

**INCREASING CHARITABLE GIVING AND
MAKING IT SUSTAINABLE**

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ABSTRACT

It is impossible for a charity to carry on its activities without funding. This paper considers the annual cycle of religiously mandated giving and argues that people give more when their cycle of giving is weekly or monthly rather than annually. It advocates making weekly or monthly giving a “habit of the heart” that is built upon social or religious obligation. This can be accomplished by utilizing charities with “donor advised funds” to accumulate donations until the appropriate time in the annual giving cycle to disburse the donations to the ultimate recipients. However, there is a theological problem, which constrains a Muslim from withholding the immediate payment and unconditional transfer of zakat. This paper encourages Islamic scholars to consider the challenges of religious giving rules developed historically in an agrarian society and to develop theologically acceptable ways for Muslims to take advantage of modern technologies and tax benefits, which incentivize giving and increase sustainable funding. This requires the appropriate approvals from religious authorities so is a theological challenge as well as needing specialized technology and legal expertise.

This paper also highlights aspects of the common law of charity problematic for Muslims because it is based upon principles that are contrary to Islamic theology. These include the common law opposing gifts to “near relatives” which are encouraged in the Qur’an. Charity and tax

law also presents legal challenges to donors creating a waqf and following shari'a compliant investment policies. It is also problematic for a private foundation to carry on shari'a compliant forms of social enterprise such as a Mudharabah contract. This paper does not solve these problems; but highlights them so that researchers and scholars come to understand these differences so that they can better recognize legitimate areas of conflict and seek reasonable accommodation.

keywords: Charitable giving, Al-Arba'een, Imam Hussein.

Introduction:

Feeding and providing accommodation to the millions of individuals who participate in the annual Arbaeen pilgrimage requires an extraordinary amount of money. I do not have access to the data to determine how much money is spent annually to provide these services without charge to the pilgrims. As a foreign legal expert involved in charitable activities in Canada, the United States, Europe, Asia, Africa and Australia during the past four decades, I believe that much more research should be done to document the quantum and sources of the money which funds the Arbaeen Pilgrimage. Hopefully, if the world becomes informed about the extraordinary spontaneous generosity of ordinary Iraqis to Arbaeen Pilgrims, this grassroots charitable phenomenon will come to be paid the respect it is due. More importantly, the world can learn from it and apply those lessons in other circumstances

This paper will begin by focusing on how to increase annual giving. Then it will consider ways to make annual giving dependably repeated year after year so it is sustainable. It will also explore creating an endowment or *waqf*⁽¹⁾ to provide sustainable funding without annual giving. Finally,

(1) Waqf is defined in Merriam-Webster dictionary as “an Islamic endowment of property to be held in trust and used for a charitable or religious purpose”. Plural is Awqaf.

it will deal with creating social enterprises to become self-generating sources of sustainable funding.

MAKING GIVING A “HABIT OF THE HEART”⁽¹⁾

It is impossible for a charity to carry on its activities without funding. No one can feed the millions of Arbaeen pilgrims unless someone provides the money to buy food. Charities rely upon donations and usually begin every new year without any committed funding which guarantees sustainability. Consequently, most charities rely primarily upon annual giving. Annual giving consists of gifts which are each “one-off” gifts that do not have any requirement or expectation in law that there will be another gift. The challenge to making annual giving sustainable is to increase the probability that these gifts will continue to be repeated consistently so that a charity can responsibly and realistically base its budget upon this expectation. Charities need these “one-off” gifts to become a “habit of the heart” of donors. If donors have a social or religious obligation, the habit of the heart is reinforced, and charities can more responsibly rely on these annual gifts to provide sustainable funding (Richard M. and Robert B., 1985).

The word “annual” in annual giving in Canada refers to the budget cycle of the charity rather than gifts which are made just once a year by the donor. The expenses of a charity are not just annual but occur week by week and month by month. One key to sustainability is to get donors to give weekly or monthly because a giving pattern which re-occurs on a regular and predictable basis becomes a habit of budgeting rather than just a habit of the heart. It is much easier to get donors to give \$25 per week or \$100 per month than it is to expect a single gift of even half that amount, being \$600, at the end of the year. If that \$600 gift is not made, it leaves a

(1) “Habits of the heart” was Alexis de Tocqueville’s phrase for “mores” and was a concept developed brilliantly.

big hole in the charity's budget whereas a charity is not significantly hurt if a donor misses a single weekly or monthly gift when aspiring to give \$1200 over the course of the year. Also, it is much easier to make up a smaller gift the next week or month.

This raises an important issue for Muslim scholars to consider theologically. In Islam, the "annual" cycle of giving is dictated primarily by the religious calendar. Given the religious requirement to calculate annually the quantum of wealth upon which the obligation ("Zimma") to pay zakat and khums is based, it is much easier to think of the cycle of giving being annual. This is particularly true of Zakat al-Fitr, which is paid on the first day after the month of fasting, Ramadan, ends.

Being a Christian from Canada, it is not my intention to challenge the theology of the cycle of giving in Islam. However, my decades of experience with giving in Canada has taught me that individuals who make a habit of setting aside their charitable donations on a weekly and monthly basis give far more each year than those who wait until the traditional period of Christian giving, being Christmas, or those who do most of their giving prior to tax incentive deadlines, such as December 31. Giving that is tied to the donor's cycle of personal income results in much greater and more reliable donations than giving which is tied to seasonal traditions or motivated emotionally by crises such as floods, famine or other emergencies. More money is given to charity when the donors make "giving" a habitual part of their budgets and give out of a sense of social or religious obligation rather than merely a spontaneous response to seeing need or being asked.

In today's tax driven world in countries such as Canada, the maximum limit of tax efficient giving is determined by the tax authority's calculation of annual taxable income. Secular taxable income calculations are done on an annual basis. Unfortunately, the later in the year persons wait to

determine the allowable maximum limit to giving which will produce a tax benefit, the more likely it is that they will not give the maximum because the donation amount has grown too large, and money has been already spent. When giving is a religious obligation, the timing of the giving should not reduce the amount donated to the extent that it does when giving is discretionary or voluntary. However, the temptation to withhold donations is increased when payment is delayed until the end of the annual cycle because much of the money has already been used for competing purposes.

While I have a limited understanding of the jurisprudence or *fiqh* regarding Islamic giving, I do know that religious scholarship can modify interpretation. It was the grandfather of the Prophet, Abdul Muttalib, who introduced *Khums* and it continued in Islam when it was revealed in the *Qur'an*. There are many differences in how religious scholars interpret the areas of wealth which must be included in calculating the *khums* or *zakat* obligation. The interpretation of the Arabic word “*Ghaneema* — Booty” is subject to much religious scholarship and many Sunni Muslims restrict its meaning to wealth collected as part of a war. My question is whether religious scholarship might increase sustainability by finding a theological basis for making annual giving less annual and more evenly distributed across weeks and months.

The primary religious giving obligation in Christian theology is to pay the “tithes”. The tithe is 10% of income so is more conducive to weekly or monthly giving. A metric which is tied to “income” makes it easier to recommend giving on a weekly or monthly basis than does a metric tied to “wealth” such as “*zakat*”. It makes sense to measure wealth on an annual basis and at a specific time in the year. However, “*khums*” provides a pathway because it is based much more upon an income metric.

One consequence of giving incrementally throughout the year is that

there is the possibility that a person might have given more throughout the year than his obligation when it is calculated at the end of the annual cycle. However, I am certain that one can never give too much to Allah so this should not be a theological problem. In the tax world, if a Canadian donor gives more of his taxable income than is allowed for tax deductions or credits in that year, the excess donation can be “carried forward” and used in the following five years. Islamic scholars could conceptualize a comparable mechanism in calculating *zakat* or *khums*. The advantages of devising a theology and system which supports giving “too much” must be preferable to mandating a system which makes it more probable that a person will not give “enough” to fulfil his obligation.

In Canada and the United States there are charitable foundations which serve primarily donors rather than charities by providing what is known as “donor advised funds”. These foundations are charities which receive donations from a donor and issue all of the documents necessary for the donor to receive tax benefits and then accumulate a specific donor’s gifts in what is effectively a charitable bank account for that donor. Giving platforms in Canada such as Charitable Impact Foundation [www.charitableimpact.com] have technology which makes it very easy for donors to use credit cards to automatically donate regular amounts monthly which accumulate in their donor advised fund until such time as that donor advises Charitable Impact Foundation to which charity he wants the funds to be given. All of this is done electronically on the website so there are no additional costs to the donor or recipient charity. This is an excellent mechanism to accumulate and then disburse *khums* or *zakat*.

The research and analysis done by Charitable Impact Foundation supports the claim that weekly and monthly donations to a donor advised fund not only increases the quantum of donations over the course of a year but also improves the wisdom applied to selecting recipient charities. Donors are reaching into their pockets to donate as a matter of habit and

know exactly the amount of funds available to them to disburse when the appropriate time comes. Consequently, they give more thought as to the worthiness of the charitable purpose to which they give. Many people giving at a time of religious festival or year end for tax purposes give simply to the first charity which comes to mind or for which they have a means to send them funds conveniently and quickly. The charitable sector benefits from more considered and prudent donations and not just from increased amounts given.

My interaction with Islamic scholars in Canada has informed me that there is a theological problem which constrains a Muslim from withholding the immediate payment and transfer of *zakat*. The theological requirement to immediately and absolutely transfer *zakat* obligations is inconsistent with allowing Muslims to develop theologically acceptable ways of giving weekly and monthly. Islamic scholars should devise theological acceptable ways for Muslims to make weekly and monthly donations which accumulate in the equivalent of “donor advised funds” until they are disbursed in fulfilment of the donor’s religious obligations. The appropriate approval should be sought from religious authorities.

RELIGIOUS APPROVAL OF CHARITABLE PROJECT

It is important to have a charitable project qualify for khums or *zakat* funding. An Islamic donor has a theological obligation (“Zimma”) to make the gifts mandated in order to comply with khums or *zakat* requirements. The faithful donor makes these gifts year after year so the funds are available on a sustainable basis. The challenge for many charities is to influence the donor to direct his *zakat* or khums to its charitable project. This may require getting the approval of the appropriate religious officials to designate the program as being worthy of *zakat* or khums funds. If a respected imam issues a fatwa confirming the eligibility for khums or *zakat*, it is important that the charitable project or program be carried on

in compliance with the theological constraints necessary to qualify for khums or zakat giving.

One of the advantages of seeking a fatwa confirming that the charitable organization's funding solicitation qualifies for khums or zakat funds is that the focus of the analysis is on the specific project or program rather than the organization. Too much of fundraising today focuses on the "brand" which an organization has publicly cultivated rather than the "purpose" which the charity is pursuing through specific programs and projects. If donors become trained to only pay attention to the brand built by a charity, they can be misled by clever marketing. A fatwa does not endorse a brand but only a worthy program or project. This process not only is good theology and leads to sustainable annual giving but it also accomplishes good public policy in putting the focus on the purposes being pursued rather than on the organization pursuing it.

Of course, not all programs qualify for khums or zakat funding. Charitable programs and projects are worthy of being funded even if they must be funded by gifts of sadaqah or voluntary charity. One way to increase giving and to work towards sustainability is to try structure multi-year gifts. For example, consider programs such as sponsoring children for education and living expenses. Usually, the costs are broken down to the relevant costs for one month which means that each gift is very affordable around \$30. What makes this giving model sustainable is that once donors begin sponsoring an individual child they normally continue month after month and year after year until that child completes his or her secondary education. This means that an individual donation of \$30 may continual monthly for a period of ten years for a total of \$3,600. When one seeks to make annual giving sustainable, it is useful to conceive mechanisms which will transform a single donation into a ten-year monthly commitment.

DIFFERENCES IN GIVING TO FAMILY IN ISLAMIC LAW AND COMMON LAW

When providing financial support for individual persons, it is important to realize that the common law of charity does not authorize charity being provided to “near relatives” in ways that are authorized by the Qur’an. In Ayat 41 of the 8th Surah of the Qur’an it says that “a fifth share is assigned to Allah, and to the Messenger, and to near relatives, orphans, the needy and the wayfarer...”⁽¹⁾

The secular law of charity in England, Canada, the United States and other Commonwealth countries is based in the common law. In most of Europe, the Middle East and Asia the applicable law is civil law. The common law does not allow distributing charitable funds to persons on the basis of being related to a single person, even if it is the near relative of the Messenger (Ahlul-Bayt). In a case called *In Re Compton*⁽²⁾ England’s Court of Appeal held that a gift was not for a charitable purpose because the group of beneficiaries was distinguishable from other members of the community by a relationship, such as family ties, with a particular individual. The common law decided that a group defined by such a familial relationship did not constitute the “public” for charitable purposes.

The only exception to this legal principle is found in the “poor relations” cases when the basis of a charity providing funding was exclusively limited to “the relief of poverty” because the “near relatives” were poor. This is

(1) “And know that out of all the booty that ye may acquire, a fifth share is assigned to Allah, and to the Messenger, and to near relatives, orphans, the needy, and the wayfarer,—if ye do believe in Allah and in the revelation We sent down to our Servant...” Qur’an 8:41

(2) [1945] Ch 123, [1945] 1 All ER 198, (1945) 61 TLR 167

somewhat like the Prophet’s saying that a gift to provide against one’s family getting into want is excellent sadaka. However, the distinction is that the common law only allows a gift to family members who have already fallen into want or poverty and does not allow a gift to provide against them becoming poor. The court was considering “near relatives” of the benefactor making the donation or settling the charitable trust rather than descendants of the Prophet. England’s House of Lords subsequently held it was not charitable at law to provide near relatives of a benefactor with funding for educational purposes (*Oppenheim V.*, 1951)⁽¹⁾. Providing for family is a significant difference between the charity set out in the Qu’ran and the charity authorized by the common law courts.

It is unfortunate that the common law does not recognize the wisdom of the Prophet’s words that:

“A pious offering to one’s family, to provide against their getting into want, is more pious than giving alms to beggars. The most excellent of sadaka (charity) was that which a man bestowed upon his family.”

The “public policy” perspective of the Prophet’s position is very different from the common law principle which treats all benefit to family and near relatives to be a “private benefit” to the benefactor and therefore lacks the quality of “public benefit” which is required to qualify as charity. The common law is based upon the legal principle that it is more pious to give alms to beggars and strangers who have already fallen into poverty than to make gifts intended to prevent one’s family from falling into poverty.

(1) *Oppenheim v. Tobacco Securities Trust Co Ltd*, [1951] AC 297 HL(E), [1950] UKHL 2, [1951] 1 All ER 31his

For years I have advised governments in China and Vietnam on the common law of charity. The culture and social mores in China and many other countries make it a priority to help those within the clan or extended family before strangers. Even without the religious teaching of the Prophet, these cultures begin their concept of public good with caring for the extended family. This is in contrast to the common law which promotes the public policy position that it is morally superior to help strangers rather than near relatives. It seems to me that the common law could benefit from modifying its position in this regard, particularly when setting up an endowment or *waqf*. Much of the common law of charity flows from the emphasis in Christian Scripture on helping “widows and orphans” already in distress. The common law would be improved if it incorporated Islamic teachings with regard to preventing poverty within the extended family. The common law concept of charity should recognize the Prophet’s inclusion of gifts which prevent families from falling into poverty instead of only allowing gifts after the recipient is already destitute.

MAKING ANNUAL GIVING SUSTAINABLE

The Prophet understood the problem of annual giving not being sustainable. The Prophet addressed it in the context of death when an individual’s acts of annual giving necessarily come to an end because he is no longer alive. A *hadith* (Muslim 1992, *bab 3, hadith 14*) narrated by Abu Huraira reported the Prophet as saying:

“When a man dies, all his acts come to an end, but three; recurring charity (sadaqa gariya) or knowledge (by which people benefit), or a pious offspring who prays for him.”

The most common mechanism for funding *sadaqa gariya* or recurring

charity is a waqf. In the Arabic language “waqf” means to stop, contain, or preserve. It is ironic that containing and preserving capital for charitable purposes does not stop charitable giving. Instead, it sustains charitable giving because the sadaka is now recurring. The first duty of the mutawalli, or manager of the waqf, is to preserve the waqf property.

There are two kinds of waqf. Waqf Khairi is an endowment for religious, charitable or pious purposes whereas Waqf Ahli is an endowment primarily for family purposes. However, even a Waqf Ahli must have a purpose which is qurba, meaning objects that will be pleasing to Allah. Thus, to be valid even a family waqf needed to have an ultimate charitable purpose. There is a need to encourage Muslims to establish and develop more Waqf Khairi if one is to increase sustainable funding for charitable causes. There is also a need for legal experts in non-Islamic jurisdictions to come to a better understanding of the waqf in terms of the law of trusts. In 2012 in an academic journal published by Oxford University Press I co-authored “Understanding the Waqf in the World of the Trust” (Paul S., David R. (September 2012). This paper will not attempt to deal with the many technical aspects of the waqf.

One of the challenges in creating a waqf is that zakat funds cannot be used to fund it. This is based upon the verse in Chapter 9 of the Qu’ran which says:

“The As-Sadaqat (here it means Zakat) are only for the Fuqara’ (poor), and Al-Masakin (the needy) and those employed to collect (the funds of Zakat—to compensate for their time); and to those who are inclined (towards Islam); and to free the captives; and for those in debt; and for Allah’s Cause, and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knowing, All-Wise.” (Verse 60)

There is a contrary opinion held by those interpret the words “for Allah’s Cause” (“Fe Sabeel Allah”) to be so general as to include the waqf. However, this interpretation ignores the fact that there is a very specific categorization of persons who deserve zakat monies which undermines the interpretation that “for Allah’s cause” should be given such a generalized meaning. There is an ‘Ijma’ or near ‘Ijma’ (consensus of the scholars) that zakat should not be used to fund a waqf.

This makes it more difficult to find persons who will first do their obligatory giving of zakat and khums and then make an additional voluntary gift to endow a waqf. However, a waqf can fund charitable and social causes which are much broader than the restrictive purposes which can be funded with zakat funding.

There are many similarities between the common law charitable trust and the waqf. There is an academic paper entitled “The influence of the Islamic law of waqf on the development of the trust in England: the case of Merton College” in which the author Monica Gaudiosi, investigates the incorporation of one of the earliest colleges at Oxford University in England (Monica G, pp. 12311261-). Merton College was established in 1274 and many of its characteristics followed the principles of Islamic law found in forming a waqf. The theory is that Merton College was created during the Crusades and the founder, being a prominent Christian clergyman, would not want to announce his adoption of an Islamic institution as the model for his charity. While this theory is controversial, it is interesting to think about the similarities between the waqf and charitable trust as a vehicle for sustainable funding.⁽¹⁾ However, one significant difference is that the legal owner of the property settled in a charitable trust is the trustee, whereas

(1) The Trusts (Hague Convention) Act 1991 seems readily adapted to support the recognition of a waqf as a trust.

for a Muslim, the true owner of waqf property is Allah.

There are billions of dollars already in endowments in charitable foundations in the United States, Canada and Europe which can make grants to charitable projects In Iraq. There are legal constraints in moving charity funds internationally. It is to be expected that Canada or the United States, having provided significant tax benefits to fund a charitable foundation in those countries, would prefer to have the charitable funds spent addressing domestic problems. Consequently, they put up barriers to make international grantmaking more difficult. However, those barriers can be overcome with skilled legal advice.

One of the solutions to finding sustainable funding for charitable projects in Iraq is to have Muslims in North America and Europe create private foundations. Private foundations function much as a waqf functions but are incorporated and operated according to tax laws in the donor's country rather than according to Islamic law. Unfortunately, there are some aspects of tax laws and the common law which are contrary to Islamic law. While the intention was not for the law to have an anti-Islamic bias, the difference in legal environment can have that effect.

For example, a Muslim creating a private foundation in Canada, similar to the Ford Foundation or Bill and Melinda Gates Foundation, donates a large amount of capital which is invested and only the earnings from the capital are given away. In Canada, a private foundation each year must distribute an amount at least equivalent to 3.5% of its investment capital whereas in the United States it must distribute at least 5%⁽¹⁾. The

(1) This distribution requirement can violate the waqf requirement that all transfers of property to a waqf are irrevocable except where there is an exchange of property of equal value because distributing 5% might require distributing

investment policy is set by the foundation.

A Muslim would want his private foundation to follow a shari'a compliant investment policy. Unfortunately, there is a problem arising from the fact that the common law of charity, initially referring to "pious causes", substantially grew out of Christian theology in countries that historically are Christian countries. The investments with which the common law is most comfortable for charities are investments producing passive income. In practice, this most commonly means earning interest income from many different forms of debt. This is, of course, theologically forbidden to a Muslim. Earning interest is usury and is forbidden "haram".

In Canada there is a statutory provision in the Income Tax Act which says that the charitable registration of a private foundation may be revoked if it "carries on any business".⁽¹⁾ There is no doubt that the mechanisms involved in shari'a compliant investing would come under the meaning of "any business" as that term is used in the Income Tax Act. That statutory provision was not intended to be anti-Islamic. Instead, it was intended to reflect the historic practice of the common law of charitable trusts and the public policy preference to prevent tax exempt entities from operating for-profit businesses. However, it unfortunately presents a legal hurdle to Muslim private foundations wanting to follow a shari'a compliant investment policy.

There is another problematic legal principle in the common law of

some of the donated capital if the annual earnings are not adequate to fund the distribution required by tax law.

(1) Income Tax Act paragraph 149.1(4)(a)

England. A decision of the High Court in *Cowan v Scargill*⁽¹⁾ established the legal principle that a trustee cannot choose an investment policy for reasons other than economic return. In that case, the trustees of the pension fund for coal miners wanted to forbid any investments in industries which competed with and was a threat to the coal industry. The High Court said that such a policy was not allowed because it could reduce the optimum economic return by restricting the investment policy. In order for such an investment policy to be acceptable, it must be established that investment policy does not reduce the fund's income. The Charity Commission for England and Wales has taken the position that restricting investments to shari'a compliant businesses similarly offends the principles in *Cowan and Scargill*. It seems certain that an investment policy forbidding a fund to invest in alcohol would also run afoul of these principles unless it can be established that the consequence is not a reduction in the fund's income.

Unlike Christianity, Islam is a legal system as well as a theology. When a caliphate or uma is entirely run by Muslims, there is no reason to worry about conflicts such as I have outlined. However, when Muslims operate in a secular legal environment, there are many problems which arise primarily because of ignorance of Islamic law. They are not intended to be prejudicial. They are intended to reflect the legal principles and norms of a country which does not have to pay attention to theology when enacting its laws. In my opinion, ignorance of Islamic law by Western governments has more often worked in the favor of Muslims than worked against them. There are many aspects of Islamic law and fiqh which breach the strict interpretation of the common law of trusts and charities but these are ignored by Western governments because they are not known or

(1) [1985] Ch 270

understood. However, it is important that researchers and scholars come to understand these differences so that they can better recognize legitimate areas of conflict and seek reasonable accommodation.

ACHIEVING SUSTAINABLE DEVELOPMENT THROUGH SOCIAL ENTERPRISE

One could argue that Islam is far ahead of Western philanthropy's current focus on social enterprise because *shari'a* compliant investing is entirely consistent with social enterprise. There is no need for Islamic law to break free of the historic limitation to passive investments and interest income. Theoretically, Islamic charities are already fully enabled to engage in social enterprises. They just need to be educated about the most prudent type of social enterprises and how to apply them to the purposes and objectives of the charity.

There are many different *shari'a* compliant forms of social enterprise such as a *Murabaha* contract or a *Ijara, Musharaka* or a *Mudharabah* contract. This paper will not delve into the differences between these contracts. Perhaps the most useful tool for charities within the Islamic finance framework is the *Mudharabah* contract. This is used in the financing of new business ventures in the non-charitable world. Under this modified social enterprise arrangement, the charity becomes the entrepreneur or *mudarib* and provides the effort and labour while another party, known as the *rabal-maal*, provides the funding. In the language we would use in Canada, the charity provides the brains and "sweat equity" while the funder provides the cash equity.

Unfortunately, there are restrictions in tax law which need to be considered. In Canada, a charitable organization, as opposed to a private

foundation, is allowed to carry on a business only as long as it is a “related business”. This means that the business must be related to the purposes of the charity or be operated primarily by unpaid volunteers. The most acceptable example of this to Canada Revenue Agency is a gift shop or coffee shop in a hospital or museum. This is not a very expansive opportunity for social enterprise.

In the United States, there is not a similar prohibition on business activities of charities. However, the Internal Revenue Code has an “Unrelated Business Income Tax” which it applies to charities. Consequently, while charities can operate a social enterprise, the profits are taxed if it is an unrelated business so it becomes much less attractive because not all the profits are available to fund charitable activities.

The law in England is much more open to charities operating significant social enterprises. You cannot walk down the High Street in any English town without seeing many charity shops. These are run quite professionally with paid staff as well as volunteers and the government does not tax their profits. All the profits go to charity. Moreover, charities in foreign countries have often employed poor persons in those countries to create handicrafts or other products which are sold in the charity shops in England. This means that there is the double charitable benefit of employing people in a country such as Iraq to create the products sold in the charity shop in England and all the profits also go to charity.

CONCLUSION

It is difficult to deal with a complex topic such as funding charities when there are so many different theological considerations as well as legal issues in different countries. Theological issues transcend geographic boundaries

and are relevant in all countries and jurisdictions. Unfortunately, tax and legal issues govern how a charity must operate in a specific country. We need a deeper and more comprehensive knowledge of both theology and law if we are to move forward. Often, we have Imams issuing inflexible fatwas based only on theological considerations and these are in conflict with secular laws which govern the operations of charities. At the same time, we have lawyers and accountants providing professional advice to these same charities with no understanding of the extent to which their advice conflicts with the theological advice.

My father was a very learned religious scholar who knew his Bible and all of the Christian theological positions extremely well. He would not have allowed secular laws promulgated by the government or tax authorities to influence his understanding of how he calculated and spent his tithe. He only looked to Scripture for his advice on making his charitable gifts.

I am his son; but I am not nearly as knowledgeable as my father was about Scripture. However, I do know tax law related to giving and the common law of charity nearly as well as my father knew his Bible. By using my tax knowledge in conjunction with my Scripture knowledge, I have been able to increase the amount of money devout people give to charity by many hundreds of millions of dollars. I give a great deal of thought as to how to reconcile the secular laws with religious teaching on giving and charity. My father lived to be 99 and his faith never wavered. However, as he became older and my legal practice matured, he became increasingly supportive of my work because he came to understand how much more money was available for charity if wealthy donors had excellent tax advice which enabled them to donate more because of the resulting tax benefits. This increased giving enabled them to fund more

charity as they simultaneously followed the religious instruction from their religious leaders.

The Keepers of the Shrine have obviously adopted some of the pragmatism of my father. Without compromising any of their religious integrity, they have invited a Christian tax lawyer to present a paper in an attempt to learn from non-Islamic sources on giving and sustainable funding. I do asking that theology be compromised. However, I would recommend that their Islamic scholars revisit some of the *fiqh* developed in an era of time before believers had to deal with income tax and estate duties. The objective would be to determine whether some of their theological interpretations can be updated to be more flexible and adaptable to the secular tax and inheritance laws to which their followers are subjected by government authorities. The intent is not to compromise theological teachings or bow down before secular authorities. The intent is to understand secular laws and to see whether more funds can be made available for religious and charitable purposes by enabling devotees to take advantage of tax deductions and credits so that their charitable giving is more economically efficient. The result will be less money transferred to governments and more money available for the mosque, *madrassahs* and charity. If charity funding is to be increased, it must reduce sending funds to tax authorities when the law allows them to be given to God.

In Christian Scripture we learn that Jesus told the people to “render unto Caesar the things which are Caesar’s; and unto God the things that are God’s”⁽¹⁾. I am concerned that if we do not have an expert understanding of Caesar’s law, we might be rendering to Caesar funds which should be

(1) Matthew 21:22 KJV

available to God by way of gifts to charities.

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