities, they have difficulty enforcing payment except when the basis for zakat is evident.²⁴⁶ This difficulty is tied to the second challenge, namely the enforcement of zakat on agricultural goods (which are somewhat easier to monitor than monetary instruments). The largest traditional category of zakat in Malaysia is zakat on rice (*padi*) production.²⁴⁷ Because peasant farmers tend to be some of the poorest citizens of Malaysia, it would seem presumptively unfair to only tax their production.²⁴⁸ Arguably, systematic enforcement of zakat (not to mention other protections of an overtly Islamic economy) would shift the burden from *padi* farmers.²⁴⁹ Some studies indicate that the emphasis of Malaysian zakat on *padi* creates the opportunity for strongly regressive impacts when viewed as a tax, in such a way that seems contrary to the original purposes of zakat as a pious duty and as a mechanism for promoting social justice.²⁵⁰ In an economy that

241. See Aidit bin Ghazali, *Zakat Administration in Malaysia*, in *THE ISLAMIC VOLUNTARY SECTOR IN SOUTHEAST ASIA* 85, 86–91 (Mohamed Ariff & Inst. of Se. Asian Studies eds., 1991).

242. See MUHAMMAD, *supra* note 23, at 109–20.

243. *Id.*

244. bin Ghazali, *supra* note 241, at 104–05.

245. *Id.*

246. BIN MUHAMMAD, *supra* note 23, at 180–81.

247. *Id.* at 182–86.

248. *Id.* at 185 (“The practice of confining agricultural zakat (‘ushr) to a single crop, for example paddy, is probably one of the greatest anomalies committed (consciously or unconsciously) in the name of Shari’ah by the official ‘ulama’ of Malaysia.”).

249. *Id.* at 186 (“The extension of the ‘coverage’ of zakat . . . focused only on agricultural products. If we were to extend this to include wage earners and zakat on minerals, such as tin and petroleum, the amount of zakat that could be collected would be substantial.”).

250. *Id.* at 165.

Zakat . . . is intended (at the temporal level) to serve as an instrument for the redistribution of income and wealth in Muslim society. However, due largely to the manner with which it is implemented in Malaysia, it not only failed to achieve the desired objective, but on the contrary in many instances, on the aggregate level, it accentuated income inequality.

is now largely tied to wages (which are not expressly taxed under zakat), some scholars argue that the understanding of zakatable production ought to be construed outside of its originally agrarian and mercantile context.²⁵¹ This would require new interpretations, new *ijtihad*.

6. Yemen

Like Saudi Arabia and Sudan, Yemen includes zakat authority in its constitution.²⁵² Zakat was mandatory even before the Constitution²⁵³ made it an absolute requirement.²⁵⁴ Yemen takes a traditional view of what is zakatable and makes no analogy to include income, shares, or deposits.²⁵⁵ Zakat is assessed and collected by the Administration of Duties, which coordinates the process at the national, governorate and local levels.²⁵⁶

IV. POSSIBLE IMPACT ON WEALTH AND DISTRIBUTION

It is difficult to evaluate legal zakat regimes for their effectiveness. In considering whether or how Muslim governments might choose to institutionalize zakat, I thought that it was important to try to identify apparent relationships with the goals of an income redistribution system. Using a sample set of 40 nations, including nearly all predominantly Muslim countries,²⁵⁷ I developed a database which allowed me to identify potential relationships between the institutionalization of zakat and (1) wealth as

Id.

251. See generally *id.* at 174–89.

252. The Constitution of the Republic of Yemen art. 21 (1994) (“The state shall collect the Zakat . . . and shall spend it through its legal channels in accordance with the law.”).

253. See Yemen Constitution art. 135 (1970) (“The alms tax (zakat) is one of the basic pillars of Islam. The Government shall endeavour to collect it and to spend it correctly.”), which was replaced by Yemen Constitution art. 21 (1994).

254. See GERALYN M. FALLON, *The Taxation of Companies and Individuals in Yemen*, 8 ARAB L. Q. 37, 41 (1993); see also MUHAMMAD YAHYA HUSSEIN AL-‘ADI, *Yemen*, in INSTITUTIONAL FRAMEWORK OF ZAKAH, *supra* note 196, at 439–69.

255. Hussein Al-‘Adi, *supra* note 254, at 446 (noting that zakat in Yemen is not applied to property in actual use, income, shares, or deposits).

256. *Id.* at 456.

257. The only countries excluded are those with populations less than 500,000 or those that do not generate economic data (Palestine and Kosovo).

reflected by per capita GDP and (2) income stratification/economic equality as reflected by GINI indices used by the UNDP and the World Bank.²⁵⁸

First, I ran regression analyses that indicated a correlation between institutionalized zakat and both wealth (higher per capita GDP) and economic equality (lower GINI index), with r 's of .325 and .328, respectively. An r correlation value over .3 typically indicates a causal relationship between the independent variable (institutionalizing zakat, or not) and the dependent variable (per capita GDP or GINI index).²⁵⁹

In order to further illustrate this correlation, I created two crosstab studies which divide countries into three categories: (1) those countries that do not legally institutionalize zakat (24 countries), (2) those countries that use law to establish a voluntary system for collecting and distributing zakat (10 countries), and (3) those countries that enforce mandatory zakat (6 countries). This serves as the X-axis for both studies. The Y-axis for the Wealth Study divides the countries roughly into thirds according to per-capita GDP (greater than \$9000, between \$2410 and \$9000, and less than \$2410). The Y-axis for the Equality Study divides countries into three groups based on GINI index (a lower number is better). Divided roughly in thirds, those countries in the good category have GINI indices under 36, the mid-range reflects GINI indices between 36 and 41, and the poor range indicates GINI indices greater than 41. As a frame of reference, Denmark has a GINI index of 23.2, the United States has a GINI index of 45, and South Africa has a GINI index of 59.3.²⁶⁰ Note that the sample pool appears to have relatively good GINI indices compared to most comparable and even some more developed economies.

258. See Corrado Gini, *Measurement of Inequality of Incomes*, 31 ECON. J. 124, 124–26 (1921) (noting that the GINI index is a measure of statistical dispersion most prominently used as a measure of inequality of income distribution or inequality of wealth distribution. It was developed by Corrado Gini. National GINI index numbers range from 23.2 in Denmark and 70.7 in Namibia); see U.N. Dev. Programme [UNDP], *Human Development Report 2006: Beyond Scarcity: Power, Poverty and the Global Water Crisis* (2006) (prepared by Kevin Watkins).

259. See generally JACOB COHEN, *STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES* (2d ed. 1988).

260. U.N. Dev. Programme, *supra* note 258, at 335–37.

*A. Zakat and Wealth Study: The Wealth Study***Per Capita GDP According to Approach to Zakat**

			Approach to Zakat			
			None	Voluntary	Mandatory	Total
Per Capita GDP	Greater than \$9000	Count	6	5	3	14
		% within				
	Between \$2410 and \$9000	Count	7	4	2	13
		% within				
	Less than \$2410	Count	11	1	1	13
		% within				
	Total	Count	24	10	6	40
		% within				

For those countries that establish voluntary zakat institutions, 50% are in the high wealth group, 40% are in the middle wealth group, and 10% are in the low wealth group. For those countries that mandate zakat, 50% are in the high wealth group, 33.3% are in the middle wealth group, and 16.7% are in the low wealth group. This is in stark contrast to the countries that do not legalize zakat. 25% of these countries are in the high income group, 29.2% are in the middle group, and 45.8% are in the low income group. For whatever reason, these countries tend to be poorer as a group. As Section II indicates, some oil-producing countries have instituted legalization of zakat, which may impact this breakdown. However, the fact that countries from all three categories have

institutionalized zakat seems to argue against the claim that these policy options are available only to wealthy countries.

Because of this surprising result, I felt obliged to consider why only two nations that have effectively legalized zakat in some way fall into the low wealth category: Yemen and Bangladesh. Yemen is one of the poorest countries in the world and has struggled since reunification after the Cold War to rebuild its economy.²⁶¹ The socialist portion of its political legacy coming from the former South Yemen (prior to reunification in 1990) might contribute to the higher level of economic equality reflected in the country's relatively low GINI index of 33.4.²⁶² It is possible that commitment to economic equality has been a higher value than increasing overall wealth. Bangladesh has been one of the poorest countries in the world since its founding. Lack of resources and vulnerability to natural disasters, particularly flooding, have made development a tremendous challenge.²⁶³ So, it is not surprising that it remains one of the poorer nations in the studies. However, the Government of Bangladesh and a number of private initiatives, including the microfinance movement pioneered by Muhammad Yunus, have had positive impacts in terms of both wealth and equality.²⁶⁴

Other than the apparent correlation, no other clear conclusions can be drawn from the study. The countries that have legalized zakat have done so in a wide variety of ways, and it is impossible to more clearly correlate the advantages or disadvantages of these policy choices without detailed studies of the specific economic impacts of particular zakat systems. Even so, the bias towards wealth among nations legalizing zakat appears more than anecdotal and justifies more detailed studies.

261. See generally PAUL DRESCH, A HISTORY OF MODERN YEMEN (2000).

262. See *infra* app. A.

263. See generally PK. MD. MOTIUR RAHMAN ET AL., THE CHRONICALLY POOR IN RURAL BANGLADESH: LIVELIHOOD CONSTRAINTS AND CAPABILITIES (2009).

264. *Id.*

*B. Zakat and Economic Equality Study: The Equality Study***GINI Index According to Approach to Zakat**

			Approach to Zakat			
			None	Voluntary	Mandatory	Total
GINI Index	Less than 36	Count	4	6	3	13
		% within Approach to Zakat	16.7%	60.0%	50.0%	32.5%
	Between 36 and 41	Count	10	2	1	13
		% within Approach to Zakat	41.7%	20.0%	16.7%	32.5%
	Greater than 41	Count	10	2	2	14
		% within Approach to Zakat	41.7%	20.0%	33.3%	35.0%
	Total	Count	24	10	6	40
		% within Approach to Zakat	100.0%	100.0%	100.0%	100.0%

As in the Wealth Study, the Equality Study indicates some sort of positive relationship between institutionalization of zakat and economic equality. Of countries with voluntary zakat institutions, 60% are in the high equality group,

20% are in the middle equality group, and 20% are in the low equality group. Of countries with mandatory zakat, 50% are in the high equality group, 16.7% are in the middle equality group, and 33.3% are in the low equality group. This contrasts with the countries that do not legalize zakat. Of these countries, 16.7% are in the high equality group, 41.7% are in the middle equality group, and 41.7% are in the low equality group. For whatever reason, these countries tend to have lower levels of economic equality as a group.

Although zakat might affect economic equality, it is also possible that countries institutionalizing an income redistribution system such as zakat do so to some extent because they are *a priori* more concerned with economic inequality. As in the Wealth Study, I am particularly interested in the outlying zakat jurisdictions with lower levels of economic equality.

Lebanon and Iran are the two countries with a voluntary legalized zakat system, while Sudan and Malaysia are the two mandatory zakat jurisdictions in this category. Lebanon, Sudan, and Iran are fairly easy to distinguish. Lebanon is still dominated by Christian political parties, such that a zakat system established for highly fragmented Muslim communities might not work efficiently as a policy tool for income redistribution.²⁶⁵ Constitutional crises, violence, and years of civil war also make Lebanon an exceptional case and justify its role as an outlier regarding economic equality. Furthermore, Sunni Muslims who would be most likely to contribute to a state-sponsored zakat fund comprise only 26% of the population.²⁶⁶ So, even with high levels of participation, this fund would be unlikely to address poverty on a national level.

A history of internal violence and political struggle between Muslim and Christian communities equally applies to the Sudan, where the redistributive goals of zakat are less important than its symbolic role as a uniquely Islamic analog for taxation and welfare.²⁶⁷ Sudan, in addition to being deeply divided religiously, has been politically turbulent for the past 25 years. As such, it is not an ideal subject for determining the impact of zakat. Sudan's outlier status will be addressed with greater specificity in Section IV.C., below.

265. See Mallat, *supra* note 178, at 13, 41–42.

266. See BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPT. OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT: LEBANON (2005), available at <http://www.state.gov/g/drl/rls/irf/2005/51604.htm>.

267. Ahmed T. el-Gaili, *Federalism and the Tyranny of Religious Majorities: Challenges to Islamic Federalism in Sudan*, 45 HARV. INT'L L.J. 503, 531–36 (2004).

Although Iran is in the low equality group, its GINI index reflects more equitable distribution of wealth than found in the United States.²⁶⁸ As the only explicitly *Shi'i* jurisdiction, zakat in Iran is subject to different legal rules in terms of *fiqh*, which might make it less likely that the impact of zakat would correlate with Sunni jurisdictions. Finally, unequal distribution of oil wealth might explain the slightly higher level of economic inequality; however, no other oil producing nations are in the low equality category.

The more difficult case is Malaysia, which has become a model for both developing economies and for moderate Muslim states.²⁶⁹ Although rapid industrial development has contributed to an overall increase in wealth, it has not resulted in an even distribution of resources. Some commentators have actually indicated that zakat on crops (rice in particular) might have a regressive effect.²⁷⁰ Further, since nearly half of the population is non-Muslim, any system mandated for only a portion of the populace is less likely to have broad distributive effect (as in the cases of Lebanon and Sudan described above). Even so, Malaysia's zakat system has been given some credit for the amelioration of poverty and has been touted as a model for other Muslim countries.²⁷¹

C. The Wealth and Equality Studies Conclusions

The studies seem to show some tendency toward both higher wealth and economic equality among the Muslim jurisdictions that have legally institutionalized zakat, and this correlation deserves further specific study. It may also lend some confidence to countries that are considering such systems that the existence of these systems does not appear to harm economies across the board (though there is some argument that particular policies in Malaysia and Pakistan, for example, have been problematic).²⁷²

268. See U.N. Dev. Programme, *supra* note 258, at 335 (noting that Iran has a GINI index of 43, while the U.S. has a GINI index of 40.8).

269. See Wolfgang Klenner, *The East Asian Development Model*, in DEVELOPMENT MODELS, GLOBALIZATION AND ECONOMIES: A SEARCH FOR THE HOLY GRAIL? 90 (John B. Kidd & Frank-Jurgen Richter eds., 2006).

270. See bin Ghazali, *supra* note 241, at 104–05.

271. See, e.g., JAMES B. ANG, FINANCIAL DEVELOPMENT AND ECONOMIC GROWTH IN MALAYSIA (2009).

272. See BIN MUHAMMAD, *supra* note 23, at 165 (regarding Malaysia); Mayer, *supra* note 200, at 68–71 (regarding Pakistan).

Of the countries legalizing zakat, Sudan shows the lowest level of economic equality and the fourth lowest level of wealth, making it the greatest outlier in the sample. However, as explained earlier, Sudan may be distinguished because it is deeply divided along religious and ethnic lines.²⁷³ Zakat is enforced to some extent as evidence of public Islamization in a country with large non-Muslim communities. Massive poverty, civil unrest, and political instability make Sudan a poor example of a stable society in which to analyze discrete policies like zakat.

There are opportunities for further study. As Kuwait moves from a voluntary to a mandatory system, it may be instructive to track the specific impacts of the system in more systematically collecting and distributing zakat funds. One challenge to studying economic inequality is the lack of data and openness to World Bank surveys on the part of a number of predominantly Muslim countries.²⁷⁴ Even for those countries that have already established zakat systems for religious or legitimacy purposes, it makes sense to study the effectiveness of these programs so that they can be adjusted to become more efficient within the constraints of traditional *fiqh* (or contemporary *fiqh* where applicable).

V. IMPLICATIONS FOR MUSLIM COUNTRIES WHICH HAVE OR ARE CONSIDERING INSTITUTIONALIZING ZAKAT

The analysis of traditional *fiqh* in Section II, the qualitative analysis of modern zakat jurisdictions in Section III, and the empirical studies in Section IV all have implications for countries that have or are planning to institutionalize zakat. Although this section is meant to address the particular issues raised by zakat itself, some of the comments have broader relevance for evaluating the mechanics of the system in terms of tax and distribution.

273. See generally ROBERT O. COLLINS, A HISTORY OF MODERN SUDAN (2008).

274. GINI indices for the Equality Study came from the Economist Intelligence Unit which derived them synthetically in the absence of World Bank statistics. These statistics have been used in comparative studies. See, e.g., INST. FOR ECON. & PEACE, GLOBAL PEACE INDEX 2008: METHODOLOGY, RESULTS, AND FINDINGS (2008), available at <http://www.visionofhumanity.org/gpi/home.php>.

A. Observations and Recommendations

An analysis of the examples of legally institutionalized zakat reveals some patterns that might indicate ways to increase the effectiveness of these policies. First, there is the question of whether zakat payments ought to be enforced by the state. Second, the state might play a positive role in the facilitation of zakat by requiring greater transparency and accountability in the nonprofit sector. Third, states might be able to optimize administrative costs. Fourth, active state participation might provide a useful policy tool for poverty alleviation. Finally, constructive engagement with religious ideas might be helpful in societies wrestling with the appropriate relationship between law and religion.

1. Mandatory vs. Voluntary

There is precedent for both mandatory and voluntary systems within Islamic *fiqh*.²⁷⁵ For countries that already have established tax systems that are viewed as both legitimate and effective, it is not clear what benefits a mandatory zakat regime would provide. Countries whose tax systems are challenged as illegitimate might consider the advantages of enforcing zakat for this reason. Countries without effective taxation systems to fund public services, particularly poverty alleviation, might consider mandatory zakat if it would provide marginal benefits over existing systems. However, because most Muslim countries now have mandatory taxation (income, VAT, etc.), mandatory zakat is probably unnecessary.²⁷⁶ The empirical data reviewed in Section III does not appear to indicate a statistically significant advantage to choosing mandatory versus voluntary zakat administrations; however there appears to be some correlation between having a zakat system (mandatory or voluntary) and both higher wealth and economic equality. It will be worth studying countries that have recently shifted from voluntary to mandatory systems, particularly as other countries consider such a shift.²⁷⁷

275. ECONOMICS OF ZAKAH, *supra* note 7, at 25–26.

276. See Lawrence W. Kenny & Stanley L. Winer, *Tax Systems in the World: An Empirical Investigation into the Importance of Tax Bases, Administration Costs, Scale and Political Regime*, 13 INT'L TAX & PUB. FIN. 181 (2006).

277. See, e.g., Arksal Salim, *The Influential Legacy of Dutch Islamic Policy on the Formation of Zakat (Alms) Law in Modern Indonesia*, 15 PAC. RIM L. & POL'Y J. 683, 701 (2006) ("Many zakat agencies, both government supported and privately sponsored, are intent on amending the current Zakat Law in order to

Countries might consider promoting voluntary zakat for a number of reasons. First, it provides support for charitable work that governments might not be able to fund. Second, voluntary giving provides an opportunity for building solidarity within the community by facilitating a pious obligation that also contributes to the physical well-being of some and the general welfare. Significantly, without compulsion and the threat of sanctions, contributors are less likely to resent making payment or actively avoid payment.

2. Positive Role for the State

There are a number of steps that governments might take to facilitate zakat. Like several of the countries studied in this article, they might establish a governmental or semi-governmental agency to receive and distribute zakat funds. This provides greater assurances that monies are used efficiently and for the purposes intended by zakat.

To encourage participation in the system, countries might consider making zakat contributions to the official fund tax deductible.²⁷⁸ In systems where charitable gifts are not normally deductible, this creates a new incentive for participating in the official system. Some systems, such as Indonesia's, still receive only a small percentage of zakat funds.²⁷⁹ However, those percentages are growing and will probably continue to grow as more people become aware of the work such zakat funds can do. This relates to another element of facilitating zakat education. Studies indicate that many Muslims are unaware of the zakat obligation or how to calculate it.²⁸⁰ Muslim countries which already fund religious work or education might wish to educate Muslim citizens regarding zakat and opportunities for giving it.

make the payment of zakat obligatory.”).

278. See, e.g., Jordanian Zakat Fund, <http://www.zakatfund.org> (illustrating tax-deductible nature of the Jordanian zakat fund).

279. See PRIHATNA *supra* note 132, at 68–70 (explaining why only 12.5% of Indonesians pay zakat through government sponsored entities).

280. See, e.g., M.A. SABZWARI, A STUDY OF ZAKAT AND USHR WITH SPECIAL REFERENCE TO PAKISTAN 1–2 (1979) (study indicating a low level of understanding of zakat in Pakistan); see also PRIHATNA *supra* note 132, at 23 (“Most people [in Indonesia] have limited knowledge about zakat. They only know about prayers, fasting and hajj.”).

a. Transparency

To foster trust, governments might require disclosure by their zakat institutions exceeding the requirements of individuals, mosques, and private charities. If donors know that operating costs are reasonable and that contributed money is used effectively, they might be more likely to participate in the official system. Studies of Indonesia's system seem to indicate that most citizens prefer to give within their local community, presumably both because of social connections and because such contributions might be more easily identifiable within the community.²⁸¹ The clearer it is that money collected by governmental organizations is used well and in ways that meet needs normally unmet by local mosques and charities, the more willing donors will be to participate in national programs.²⁸² Rigorous transparency policies, such as those of the Nasser Social Bank, provide zakat institutions an important measure of credibility.²⁸³

b. Oversight

Regarding oversight, it is important to address the issue of Muslim charities supporting violence. Certain literature is highly critical of Muslim charities because of reported connections to organized violence.²⁸⁴ Investigation of some Muslim charities after 9/11 did uncover some potentially problematic connections.²⁸⁵ However, one must not condemn Muslim charities generally;²⁸⁶ many have played a vital role in poverty alleviation throughout the world. Instead, the need for oversight strengthens the argument that governments might play a constructive role in receiving zakat payments by ensuring that funds reach appropriate beneficiaries and are not used to support violence. Although one class of appropriate beneficiaries was traditionally

281. See PRIHATNA, *supra* note 132, at 6–7 (noting that most zakat donors in Indonesia give to neighborhood funds, usually at the local mosque, or directly to beneficiaries).

282. *Id.* at 58–64.

283. See Monzer Kahf, *Applied Institutional Models for Zakat Collection and Distribution in Islamic Countries and Communities*, in INSTITUTIONAL FRAMEWORK OF ZAKAH, *supra* note 196, at 202–04.

284. See, e.g., Baron, *supra* note 133, at 315–19.

285. *Id.*

286. See Laila Aal-Marayati, *American Muslim Charities: Easy Targets in the War on Terror*, 25 PACE L. REV. 321, 336–38 (2005).

interpreted to include warriors who fight for the cause of Islam, it is unlikely that modern militant groups (many of whom indiscriminately target Muslims and non-Muslims alike) could be construed as “the cause of Allah.”²⁸⁷

3. Administration Costs

One potential pitfall of government-administered zakat programs is the risk of high administrative costs. Ideally, private charities could minimize the costs of administration, but where charities do not have rigorous disclosure requirements, government programs with accountability mechanisms might minimize costs more effectively.²⁸⁸ A number of the statutory zakat programs described in Section III contain mandatory caps on administrative costs.²⁸⁹ Some adopt the *fiqh* tradition of limiting each beneficiary (including those who collect and distribute zakat) to one-eighth of the total contributions.²⁹⁰ Others have set more rigorous limits on costs.²⁹¹ Some states have allowed costs to be internalized within the state budget.²⁹² Perhaps the chief challenge to evaluating costs is the dearth of financial disclosure by traditional zakat

287. See, e.g., *Council on Am.-Islamic Relations, Advertisement*, WASH. POST, Sept. 16, 2001, at A35. We at the Council on American-Islamic Relations (CAIR), along with the entire American Muslim community are deeply saddened by the massive loss of life resulting from the tragic events of September 11th. American Muslims unequivocally condemn these vicious and cowardly acts of terrorism. Our thoughts and prayers are with the families, friends and loved ones of those who have been killed or injured. We also extend our gratitude to all the heroic firefighters, police officers and emergency medical workers who continue to risk their lives in the ongoing rescue and relief efforts. We join all Americans in calling for the swift apprehension and punishment of the perpetrators of these crimes. May we all stand together through these difficult times to promote peace and love over violence and hate.

Id.

288. See PRIHATNA, *supra* note 132, at 68 (“[BAZ and LAZ] need to work to encourage people to pay their zakat through professional institutions like them to ensure optimal utilization.”).

289. See *supra* Part III.B.

290. See, e.g., bin Ghazali, *supra* note 241, at 99–105 (describing the distribution of zakat funds in Malaysia, noting the presumption of the Shafi’i school of jurisprudence that each of the beneficiaries receive an equal portion).

291. See, e.g., ECONOMICS OF ZAKAH, *supra* note 7, at 31 (indicating that no more than 10% of zakat revenue in Libya may be used for administrative costs); see also Zakat and Ushr Ordinance of 1980, *supra* note 195, ch. 4, § 8b (indicating that local zakat committees in Pakistan may use up to 10% of received contributions for administrative costs); 1982 Amendment to the Zakat Act (Jordan) (indicating that no more than 10% of zakat fund in Jordan can be used for administrative purposes).

292. See, e.g., ECONOMICS OF ZAKAH, *supra* note 7, at 37 (“[A]s the House is affiliated to the ministry of Awqaf and Religious Affairs all its administrative expenditures are carried out by the general budget of the government.”).

charities and mosques related to costs and distributions. Concern for costs and questions regarding the ultimate beneficiaries of zakat monies certainly contribute to the pattern of giving directly to the poor in the community. Disclosure of and accountability for costs seems to make government funds an increasingly attractive vehicle for zakat giving.²⁹³

4. Role in Poverty Reduction

Although donors are assured who the beneficiaries will be when they give directly to the poor, such money may not be allocated to the most efficient location to combat systemic problems of poverty. Alternatively, state organized systems address broader societal patterns of poverty.²⁹⁴ Such systems can often reach the most needy rather than those most visible to individual donors.²⁹⁵ Further, coordinated systems can assure broader and more equitable distribution.²⁹⁶ Government information and resources allow them to administer rational welfare systems nationally.²⁹⁷ Note that this line of argument presumes the absence of a market of large, efficient charitable organizations which might allocate resources more efficiently than governments. In some cases, zakat money has funded community development projects and job training to equip the poor to support themselves.²⁹⁸ Although these efforts have been criticized because they are not explicitly included in traditional zakat *fiqh*, they are nevertheless supported by some governments which gives them some legitimacy.²⁹⁹

293. See, e.g., PRIHATNA, *supra* note 132, at 22 (“[Z]akat distribution through the government institutions increased 9% [based on 2004 data].”).

294. *Id.* at 24–25.

295. *Id.*

296. *Id.*; see also *Recommendations of the Third International Zakah Conference Held In Kuala Lumpur Malaysia 19–22 Shawwal 1401H*, in INSTITUTIONAL FRAMEWORK OF ZAKAH, *supra* note 196, at 473–77 [hereinafter *Recommendations*] (recommending state facilitation of zakat administration and international coordination of standards).

297. PRIHATNA, *supra* note 132, at 24–25.

298. See, e.g., Abd al-Qader Dahi al-Ajeel, *Kuwait*, in INSTITUTIONAL FRAMEWORK OF ZAKAH, *supra* note 196, at 276 (indicating that the zakat House in Kuwait “undertakes charity schemes such as mosques, health centers, orphanages, schools, drilling of wells, etc. outside Kuwait”); see also bin Ghazali, *supra* note 241, at 99–103 (listing uses of zakat funds in Malaysia, including education, scholarships, medical assistance etc.).

299. See al-Ajeel, *supra* note 298, at 270.

5. *Significance of Religion*

Although predominantly Muslim countries could (and many do) adopt secular welfare systems based on European or North American models, there are both advantages and disadvantages to adopting an explicitly religious system of taxation and welfare. Criticisms could be made from a secular or pluralistic perspective, that is, a government, particularly one that has authority over significant non-Muslim populations, ought not reify religious tradition at the level of government. This argument has particular relevance in countries with large non-Muslim populations such as Sudan, Malaysia, and Indonesia. Argument against government involvement in zakat may also be rooted in a commitment to Islamic principles. Since there is no unified global Muslim community, individual state governments (most of which have no acknowledged religious authority) are not in a position to enforce zakat uniformly as in the early Caliphates. Instead, so the argument might go, such state governments ought to simply allow for the voluntary contribution of zakat by the individual believer. This perspective might prove consistent with government support of voluntary zakat programs, which might be an example of the comparative benefits of voluntary systems.

It is possible that government zakat programs have benefits without resorting to religious justifications. To the extent that supporting such programs deals with real policy challenges (e.g., poverty) or provides the state with legitimacy in such a way that non-Muslim citizens are not marginalized, these programs might be beneficial. The legitimacy argument is strengthened from a religious perspective. Governments of predominantly Muslim countries might be viewed as more legitimate to the extent that they validate and facilitate traditional pious obligations such as zakat.³⁰⁰ To the extent that these programs are viewed as equitable and efficient, they likely confer greater legitimacy.³⁰¹

300. See, e.g., *Recommendations*, *supra* note 296, at 473–77.

301. The contrary may be observed in Pakistan, where equitable enforcement has been heavily litigated and continues to be a source of contention. See *supra* Part III.C.2.

B. Challenges for Muslim Countries Instituting Zakat

Zakat systems pose a set of common challenges for the countries that choose to institutionalize them. As a matter of economic policy, governments ought to consider the concrete impact of zakat on the poor; in tax parlance, this would include regard for progressivity. In terms of benefits law, it would consider the identities and needs of zakat beneficiaries. As described earlier, modern Muslim countries have adopted a wide variety of zakat collection measures. The efficiency of these options ought to be considered by governments considering adoption or modification of zakat policy. The question of who collects and distributes zakat raises similar considerations. Because zakat is rooted in religious law, its enforcement by a modern state raises questions regarding the appropriate role of religion in government. These issues are particularly salient for religious minorities. The adaptation of Islamic jurisprudence also raises questions related to the appropriateness of new interpretations. Finally, since most Muslim countries have incorporated many European notions of law, including tax and benefit law, the introduction of zakat may inefficiently duplicate or compete with existing systems.

1. Progressive

In the simplest sense, a progressive tax takes a larger percentage from the income of high-income people than it does from low-income people.³⁰² Although tax progressivity is sometimes defined as a tax whose rate rises as income rises, as in the U.S. system of graduated income tax brackets, this paper will assume the simpler meaning which can still be distinguished from regressive or proportionate taxes.³⁰³

Tax exemption to the extent of *nisab* ensures some degree of progressivity in zakat as a tax regime. This is particularly true if *nisab* accurately measures minimal costs of living. However, at the upper end of the wealth and income spectrum, there is a drop in progressivity because rates are fixed.³⁰⁴

302. See, e.g., CHARLES O. GALVIN & BORIS I. BITTKER, *THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE?* (1969).

303. See Joseph Bankman & Thomas Griffith, *Social Welfare and the Rate Structure: A New Look at Progressive Taxation*, 75 CAL. L. REV. 1905, 1907–08 (1987).

304. See *id.* at 1907 (“The progressivity of a tax rate structure is defined by the effective tax burden

The degree of progressivity also depends on the item taxed. Agricultural products which are measured annually are likely to represent something like income, particularly in agrarian societies. As a form of income tax, these 5-10% rates are subject to critique as regressive, particularly because those who produce well above their needs pay the same rate as those who make just over *nisab*.³⁰⁵ However, the 2.5% tax on wealth does not function as an income tax and is less subject to such criticisms.³⁰⁶

Some mandatory zakat systems emphasize the elements of zakat that function as income tax (Malaysia).³⁰⁷ Others emphasize tax on wealth (Pakistan).³⁰⁸ Others claim to enforce zakat according to classical jurisprudence (Yemen).³⁰⁹ Each of these options creates particular advantages and challenges for making zakat an effective system of poverty alleviation. Emphasis on taxing agricultural production risks putting a disproportionate burden on a poorer segment of society.³¹⁰ Emphasis on taxing wealth creates challenges in both estimating and collecting zakat.³¹¹ In Pakistan, deducting zakat from bank accounts on a fixed date caused massive withdrawals to avoid compliance.³¹² Countries that enforce zakat in its multiple classical forms might create particular avoidance strategies, but Saudi Arabia seems to have systematized collection, creating the appearance that it is enforcing its tax code like any other wealthy country.³¹³ Obviously, voluntary systems avoid having to address these issues.

on differing income classes. Under a progressive tax, the percentage of income paid to the government, or average tax rate, rises as income rises.”).

305. *Id.* at 1907–08.

306. David Shakow & Reed Shuldiner, *A Comprehensive Wealth Tax*, 53 TAX L. REV. 499, 578 (2000) (concluding that a flat percentage wealth tax could be as progressive as the current form of graduated income tax).

307. See BIN MUHAMMAD, *supra* note 23, at 185–86 (zakat in Malaysia emphasizes paddy production).

308. Mayer, *supra* note 200, at 68 (Pakistan emphasizes zakat on depository accounts.)

309. See Hussein Al-‘Adi, *supra* note 254, at 439–48 (Yemen has historically collected zakat on a regional basis, and its current institutional form relies directly on the *fiqh* tradition).

310. See BIN MUHAMMAD, *supra* note 23, at 185–86; bin Ghazali, *supra* note 241, at 96.

311. See *supra* Part II.B.3 for references to disagreement over visible versus non-visible assets. See also Shakow & Shuldiner, *supra* note 306, at 578 (noting valuation is one of the major problems with any wealth tax).

312. See Aazim, *supra* note 208.

313. See Dept. of Zakat and Income Tax, <http://www.dzit.gov.sa/en/index.shtml> (last visited Dec. 21, 2009) (Saudi Arabia).

2. Beneficiaries

Another challenge for both mandatory and voluntary zakat regimes is how to allocate resources to appropriate beneficiaries. Some systems attempt to distribute portions (in some countries equal portions) to all eight of the Quranic categories described in Section I.B.1., above.³¹⁴ Some systems clearly emphasize particular groups, especially the poor and needy. To the extent that groups other than the poor and needy are the beneficiaries, poverty alleviation is not likely to be served even though the distribution is jurisprudentially justified.

Most zakat systems distribute money, although some distribute goods or services. Because all of these systems distribute limited amounts, there is inevitably a high demand for distributions.³¹⁵ In Pakistan, announcement of zakat distributions has led to rushes by potential beneficiaries to reach distribution sites, resulting in injuries and occasional violence.³¹⁶

The notion that the poor have a legal claim on the property of the rich in the form of zakat bears some resemblance to the principle of the “preferential option for the poor” in Catholic social thought.³¹⁷ Roman Catholic liberation theologian Gustavo Gutierrez coined the term “preferential option for the poor” in the 1960’s, although it is deeply rooted in the scriptural and theological tradition of the Church.³¹⁸ Under the principle, it is a moral imperative to create conditions for marginalized voices to be heard, to defend the defenseless, and to assess lifestyles, policies, and institutions in terms of their impact on the poor and the excluded.³¹⁹ Similarly, zakat is an imperative to share resources with the poor and needy in such a way that constrains ownership rights. Both Catholic and Islamic jurisprudence view property rights in terms of stewardship rather than as absolute. In both cases the strongest

314. See bin Ghazali, *supra* note 241, at 99–101 (noting the state of Selangor, in particular, allocates zakat to all eight of the Quranic beneficiaries).

315. See, e.g., Zulfiqar Memon, *Sindh in Danger of Losing Zakat Funds*, DAWN, May 27, 2008, available at <http://www.dawn.com/2008/05/27/nat13.htm> (“About 100,000 deserving people of the province who depend on Zakat funds for their needs have to wait longer than expected for the second installment . . .”).

316. See *id.*

317. See *id.* at 374–76.

318. James B. Nickoloff, *Introduction* to GUSTAVO GUTIÉRREZ: ESSENTIAL WRITINGS 1, 12 (James B. Nickoloff ed., 1996).

319. *Id.* at 12–14; see also GUSTAVO GUTIÉRREZ, *A THEOLOGY OF LIBERATION: HISTORY, POLITICS AND SALVATION* 108–12 (Sister Caridad Inda & John Eagleson trans. & eds., 1973).

claim of right can only be made after obligations to others (rooted in the preferential option for the poor or zakat, respectively) are met.

3. *Collection Mechanisms*

Collection regimes for states that enforce zakat vary widely. As mentioned earlier, Pakistan attempted to streamline the process by having depository institutions enforce the contribution on a fixed date every year.³²⁰ Some states such as Malaysia have local enforcement personnel who estimate the productivity of agricultural resources.³²¹ Saudi Arabia appears to have a sophisticated system for monitoring and estimating zakat.³²² Even so, there is evidence that some voluntary systems (as in Indonesia) result in higher participation and collection rates than countries with mandatory zakat (Pakistan for example).³²³

4. *Administrators*

Although administrators are eligible to receive money from zakat revenues as valid beneficiaries, it is less clear what qualifications they ought to have. In most mandatory systems, collectors are government officials (or perhaps local officials in a federal system such as Malaysia). Ideally, the Pakistani system required almost no resources for collection because the onus was placed directly on depository institutions.³²⁴ In countries with voluntary systems, administrators may be government employees or they may simply be the employees of the semi-governmental entity established to receive and distribute zakat. In voluntary systems, the role of government calculation and enforcement of zakat falls away, so there is less administrative cost.

320. See Ordinance No. VI of 1982, *supra* note 161, §§ 1–2 (valuation of zakatable property is made at the beginning of the zakat year, the 1st day of Ramadan).

321. See BIN MUHAMMAD, *supra* note 23, at 140–42 (describing the selection process and collection protocols for zakat collectors who must estimate the zakat owed on particular plots of land).

322. See generally Abdul Aziz M. Rashid Jamjoon, *Saudi Arabia*, in INSTITUTIONAL FRAMEWORK OF ZAKAH, *supra* note 196, at 403.

323. See Hassan, *supra* note 127 (noting that 60% of Pakistanis paid zakat according to the survey, as opposed to 94% of Indonesians).

324. See Zakat and Ushr Ordinance of 1980, *supra* note 197, ch. 2, § 3 (depository institutions are obligated to collect zakat and forward funds to the Central zakat Committee).

Regardless of who is designated to administer zakat, that person will have to be compensated to secure their services. This might be challenging in systems that use traditional caps on the amount that zakat collectors may receive (1/8 or 1/10).³²⁵

5. Encouraging Piety

As described earlier, some countries have institutionalized zakat in order to foster Islamic identity and piety. Both Indonesia and Malaysia (a voluntary and a mandatory zakat enforcement jurisdiction, respectively) have high rates of zakat participation.³²⁶ Perhaps ironically, Pakistan, which has the most truncated collection system, also has one of the lowest rates of zakat giving. One explanation might be that most Pakistanis own less than the *nisab* and are exempt from zakat liability. Another explanation might be that the automatic system generates resentment of attempts to enforce traditional piety, leading to avoidance.³²⁷ Even within predominantly Muslim societies, state encouragement of piety might not be considered an appropriate policy goal. In some traditional Muslim societies, however, encouraging devotion and piety might be a significant concern of government. Voluntary systems tend not to generate resentment in the way mandatory enforcement might. By providing incentives like tax deductibility of contributions, states can incentivize zakat contributions without the risk of alienation that mandatory systems pose.

6. New Exercise of *Ijtihad*

A number of commentators have observed that zakat systems might become more effective if they are reimagined consistent with the Quranic principles but not necessarily according to the rules of traditional *fiqh*.³²⁸ As

325. See bin Ghazali, *supra* note 241, at 87–88 (compares Malaysian states that subsidize the costs of zakat collection as opposed to those that only allow a fixed portion of zakat revenues to be used for this purpose).

326. See Hassan, *supra* note 127 (80% of Malaysians and 94% of Indonesians gave zakat according to the survey).

327. See Aazim, *supra* note 208 (describing mass withdrawals from accounts in order to avoid zakat valuation and deduction).

328. See, e.g., BIN MUHAMMAD, *supra* note 23, at 182–89 (recommending changes to zakat in Malaysia, some of which would necessitate new interpretations of the textual sources).

an example, some scholars argue that *nisab* ought to be recalculated to reflect basic cost of living rather than relying exclusively on measures of commodities (whether gold, silver, wheat, rice, or cows) that have different values in contemporary economies.³²⁹ This move would allow countries to ensure that basic living costs are exempt from zakat and contribute to progressivity, but it would require a reinterpretation of the sources of *fiqh*. Because such interpretation has generally been disallowed in Sunni jurisdictions for more than 700 years, this would reflect an intentional opening of the “gates of *ijtihad*.”³³⁰ If modern jurisdictions could disregard or modify the *fiqh* tradition, they could shift from a legal interpretive posture of imitation (*taqlid*) to one of broader interpretive authority.³³¹ Although a number of Islamic scholars have proposed a renewed *ijtihad*, no country has openly claimed to be engaging in new *ijtihad* in the formation of zakat systems. On the contrary, justifications rooted in *fiqh* and the *usul al-fiqh* lend these systems legitimacy.³³² The role of traditional *fiqh* in modern statutes raises fascinating questions for future study: who writes these zakat statutes, what is their training in Islamic *fiqh*, on what basis do the statutes claim legitimacy, and does it matter?

7. Minorities

The question of how to treat minorities within a legal zakat framework is complex. The statistical analysis in Section III seems to indicate that countries with social unrest and religious division (Sudan and Lebanon in particular) might have less prosperity and economic equality.³³³ Zakat as a form of tax levied only on Muslims reinforces the classical distinction between Muslims

329. *Id.* at 185.

330. See generally Wael B. Hallaq, *Was the Gate of Ijtihad Closed?*, 16 INT’L J. MIDDLE E. STUD. 3–41 (1984) (describing the dispute over whether the need for new interpretation ended in or shortly after the third/tenth century once legal rules in the school of jurisprudence were well-developed).

331. See LOMBARDI, *supra* note 119, at 83–92 (describing and contextualizing modern efforts to restore the traditions of *ijtihad*).

332. See *Recommendations*, *supra* note 296, at 475.

The Conference calls upon zakat institutions to ensure that their performance of the collection and distribution of zakat must be compatible with the provisions of Shari’ah, bearing in mind that zakat is an act of financial worship. In addition, this will help to promote the confidence and trust of the zakat-payers and increase the efficiency of zakat institutions.

Id.

333. See *supra* Part IV.

and non-Muslims which legally disadvantaged non-Muslims even if the system provided for religious toleration.³³⁴ Of the countries that enforce mandatory payment of zakat, Sudan and Malaysia, in particular, must wrestle with the consequences of alienating large non-Muslim communities.³³⁵ Legalizing a religious system of taxation that reinforces outsider status might undermine national integrity and solidarity.

The question of minorities is not limited to the Muslim/non-Muslim axis. Many Muslim countries have a patchwork of diversity among Muslims—representing all four of the Sunni schools, the traditional *Shi'a* communities, and even communities that self-identify as Muslim but are not viewed as orthodox by other Muslims. Perhaps the best example of this tension is found in Pakistan, where the greatest challenge to mandatory zakat has been made on the basis of diversity. Early on, *Shi'a* communities objected to the Ordinance because it applied a standard rooted in Hanafi *fiqh* that was quite different from the Jafari *Shi'i* rules.³³⁶ These communities won an exemption from the system on that basis.³³⁷ The Ahmadi community, which is not considered to be Muslim by the Pakistani government, argued that its members could not be subject to the Ordinance unless the government conferred upon them legal status as Muslims.³³⁸ Unwilling to do this, Pakistan instead exempted Ahmadis from paying zakat.³³⁹ Perhaps the most significant challenge came from Sunnis who argued that they should be allowed to opt out as well if they followed a particular school of thought (*madhhab*) or tradition that conflicted with the Ordinance.³⁴⁰ As a result, many wealthy Pakistanis

334. See ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 88–91 (1996) (describing the secondary status of non-Muslims under Muslim rule).

335. See *infra* app. A (noting that both countries have large non-Muslim populations: Sudan 30% and Malaysia 40%).

336. Mayer, *supra* note 200, at 72 (“[The government of Pakistan] underestimated the strength of the opposition to the new tax by members of the Shi’a community.”).

337. Zakat and Ushr Ordinance of 1980, *supra* note 195, ch. 1, § 3(a).

[N]o Zakat or Ushr shall be charged or collected . . . [from a] person who [swears before a magistrate and two witnesses] . . . that he is a Muslim and follower of the recognized *fiqhs* . . . and that his faith and the said *fiqh* do not oblige him to pay the whole or any part of zakat or Ushr

Id.

338. *Pakistan Zakat Levy*, ASIAN RECORDER, June 2, 1988, at 15578.

339. U.S. DEP’T OF STATE, FREEDOM OF RELIGION, HUMAN RIGHTS REPORT (2002) (noting that non-Sunni and non-Muslim citizens are now exempt from the collection of zakat).

340. See *Pakistan v. Farzana Asa*, *supra* note 223; Clark, *supra* note 201.

avoid the automatic withdrawals from their accounts by filing the appropriate exemption form every year.³⁴¹

Every country must address the treatment of various Muslim and non-Muslim groups under zakat rules. Classical jurisprudence provides some answers, but not all. It is certainly a topic that warrants further consideration by Muslim legal scholars and policy makers.

8. *Integration within a Comprehensive Economic System*

Zakat was not originally enforced as or expected to be a modular policy that could be dropped into economies with values antagonistic to Islam. It was a devotional act of piety with redistributive effects that played a role within a larger set of economic mechanisms intended to promote social justice.³⁴² Zakat originated in a largely agrarian society with a significant trade infrastructure.³⁴³ Social and economic relations generally followed family, clan, and tribal lines.³⁴⁴ These relationships created an expectation of support within the group.³⁴⁵

Islam challenged some practices that were presumed to prevent prosperity and equitable distribution of resources by prohibiting exploitive trade, interest, and risk that could not be calculated.³⁴⁶ With the recent massive upheavals in Western-style capitalism, some scholars have started to reflect on the possible advantages of alternative systems, including Islam.³⁴⁷ Classical Islam values

341. See Aazim, *supra* note 208 (noting that by 2007, many depositors (presumably Sunni and Shi'a) exercised the right to be exempt from zakat on religious grounds, while some still withdraw cash from accounts prior to the valuation date).

342. See generally Ahmad Oran & Salim Rashid, *Fiscal Policy in Early Islam*, 44 PUB. FIN. 75 (1989) (describing economic policies of early Islam).

343. See ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* 43–46 (1991).

344. See CHARLES LINDHOLM, *THE ISLAMIC MIDDLE EAST: TRADITION AND CHANGE* 84–88 (revised ed. 2002) (describing the importance of family, clan and tribe affiliation in the period of the early Caliphs, who are the source of much of the Sunna of zakat).

345. *Id.* at 49–62 (discussing kinship obligations in the Arab Middle East).

346. See FRANK E. VOGEL & SAMUEL L. HAYES III, *ISLAMIC LAW AND FINANCE: RELIGION, RISK, AND RETURN* 53–128 (1998) (detailed analysis of financial regulation in the Quran, Sunna, and *fiqh* literature).

347. See, e.g., Haider Ala Hamoudi, *Muhammad's Social Justice or Muslim Cant?: Langdellianism and the Failures of Islamic Finance*, 40 CORNELL INT'L L.J. 89, 133 (2007).

Some may accuse the author of lifting longstanding prohibitions in the Islamic framework merely to satisfy global commercial demand. However, it seems clear from current experience that at some level the demands of the marketplace will reign supreme under any modality. The only question is

private property rights, but in the context of divine ownership and human stewardship.³⁴⁸ It encourages trade, investment, partnerships, and trusts.³⁴⁹ Honesty, integrity, industry, and innovation are all valued.³⁵⁰ Contracts presumed to be exploitive are prohibited.³⁵¹ The charging of interest is (presumably) prohibited.³⁵² Risk that results in the inability to value a business interest is prohibited.³⁵³ This system could potentially apply to futures, derivatives, and the class of instruments that nearly bankrupted the entire American financial sector.³⁵⁴ Zakat is an instrument intended to provide relief for the poor and disadvantaged when families and communities are unable to meet basic needs.³⁵⁵ Thus, it fits into a larger complex of economic values, relationships, and institutions.

Some scholars argue that zakat cannot meet its potential outside of that context.³⁵⁶ The set of countries that have legally institutionalized zakat have a variety of approaches to these other issues. Some, like Iran, view zakat as a small part of the overall Islamic economy.³⁵⁷ Others, like Jordan,³⁵⁸

whether to adopt a system that acknowledges this reality while retaining a distinctively Islamic character infused with populist notions of social justice and fairness, or to deceive the Muslim populace with elaborate obfuscatory measures intended to retain the form of profit-sharing while concealing the substantive reality of debt and risk-based finance.

Id.; see also Asad Zaman, *Islamic Economics: A Survey of the Literature* 79–80 (Religions & Dev. Research Programme, Working Paper No. 22, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1282786; Alex Berenson, *How Free Should A Free Market Be?*, N.Y. TIMES, Oct. 5, 2008, at WK.1 (noting that the \$700 billion bailout of Wall Street, including government ownership of bank stock, along with the inevitable wave of new regulation mean an end to hypercapitalism).

348. VOGEL & HAYES, *supra* note 346, at 56 (“We thus find *fiqh* statements that everything is God’s property, and that man deals with it only as agent. Every worldly benefit comes to mankind from God, as his providence.”).

349. See *id.* at 53–178.

350. MUHAMMAD, *supra* note 23, at 14–21.

351. VOGEL & HAYES, *supra* note 346, at 74–93 (describing the prohibitions against *riba* (usually translated oversimply as “interest”) and *gharar* (“risk”)).

352. *Id.* at 77–87; see also Hamoudi, *supra* note 347, at 111–14.

353. See VOGEL & HAYES, *supra* note 346, at 87–93; Hamoudi, *supra* note 347, at 114–15 (for descriptions of *gharar* (“risk”) prohibitions).

354. VOGEL & HAYES, *supra* note 346, at 154 (“The chief problem is that the conventional tools for risk management, hedges and derivatives of various kinds (futures, forward contracts, options, swaps, etc.), are presumptively invalid under Islamic law.”).

355. See Oran & Rashid, *supra* note 342, at 83–85, 90–93.

356. See, e.g., Ilyas Ba-Yunus, *A Note on the Social Implication of Zakah in Modern Times*, in SOME ASPECTS OF THE ECONOMICS OF ZAKAH 180, 180–81 (M. Raquibuz Zaman ed., 1979) (“Zakah, therefore, cannot be successfully implemented in a non-Islamic social and economic environment. Zakah is only a part of the total Islamic system. Unless the whole Islamic system is introduced, introduction of Zakah will bring very little fruit.”).

357. See generally Parvin Alizadeh, *Introduction to THE ECONOMY OF IRAN: DILEMMAS OF AN*

Indonesia,³⁵⁹ and Malaysia³⁶⁰ have not attempted to entirely replace the capitalist colonial institutions they inherited in the 20th century with Islamic ones. If there is some relationship between institutional commitment to zakat and economic prosperity and equality, it might not be necessary to artificially Islamize an economy; however, Islam's role in the economy, whether in banking, securities, derivatives, or trade, remains a potent political question in many Muslim countries.

VI. IMPLICATIONS FOR NON-MUSLIM LEGAL AND ECONOMIC SYSTEMS

Although the religious elements of zakat may not have relevance for secular tax and welfare systems, there are a number of insights that law and policymakers might glean from this rich tradition of jurisprudence. As a practical matter of tax implementation, zakat is an example of a modest wealth tax combined with a form of income tax. As a theoretical matter, zakat supports the ethical conclusions of philosophers and tax scholars who contend that property rights are attached to post rather than pre-tax income. To the extent that zakat is considered a principal source of revenue for public programs, it might imply a limited role for government, focusing on equitable distribution of goods. I take a pragmatic approach to considering potentially illustrative or beneficial ideas from religious traditions. However, I recognize that some object to including ideas drawn from religious tradition in legal and policy discourse.

A number of prominent tax scholars, including Deborah Schenk,³⁶¹ David Shakow, and Reed Shuldiner,³⁶² have proposed the possibility of using a wealth tax along, with an income or consumption tax in the case of Schenk, or an earned income component in the case of Shakow and Shuldiner. These scholars posit that a wealth tax might be superior to the current form of U.S. income tax and that studying wealth taxes, at the very least, provides helpful

ISLAMIC STATE (Parvin Alizadeh ed., 2000).

358. See generally WARWICK KNOWLES, *JORDAN SINCE 1989: A STUDY IN POLITICAL ECONOMY* (2005).

359. See BRUCE GLASSBURNER, *THE ECONOMY OF INDONESIA 2-5* (Equinox 2007) (1971).

360. See Bryan K. Ritchie, *Politics and Economic Reform in Malaysia* (William Davidson Institute Working Paper No. 655, 2004), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=509682.

361. See Deborah H. Schenk, *Saving the Income Tax with a Wealth Tax*, 53 TAX L. REV. 423, 465-66 (2000).

362. See Shakow & Shuldiner, *supra* note 306, at 499.

insights on tax theory.³⁶³ Zakat, as a form of taxation, argues for the practicability of such systems, since it has actually been enforced in a variety of contexts over the past fourteen-hundred years. Further tax scholarship might find fertile opportunities for exploring the impacts of wealth taxes in those jurisdictions that currently enforce zakat collection. The most obvious countries to examine would be those that have implemented zakat broadly and successfully. These would likely include Malaysia, Saudi Arabia, and Yemen. Kuwait will also be an interesting jurisdiction to study, since it is in the process of converting from a voluntary to a mandatory system of zakat. Pakistan and Sudan have both had economic and legal challenges to their zakat systems that make them less suitable candidates for studying the impact of wealth taxes. Although Libya has not encountered similar difficulties, its enforcement of zakat has not included wealth tax elements.

Zakat emerged from a religious tradition that views property rights in the context of ultimate divine ownership. Thus, human property interests are rooted in stewardship rather than an absolute right. Even so, Islam takes this property interest quite seriously, and in such a way that it might be considered analogous to common law notions of property. However, Islamic visions of justice differ from most libertarian models in their concern for equitable distribution. Perhaps the clearest example of this value is found in zakat tradition, which gives the poor a vested right in pre-tax property to the extent of zakat (although there is not agreement among the schools as to whether this right is *in personam* or *in rem*).³⁶⁴ This understanding of property appears to be consistent with the ethic proposed by Liam Murphy and Thomas Nagel, and arguably for the same fundamental reason—that justice must be evaluated in terms of an entire economy rather than in the narrower sense of tax justice.³⁶⁵ In other words, fairness must be measured for society as a whole, rather than for a single policy in isolation. Their solution to this problem for tax theory is to imagine property rights in post-tax income only. Taxes are a necessary precondition to the opportunity for generating wealth, particularly in complex economies like the U.S. or the European Union. So the claim to property rights according to Murphy and Nagel can only be made on the amount that remains after taxes have been collected sufficiently to support the infrastructures that make wealth creation possible.³⁶⁶ The tradition of zakat and Islamic philosophy

363. *Id.* at 500.

364. See AL-QARDAWI, *supra* note 22, at 543–44.

365. See MURPHY & NAGEL, *supra* note 10, at 44–45, 73–75.

366. See *id.* at 74.

related to property provides an opportunity to explore these ideas in a comparative and historical context that might add depth to the discourse of moral and political philosophy in this area.

To the extent that Islamic jurisprudence limits governments to the traditional taxes in the *fiqh* tradition, it seems to envision a society in which political power is primarily exercised to provide security and ensure a fair distribution of wealth. The legal claims of the poor are limited to zakat distributions (although the extensive network of charitable trusts that evolved also provided for the material needs of the poor as a complement). The legal claim of legitimacy in taxation was limited to the traditional taxes (zakat, poll taxes on non-Muslims, duties, etc.), so that a government's impulse to spend would be inherently constrained by its right to exact taxes. This sort of fixed limit on government power to tax could provide insights for theories of the state and government power outside of the Islamic context.

Some readers will likely object to my proposal that theory and practice rooted in religious tradition ought to play a role in public reason. I am sympathetic to the concern that religion and religious ideas have been used to justify or effect oppression but have three responses to this concern. First, the proposal to consider religious ideas in public discourse assumes as a general principle that including more ideas adds depth to public discourse even when those ideas are rejected. Second, the catastrophic failure of the U.S. economy, particularly the financial sector, justifies creative, pragmatic thinking—including analyses of economic systems that have not been considered before. Third, if religion has been a source of oppression when it has been included in public discourse, considering religious ideas that might promote social justice and subvert oppression might be theoretically justifiable as a counterbalance. In fact, one can hardly argue that religion does not currently play a powerful, and at times pernicious, role in the formation of law and policy, though it is often masked with other justifications. Openly considering ideas from religious traditions for their role in contributing to justice, rather than subverting it, provides transparency and may actually counter the impact of oppressive religious discourse, rather than magnifying it.³⁶⁷

367. See Powell, *supra* note 20, at 334–40.

VII. CONCLUSION

The *fiqh* of zakat provides a rich and varied body of jurisprudence. Modern statutory attempts to codify this tradition have actually furthered the development of this interpretive tradition despite prohibitions against *ijtihad*. Evidence that zakat is positively correlated with both wealth and economic equality and that it has contributed to poverty alleviation justifies its further study. Muslim states may wish to consider the experience of those countries that have institutionalized zakat in considering zakat measures or reforms. Non-Muslim law and policy makers may find further study of zakat helpful in developing alternatives to current assumptions regarding tax theory, even though the tradition is rooted in religious thought. Sincere interest in this Islamic legal tradition may also contribute to deeper understanding across cultural and religious boundaries and promote constructive dialogue that leads to cooperative efforts to achieve the mutual goals of social justice and poverty alleviation in particular.

APPENDIX A³⁶⁸

Country	Population	Per Capita	Approach to	GINI
		GDP	Zakat	Index
Afghanistan	31,900,000	1,522	None	60
Algeria	33,400,000	8,203	None	35.3
Azerbaijan	8,500,000	6,476	None	36.5
Bahrain	619,100	25,851	Voluntary	36
Bangladesh	156,000,000	2,270	Voluntary	33.4
Burkina Faso	14,400,000	1,494	None	39.5
Chad	10,500,000	1,777	None	52.3
Egypt	74,200,000	5,272	Voluntary	34.4
Guinea	7,991,700	2,438	None	38.1
Indonesia	231,800,000	4,684	Voluntary	34.3
Iran	70,300,000	9,127	Voluntary	43
Iraq	26,674,600	1480	None	42
Jordan	5,700,000	5,964	Voluntary	38.8
Kazakhstan	15,400,000	10,658	None	33.9
Kuwait	3,200,000	21,418	Voluntary	30
Lebanon	4,100,000	5,965	Voluntary	45
Libya	6,036,800	14,108	Mandatory	36
Malaysia	26,600,000	12,754	Mandatory	49.2
Mali	13,500,000	9,630	None	40.1
Mauritania	3,119,900	2,530	None	39
Morocco	33,723,400	6,003	None	39.5
Niger	12,226,000	1,012	None	50.5
Nigeria	144,000,000	1,281	None	43.7
Oman	2,600,000	19,879	None	32
Pakistan	160,900,000	2,943	Mandatory	30.6
Qatar	900,000	38,672	None	39
Saudi Arabia	24,564,900	17,196	Mandatory	32
Senegal	12,100,000	2,086	None	41.3
Sierra Leone	3,528,000	959	None	62.9

368. Population and GINI figures come from the UNDP 2007–2008 Human Development Report. U.N. Dev. Programme [UNDP], *Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World* (2007) (prepared by Kevin Watkins). Where GINI numbers were not available from UNDP, I have used numbers from the Economist Intelligence Unit.

2009]	ZAKAT			101
Somalia	9,118,000	272	None	30
Sudan	37,700,000	3,093	Mandatory	51
Syria	19,400,000	4,498	None	42
Tajikistan	6,533,900	1,637	None	32.6
The Gambia	1,572,300	2,402	None	50.2
Tunisia	10,200,000	9,630	None	39.8
Turkey	74,300,000	10,380	None	43.6
Turkmenistan	6,700,000	9,483	None	40.8
UAE	4,900,000	35,516	Voluntary	31
Uzbekistan	26,500,000	2,542	None	36.8
Yemen	22,008,200	1,015	Mandatory	33.4

