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THE RELEVANCE OF WAQF TO THE AUSTRALIAN SOCIETY FROM THE PERSPECTIVE OF MAQĀSID AL-SHARĪ'AH (HIGHER OBJECTIVES OF SHARĪ'AH)¹

Rawaa El Ayoubi Gebara

Abstract

Philanthropic institutions (awqāf) were very functional vis-à-vis socio-religious aspects and the public welfare system in the early days of Islam. Gradually, however, the development of waqf (pl. awqāf) degenerated and is now limited to Muslim-majority countries and specifically consists of the religious kind. Nonetheless, can Muslims and non-Muslims benefit from waqf in a majority non-Muslim country like Australia? The primary objective of this paper is to study the relevance of waqf to the Australian secularised society from the perspective of maqāsid al-Sharī'ah. Therefore, I will examine how maqāsid al-Sharī'ah is achieved in the introduction of waqf in Australian society, and how waqf can be rejuvenated to serve the purpose of maqāsid al-Sharī'ah, which aims to preserve life, intellect, religion, progeny and property. The methodology used in this paper is analytical and critical. The primary sources of Islamic knowledge, such as Qur'an and sunnah, will be studied carefully. Secondary sources will also be studied and analysed critically to explore the findings. The worth of this paper lies in drawing the attention of stakeholders like policy makers, lawyers, leaders and the general public to the contemporary relevance and need for awqāf in achieving social justice for the ongoing benefit of the general public. This paper is a humble effort in evaluating the possibility of the application of waqf in Australia and to justify how far this product achieves maqāsid al-Sharī'ah. A comprehensive and careful examination of the methodology of maqāsid al-Sharī'ah entails an understanding that Sharī'ah aims to protect and preserve public interest (maṣlaḥa) in all aspects of life.

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1. Introduction

The higher objectives of *Sharī'ah* (*maqāṣid al-Sharī'ah*) rest within the concept of mercy and are assigned on the benefits of the individual and that of the society, and its laws are designed to protect these benefits and facilitate improvement and perfection of the conditions of life on earth.² The Qur'an expresses this when it singles out the most important purpose of the prophethood of Muḥammad (pbuh) in such terms such as: "We sent thee not, but as a Mercy for all creatures"³ and "O mankind! There hath come to you a direction from your Lord and a healing for the [diseases] in your hearts, and for those who believe, a guidance and a Mercy."⁴ The two objectives of mercy (*rahmah*) and guidance (*huda*) are demonstrated by other conditions in the Qur'an and *sunnah* that seek to establish justice, eliminate prejudice and alleviate hardship, which is manifested in the realisation of benefit (*maṣlaḥa*).⁵ Justice is a manifestation of God's mercy as well as an objective of *Sharī'ah* in its own right.⁶ Thus, *maqāṣid al-Sharī'ah* is the branch of Islamic teaching that explains the wisdom behind rulings. One of these wisdoms is about "fortifying social cohesion". The vital way to achieve this wisdom is to promote *waqf* through encouraging charity and donations, showing thereby the importance of cooperation and support within the family and society at large.

Explicitly, *maqāṣid al-Sharī'ah* ensures that *waqf* can contribute to the promotion of human welfare, enhance social solidarity and achieve economic prosperity for the whole society by satisfying people's basic needs.⁷

² Mohammad Hashim Kamali, *Sharī'ah Law: An Introduction* (Oxford: One World Publications, 2008), 14.

³ Qur'an 21:107.

⁴ Qur'an 10:57.

⁵ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (UK: The Islamic Texts Society, 2008), 352–353.

⁶ To prevent injustice, corruption and prejudice in the areas of commerce and transactions (*mu'āmalāt*), the Qur'an forbids exploitation, usury, hoarding and gambling, which are harmful and jeopardise the objective of fair dealing in the marketplace; Mohammad Hashim Kamali, *Maqāṣid al-Sharī'ah Made Simple* (Malaysia: International Institute of Advanced Islamic Studies, 2008).

⁷ Muḥammed Tahir ibn Ashūr, *Treatise on Maqāṣid al-Sharī'ah*, trans. Mohammed

During the glorious days of the Islamic civilisation, *waqf* played a significant role in the cultural, economic, educational and many other social amenities of the society. Nowadays, instead of being an innovative and productive institution, it is argued that *waqf* is locked to a narrow understanding and a practice of religious *waqf* (*waqf khairi*). *Waqf* is understood to be a charity made to mosques just for religious purposes. To rejuvenate the concept of *waqf*, we have to move beyond this limited understanding.

Today, there is a revival of scholarly writing on *waqf*. To understand this phenomenon, I will provide a summary of the historical context of its development. Then, I will explicate the value of a *maqāsid al-Sharī'ah* approach for the sustainability of *waqf*. However, it is essential to begin with a literature review of the concepts of *maqāsid al-Sharī'ah* and *waqf*.

2. Overview of Literature on *Maqāsid al-Sharī'ah* and *Waqf*

Sharī'ah signifies a way or path to felicity and salvation.⁸ *Sharī'ah* may be defined as a system of ethics and values covering all aspects of life (e.g. personal, social, political, economic and intellectual) with its unchanging bearings as well as its major means of adjusting to change.⁹ Moreover, not understanding one key concept of its aspects may thwart developments in all of its fields.¹⁰ The word “*maqāsid*” (the plural of *maqṣad*) comes from the Arabic word “*qaṣad*”, which means “to aim” or “to intend” for an action. Therefore, *maqāsid al-Sharī'ah* refers to a goal or objective to be achieved in Islamic law. Writers on the principles of Islamic jurisprudence (*uṣul al-fiqh*) have used *maṣlaḥa* almost interchangeably with *maqāsid*. The early pioneers of *maqāsid*, such as Abu Ḥāmid al-Ghazali (d.1111), ‘Izz al-Din ‘Abd al-Salam (d.1262) and al-Shāṭibi (d.1388), have generally concurred with the analysis that almost all the rules of

El Tahir El Mesawi, vol. I (London & Washington: The International Institute of Islamic Thought, 2006).

⁸ Kamali, *Sharī'ah Law*, 14.

⁹ Ziauddin Sardar, *Islam, Postmodernism and Other Futures: A Ziauddin Sardar Reader* (London: Pluto Press, 2003).

¹⁰ Ibid.

Islamic law fulfil the purpose of *Sharī'ah*.¹¹ Contemporary Muslim scholars have a very similar understanding to the classical scholars on the purpose and objectives of *Sharī'ah*. For example, Muḥammad al-Tahir Ibn 'Ashur (d.1973) and Muḥammed Allal al-Fasi (d.1974) define the general objectives of *Sharī'ah* as the deeper meanings (*ma'āni*) and inner wisdoms (*ḥikam*), as well as the hidden meanings (*al-asrār*) that the lawgiver has considered in the enactment of *Sharī'ah* ordinances.¹² Al-Qaradawi also noted “*maqāṣid al-shariah* consist of the attraction of benefits (*al-maṣāliḥ*) to the people and the repelling of harm and corruption (*al-maḍār wa al-mafāṣid*) from them,”¹³ pointing out that *Sharī'ah* has been revealed to bring happiness and prosperity to humanity and there is consensus among the 'ulamā' (Muslim scholars) that the laws of *Sharī'ah* have as their underlying cause the realisation of public welfare (*maṣlaḥa*). A similar position is put forward by the scholar Muḥammad al-Zuḥayli, who described *maqāṣid* as “the ultimate goals, aims, consequences and meanings which the *Sharī'ah* has upheld and established through its laws, and consistently seeks to realise, materialise and achieve them at all times and places.”¹⁴ Thus, *maqāṣid* is mostly about the goals for which *Sharī'ah* has been promulgated to realise the common good and interests for human beings (*maṣlaḥa*). *Maqāṣid* are the goals and purposes that look to the future and permit innovative approaches to *Sharī'ah* and contemporary issues.

The 'illah (effective cause, *raison d'être* or rationale) of *waqf* is based on human brotherhood and sisterhood, which demand that all humans are treated equally with dignity and respect regardless of their

¹¹ Mohammed Hashim Kamali, *Maqāṣid al-Shariah, Ijtihād and Civilisational Renewal* (London and Washington: The International Institute of Islamic Thought, 2012), 6.

¹² Muḥammad al-Tahir Ibn 'Ashur, *Maqāṣid al-Shariah al-Islamiyyah*, ed. Muḥammad al-Tahir al-Messawi (Amman: al-Basha'ir li al-Intāḥ al-'Ilmi, 1998), 171; Muhammed Allal al-Fasi, *Maqāṣid al-Shariat al-Islamiyyah wa Makārimuha* (Casablanca: Maktabat al-Waḥdah al-'Arabiyyah, n.d.), 3.

¹³ Yusuf al-Qaradawi, *Fiqh al-Zakat*, vol. 1 (Beirut: Mu'assasatal-Risālah, 2000), 31.

¹⁴ Muḥammad al-Zuḥayli, *Maqāṣid al-Shariah Asas li-Huquq al-Insān, Kitāb al-Ummah*, series no. 87 (Doha: Ministry of Awqāf and Islamic Affairs of Qatar, 2003), 70.

religion, race, colour, gender or nationality. The establishment of *waqf* exists to organise and institutionalise the voluntary charities.¹⁵

Since the turn of this century, a number of books have been published on *waqf*: some scholars have attempted to extract the rules of *waqf* from the principles of *Sharī'ah*, while others have accepted the view that *waqf* is subject to ongoing re-evaluation according to the principles of independent legal reasoning (*ijtihād*), which adapt *Sharī'ah* to changing societal circumstances.

The works of two Muslim scholars of *fiqh* (Islamic jurisprudence), Mustapha al-Zarqa (d. 1999) and Wahbeh al-Zuhāily (d.2015), provide a detailed account of the concept of *waqf* related to the *fiqh* of Islam.¹⁶ However, their works contain no discussion of the concept of *waqf* for Muslim minority communities, especially those living in the Western world. According to them, only a small part of *waqf* principles is proven from the primary sources of *Sharī'ah* and the rest of the related guiding principles have been deduced in the light of the primary sources via *ijtihād* with the application of the rules of *istihsān* (juristic preference), *istiṣlāḥ* (consideration of public interest) and *'urf* (custom). Writing almost simultaneously, al-Zarqa and al-Zuhāily focused on the development and role of *waqf* from the perspective of Islamic jurisprudence in Muslim societies and the issue of Islamic origins, more specifically the concept of the Prophetic example (*sunnah*) found in the literature that collated Prophetic traditions (*aḥādīth*). However, there is no focus in their works on the evaluation of *waqf* from the perspectives of *maqāṣid al-Sharī'ah*.

Taking a parallel position to al-Zarqa and al-Zuhāily, Monzer Kahf (b.1940), a leading Muslim contemporary scholar in Islamic finance, attempts to develop the ideas about the Islamic financial economic system, and sees the development of Islamic *waqf* as rejuvenation via an adaptation to modern economic and social conditions.¹⁷

¹⁵ 'Abdur Raḥman I. Doi, *Sharī'ah: The Islamic Law* (Kuala Lumpur: A.S. Noordeen, 1984), 338.

¹⁶ Mustapha al-Zarqa, *Aḥkām al Waqf* (Amman: Dar Ammar, 1998); Wahbah al-Zuhāily, *Al Wasāyā wa al Waqf Fi al Fiqh Al Islami* (Damascus: Dar Al Fikr Al Mu'asr, 1998).

¹⁷ Monzer Kahf, *Al Awqāf Al Islami, Tatauruhu ,Idāratuhu, Tanmiyatuhu* (Damascus: Dār al-Fikr al-Mu'asr, 2006).

It is very useful here to mention the work of a University of Saudi Arabia professor in *Shari'ah* law and *fiqh*, Khaled Ibn Ali al-Meshaikh (b.1943), who not only charted the textual space relating to the history of *waqf*, but his opus of three volumes is about the collective rulings of *waqf*.¹⁸ His work also centres on the exposure of the revival of *waqf* as a Prophetic *sunnah* in the twenty-first century.

This type of reform and inspiration is similarly promoted by many scholars in Turkey, Malaysia, Indonesia, India, Pakistan and Bangladesh. Moreover, there is a biannual *waqf* Journal in Kuwait that specialises in publishing all academic works about *waqf*.¹⁹ This journal attracts intellectuals and professionals in the domain of *waqf* and adopts a scientific approach in dealing with *waqf* and its contemporary challenges.

Issues that call for attention include the importance of *waqf* to the whole Australian society and how *maqāsid al-Shari'ah* could be achieved in the revival of *waqf* to serve the purpose of *maqāsid al-Shari'ah*, which aims to preserve life, intellect, religion, progeny and property. Also, scholarship on Islamic law and *fiqh* have been represented by the first generations and contemporary scholars, but their works contain no discussion of the revival of *waqf* for Muslim minority communities or how non-Muslims can benefit from this practice, especially for those living in Australia. This paper seeks to fill this apparent gap. A careful examination of the concept of *waqf* entails an understanding of its features and historical development to provide a broader understanding for the interests of society at large.

3. The Essence and Features of *Waqf*

Linguistically, the word *waqf* (pl. *awqāf*) comes from the verb *waqafa* in the Arabic language, which means stop. In Islamic terms, *waqf* means *ḥabs* (confinement), which is withholding or immobilising an asset and releasing its proceeds.²⁰ *Waqf* is defined

¹⁸ Khaled Ibn Ali al-Meshaikh, *Al Jāmeḥ li Ahkām al Waqf wa Al Hibāt wa Al wasāyā* (Qatar: Wizarat al-Awqāf wa Al Shouun Al Islamiyah, 2013).

¹⁹ Awqaf, Refereed Biannual Journal Specialised in Waqf and Charitable Act; See, <http://ww2.awqaf.org.kw/awqafjournal/portal.aspx?tabid=77>.

²⁰ Al Sayyed Sabiq, *Fiqh El Sunnah*, 10th ed., part 3 (Cairo: Al Fath lil l'Illam el-Arabi, 1993), 307.

as the perpetual dedication of any property or asset to God and devoting it for a religious cause for the benefit of human beings.²¹ Therefore, *waqf* is a permanent form of endowment donated, for the cause of Allah, by its owner and held or preserved for the benefit of philanthropic use by the community or public. Once the property or asset is made *waqf*, it cannot be revoked: meaning the donor cannot cancel this act and repossess or take back this property.²² Also, once the asset becomes *waqf*, it can no longer be inherited nor sold.²³ Qahf introduced a definition of *waqf* as “a permanent withholding of an asset for a recurring benefit, i.e., a private or common charitable purpose”.²⁴ It is important to mention that *waqf* is a voluntary act and is not obligatory as compared to *zakat* (giving alms), which becomes compulsory on a Muslim when their wealth reaches a certain minimum amount. Consequently, *waqf* is a means that brings a human being closer to their creator and wins the hearts of the poor and needy.²⁵ Principally, a *waqf* deed involves four key figures: *wāqif* is the endower or donor; *mawqouf ‘alayh* is the beneficiary; *mawqouf bihi* is the endowed deed; and *mutawalli* is the group/person who is taking care of the *waqf* or the custodian.

According to Imam al-Shāfi‘i, Imam Mālik and two disciples of Imam Abu Ḥanifa, *waqf* signifies the extinction of the appropriator’s ownership of an asset and its dedication to the ownership of Allah (*‘alā ḥukum milk-Allāh*) in such a manner that its profit should be used for the good of mankind from beginning to the end.²⁶ Once the *waqf* is created, a pious individual or group is appointed as the manager or

²¹ Ali Syed Ameer, *The Law Relating to Gifts, Wakfs, Wills, Pre-Emption and Bailment* (Lahore, New Delhi: Law Publishing Company, 1976).

²² Farra Munna Harun, Bayu Taufiq Possumah, Muhammad Hakimi Bin Mohd. Shafiai, Abd. Halim Mohd. Noor, *Empowering Higher Education Institution: The Role of Waqf-Malaysian Perspective* (Malaysia: Institut Islam Hadhari Faculty of Economic and Management Universiti Kebangsaan Malaysia and Accounting Research Institute Universiti Teknologi, 2014) Proceedings of the Australian Academy of Business and Social Sciences Conference 2014 (in partnership with the Journal of Developing Areas), 1.

²³ Ibid.

²⁴ Kahf, *Al Awqāf Al Islami, Tatauruhu, Idāratuhu, Tanmiyatuhu*, 62.

²⁵ Sabiq, *Fiqh El Sunnah*, 307.

²⁶ Doi, *Sharī‘ah*, 339-340.

custodian (*mutawalli*).²⁷ As an act of charity, the donor (*wāqif*) has to make sure the asset is free from any claims of debts or taxes, or if it is under mortgage or secured as collateral to a loan: i.e. whether the asset is under complete ownership by its registered owner to be *waqf*.²⁸ Also, the asset must be identifiable, quantifiable, non-perishable and recognised as *Sharī'ah*-compliant. For instance, the donation of wine is invalid because it is prohibited to consume under Islamic law and the donation of items such as medicine or food cannot be made because they perish on consumption.

A *wāqif* can create three types of *waqf*: *khayri*, *thurri*, and *mushtarak*.²⁹ A *waqf khayri* is a philanthropic *waqf* where the *wāqif* settles their property in perpetuity for a specific charitable purpose.³⁰ A *waqf thurri* or *ahli* means family *waqf* as well. It is where the *waqf* property is perpetually reserved or held with the *wāqif* family and their descendants are intermediary beneficiaries until they die, after which the *waqf* benefit will be dedicated to a specific charitable purpose.³¹ A *waqf mushtarak* is ultimately and simultaneously charitable and private.³² It means the dedication of one's property is partly for the welfare of the public and the other part for the benefit of the *wāqif* family.

It is important to mention that the beneficiary (*mawqūf 'alayhi*) does not have to be a Muslim. For instance, Safiyah, the wife of the Prophet, made *waqf* in favour of her Jewish brother.³³

4. The Legality and Historical Context of *Waqf*

Despite the fact the charm of *waqf* is in its legal distinctiveness and ability to alleviate poverty and bring social welfare, its spiritual merit and the consciousness of God remain the inspiring reasons behind

²⁷ Ibid., 340.

²⁸ Harun, Possumah, Mohd. Shafiai, Noor, *Empowering Higher Education Institution*, 2.

²⁹ Kahf, *Al Awqāf Al Islami, Tatauruhu, Idāratuhu, Tanmiyatuhu*, 158.

³⁰ Hamid Harasani, *Towards the Reform of Private Waqfs: A Comparative Study of Islamic Waqfs and English Trusts* (Leiden, Boston: Brill Nijhoff, 2014), 50.

³¹ Hicham Marwah and Anja K. Bolz, "Waqfs and Trusts: A Comparative Study" (2009) 15 *Trusts and Trustees* 8u, 812.

³² Harasani, *Towards the Reform of Private Waqfs*, 50.

³³ Al-Zuhayli, *al-Wasaya wa al-waqf fi al-fiqh al-Islami*, 167.

creating *waqf*. This is clear in this verse of the Qur'an: "By no means shall ye attain righteousness unless ye give [freely] of that which ye love; and whatever ye give, of a truth Allah knoweth it well".³⁴ Explaining this verse, Sayyid Qutb highlights the nexus between the consciousness of God and giving charity in the sake of God.³⁵ He states, "worship, contemplation and moral education have no practical value in people's lives unless incorporated into a social system".³⁶ The companions of Prophet Muḥammad (pbuh) were keen to achieve this level of piety. For instance, when the above verse was revealed, Abu Talḥah — one of the companions of the Prophet who possessed the most palm trees in Medina and his favourite field was *Bayruḥā'* in front of the Prophet's mosque — said to the Prophet: "O Messenger of God, Allah says, 'By no means shall you attain to righteousness until you give out of what you love' and my most beloved property is *Bayruḥā'*, I therefore declare it a charity for the sake of Allah and I hope for its reward from Him, so place it, O Messenger of God, where Allah inspires you to do so". Prophet Muḥammad (pbuh) said, "This is a profitable investment! My opinion is that you direct its benefit to your family", and Abu Talḥah did so.³⁷

The second famous *ḥadīth* that confirms the legitimacy of *waqf* is that of the second Calif 'Umar's land in Khaybar.³⁸ 'Umar, who was granted an oasis property in Khaybar, once he heard the above verse, said to the Prophet: "I was granted a piece of land that is more precious than all my other assets, what do you advise me to do with it?" The Prophet said, "If you wish you can hold its capital and designate its benefit as an endowment to charity". 'Umar did so with the conditions that the capital is not sold, gifted or inherited and that its usufructs are spent on the poor and needy, relatives, freeing slaves, preparing soldiers for the defence in battles and travellers who did not have means to return home. Also, 'Umar permitted those in

³⁴ Qur'an 3:92.

³⁵ Sayyid Qutb, Sayyid Qutb, *In the Shade of the Qur'ān*, vol. II, surah 3 (Leicester and Nairobi, Kenya: Islamic Foundation of Islamiconline, 1999), 114.

³⁶ Ibid.

³⁷ Ahmad Ibn Ḥajar Al 'asqalānī, *Fatḥh Albārī Sharḥ Saḥīḥ alBukhārī* (Dār Alrīyān Lilturāth, 1986), ḥadīth no. 5288.

³⁸ Harasani, *Towards the Reform of Private Waqfs*, 51.

charge of administrating the *waqf* to receive some income in return for their services.³⁹

A third *ḥadīth* that affirms the legality of *waqf* is when the Prophet (pbuh) said, “When a person dies the reward of his deeds ceases except from three: a permanent charity, a knowledge from which benefit is constantly gained and a pious child who is invoking Allah for him.”⁴⁰ Commenting on the above *ḥadīth*, jurists assure that a permanent charity can only be created by *waqf* and this *ḥadīth* basically inspired and influenced the decisions of Muslims to create *awqāf*.⁴¹

Adding to the verse cited earlier, *waqf* also derives its legality from many verses of Qur’an, for example:

They ask thee what they should spend [in charity]. Say: Whatever ye spend that is good, is for parents and kindred and orphans and those in want and for wayfarers. And whatever ye do that is good, Allah knoweth it well.⁴²

O ye who believe! Give of the good things which ye have [honourably] earned, and of the fruits of the earth which We have produced for you, and do not even aim at getting anything which is bad, in order that out of it ye may give away something, when ye yourselves would not receive it except with closed eyes. And know that Allah is Free of all wants, and worthy of all praise.⁴³

As always being a role model for Muslims, the Prophet (pbuh) started establishing the foundations for *waqf* by building the first mosque and some Islamic centres in the city of Medina in the first year of hijrah.⁴⁴ This prophetic tradition has been followed by the Muslim Caliphs as well: Hundreds of *awqāf* were established in the periods of

³⁹ Al ‘asqalānī, *Fath Albārī Sharḥ Saḥīḥ alBukhārī*, ḥadīth no. 2620.

⁴⁰ Al Nawawī, *Sharḥ al Nawawī ‘alā Muslim*, ḥadīth no. 1631.

⁴¹ Harasani, *Towards the Reform of Private Waqfs*, 52.

⁴² Qur’an 2:215.

⁴³ Qur’an 2:267.

⁴⁴ Doi, *Shari’ah*, 338.

the Umayyad and 'Abbasid in Islamic history.⁴⁵ For instance, *waqf* was behind building five hospitals in Baghdad, and many were built in other regional centres between the ninth and tenth centuries.⁴⁶ After this period, the number of hospitals increased significantly, such as Nuri hospital in Damascus (twelfth century), Mansuri hospital in Cairo (thirteenth century) and many other hospitals in Qayrawan, Mecca, Medina and Rayy. Most of these hospitals had enormous operating budgets, which were derived from the revenues of *waqf* properties dedicated to hospitals.⁴⁷ Such revenues were spent on the maintenance of the premises and staff wages, as well as the cost of treatments, which was provided to patients free of charge.⁴⁸ Moreover, examples of health *waqf* are the Shishli Children's Hospital in Istanbul, which was founded in 1898 CE,⁴⁹ and the animal hospitals especially built for cats and unwanted domestic animals, both in Damascus.⁵⁰ Additionally, there are *awqāf* for helping people to go on pilgrimage and helping couples to marry.⁵¹

Another example of *waqf* is the famous Maragha observatory. It was established in the thirteen century under the directorship of the Muslim astronomy scholar Nasir al-din al-Tusi.⁵² This observatory, which is a centre of astronomical research and attracted a large team of astronomers from all over the Muslim world, was built on a large piece of land that was financed by a *waqf* asset.⁵³

Although education for religious purposes was usually covered by *waqf*, general education has been the second largest recipient of *waqf* revenues. For instance, *awqāf* of the Ayubides (1171-1249) and

⁴⁵ Ibid, 341.

⁴⁶ Ahmad Dallal, "Science, Medicine, and Technology: The Making of a Scientific Culture." In *The Oxford Encyclopedia of the Islamic World*, vol. 4, ed. John L. Esposito (Oxford: Oxford University Press, 2009), 208.

⁴⁷ Ibid, 208-209.

⁴⁸ Ibid.

⁴⁹ 'Abd Al-Malik Al-Syed, "Al-Waqf Al-Islami wa Al-Dawr Al-Ladhi la'ibahu fi Al-Numuw Al-Ijtima'i fi Al-Islam" [Islamic Waqf and the role it played in social development in Islam], in *Idarat wa Tathmir Mumtalahat Al-Awqāf* (Jeddah: Islamic Research and Training Institute of the Islamic Development Bank, 1989), 225-304.

⁵⁰ Mustafa Al-Siba'i, *Min Rawa'i 'Hadaratina* (Beirut: al Maktab al Islami, 1969).

⁵¹ Ibid.

⁵² Dallal, "Science, Medicine, and Technology," 182.

⁵³ Ibid.

Mamalik (1249-1517) in Palestine and Egypt are good examples of educational *waqf*.⁵⁴ Also, at the beginning of the twentieth century, Jerusalem had sixty-four schools that were supported by *awqāf* in Palestine, Turkey and Syria.⁵⁵ Moreover, Al-Azhar University of Cairo (972 CE) was financed by its *waqf* revenues until the government of Muhammed Ali took control in Egypt over the *awqāf* in 1812.⁵⁶

Other recipients of *waqf* is the category of the needy, poor, orphans and people in prisons. Furthermore, *waqf* has covered the cost of schools and universities for teachers and students.⁵⁷

The use of *waqf* for many purposes had a significant constructive social change in the history of Islamic civilisation. This contributed to the circulation of wealth and elimination of poverty from the Muslim society.⁵⁸

As we can see from its historical development, the legitimacy of *waqf* and its role in the religious and social life of the community was well-established for the benefit of all categories of people in the society. This active role of *waqf* lies in the increase of Islamic awareness about the rewards of *waqf* in the hereafter coupled with the realisation that *waqf* could contribute to the promotion of human welfare, fortify social cohesion and achieve economic prosperity for the whole society by satisfying the basic needs of all people, without any discrimination.

Keeping in mind the context of the historical achievement of *waqf* and witnessing the real need for a similar rejuvenation of *waqf*

⁵⁴ Kamil Jamil Al-'Asali, "Mu'assat Al-Awqāf wa Madaris Bait Al-Maqdis" [*Awqāf* institution and the schools of Jerusalem], in the Proceedings of the Symposium of Awqāf Institution in the Arab and Islamic World (Baghdad: Institute of the Arab Research and Studies, 1983), 93-112.

⁵⁵ Ibid.

⁵⁶ Mustafa Muhammad Ramadan, "Dawr Al-Awqāf fi Da'm Al-Azhar", in the Proceedings of the Symposium of Awqāf Institution in the Arab and Islamic World (Baghdad: Institute of the Arab Research and Studies, 1983), 125-148.

⁵⁷ Ibid.

⁵⁸ During the rule of 'Umar Ibn Abdul Aziz (682-720 CE), poverty was eliminated again: charitable donations exceeded need and donors could not find eligible *zakat* or charity recipients. See, Yusuf Al-Qaradawi, *Fiqh-uz-Zakah*, trans. Monzer Kahf, vol. II (Jeddah, Saudi Arabia: Scientific Publishing Center, King AbdulAziz University, 1999), 46.

in our times, it seems possible to re-evaluate the model of *waqf* in the light of *maqāṣid al-Sharī'ah*.

5. The Value of a *Maqāṣid al-Sharī'ah* Approach for the Sustainability of *Waqf*

While *Sharī'ah* considers the improvement and perfection of human lives' conditions on earth through development as well as the recognition of equitable distribution of revenue and wealth, its comprehensive vision is to ensure the sustainability of long term economic development.⁵⁹ This sustainability leads ultimately to well-being and public benefit (*maṣlaḥa*). Drawing on the views of leading classical and contemporary scholars, I will present a holistic view of how *maṣlaḥa* and *maqāṣid al-Sharī'ah* are mutually interrelated and how they can help promote human well-being.

5.1. Understanding *Maqāṣid al-Sharī'ah* via *Maṣlaḥa*

Understanding *maqāṣid al-Sharī'ah* through God's commands leads to capturing the 'illah behind them. At this point, *maṣlaḥa* is only a framework to follow as a guideline and eventually gives birth to the theory of *maqāṣid al-Sharī'ah*,⁶⁰ so people can implement the higher objectives of *Sharī'ah* in a practical and beneficial way in the religious and social activities of the society.

'Izz al-Din 'Abd al-Salam al-Sulami's (d.1262) renowned work, *Qawā'id al-Aḥkām*, was in his own description a work on the objectives of divine texts and addressed the various aspects of *maqāṣid*, especially in relation to 'illah and *maṣlaḥa* in more detail. He writes "the greatest of all the objectives of the Qur'an is to facilitate benefits (*maṣāliḥ*) and the means that secure them and that a realisation of benefit also included the prevention of evil."⁶¹ Sulami

⁵⁹ Umar Chapra, *The Islamic Vision of Development in the Light of Maqāṣid al-Sharī'ah* (London, Washington: The International Institute of Islamic Thought, 2008), 3.

⁶⁰ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London, Washington: The International Institute of Islamic Thought, 2008), 17.

⁶¹ 'Izz al-Din 'Abd al-Salam al-Sulami, *Qawā'id al-Aḥkām Fi Maṣāliḥ al-Anām*, ed. Taha 'Abd al-Raouf Sa'd (Cairo: al Maṭba'ah al-Ḥusayniyyah, 1932), 1:8.

highlights that all the obligations of *Sharī'ah* were predicated on securing benefits for the people in this world and the hereafter.⁶² There are some Qur'anic objectives that embrace the essence of *maṣlaḥa*. This seems to indicate an unwarranted restriction on the general objectives of the lawgiver as these are expounded in the Qur'an. This is confirmed in Sūrat al-Mā'idah (5:7), which states, in more general terms, that "Allah doth not wish to place you in a difficulty." This means God does not want to afflict or overburden people or cause them any difficulty in meeting their religious duties.⁶³

Muslim scholars of the principles of Islamic jurisprudence (*uṣūl al-fiqh*) have used *maṣlaḥa* almost mutually with *maqāṣid*. For al-Ghazali (d.1111)⁶⁴ and al-Zarqā (d.1999),⁶⁵ *maṣlaḥa* consists of considerations that secure a benefit or prevent harm, but which are simultaneously harmonious with the objectives of *maqāṣid al-Sharī'ah*. Furthermore, to understand *Sharī'ah*, one needs to comprehend its objectives, which allow flexibility, dynamism and creativity in social policy.⁶⁶ These objectives consist of protecting the five "essential values".⁶⁷ Al-Ghazali states:

The objective of the Shari'ah is to promote the well-being of all mankind, which lies in safeguarding their faith (*din*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*) and their wealth (*māl*).

⁶² Ibid.

⁶³ Sayyid Qutb, *In the Shade of the Qur'ān*, vol. IV (Leicester and Nairobi, Kenya: Islamic Foundation of Islamiconline, 1999), 35.

⁶⁴ Abu Hamid Muhammad Al-Ghazali, *Al-Mustaṣfā min 'ilm al-Uṣūl* (Cairo: Al-Maktabah al-Tijāriyyah, 1993).

⁶⁵ Muṣṭafā Aḥmad Al-Zarqā, *Al-Madkhal al-Fiqhī al-'Āmm* (Damascus: Dār al-Qalam, 1998).

⁶⁶ Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 2004), 248–249.

⁶⁷ In *Al-Mustaṣfā fi uṣūl al-fiqh*, al-Ghazali clarifies the basics of *al-maṣāliḥ al-mursala* and its three divisions (the five essential values-the necessary), which consist of protecting the five 'essential values' (religion, life, intellect, lineage and property), the needed and the complementary. Then, al-Shāṭibi elucidates, investigates and analyses these divisions in his book *Al Muwāfiqat fi uṣūl al-Shari'a*. In our time, Muḥammad Abu-Zahra and Muḥammed Tahir ibn Ashūr expand on these divisions in their books *Al Malik* and *Maqasid al-Shari'ah*, respectively.

Whatever ensures the safeguard of these five serves public interest and is desirable.⁶⁸

Al-Qaradāwi further extended the list of *maqāṣid* to include social welfare and support (*al-takāful*), freedom, human dignity and human fraternity, among the higher objectives of *Sharī'ah*. These are undoubtedly upheld by the detailed and general weight of evidence in the Qur'an and *sunnah*.⁶⁹ A prominent scholar of *Sharī'ah*, al-Shāṭibi⁷⁰ (d.1388), approves of al-Ghazali's list and sequence, thereby indicating they are the most preferable in terms of their harmony with *Sharī'ah*'s essence.⁷¹ He adds the benefits (*maṣālih*) are to be understood in their broadest sense, which is inclusive of all benefits pertaining to this world and the hereafter, those of the individual and the community, material, moral and spiritual, and those that pertain to the present as well as the interests of future generations. This broad meaning of benefits also includes prevention and elimination of harm. These benefits cannot always be verified and ascertained by human reason alone without the aid and guidance of divine revelation.⁷²

Accordingly, securing benefit (*maṣlaḥa*) can also be understood as repelling corrupt acts (*mafsada*). It is broadly divided into three categories: necessities (*al-ḍarūriyyāt*), needs (*al-ḥājjiyyāt*) and things

⁶⁸ Cited in M. Umer Chapra, *The Future of Economics: An Islamic Perspective* (Leicester: The Islamic Foundation, 2000), 118.

⁶⁹ Yusuf al-Qaradawi, *Islamic Law in the Modern World* (Cairo: Wehbe Printing, 2000); Yusuf al-Qaradawi, *Madkhal lidrassat al-Sahri'a al-Islamiyya* (Cairo: Wehbe Printing, 2009), 73–79.

⁷⁰ Al-Shāṭibi wrote his magnum opus in the field of Islamic law, *Al-Muwafaqat*. His seminal and highly influential development of the theory of *maqāṣid* and *maṣlaḥa* (Islamic law based on its universal objectives and public benefit) is actually a synthesis of the principles of the two oldest and complementary Sunni schools of law (the Ḥanafī and Maliki *madhhabs*). This synthesis provides the basis for a holistic, unified approach to Islamic law that accommodates all the recognised schools of law, *madhhabs*, rather than a divisive approach based on rigid and partisan *madhhab*-ism.

⁷¹ Imran Ahsan Nyazee, *Islamic Jurisprudence* (Islamabad: The International Institute of Islamic Thought, 2000), 121.

⁷² Abu Iṣḥāq Ibrahim al-Shāṭibi, *al-Muwafaqat fi uṣul al-Sharī'a*, ed. Shaykh 'Abd Allah Dirāz, vol. I (Cairo: al-Maktabah al-Tijariyyah al-Hubra, n.d.), 243.

that are complementary or luxuries (*al-takmīliyyāt* or *al-tahsīniyyāt*).⁷³ This strict hierarchy governs the gradation of interests, including the fact they have to be of general benefit to the public, and not simply for a specific sector of people, for them to be deemed acceptable and used as a source of law.⁷⁴ Necessities are further classified into what preserves one's life, intellect, religion, progeny and property, the formulations of these "essential values" were considered fundamental matters for a secured human life. The category of needs is less essential for human life, and the level of luxuries is used for beautifying purposes in the traditional expression.⁷⁵

Discovering that *waqf* can enhance its role in social and economic development, the practice of *waqf* needs to be evaluated to serve the purpose of *maqāṣid al-Sharī'ah*, which aims to preserve the five essential values.

5.2. Achieving *Maqāṣid al-Sharī'ah* through Practising *Waqf*

There is intense debate among Muslim scholars and economists about the role and practice of *waqf* in Muslim societies. Despite the significant contribution to the social solidarity and welfare of Muslims in the glorious years of Islamic civilisation, it has been argued that the current practice of *waqf* could not achieve a sustainable development scheme.⁷⁶

I will use the methodology of *maqāṣid al-Sharī'ah* in response to the challenge of the possibility of re-introducing *waqf* in all the amenities of human life.

Since the five necessities of *maqāṣid al-Sharī'ah* aim to protect life, intellect, religion, progeny and property, the formulations of these objectives have secured the human being in this life and the hereafter. In this sense, I will use *maqāṣid* terminology concerning *waqf*.

For the preservation of the right to life, which I put as the first necessity of *maqāṣid al-Sharī'ah*, jurists outline a theory of necessary

⁷³ Abu Hamid Muhammad Al-Ghazali, *Al-Mustafā min 'ilm al-Uṣūl*.

⁷⁴ Kamali, *Principles of Islamic Jurisprudence*, 358–360.

⁷⁵ Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 4.

⁷⁶ Andrew White, "The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study," *International Journal of Civil Society Law*, vol. 7, 2006, 7-36.

purposes in terms of a “theory of protection”,⁷⁷ and an elaboration of a social system based on family-related purposes and moral values in Islamic law.⁷⁸ Protection of life is so important in Islam, as without one’s life, it would be impossible to protect the other four necessities of *maqāṣid al-Sharī’ah*. This protection is achieved by providing people with the basic needs that allow one to live with security and dignity. The basic needs for all human beings—regardless of their gender, race, colour or religion—include water, shelter and food. The Qur’an is expressive on the fact of honouring every human being without exception, as God states: “We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation”.⁷⁹ Establishing *waqf* can be of a great importance to fulfil the preservation of this necessity. For instance, meeting the needs of the poor, raising orphans, helping the sick and disabled, providing food and toys for children of poor families, helping the homeless, assisting universities with the cost of research to prevent diseases and building hospitals to provide aid free of charge.

Similarly, the preservation of intellect, which is the second necessity of *maqāṣid al-Sharī’ah*, has two purposes. The first is education about the reasons of the prohibition of intoxicants as they pose a threat to the integrity of the human intellect and mind. The second purpose is the pursuit of education, which is of great importance for society. The latter has sometimes been interpreted to mean “the propagation of scientific thinking”, “travelling to seek knowledge”, “suppressing the herd mentality” and even “avoiding brain drain”.⁸⁰ Establishing *waqf* can assist in financing all these ideas.

The preservation of religion, the third necessity of *maqāṣid al-Sharī’ah*, has been re-interpreted by some jurists to mean “freedom

⁷⁷ Abdul-Malik Al-Juwayni, *Al-Burhān Fi Uṣul al-Fiqh*, ed. Abdul-Azim al-Deeb, 4th ed., vol. 2 (Manṣurah: al-Wafā’, 1998), 747.

⁷⁸ Al-Ghazali, *al-Muṣtaṣfā fi ‘ilm al-Uṣul*, p. 258; Ibn ‘Ashur, *Uṣul al-Nizām al-Ijtīmā’i fi al-Islam*, 206.

⁷⁹ Qur’an 17:70.

⁸⁰ Auda, *Fiqh al-Maqāṣid*, 20.

of faith”⁸¹ or “freedom of belief”.⁸² The preservation of religion is one of the most important objectives of *Sharī’ah*; therefore, protecting religion from misconceptions is an obligation upon all Muslims. Acting with good morals (*akhlāq*) to Muslims and non-Muslims, and assisting fellow citizens in every aspect of their life are important to promote and preserve one’s religion. Founding *waqf* can also play a significant role in financing interfaith dialogue.

In a similar way, scholars have interpreted the fourth necessity, the protection of progeny, in terms of the preservation of human dignity and human rights.⁸³ It is vital to mention that defaming honour was a serious matter in the pre-Islamic era, and it was preserved throughout Arabic culture to become a dignified value in Arab-Muslim families. Recently, the preservation of honour is being replaced—as a purpose of Islamic law—by “the preservation of human dignity” or “the preservation of human rights”.⁸⁴ Achieving *maqāṣid al-Sharī’ah* through the *waqf* assistance: First, to needy couples who want to marry or medical students and professors who are conducting research in the field of protecting lineage and educating people about the dangers of abortion and infanticide. Second, assisting people with funeral services and buying graveyards, running healthcare centres, and financing sports and educational programs.

The fifth necessity consists of the preservation of property and/or wealth, which has been developed into familiar socio-economic terminology, such as “well-being”, “economic development”, “social assistance” and “diminishing the difference between economic

⁸¹ Ibn ‘Ashur, *Maqāṣid al-Sharī’ah al-Islāmiyyah*, 292.

⁸² Attia, *Naḥwa Tafīl Maqāṣid al-Sharī’ah*, 171; El-Raysuni, al-Zuhaili, and Shabeer, “Ḥuqūq al-Insān Miḥwar Maqāṣid al-Sharī’ah,” *Kitāb al-Ummah* 87 (2002).

⁸³ Attia, *Naḥwa Tafīl Maqāṣid al-Sharī’ah*, 170; El-Raysuni, al-Zuhaili, and Shabeer, “Ḥuqūq al-Insān Miḥwar Maqāṣid al-Sharī’ah”; El-Awa, *al-Fiqh al-Islāmī fī Tariq al-Tajdīd*, 195; Al-Qaradawi, *Madkhal li-Diāsah al-Sharī’ah al-Islāmiyyah*, 101.

⁸⁴ Attia, *Naḥwa Tafīl Maqāṣid al-Sharī’ah*, 170; El-Raysuni, al-Zuhaili, and Shabeer, “Ḥuqūq al-Insān Miḥwar Maqāṣid al-Sharī’ah”; Mohamed el-Awa, *al-Fiqh al-Islāmī fī Tariq al-Tajdīd* (Cairo: al-Maktab al-Islāmī, 1998), 195; Yusuf al-Qaradawi, *Madkhal li-Diāsah al-Sharī’ah al-Islāmiyyah* (Cairo: Wahba, 1997), 101.

levels”.⁸⁵ *Waqf* assistance in this category can provide aid to bankrupts or those with excessive debt, sheltering animals, and taking care of widows, hungry and the destitute. At this level, the main objective of *waqf* is to achieve social economic solidarity for the whole society by satisfying people’s basic needs.

It is evident that *maqāṣid al-Sharī’ah* provides a framework for *waqf* that evolves in association with the needs and aspirations of today’s Muslims. Thus, the *waqf* system can play a vital role in the social security for all Australians without any discrimination. Also, Muslims and non-Muslims can contribute to this charitable system by making part of their properties *waqf*. This eventually leads to the continuation of self-generated incomes of *waqf* funds that can support the needs of the community, enhance sustainable social and economic development, and alleviate poverty.

6. Conclusion and Recommendations

Historically, *waqf* played the role of an important source for financing and assisting public and social amenities, such as education, medical services, astronomy research, hospitals, orphans and disabled care centres, maintaining mosques and paying for funeral services. However, the contemporary practice of *waqf* has degenerated to a narrow understanding of *waqf khairi*, which is only established for religious purposes. The main objective of this paper is to propose a rejuvenated model of *waqf* in our modern days based on its historical review from the perspectives of *maqāṣid al-Sharī’ah*.

This paper demonstrated the concept of *maṣlaḥa* and higher objectives of *Sharī’ah* could be achieved in the revival of *waqf* to serve the purpose of *maqāṣid al-Sharī’ah*, which aims to preserve the five necessities: life, intellect, religion, progeny and property.

The model proposed will help the public better understand the concept of *waqf* in order to apply it in real life. Stemming from the findings and to optimise contributions towards the creation of *waqf*, I propose the following recommendations:

⁸⁵ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 24.

1. Properly plan, manage and integrate the *waqf* system into Australian society for the purposes of poverty reduction and economic growth.
2. Conduct more research about the differences between the *waqf* system and trusts in Australia. Benefitting from the trust formula can inspire and guide custodians of *waqf* and stakeholders.
3. Have Islamic scholars emphasise the role of *waqf* to give due attention and awareness about the essence of *waqf*. It is the responsibility of Islamic leaders to provide full support to the *waqf* model, which will significantly contribute to the social solidarity of the society.
4. Integrate the methodology of *maqāṣid al-Sharī'ah* into the contemporary knowledge of sustainability of the *waqf* system.
5. Organise academic seminars and workshops that invite specialists on Islamic jurisprudence, philanthropic work and economy.

This paper is hoped to be an eye opener to researchers and academics on the contemporary relevance and the need for *awqāf* in achieving the higher objectives of *Sharī'ah* and serving the purpose of *maqāṣid al-Sharī'ah* for the ongoing benefit of the general public.

TRANSLITERATION TABLE

CONSONANTS

Ar=Arabic, Pr=Persian, OT=Ottoman Turkish, Ur=Urdu

Ar	Pr	OT	UR	Ar	Pr	OT	UR	Ar	Pr	OT	UR	
ء	ء	ء	ء	ز	z	z	z	گ	—	g	g	g
ب	ب	ب	ب	ژ	—	—	ʀ	ل	l	l	l	l
پ	پ	پ	پ	ژ	—	zh	j	م	m	m	m	m
ت	ت	ت	ت	س	s	s	s	ن	n	n	n	n
ث	—	—	ṭ	ش	sh	sh	ʃ	ه	h	h	h'	h'
ث	th	th	th	ص	ṣ	ṣ	ʃ	و	w	v/u	v	v/u
ج	j	j	c	ض	ḏ	ḏ	ḏ	ی	y	y	y	y
چ	—	ch	çh	ط	ṭ	ṭ	ṭ	ة	-ah	—	—	-a ²
ح	ḥ	ḥ	ḥ	ظ	ẓ	ẓ	ẓ	ال	al ³	—	—	—
خ	kh	kh	kh	ع	‘	‘	‘	—	—	—	—	—
د	d	d	d	غ	gh	gh	ğh	—	—	—	—	—
ڈ	—	—	d	ف	f	f	f	—	—	—	—	—
ذ	dh	dh	dh	ق	q	q	k	—	—	—	—	—
ر	r	r	r	ك	k	k/g	k/ñ	—	—	—	—	—

¹ – when not final
² – at in construct state
³ – (article) al - or l-

VOWELS

	Arabic and Persian	Urdu	Ottoman Turkish
Long	ا	ā	ā
	آ	Ā	—
	و	ū	ū
	ي	ī	ī
Doubled	ي	īy (final form ī)	īy (final form ī)
	و	uww (final form ū)	uvv
	و	uvv (for Persian)	uvv
Diphthongs	و	au or aw	ev
	ی	ai or ay	ey
Short	ا	a	a or e
	ا	u	u or ū
	ا	i	o or ö
	ا	i	i

URDU ASPIRATED SOUNDS

For aspirated sounds not used in Arabic, Persian, and Turkish add h after the letter and underline both the letters e.g. چ jh گ gh

For Ottoman Turkish, modern Turkish orthography may be used.

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