WAHID M. AMIN

Introduction: The Efficacy of Financial Structures for Islamic Taxes and Dues

In 2013 the Al-Mahdi Institute (AMI) held its first Contemporary Fiqhī Issues Workshop exploring the jurisprudence of fasting and has since continued each year to organise what has now become an annual workshop recognised by Islamic law specialists throughout the world. The aim of these workshops is to provide a platform for scholarly exchange in the widest possible sense of the term, bringing together under one roof scholars from both traditional seminary and other academic and professional backgrounds to discuss and debate topics within Islamic law. As such, the AMI Contemporary Fiqhī Issues Workshop provides a forum unlike any other in the academic world. And although at times the epistemic assumptions may vary considerably among participants, it is these very differences that make for enriching discussion and debate. Such trend-setting initiatives encapsulate the ethos of the Al-Mahdi Institute since it was founded in 1993 to make the study of Islam a non-territorial space of scholarship that engages experts no matter what their background, recognising that the study of Islam has no one set methodology or privileged community of scholars. Over the years, the Institute has held workshops covering a broad range of topics including family law, human rights, the status of non-Muslims, violence in Sharia, and the history and future of Shīʿī *ijtihād*, with participants from many of these gatherings going on to publish their research in books and journals with an international readership.

As guest editor of this volume it gives me immense pleasure to not only introduce the exciting papers that fill its pages, but also to write the introduction of the first officially published proceedings volume of the AMI Contemporary Fiqhī Issues Workshop. The papers gathered in this volume represent the contributions of some of the participants of the 7th Contemporary Fiqhī Issues Workshop that was held at the Al-Mahdi Institute on 4–5th July 2019. The theme of the workshop focussed on the efficacy of financial structures for Islamic taxes and dues and aimed to provide participants the opportunity to critically evaluate the financial mechanisms and wealth management strategies within Islamic law. For over a millennium, Islamic law has institutionalised money (and other economic assets) to implement its vision of a just society. Be it religious taxation

in the form of *zakāt*, charitable donations in the form of *ṣadaqa* or religious endowments (*awqāf*), the dowry that is paid by a man to his would-be wife in a marriage contract, or the different categories of financial compensation within Islamic criminal and tort law, the Sharia utilises money and wealth for a diverse range of functions and objectives. Some of these assume a functioning political framework involving government officials and an Islamic judiciary system, while others seem to be effective only in the pre-modern contexts in which they were conceived and implemented. In the contemporary age, Muslims live under different models of government that range from Islamic governments such as the Islamic Republic of Iran to secular states such as the United Kingdom, each with their own financial structures. In the West, Muslims are already subjected to a variety of state taxes, many of which are used for the same welfare objectives as traditional Islamic taxes, which raises interesting questions about the need and efficacy of further Islamic taxation in addition to these other forms of tax already paid by Muslim citizens of the secular state. The papers in this volume therefore engage the topic of religious taxation in Islam from a wide range of philosophical, sociological, ethical, historical, and cultural perspectives, each offering unique insights and perspectives on the possibility of financial structures within Islamic law developing and evolving with the times and in accordance with different models of government.

The papers that are presented here focus on the laws of religious taxation – i.e. *zakāt* and *khums* – from different ends and perspectives of the jurisprudential discussion surrounding them. The possibility that *zakāt* may be levied on categories beyond those that are traditionally recognised as being subject to the law of *zakāt* is considered by Arif Abdul Hussain in his paper entitled 'A Functional Interpretation of *Zakāt* and the Inclusion of Contemporary Taxation as Its legitimate Form'. Traditional Islamic jurisprudence (*fiqh*) does not consider an individual's salaried income to be a *zakāt*-able entity. A brief glance at the kinds of entities most *fuqahā'* consider to be subject to religious taxation in fact reveals that what is primarily taxable in this regard is not the salaried income a person earns through labour, but rather the material possessions they own over the course of a financial year, the majority of which are ostensibly linked to farming and agricultural economies. *Zakāt* is thus levied form of taxation on material commodities (*amwāl*) such as grazing livestock, gold and silver, and different types of grain such as wheat and barley. Apart from these there is no religious taxation in the form of *zakāt*, which raises the question of whether or not *zakāt* as a fiscal policy is an outmoded form of religious taxation in the modern world. Whereas in the Prophetic era the burden of religious taxation

would have fallen on the shoulders of a mainly agrarian populace, the same tax traditionally-conceived it seems appears only fully applicable to a small segment of the UK population today in an economy which, since the nineteenth-century, has rapidly moved toward industrialisation away from agriculture-based economies. One can see this in the very fact that organisations that collect *zakāt* taxes from Muslims in the UK, for example, do so on the monetary value of gold and silver, the other categories being more or less redundant. Arif Abdul Hussain's contribution therefore challenges two crucial aspects of the traditional law of *zakāt* by arguing that not only should the taxes a person pays on their income (e.g. in the UK) be considered legitimate instances of religious taxation, but also – and perhaps even more controversially – that these may be legitimately handed over to a 'secular' state without undermining their 'religious' status even if the recipients of these taxes are non-Muslims. To justify such a radically ground-shifting perspective, the author urges us to reconceptualise the notion of *zakāt* in accordance with a functionalist paradigm in which the emphasis lies not so much on the *form* of *zakāt* but its essence, that is to say, the outcomes and purposes for which *zakāt* is striving. This is further elaborated on the basis of the author's 'existentialist philosophy' whereby religious norms are measured against the overarching purpose and philosophy of a human being's existence, which is to maximise growth both at the individual and collective level. The legal norms of Islam are thus regarded to be productive to the extent that they are facilitative causes for the growth of the human individual and their society; it is this that defines their 'Islamic' character or essence and not the historical formulation of the laws themselves. Hence, given that the legal definition of *ṣalāt* would have necessarily had to change when the *qibla* of the Muslims changed from Jerusalem to Mecca in the Prophetic era, this does not imply that the essence of *ṣalāt* would have also had to change. While the form of a legal norm is susceptible to change over time in differing contexts, the essence of what the norm strives after is eternal and changeless. It is on this meta-legal understanding of the nature of legal norms that Abdul Hussain argues that the form of *zakāt* can also change under different circumstances all the while preserving the essence of the law of *zakāt*, which is to distribute wealth in a just manner to facilitate the moral, spiritual and intellectual growth of the members of society whatever their religious beliefs so long as they are not hostile to Muslims or the religion of Islam.

Ahmed Saad al-Azhari al-Hasani's contribution 'Prophetic Initiatives to Institutionalise Money Matters: An Historical Overview through Al-Kittānī's *al-Tarātīb al-idāriyya*' examines the historical origins of pre-Islamic notions

of charity and the guidelines found within the Prophet Muḥammad's own processes for administering *zakāt*, tax, land revenue and charity collection by offering a close reading of Sayyid ʿAbd al-Ḥayy ibn ʿAbd al-Kabīr al-Kittānī's (d. 1962) work, *al-Tarātīb al-idāriyya*. This detailed work provides both a clear historical understanding of the Prophet's role as the head of state as well as the administrative framework he introduced for the collection and distribution of different forms of state revenue, from which al-Hasani argues there are instructional guidelines and strategies for the effective management of collected taxes for modern-day Muslim states. The author begins by first introducing the philanthropic nature of the pre-Islamic Arabs, and in doing so highlights the importance of charitable acts for social distinction and reputation among individuals and tribal classes. With the establishment of Medina as the first Islamic city-state, however, the act of giving charity had to be reformulated by means of a shift in cultural practices, so that in order to sustain the growth of the community an individual's act of charity was now facilitated by means of a centralised authority in the form of a mandatory levied tax. As such, the law of *zakāt* became a fully-fledged state-administered tax which built on the social norms and customs of pre-Islamic Arabian society, and with it came the introduction of entirely new systems for fiscal management that were unprecedented in traditional Arabian culture. Al-Hasani's chapter outlines in detail the variety of roles and positions that were created through Prophetic initiatives to manage public money; initiatives that were designed to administer public funds in the most efficacious and transparent way. Al-Hasani identifies three major areas in which such initiatives were undertaken: (1) resources, (2) funds and (3) spending. Initiatives linked to resources were primarily designed for the purpose of calculating the amount of religious taxation from assets such as crops and grazing animals, and in the process required specialisation in three subsidiary functions, namely, estimation, documentation, and role-creation. Once funds were collected, this in turn led to other Prophetic initiatives to preserve and supervise fiscal management, before finally being spent in financially prudent and responsible ways. The state functionaries and official posts that were therefore introduced through Prophetic initiatives were all designed to ensure minimal wastage in the system, full accountability and documentation at every stage, and proper administration of public funds so that the most deserving members of society could receive state support. As al-Hasani remarks, such 'Prophetic initiatives to institutionalise public money in his city-state of Medina were creative and unprecedented'.

Although Islam encourages charity and religious taxation through financial

structures such as *ṣadaqa* and *zakāt*, the management and distribution of funds gathered by charitable organisations and/or central authorities (where applicable) is not an uncomplicated affair. Furthermore, Shīʿī *fiqh* imposes a specific kind of religious tax known as *khums*, the one-fifth tax, which in the modern context is almost exclusively restricted to an individual's profits from earnings barring any sudden discoveries of treasure troves or precious minerals obtained from underwater diving (in which case one would also have to pay *khums* on these too). Unlike *zakāt*, the *khums* levy can only be distributed to *sayyid*s who are poor, or who are orphans, or who have become stranded on a journey; or to a division of *khums* known as the *sahm al-imām*, the portion reserved for the Twelfth Imam which, in the present circumstances of the Imam's occultation, must either be given to a qualified *mujtahid* or to those whom he (invariably male) has authorised. In fact, many jurists even specify that the *mujtahid* in question be the most learned *marjaʿ* of the age, which restricts the number of people who are responsible for such vast sums of money to a relatively small handful of individuals. It is impossible to estimate how much money is accumulated through *khums* each year given the lack of transparency and public accounting.

One of the ways in which this money is spent is for the religious education and training of scholars enrolled at the Shīʿī seminaries of Iran and Iraq. Aside from the questions this raises concerning the use of funds when religion and state politics overlap, a specific problem arises with respect to the individuals themselves who are conducting supposedly 'independent' research but whose source of income relies on payments from the state (or *marjaʿ*) that have been derived from religious taxation. The question of whether or not this leads to a conflict of interest is raised and discussed in Ali Fanaei's paper as part of a wider conversation with two previous scholars' views on the subject: Ayatollah Morteza Motahhari and Abdulkarim Soroush. Fanaei begins by summarising each of these authors' opinions, noting how that even though both considered there to be a problem in the way money was managed for religious education, they nonetheless disagreed on the diagnosis of where the problem lay exactly and what its solution(s) ought to be. Indeed, although Motahhari acknowledged the possibility of a conflict of interest, he did not believe the problem to be an insurmountable one; whereas in the case of Soroush, the problem is fundamentally irreconcilable. However, according to Soroush, the conflict is a much more deeply rooted one than Motahhari had conceived, and has less to do with whether or not a scholar's research depends on money that is derived from religious taxation, but instead on the very fact that the 'clergy' rely on

religion as their source of income. Soroush therefore argues for a distinction between the clergy (i.e. individuals who rely on religion for their income), on the one hand, and religious scholars who investigate religion without depending on it for their income. In other words, a religious scholar (as opposed to the clergyman) is someone who has an independent source of income which, according to Soroush, guarantees that his research on religion and his source of income do not get intermingled in a conflict of interest. For Soroush, the problem therefore lies in the intermingling of religion as an object of study and investigation and religion as a source of income, and the remedy to this problem ought to lie unsurprisingly in a complete and total separation between them. Fanaei rejects Soroush's solution to the problem and rejects both his and Motahhari's identification of where the problem lies exactly in the first instance. As Fanaei shows, the conflict of interest is a moral problem with epistemic consequences in religious and non-religious scholarship, and hence is not specifically a problem confined to religious studies only. A scientist whose source of income relies on science is not necessarily conflicted. The solution that Fanaei offers is more holistic than either of the solutions provided by Motahhari and Soroush given the multifaceted nature of the problem, and includes taking steps at the economic, social and political levels to ensure that misconduct is eliminated wherever possible.

In the final contribution of this volume, Jaffer Ladak makes a strong argument in favour of spending *zakāt* funds as a means of resisting the rise of far-right movements in the UK which have a detrimental impact on Muslims living in this country and on the image of Islam more generally. The potential scope for doing this already exists, suggests Ladak, within the *fiqh* of *zakāt* itself, especially in the notion that *zakāt* may be legitimately distributed in order to persuade 'those whose hearts are inclined' (*al-mu'allafa qulūbuhum*). Traditionally, this was understood to mean that the wealth that was generated through *zakāt* could be distributed (1) to help those of weak *īmān* from leaving the faith of Islam altogether or (2) to win the allegiance and military services of disbelievers who could be employed to fight against the combatant enemies of the Muslim community. *Ta'līf* was thus a fiscal mechanism of ensuring the survival of the Islamic faith, especially in the Prophetic period when the religion of Islam was still at its early developmental stages and as such exposed to threats from both within and without the Muslim community. Nowadays, although Islam is a global religion and as such does not face any imminent threat of extinction, it is this very success of Islam and its 'intrusion' onto the global scene which agitates Islamophobes everywhere. As shown by Ladak, the statistics measuring the rise

of far-right movements in the UK and Islamophobic hate speech and violence make for shocking reading. As a way of counteracting these tendencies, Ladak proposes the use of the notion of *ta'līf* as a form of 'strategic spending' so that a positive public image of Muslims and the Islamic religion is created, whereby Muslim charities and taxes are used to feed poor white working-class children in UK town and cities. It is often areas like these where poverty among the young white working-class population provides a strong breeding ground for far-right propaganda and recruitment. By targeting these demographic areas strategically and implementing policies that help the local white population appreciate the contribution of their fellow Muslim citizens, there lies the possibility that many misconceptions and deliberate misrepresentations of Islam and Muslims could be debunked and dispelled within the very communities where such negative discourses are prevalent.

As demonstrated by the papers collected in this volume, research on the efficacy of financial structures for Islamic taxes and dues raises important questions about the theory and practice of money-matters in Islam. From the very philosophical foundations of *zakāt* that define its nature and purpose to the practical ways in which these funds are administered and distributed, the papers in this proceeding's volume each show how vibrant and multifaceted the discussion on religious taxation and dues can be within Muslim jurisprudential discourse. Furthermore, as the authors of these timely papers demonstrate, the debates and discussions on religious taxation are no longer just confined to the narrow context of Muslim society and politics only, but in the modern period naturally involve the consideration of secular authorities and their financial structures – and in some instances their direct involvement also – to inform Muslim jurisprudential discourse on money-matters within Sharia.

As a final word, I would like to thank all those who through their hard work and dedication have made this and each of the previous years' Fiqhī Workshops possible: the organisers and administrators, security and facilities staff, caterers, panel organisers and chairs, IT staff, student volunteers and, of course, all of the speakers and delegates who participated in the workshops. The Institute is blessed to have a team of committed staff, many of whom work tirelessly behind the scenes to ensure the smooth running of the Institute and its activities such as events like the Fiqhī Workshop. It is to them – Rukhsana Bhanji, Ali Redha Khaki, Hashim Bata, Mahdiya Abdul Hussain and Muhammed Reza Tajri (who, by the way, has convened the Fiqhī Workshop in exemplary fashion over the last few years) – that I give the final mention. Thank you for all of your hard work.