

I. INTRODUCTION

Zakāt is an obligation that constitutes one of the five pillars of Islam together with the declaration of faith, prayer, fasting and the pilgrimage to Mecca. Although *zakāt* is commonly defined as a form of charity, almsgiving, donation, or contribution, it differs from these activities primarily in that they are arbitrary, voluntary actions, known as *ṣadaqa*. *Zakāt*, due to being an obligation sanctioned by the Qurʾān and the *sunna*, is a formal duty not subject to choice.

From the time of the Prophet Muḥammad's relocation from Mecca to Medina, Islam has not only been a political religion but also has imbedded in it a clear notion of political economy. State economics became bound up with pious practice: the collection and distribution of alms (*zakāt* but also alternatively *ṣadaqa* in the Qurʾān) was to be supervised – if not controlled – by the head of the community of the believers. Following the Prophet's death, the rejection of the obligation to pay *zakāt* by some nomadic tribes of Arabia was regarded as an act of apostasy, *ridda*, and became a cause for war.

The role of the state and its obligation to collect and distribute *zakāt* in the "rightful way" was often debated by Muslim scholars. While the Qurʾān says nothing about *zakāt* in an institutional sense, it does lay down how it should be distributed once it has been collected. Various revivalist and reformist movements in particular used the question of the collection of *zakāt* in their critique of unpopular Muslim rulers or in their attempt to establish an Islamic order in a non-Islamic setting. Taxation was condemned by these scholars as non-Islamic and a return to early Islam and the ideal of the Prophet's community in Medina was propounded. Such movements could be found, for example, in the Bilād al-Sūdān.

Thus an ideal Islamic order was established by critics of the "non-Islamic reality". According to this ideal, the *imām*¹ of the Muslim community was recognised as the principal political and religious figure. His duty was the maintenance of Islamic traditions, the enforcement of the *sharī'a* as well as Islamic economic

1 It is interesting to note that the notion of the word *imām* is always masculine within an Islamic discourse. Thus, for example, al-Māwardī stated that "a woman may not take up office as she is not suited to administrative office" and had similar restrictions in the case of the imamate of prayer (al-Mawardi 1996: 98, 152–153). On the other hand, it is well known that women could establish themselves as teachers, scholars and Islamic leaders. One of the most well-known examples of a Muslim female scholar in Sudanic Africa is that of Nana Asma'u (1793–1865) in the Sokoto Caliphate. See further Boyd 1989.

and social policy. His duty was also to provide the internal and external security of the community of believers. These duties he accomplished through his *amīrs* who were responsible for police and military affairs. Taxation was to be based on Qur'ānic principals, the revenues from the '*ushr*' ('tithe'), *zakāt* and *jizya*, as well as taxes collected on caravans, and one-fifth of revenues from military expeditions (*khums*) were to be redistributed by the *imām* and his officials in the form of public assistance.² On the other hand, non-payment of *zakāt* was viewed as an act of apostasy and rebellion against the Islamic order and, therefore, the *imām* had the right to demand the rightful amount of *zakāt* by force.³

In the light of the ideal Islamic order, it seems as if the *imām* had a central position in the collection, control and disbursement of *zakāt*. But who was the *imām*? Was he the ruler of a Muslim state or the head of a local community? Clearly, during the time of the first caliphs, the *imām* and the Caliph was the same person, combining political and religious authority. However, as the administration of the Caliphate became more complicated, the ruler had to hand over several of his obligations to his religious and political deputies. Due to the various tax reforms during the Umayyad and Abbasid period, the collection and disbursement of *zakāt* was not a concern of the Muslim state but the local Muslim community. Such a development also took place during later centuries. For example, the *ṣūfī* communities (*zāwiya*, pl. *zawāyā*) took over the collection of *zakāt* in Morocco during the 16th century due to the split in the central government and the dynastic strife which created a political vacuum in some parts of Morocco.⁴

On the other hand, the transfer of the collection and disbursement of *zakāt* was somewhat contradictory to the ideal of the Islamic ideal of the "good ruler". According to this ideal, the "good ruler" was someone who looked after and cared for the welfare of his subjects, especially the poor and miserable.⁵ These objectives are underlined by, among others, Fulbe scholars such as Usman dan Fodio ('Uthmān ibn Fūdī) and his brother Abdullahi dan Fodio ('Abd Allāh ibn Fūdī) as well as his son Muhammad Bello (Muḥammad Balū) in early 19th century Hausaland. In his political tract *Uṣūl al-Siyāsa*, Muhammad Bello refers to the example of the second caliph, 'Umar ibn al-Khaṭṭāb (who, in fact, seemed to have been used by several authors as the archetype of the "good ruler"), "... 'Umar was constantly looking into the problems of the destitute among his subjects and being of service to them personally."⁶ He walked at night dressed as an ordinary man

2 Willis 1978: 206.

3 Fisher 1971: 395.

4 Rodriguez-Manas 1966; 1996.

5 On *maṣlaḥa* or 'communal welfare and the responsibility of the ruler', see further Khadduri 1991: 738-740.

6 Muhammad Bello, *Uṣūl al-Siyāsa*, quoted in Martin 1971: 84.

among his subjects and listened to their complaints. During the daytime, he then gave orders to correct the injustice or provide help for the needy one. Such an ideal of the “good ruler” did prevail in Muslim societies and in the teaching of Muslim scholars; “good rulers” were praised by the chroniclers and “bad rulers” condemned. However, it has to be underlined that this “goodness” was a statement of personal piety and moral (as well as political) wisdom, not an exemplification of the existence of an established institution.

Yet, all rulers were not “good” ones. Among 16th-century Timbuktu scholars, such as Aḥmad Bābā, a rather critical stance developed towards a too close cooperation between the scholars and the rulers. In his treatise *Jalb al-ni‘ma wa-daf‘ al-naqma bi-mujānabat al-wulāt al-ḡalama* (“Attaining grace and averting evil by avoiding tyrannical rulers”, c. 1588), Aḥmad Bābā calls upon Muslims to avoid all dealings with rulers and state officials. Aḥmad Bābā did not single out any ruler of his time – it could have been directed against the ruler of Songhay or Morocco – but wanted to relegate state authority to an extremely marginal position in the affairs of Muslim society. As Saad has emphasised, Aḥmad Bābā’s argument was that the relationship between Muslim society and the Muslim state should be channelled solely through the judgeship, which, at least in Timbuktu, had at that time emerged as the central juridical, legislative and executive institution. Therefore, according to Aḥmad Bābā, only the judge could lawfully be paid by the state.⁷

Aḥmad Bābā’s argument is interesting for the discussion on the relationship between the Muslim community, on one hand, and the state – Muslim or not – on the other. In fact, it can be argued that Aḥmad Bābā’s treatise can be regarded as critical towards both the misrule of Muslim rulers as well as non-Muslim ones. Especially in the Bilād al-Sūdān, both cases were present. Such a critical stance as the one of Aḥmad Bābā could indicate that the establishment of an Islamic order had been superficial in particular Muslim states or was not put into practice. Aḥmad Bābā’s argument that Muslims should never accept gifts and wages from any official other than the *khalīfa* himself or his deputy, who were the only ones lawfully qualified to dispense revenue at their own discretion,⁸ can be read as a critique of the situation in the Muslim states. Among other things, corruption, bribery and unlawful assessment and levy of taxes and dues could be the targets of such accusations.

7 Saad 1983: 100, 152–153.

8 Saad 1983: 153.

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This study provides an overview of the existence or non-existence of *zakāt* in precolonial Sub-Saharan Africa, with special emphasis on the Bilād al-Sūdān. The objective of the book is to examine the assumption of a possible connection between the establishment of an Islamic state and the attempt to introduce Islamic taxation in the form of *zakāt*, *kharāj* and *jizya*. However, this study is not an overview of the process of Islamisation in sub-Saharan Africa, as this topic is already well known.⁹ Instead, the key issue is to define which precolonial Muslim governments may have been or were identified as trying to introduce and implement Islamic Law and to push for a reorganisation of the political and fiscal structures in accordance of what might be called an “Islamic Ideal”. Such an “Islamic Ideal” or “Islamic order” would include the Islamisation of the political, economic and juridical structures of the state, in practice the abolishment of and break with pre-Islamic customs and traditions or such manifestations that are defined as non-Islamic by Muslim scholars and reformers.

In my view, the manifestation of such an “Islamic order” is to some extent realised through the introduction and levy of *zakāt*. Other visible manifestations of an “Islamic order” were the regular prayers as well as the fasting during the month of Ramaḍān. The “Islamic order” becomes part of the public sphere, i.e., religious practices are not performed in private and individually but in public or at least among a group of believers.

The concept of public and private sphere will be used in the book as a tentative division. The role of the state is, according to my interpretation, of key importance: Does the ruler or his representatives try to regulate and supervise the collection and distribution of *zakāt* or not? As long as *zakāt* is regarded as an individual act, given for the “sake of God”, distributed directly to the recipients without the intervention of the state or any other authority, such an act is part of the private sphere. However, whenever the state or any other authority tries to enforce its control over the transaction, *zakāt* becomes a public matter as the collection and distribution of *zakāt* by the state is regulated by the *sharīʿa*, which, in turn, is interpreted and articulated by Muslim scholars and jurists. However, such a distinction is in most cases rather academic. Would, for example, the distribution of alms after the Friday prayers outside a mosque be regarded as a public or a private matter? Clearly, from a strictly legal interpretation it would be regarded as a private matter due to the absence of the state or its representatives. However, one could also argue that such a distribution of alms is as much a

9 For an overview, see Clarke 1982, Hiskett 1984 and Levtzion 2000.

private as a public matter, being a private one for the one who distributes his alms but a public one for the recipients as they would receive the alms in public. A different case occurs when alms are given in private, for example when poor people are invited for a dinner (in this case I would regard such an act as a private one), whereas the distribution of food, say in times of distress, could be regarded as a voluntary but public act, especially if it is done outside the compound.

In the case of *zakāt*, one must further distinguish between the moral obligation and the pious act when one discusses the difference between the two kinds of almsgiving in Islam. *Zakāt* is a moral obligation and becomes a tax for the Muslims in an Islamic state, whereas *ṣadaqa* is an individual pious act and never has any collective connotations. Thus *zakāt* is more than just a “good deed” because it is an obligation, whereas the giving of alms (*ṣadaqa*) is the decision of the giver alone. Therefore, in an Islamic order, *zakāt* belongs to the public sphere, whereas *ṣadaqa* belongs to the private sphere.

As a consequence, therefore, when *zakāt* becomes part of the public sphere, i.e., its collection and distribution is supervised by an Islamic government, such a government is able to create an “Islamic sphere”, which is manifested through the establishment of an “Islamic order”. However, as will be argued in Chapter VIII, the establishment of an “Islamic sphere” does not necessary depend on the existence of an Islamic government. The concept of an “Islamic sphere” has been developed by Benjamin Soares and Robert Launay in their article on the transformations within Muslim societies in French West Africa during the colonial period.¹⁰ According to Launay and Soares, political and economic developments during the late 19th and early 20th century have led to the emergence of a space conceptually separate from, but not independent of, the colonial state. This space is described by Launay and Soares in terms of a “public sphere” and called “Islamic” because it was within this space that Muslims debated matters of public concern outside the direct control of the colonial state, such as matters related to the question of how Muslims should practise their religion. Although Launay and Soares restrict their discussion to the colonial period, it could be argued that the metaphor of the/a “Islamic sphere” can be applied to precolonial conditions in the Bilād al-Sūdān, too. It could be argued that such an “Islamic sphere” existed and emerged in all those Muslim communities that tried to enforce an Islamic order within a non-Muslim society. In such “Islamic spheres” *zakāt* emerged again as a public matter – it was collected and distributed by the *imām*, the *ṣūfī shaykh* or the holy man who led the community of believers (see Chapter VIII). Yet, how should one interpret the situation in most of the pre-colonial Muslim states in the Bilād al-Sūdān? It could be argued that there existed

10 Launay & Soares 1999. I am indebted to Rüdiger Seesemann for this information.

an “Islamic sphere” in all of the precolonial Muslim states, but this “sphere” was not overlapping or equal with the Muslim state. In most of the precolonial Muslim states the majority of the subjects were non-Muslims and the rulers were ruling over two different societies – a Muslim one and a non-Muslim one. Therefore, several states, especially those in the eastern part of the Bilād al-Sūdān, have been identified as being “Sudanic” kingdoms, i.e., a combination of Muslim and local, sometimes divine, political traditions. In a few Muslim states, especially those established as an outcome of a victorious militant Islamic reform movement, it could be argued that the “Islamic sphere” and the “sphere” of the state were overlapping. It seems that it was in such cases that *zakāt* emerged as one cornerstone of an Islamic order.

One focus of the book will be on the identification of what kind of taxation was implemented by precolonial sub-Saharan Muslim states, especially whether *zakāt* was collected or not and whether the collection and distribution of *zakāt* was supervised by the state and its agents. Second, the aim is to investigate the existence of both obligatory and voluntary almsgiving and whether *zakāt* was regarded as a purely private religious act or if it was connected to the public sphere, namely if *zakāt* was identified by the believers as well as the rulers as a collective manifestation and act. Third, and closely connected to the second aim, comes the question of the “good ruler” and the “expectations of the subjects”, especially with regard to obligatory or mandatory almsgiving, its collection, control and distribution, which were meant to be the task of the Islamic state.

It is suggested in this study that *zakāt as a tax* was not implemented by most of the sub-Saharan Muslim states. Only those states that were established as the outcome of a victorious Islamic militant reform movement did try to establish an Islamic economy. There are four clear cases of such Islamic states – the Almoravids,¹¹ the Sokoto Caliphate and the Mahdiyya as well as the *Diina* in Masina. Another set of states were those states which were established as the result of militant reform movements, such as the almamates of Futa Toro and Futa Jallon as well as Futa Bundu. Although these states at some stages could be identified as Islamic ones, the Islamisation of the tax system was rudimentary despite the fact that an Islamic order had been established. Other states and empires that can be identified as Muslim, but not Islamic states, did not push for an Islamisation of the government, the juridical system and taxation, although there are some exceptions. Songhay, Kanem-Borno, and possibly Mandara, are interesting cases because at times there were clear attempts to establish an Islamic order in these states although pre-Islamic traditions and customs were to prevail

11 Although constituting an important chapter in the history of the Maghrib, the Almoravids are included in this survey due to the impact of the movement and affiliated scholars throughout the Western Sudan.

in the end. Further to the east, the case of Wadai as well as Dār Fūr is interesting because the politico-religious structure of these states was quite similar to earlier ones in the Western Sudan savannah, namely a mixture of pre-Islamic divine kingship and Islamic political, fiscal and administrative concepts.

On the other hand, it is quite clear that there existed a "moral economy of salvation" throughout sub-Saharan Muslim Africa,¹² and there is no doubt that *zakāt* was collected and distributed in many sub-Saharan Muslim societies. However, as one late 15th century document reveals, its collection and distribution was rather haphazard and gave rise to a criticism of the ruling class by the *ʿulamāʾ*.¹³ On the other hand, on a local level and especially within Muslim enclaves within non-Muslim societies, such as the communities of Muslim scholars and holy men, the establishment of an Islamic order was pursued and was often achieved. *Zakāt* was collected and distributed within such enclaves by the local *imām* and/or the holy man. Yet, although the existence of an Islamic order within these communities cannot be denied or doubted, it does not follow that one can identify such an Islamic order to be a public one. Instead, the Islamic order of the enclaves was limited to the Muslim community and in most cases did not affect the surrounding non-Muslim society and state.¹⁴

However, it is not enough to identify the existence or non-existence of *zakāt* in the precolonial Bilād al-Sūdān but one has also to investigate the meaning and impact of obligatory almsgiving. Unfortunately, the conclusions are rather disappointing due to the almost total lack of appropriate sources. Written documents are rare and government records are almost totally missing. Therefore it is almost impossible to reconstruct the system of taxation in precolonial sub-Saharan Muslim states, not to mention the fiscal ideal and realities. Thus, for example, there are no fiscal records left from any state apart from the Mahdiyya,¹⁵ although there are references to both public treasuries and the keeping of records in several other states. One argument would be that such written records never existed. In the case of the Sokoto Caliphate, the use of oral data was common, but there are some references by early British colonial officers about written records, too. Although most of the states were based on a kind of "oral administration", one could argue that especially Muslim states would at least have tried to establish a rudimentary "written administration".¹⁶ However, one has also to underline the fact that the most important revenue consisted of custom dues and tolls as well as

12 The concept of a "moral economy of salvation" was introduced by John Hunwick, see further Hunwick 1999a. An outline is provided in Chapter II.

13 See further Chapter III.

14 See further Chapter VII.

15 See Abu Shouk & Bjørkelo 1996. An outline is provided in Chapter VI.

16 See further Goody 1986.

various fees and tributes levied on traders and their goods in most, if not all, precolonial Muslim or Islamic governments in the Bilād al-Sūdān. As a consequence, the state itself as well as the ruler and his court were not dependent on the income from the religious taxes. Last, but not least, the special nature of sub-Saharan Muslim states in comparison with the “Heartland” of the Islamic world, the Middle East, Egypt and Persia, must be emphasised. Although the notion of a special “African” or “Black” notion of Islam does not have any credibility, one must not forget that sub-Saharan Africa – especially the Bilād al-Sūdān – was only to a certain part of the Islamic oecumene. The region was not conquered and was never part of the Umayyad or Abbasid Caliphate, its rulers converted to Islam but remained sovereign rulers. On the other hand, the Bilād al-Sūdān was an integrated part of the Islamic (economic) world system, the Islamic oecumene that stretched from the Atlantic to the Southeast Asian archipelago, Central Asia and eventually China.

This study is divided into six parts. Chapter II concentrates on Islam and charity and presents an overview of the various aspects of benevolence, philanthropy, charity as well as giving and receiving, focussing on Islam and outlines by Muslim scholars. In addition, *zakāt* as a moral obligation both within the private and the public spheres as well as an ideal concept is discussed together with the ideal of the “good ruler”. Chapter III concentrates on the identification of *zakāt* in Muslim states in the Bilād al-Sūdān until the latter part of the 17th century, highlighting the (non-) existence of Islamic taxation – or at least the lack of sources – in various Muslim societies. Thus Takrūr, Muslim Ghāna and Mālī turn out to be “unknown realities”, whereas clear arguments for the establishment of an Islamic order can be identified in the cases of the Almoravids, Songhay under Askiya al-Ḥājj Muḥammad and Nāṣir al-Dīn. An examination of the various attempts to establish an Islamic state in the Bilād al-Sūdān during the 18th and 19th century will be provided in Chapter IV, apart from the case of the Sokoto Caliphate and the Maḥdiyya, which have been dealt with in Chapters V and VI respectively. In Chapter VII the discussion will shift from the public to the private sphere. The impact of *ṣūfī* orders and local *imāms*, private acts of religious piety and charity as well as what can be labelled as “Islamisation without the establishment of an Islamic state” will be examined.

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A note on quotations from the Qur’ān: I have made use of the English translation of King Fahd’s Holy Qur’ān.

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A note on the transcription of Arabic and vernacular names: I have made use of a wide variety of sources where English, French as well as German spelling of Arabic and vernacular words and names is used. However, as already Mervyn Hiskett has pointed out in his work *The Development of Islam in West Africa* (1984), there are several problems connected with the transcription of Arabic and vernacular names and terms in a West African context. First, English and French spelling differs greatly from each other (for example: should one use Dyula or Juula?). Second, how should one treat West African names of Arabic origin? I decided to use the English forms throughout the text for geographical and ethnological names as well as for non-Arabic titles. Arabic names and titles are used throughout the text, whereas West African names of Arabic origin are not translated but used their local (Anglicised) vernacular form. However, names and terms that occur in the *Corpus of Early Arabic Sources of West African History* (2000 [1981]) are spelled and transcribed in the way the authors of the *Corpus* have outlined.

II. ZAKĀT: THE PUBLIC AND THE PRIVATE SPHERE

In the ideal Islamic society, *zakāt* is supposed to bridge the rift between rich and poor members of the (Muslim) community. As a religious tax, *zakāt* is thought to be the basis of taxation for Muslims. In theory, the members of the Muslim community were obliged only to pay *zakāt*, whereas non-Muslims who accept Muslim over-rule should pay, for their protection, the *jizya* or poll tax. However, the intention of *zakāt* is primarily to purify in the eyes of God the possessions upon which it is assessed. Therefore both the Qurʾān and Muslim Law are more concerned with the aspects of giving and collecting than of receiving of *zakāt*. To make things more complicated, there is a basic problem with regard to *zakāt* in the Qurʾān and Muslim Law: The term is used synonymously with *ṣadaqa*.¹ Even in the most vital verse for the disbursement of *zakāt*, in sura 9:60, *ṣadaqa* and not *zakāt* is used, although later Muslim scholars and lawyers refer to this sura as being the basis of *zakāt*. The problem gets more complicated, as *zakāt* (and not *ṣadaqa*) is thought to be a religious tax, besides being a religious and moral duty, whose collection and disbursement should be performed and controlled by the head of the Muslim state.²

The recipients were the poor and the needy, those persons who collect the *zakāt*, those whose hearts are reconciled to Islam, those who are in captivity, those who are in debt, those who fight for the sake of Islam and the wayfarers. However, neither the Qurʾān nor the collections of the Prophet's tradition (*ḥadīth*), describe in detail the conditions and qualities of the recipient. Therefore, as Bukhārī states, *zakāt* could also be given to the rich, thieves and whores, as long as the intention of the payer was to serve God and not Man. However, the Prophet originally had an ambivalent attitude towards the recipients, especially beggars: "The upper hand is better than the lower hand."³

¹ Al-Māwardī, for example, stated that "tax is known as *sadaqa* and *zakah*, and the latter is the same as the former; the names are different but the issue is the same, and a Muslim has no other obligation to pay tax other than this tax on wealth" (al-Mawardi 1996: 168).

² See further Schacht 1934 as well as Levy 1957.

³ al-Buḥārī 1991: 192–194, 198–199. The common interpretation among Muslim scholars of this *ḥadīth* is that one should cater for one's needs instead of depending on others: the lower hand meaning to beg, the upper hand meaning to give.

20th century Muslim social and economic scholars have underlined the possibility of an Islamic welfare concept based upon *zakāt*.⁴ Other Muslim economists and scholars have claimed that the only way forward for today's Muslim societies is a return to the Islamic values and bases of the legal, social and political system.⁵ Such an approach has been criticised by Western scholars as overlooking the built-in discrepancy between ideals and reality in Islamic social theory.⁶ Therefore, Western research has regarded such studies as apologetic.⁷ However, as will be pointed out in the following chapters, the argumentation for a return to or a revival of the practices of the days of the Prophet and the community in Medina is not a new one in the Islamic world. In case of the Bilād al-Sūdān, similar calls for religious as well as socio-political renewal can be traced back to the beginnings of Islam in the region. In fact, one could claim that one of the inner dynamics within the Islamic world has been the obvious discrepancy between the religious ideal and the political state of affairs. *Zakāt*, therefore, articulates such a discrepancy: as a religious ideal, it should belong to the public sphere, i.e., be a collective matter and be handled by the state and its officials, yet few Muslim rulers ever controlled the handling of *zakāt*. Nobody, on the other hand, could claim that *zakāt* was not debated and not handled within the private sphere.

Thus, one problem with *zakāt* arises from the question of the role of the actual transaction of the alms: is the state to have a position or not? Whereas it can be argued that *zakāt* belonged to the public sphere during the early days of Islam, this has become a confusing situation during later periods. As long as the community was of a limited size, the Prophet was able to control the collection and distribution of the alms. Under the first caliph, Abū Bakr, the role of the state was further strengthened: refusal of payment of *zakāt* led to the *ridda* wars. However, after expansion outside the Arabian peninsula, the role of the state seems to have been changed. *Zakāt* was certainly still collected, but it was organised on the local level by the local imam. With the breakdown of caliphate rule and the division of the community into several regional political entities, it seems as if the role of the state as the supervisor of the collection and distribution was lost. What remained was the ideal setting: the Islamic state enforcing Islamic law and, as a consequence, the collection and distribution of the Qur'ānic taxes.

Reality, however, proved to be different to the ideal. To meet expenditures, most Muslim states started to collect extra-Qur'ānic taxes. This rift between the ideal and the reality was to be articulated by the critics of the rulers and their

⁴ Among others Mannan 1970; Naqvi 1981; Ahmad 1991; Chapra 1992; Naqvi 1994.

⁵ Siddiq 1948; Qutb 1953. See also Wilson 1998.

⁶ Eickelman & Piscatori 1990: 8.

⁷ Ule 1971; Arafat 1989; Reissner 1991.

regime, the key argument being that the rulers were not ruling according to Islamic law and had neglected their duties towards the community of believers. Critics usually pointed at the heavy taxation imposed upon the commoners, arguing that within the “Islamic state” Muslims only had to pay the Qur’ānic taxes. The similarity of the development from a scholarly critique of the state of affairs of the present to an open rebellion against the ruler in many Muslim regions is striking. One common argument of these scholars has usually been the denouncement of the rulers and the state as being non-Muslim and the attempts to establish conditions resembling those of the community of the Prophet in Medina: the ideal state materialised on earth.

Background and Definition

There is no consensus among scholars about the roots and meanings of the words *zakāt* and *ṣadaqa*; the main argument being, on the one hand, that the words are of purely Arabic derivation, whereas the counter argument has been that both *zakāt* as well as *ṣadaqa* are borrowings from other Semitic languages into Arabic. Arabic lexical and other sources point to several meanings given to abstract nouns from the root ZKA/I/W, such as growth (*yazkū*), increase and praise, but also charity. Another line of argumentation maintains that the meaning of the word would be purification (*zakī*). A third explanation was presented by those scholars who tried to harmonise the two meanings of growth and purification by saying that purification of the property causes it to grow and increase.⁸ Voluntary alms or, as they are also usually referred to, *ṣadaqat al-nafl*, “alms of supererogation” or *ṣadaqat al-taṭawwuʿ*, “alms of spontaneity”, are considered to be an indication of the sincerity, *ṣidq*, of the almsgivers’ religious belief.⁹

Suliman Bashear, who has produced an examination of cognate Semitic words to *zakāt*, stresses the fact that the meanings from purification and exemption of taxes were the main ones conveyed by these words. For instance, in Akkadian, the word *zakūtu* occurs in contexts of freeing people from acts and payments due to the gods, in Assyrian the word *zakū* has the meaning of being pure, clean and shining as well as free from commitments whereas the word *zakūtu* has, among other connotations, the idea of being free of payment of tithes as well as being an agreement, a judgment, a declaration of the independence of cities.¹⁰ Bashear also discusses the meaning of the Ge’ez, Tigrean, Guage, Amharic and Sabaean meanings for the root form *zkh*, denoting purity but also a tax paid to the

⁸ Bashear 1993: 86–87. See also Juynboll 1910: 99.

⁹ Weir 1995: 708.

¹⁰ See further *The Assyrian Dictionary*, XXI (Z): 23ff. [“zakū”] and 32ff. [“zakūta”].

local chief and charity for the poor,¹¹ but he does not ponder about the possibility of a later influx of Christian-Islamic notions which could give another explanation, namely that the word(s) is perhaps a borrowing into these languages from Arabic? The latter is clearly the case in the Bilād al-Sūdān, where various derivations of *zakāt* and *ṣadaqa* are to be found, such as *zakka* (Hausa), *zaragh* (Wolof) and *jakko* (Manding), all of them clearly tied to the Islamic and Arabic origin.

For *ṣadaqa*, at least, there exists some kind of general acceptance, by both Muslim and Western scholars, of a pre-Islamic but Arabic notion of the concept. Western scholars have noted some grammatical variations in the use of *ṣadaqa* which would suggest that the history of *ṣadaqa* is pre-Islamic. This hypothesis is said to be strengthened by a *ḥadīth* that depicts the giving of *ṣadaqa* as being familiar to both Arabian Jews and pagans before Islam. *Zakāt*, on the other hand, is only used in the singular (like the Hebrew *sedaka*) and has no denominative verb corresponding to its sense of giving alms. This, again, would point to the fact that *zakāt* has “a shorter history” as an Arabic word than *ṣadaqa*.¹²

Non-Muslim scholars, such as Joseph Schacht and Philip K. Hitti among others, have argued that the word *zakāt* was borrowed from Jewish usage of Hebrew-Aramaic *zākūt*,¹³ whereas *ṣadaqa* is considered a mere transliteration of the Hebrew *sedaka*, which originally meant “honesty” or “righteousness”. *Sedaka* later developed into having the sense of alms given to the poor and was applied by the Pharisees to what they considered the chief duty of the pious Israelites, namely almsgiving.¹⁴ Some Western scholars have even argued that the Aramaic word *zakhūthā* was not attested in classical Jewish sources to mean alms at all, but only acquired this meaning through its common use at a later stage when *sedaka*, too, referred to alms.¹⁵ Thus, for example Marcel Mauss in his treatise on the gift, highlights the connection between *zedaka* and *ṣadaqa*.¹⁶ According to Mauss, the difference between *zedaka* and *ṣadaqa* implied a process where an earlier juridical principle was changed into a moral obligation to give alms.¹⁷ Yet, what Mauss is missing is the division of *zakāt* and *ṣadaqa* in Islam, a division which is not found in Christianity. Whereas Christian moral ideas were built on

11 Bashear 1993: 87–88.

12 *EI* (New Ed.): 709 [“ṣadaqa”]. See also Juynboll 1910: 95.

13 Schacht 1934: 1302; Hitti 1970: 132.

14 Bashear 1993: 85.

15 *EI* (New Ed.): 709 [“ṣadaqa”].

16 Mauss refers hereby to the earlier study by Edvard Westermarck (1971: 553) on the *Origin and Development of Moral Ideas*: “Almsgiving, prayer, and fasting were the three cardinal disciplines which the synagogue transmitted to both the Christian Church and the Muhammedan mosque.”

17 Mauss 1969: 16.

both Hebrew/Jewish as well as Greek traditions, in Islam, it can be argued, the idea of charity and benevolence in the form of a division of voluntary and obligatory almsgiving is a clear strengthening of both pre-Islamic Arabic nomadic or tribal tradition but also the Greek and Byzantine tradition.¹⁸

Modern Muslim scholars, again, are not convinced about the Western claim of borrowing. Yusuf al-Qardawi, who has written a modern treatise on the law of *zakāt*, *Fiqh al-Zakāt*, rejects the argumentation of Western Orientalists and claims that the Prophet did not know Hebrew or any other language except Arabic and had not been in contact with Jews or Christians before he emigrated to Medina. Therefore, al-Qardawi asks, how could the Prophet then have borrowed the idea of *zakāt* from the Jews and the Christians, when the Prophet had already in Mecca laid the grounds for obligatory almsgiving and introduced *ṣadaqa*? Further, al-Qardawi refutes Western linguistic theory and methodology as mere speculations.¹⁹

Generally, the argument of the Muslim scholars has been to stress the meaning of *zakāt* as being “growth” and, by extension, growth in purity of the soul through honest actions and dealings.²⁰ Islam and the revelation of the Prophet are the sole basis for *zakāt*, thus being first and foremost a religious – never a secular – institution. A fundamental argument among Muslim scholars has been that the observance of all obligatory duties, among others obligatory almsgiving, is the responsibility of the individual and not the state. Therefore, de Zayas, for example, concludes that *zakāt* is not an income-tax (which other scholars would claim), nor is it a government tax but an “obligatory social tax”. According to her, *zakāt* cannot be imposed by the state, nor is it destined for the state and it does not even primarily depend on the state for its function. However, the state is identified, not only by de Zayas, but by most other Muslim scholars as having a crucial role in the supervision of *zakāt*:

The right of the state is only to enforce observance of the Quranic Law ... and to watch over the smooth functioning of the institution, being itself bound to abide by the rules that govern it.²¹

***Zakāt*: Purification and Growth**

Zakāt and *ṣadaqa* are used in the Qur’ān to indicate purification: “Of their wealth take alms (*ṣadaqa*), that so thou mightest purify and sanctify them,”²² and

¹⁸ On Byzantine almsgiving, see Constantelos 1991 as well as Chapter II, fn. 151.

¹⁹ al-Qardawi 1999: xliv–slv.

²⁰ Aghnides 1916: 203; de Zayas 1960: 3.

²¹ de Zayas 1960: 5.

That which you give in usury for increase through the property of (other) people, will have no increase with Allah; but that which you give for charity (*zakāt*), seeking the Countenance of Allah (will increase): it is these who will get a recompense multiplied.²³

Charity and prayer are among the most important virtues and are defined in the Qurʾān as being among the most fundamental principles of faith:

Those who patiently preserve seeking the countenance of their Lord; establish regular prayers; spend, out of (the gifts) we have bestowed for their sustenance, secretly and openly; and turn off Evil with good: for such there is the final attainment of the (Eternal) Home.²⁴

Most important, however, is the notion that charity as such is an act of love of Allah, which is stressed in several suras:

And they feed, for the love of Allah, the indigent, the orphan, and the captive, (saying) "We feed you for the sake of Allah alone: No reward do we desire from you, nor thanks".²⁵

Those who spend (freely), whether in prosperity, or in adversity; who restrain anger, and pardon (all) men; – for Allah loves those who do good.²⁶

Know they not that Allah doth accept repentance from His votaries and receives their gifts of charity, and that Allah is verily He, the Oft-Returning, Most Merciful?²⁷

Therefore, the ultimate meaning of obligatory almsgiving is to give a loan to Allah for which the giver will be rewarded:

If ye loan to Allah a beautiful loan, He will double it to your (credit), and He will grant you Forgiveness: For Allah is All-Thankful, Most Forbearing.²⁸

Thus, the key argument for giving alms is the promise of salvation: act charitably in this world for the sake of your soul in the hereafter.

22 Sura 9:103.

23 Sura 30:39.

24 Sura 13:229. This obligation is repeated in several suras, such as: "And be steadfast in prayer and give *zakāt*: and whatever good ye send forth for your souls before you, ye shall find it with Allah: for Allah sees well all that we do" (sura 2:110); "Your (real) friends are (no less than) Allah, His Messenger, and the Believers, – those who establish regular prayers and pay *zakāt* and they bow down humbly (in worship)" (sura 5:55) and "Those who rehearse the Book of Allah, establish regular Prayer, and spend (in charity) out of what we have provided for them, secretly and openly, hope for a Commerce that will never fail" (sura 35:29).

25 Sura 76:8–9.

26 Sura 3:134.

27 Sura 9:104.

28 Sura 64:18.

And spend something (in charity) out of the substance which we have bestowed on you, before death should come to any of you and he should say, "O my Lord! Why didst Thou not give me respite for a little while? I should then have given (largely) in charity, and I should have been one of the doers of good."²⁹

So fear Allah as much as ye can; Listen and obey; and spend in charity for the benefit of your own souls. And those saved from the covetousness of their own souls, – they are the ones that achieve prosperity.³⁰

Allah will admit those who believe and work righteous deeds, to Gardens beneath which rivers flow: they shall be adorned therein with bracelets of gold and pearls; and their garments there will be of silk.³¹

What makes *zakāt* interesting as a concept is the theoretical discussion about the nature and the qualification of a moral obligation. As a moral obligation that is incumbent on all Muslims, the concept needs to be discussed as well as outlined. Most important, however, the imperative basis of the concept has to be established. According to Muslim scholars, the key question is about the concept of *farḍ*, obligation or/and duty. Islamic ethics distinguishes between personal and collective obligations. An individual or personal obligation, termed *farḍ ‘ayn*, is an act that every Muslim must personally perform. It comprises duties such as the payment of *zakāt*, the obligation to support the family and the obligation to support close relatives. Collective obligations or *farḍ kifāya*, on the other hand, consist of duties incumbent upon the community as a whole. A *farḍ kifāya* is an act which every person is under the obligation to perform until a sufficient number of persons have performed it, absolving the rest from this obligation. These obligations are considered to be imperative, *farḍ*, and have been established by *sharī‘a* evidence and for which there is no room for doubt. Further, to help perform a *farḍ* is itself considered a *farḍ*. The basic difference between obligatory and voluntary almsgiving is therefore established through the concept of *farḍ*. While every *zakāt* is also *ṣadaqa*, only the *ṣadaqa* which is considered a *farḍ* is *zakāt*.³²

The moral obligation of almsgiving is already fixed in the Qur‘ān, especially in *sūrat al-Baqara*:

O ye who believe! Spend out of (the bounties) we have provided for you, before the Day comes when no bargaining (will avail), nor friendship nor intercession. Those who reject Faith – they are the wrong-doers.³³

²⁹ Sura 63:10.

³⁰ Sura 64:16.

³¹ Sura 22:23.

³² Aghnides 1916: 112, 204; Gusau 1993: 113.

³³ Sura 2:254.

Those who believe, and do deeds of righteousness, and establish regular prayers and give *zakāt*, will have their reward with their Lord: On them shall be no fear, nor shall they grieve.³⁴

The open-handed are promised a reward by Allah – both in this world and in the next:

And the likeness of those who spend their wealth seeking to please Allah and to strengthen their soul, is as a garden, high and fertile: heavy rain falls on it but makes it yield a double increase of harvest, and if it receives not heavy rain, light moisture sufficeth it. Allah seeth well whatever ye do.³⁵

Does any of you wish that he should have a garden with date-palms and vines and streams flowing underneath, and all kinds of fruit, while he is stricken with old age, and his children are not strong (enough to look after themselves) – that is should be caught in a whirlwind with fire therein and be burnt up? Thus doth Allah make clear to you his Signs; that ye may consider.³⁶

It is not for you to guide them to the right path, but Allah guides to the right path whom He pleaseth. Whatever of good ye give benefits your own souls, and shall only do so seeking the “Face” of Allah. Whatever good ye give, shall be rendered back to you, and ye shall not be dealt with unjustly.³⁷

But those among them who are well-grounded in knowledge, and the Believers, Believe in what hath been revealed to thee and what was revealed before thee: And (especially) those who establish regular prayer and pay *zakāt* and believe in Allah and in the Last Day: To them shall We soon give a great reward.³⁸

As has been pointed out previously, giving away one’s wealth is perceived as an act for the love of Allah; the giver is promised to be rewarded by Allah, not man:

The parable of those who spend their wealth in the way of Allah is that of a grain of corn: it groweth seven ears, and each ear hath a hundred grains. Allah giveth manifold increase to whom He pleaseth: and Allah careth for all and He knoweth all things.³⁹

Those who (in charity) spend of their goods by night and by day, in secret and in public, have their reward with their Lord: On them shall be no fear, nor shall they grieve.⁴⁰

Those who believe, and do deeds of righteousness, and establish regular prayers and give *zakāt*, will have their reward with their Lord: On them shall be no fear, nor shall they grieve.⁴¹

34 Sura 2:277.

35 Sura 2:265.

36 Sura 2:266.

37 Sura 2:272.

38 Sura 4:162. This text seems, however, to refer to the Jewish community in Medina and has only afterwards been interpreted to be of a general nature.

39 Sura 2:261.

40 Sura 2:274.

41 Sura 2:277.

For those who give in charity [*ṣadaqa*], men and women, and loan to Allah a Beautiful Loan, it shall be increased manifold (to their credit), and they shall have (besides) a generous reward.⁴²

The order to give *zakāt* was, in fact, established by the Prophet after a dispute among the community of believers on the way alms were to be spent. The dispute is described in sura 58:12–13, and it ended with the demand of the Prophet that if people would not spend alms (*ṣadaqa*) when they wanted to consult him, then they should at least give *zakāt* and establish the regular prayers (*ṣalāt*). The interesting case with sura 58:13 is that the verse makes a distinction between *ṣadaqa* and *zakāt*: the former being voluntary, the latter being mandatory.⁴³ This sura could be taken as a direct example of the division between these two forms of alms, although both the Qurʾān, the *ḥadīth*-texts as well as several early scholars of Muslim law do not distinguish between *ṣadaqa* and *zakāt* but use the words as synonyms.

Muslim scholars in general argue that *zakāt* is paid as a purification for the donor and a support for the recipient. In an ideal setting, *zakāt* provides – as a social obligation, if not a tax – for the transfer of wealth from certain productive classes, mainly farmers, livestock owners and merchants to certain poor and non-productive classes. As a religious duty, especially its correct performance, it involves an attention to precise details of quantity (*naṣab*), timing (*ḥawl*), and intention (*nīya*). The aim of giving *zakāt*, it has to be underlined, is not to alleviate the distress of the poor or to provide some kind of altruistic welfare system. The idea of *zakāt* is giving for the sake of God. Thus the intention and motivation of the almsgiver was of key importance, which is the basic argument in the Qurʾān: “O ye who believe! Chancel not your charity (*ṣadaqa*) by reminders of your generosity or by injury – like those who spend their wealth to be seen of men, but believe neither in Allah or in the Last Day.”⁴⁴ This point is also highlighted by al-Shāfiʿī, who explained that since *ṣadaqa* might either be incumbent (*farḍ*, therefore being *zakāt*) or voluntary (*taṭawwuʿ*) it is not permissible for someone to gain religious reward for distributing *zakāt* unless he or she expresses *nīya* to the effect that it is such. Following Calder, *nīya* thus distinguished for al-Shāfiʿī the formal ritual of *zakāt* from supererogatory almsgiving.⁴⁵

Further, alms should be given in secrecy rather than publicly – an argument similar to the Biblical one:

⁴² Sura 57:18.

⁴³ Sura 58:13: “Is it that ye are afraid of spending sums in charity (*ṣadaqa*) before your private consultation (with the Prophet)? If, then, ye do not so, and Allah forgives you, then (at least) establish regular prayer; give *zakāt* and obey His Messenger.”

⁴⁴ Sura 2:264.

⁴⁵ Calder 1981: 473.

Those who spend their wealth in the cause of Allah, and follow not up their gifts with reminders of their generosity or with injury, – for them their reward is with their Lord: On them shall be no fear, nor shall they grieve.⁴⁶

If ye disclose (acts of) charity (*sadaqa*), even so it is well, but if ye conceal them, and make them reach those (really) in need, that is best for you: It will remove from you some of your (stains) of evil. And Allah is well acquainted with what ye do.⁴⁷

This verse raises two interesting questions. First, the problem for the giver is to decide who is the person “really” in need. This question is left open in the Qur’ān – neither the poor and the needy are clearly defined in the scripture, which has led to a great variation of interpretations among Muslim scholars. Second, the argument of “removing” some of a person’s sins by giving alms. Whereas the matter is left open in the Bible and caused a fierce debate among Christians about indulgence and the question whether good deeds are counted by God, the Qur’ān has a very clear message to the believer: to do acts of charity counts in the eyes of God. However, according to Islamic ethics, charity as such does not remove a sin. It is already stated in the Qur’ān that charitable acts are useless if not performed with the right intention and the donation must have been honourably earned or acquired by the giver:

Kind words and covering of faults are better than charity (*sadaqa*) followed by injury.⁴⁸

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 aim at anything which is bad. Out of it ye may give away something, when ye yourselves would not receive it except with closed eyes.⁴⁹

As previously noted, much less space has been given in the Qur’ān to the position of the recipient. The key text that is usually referred to by Muslim scholars as the foundation of the rules of *zakāt* concerning its distribution is sura 9:60:

Alms [*sadaqa*] are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer.

Other verses in the Qur’ān that discuss the recipients of alms usually include only one’s kin, orphans, poor people and wayfarers, whereas the other categories listed in sura 9:60, such as the collectors, are not mentioned at all:

⁴⁶ Sura 2:262.

⁴⁷ Sura 2:271.

⁴⁸ Sura 2:263.

⁴⁹ Sura 2:267.

It is not righteousness that ye turn your faces towards the East or West; But it is righteousness – to believe in Allah and the Last Day and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and give *zakāt*, to fulfil the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the God-fearing.⁵⁰

(Charity is) for those in need, who in Allah's cause are restricted (from travel). And cannot move about in the land, seeking (for trade and work): The ignorant man thinks, because of their modesty, that they are free from want. Thou shalt know them by their (unfailing) mark: They beg not importunately from all and sundry. And whatever of good ye give, be assured Allah knoweth it well.⁵¹

So give what is due to kindred, the needy, and the wayfarer, that is best for those who seek the Countenance, of Allah, and it is they who will prosper.⁵²

An important question would be the “rights” of the receiver, namely if a person is in the position to demand – as a tool of God – a share of the wealth of those who have and are obliged to give? Sura 70:24–25 might hint towards a positive position of the receiver: when a person asks for help, it should be given: “And those in whose wealth is a recognised right for the (needy) who asks and him who is deprived (for some reason from asking).”⁵³ Totally left open is the question about how much should be given – particular rules of the collection of *zakāt* were made only after the death of the Prophet. Thus, the Qur’ān remains vague:

They ask thee what they should spend (in charity). Say: Whatever wealth 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.⁵⁴

They ask thee concerning wine and gambling. Say: “In them is great sin, and some profit, for men; but the sin is greater than the profit.” They ask thee how much they are to spend; say: “What is beyond your needs.” Thus doth Allah makes clear to you his sign: in order that ye may consider.⁵⁵

Moreover, practical details are very seldom discussed in the Qur’ān. Thus, for example, no rules on the collection of *zakāt* are laid out in the Holy Book, nor is the condition of collection and distribution specified. Sura 22:41, “(They are) those who, if we establish them in the land, establish regular prayer and give *zakāt*, enjoin the right and forbid wrong: With Allah rests the end (and decision)

50 Sura 2:177.

51 Sura 2:273.

52 Sura 30:38.

53 Sura 70:24–25.

54 Sura 2:215.

55 Sura 2:219.

of (all) affairs," might be regarded by some scholars as referring to the state and it being commissioned to establish the Faith and obligatory almsgiving. However, this interpretation rests on vague assumptions as nothing is in fact stated about the obligations of the community of believers, which eventually would establish itself as an Islamic state.

A Private or a Public Matter?

Whereas the Prophet introduced the distinction between voluntary and obligatory almsgiving as well as established *zakāt* as a kind of general levy paid by all members of the community of believers, it was during the reigns of the caliphs Abū Bakr (632–634) and ‘Umar ibn al-Khaṭṭāb (634–644) that *zakāt* was formalised and specified rules for *zakāt* were established. Thus, by that time *zakāt* emerged as a legal institution, quite contrary to what it had been during the early days of the Muslim community when it existed as a small group of rather poor believers in Mecca. During the early period in Mecca, *zakāt* was still an informal expression of faith, not regulated or institutionalised but given in private to assist poorer members of the community as well as to buy the freedom of those in slavery.⁵⁶ Yusuf al-Qardawi describes *zakāt* during this period as being general, without rules, left to the individual’s conscience and feeling of duty.⁵⁷

It was only after the *hijra* of the Prophet and the establishment of his community in Medina when *zakāt*, together with the prayers emerged as the cornerstone of Islam. The difference of the almsgiving as a pious act and a legal obligation is revealed by a comparison of those suras which were revealed to the Prophet in Mecca and the suras from the Medinan period. Whereas almsgiving in the former was merely advice, in the latter it had become a command.⁵⁸ Thus *zakāt* had been transformed from being a personal duty or *farḍ ‘ayn* to become a specified communal duty or a *farḍ kifāya* in the Medinan period. *Zakāt* became legally binding and was to include legal institutions and statutes on what was zakātable wealth and income and who was to receive a share of the collected goods.⁵⁹ However, during the lifetime of the Prophet, no precise rules on how

⁵⁶ al-Shiekh 1995: 366–367. See also Juynböll 1910: 95–96.

⁵⁷ al-Qardawi 1999: 15–16.

⁵⁸ al-Shiekh 1995: 367.

⁵⁹ See, for example sura 9:53 which refers to the possibility of the Prophet refusing someone’s payments: “Say: ‘Spend willingly or unwillingly: Not from you will it be accepted: for ye are indeed a people rebellious and wicked’.”

much was to be paid were laid down. Instead, the proceeds of *zakāt* were normally used at Muḥammad's discretion.⁶⁰

According to Bashear, *zakāt* was applied as a payment aimed to purify sinners in its pre-institutional phase and it was the exclusive role of the Prophet to perform the purification prayer on behalf of the paying sinners.⁶¹ The payment of *zakāt* had become during the lifetime of the Prophet a sign of the acceptance of the political as well as religious authority, which, in the case of Abū Bakr, was called into question by several Bedouin groups.⁶² However, as Bashear points out, the outcome of the refusal to pay *zakāt* and the war that followed resulted in the final change of the concept of *zakāt* from being a payment of purification to constituting the identification of the members of the community: He who pays *zakāt* is a believer and upon whom war should not be waged.⁶³

The development of *zakāt* from a voluntary charitable act to a formal institution was, according to Kuran, an inevitable process: the mere size of the community of believers had risen from about 80 in Mecca to 1,500 shortly after the *hijra* to Medina. The outcome was that brotherly co-operation was weakened and replaced by a system that would include coercion if needed:

Islam's voluntary redistribution mechanism was supplemented by the formal tax-cum-subsidy scheme known as *zakāt*, and [...] coercion started to play a major role in controlling prices and preventing speculation.⁶⁴

From the Public to the Private Sphere

Zakāt is said to have become a legal obligation, or, paraphrasing Kuran above, a "formal tax-cum-subsidy scheme" in the year 9 AH (630–631).⁶⁵ By this time, *zakāt* was part of the public sphere as prophetic tradition laid down the rules of taxation for the Muslims, and *zakāt* was controlled by the *bayt al-māl*, the state treasury. Non-Muslims had to pay *jizya*. After the conquest of Syria and Iraq in the reign of Caliph 'Umar ibn al-Khaṭṭāb, the rules of taxation were changed.

⁶⁰ Hodgson 1974a: 181. It is also interesting to note that during the lifetime of the Prophet the payment of *zakāt* seemed to have also been incumbent on the Jewish community in Medina. The order to pay *zakāt* in sura 2:43, 83 and 110 was directed to the Jews. See further the discussion in Bashear 1993: 89–91, and Juynboll 1910: 96.

⁶¹ A similar argument is put forward by Nagel 1998: 11.

⁶² See, for example, Hodgson 1974a: 197–198; Haque 1977: 187; el-Affendi 1991: 22–23; al-Shiekh 1995: 367.

⁶³ Bashear 1993: 99–108. A similar argumentation is presented in Juynboll 1910: 97–98.

⁶⁴ Kuran 1986: 142.

⁶⁵ Hitti 1970: 199. Other scholars set the date for the imposition of *zakāt* to the year 2 AH.

Zakāt was imposed on the stock of merchants and on horses, which previously had not been taxed.⁶⁶ The inhabitants of the subdued regions also had to pay, apart from *jizya*, a tax upon their land, *kharāj*. Through this tax, the burden of taxation within the Muslim state was put on the agricultural, non-Muslim population. *Kharāj* became the most important tax income for the state thereafter, apart from incomes from booty and various dues and customs duties. However, this situation changed during the reign of the Umayyad Caliphs when conversion to Islam became widespread. The crucial matter was the fate of *kharāj*: Should the converts (*mawālī*) continue to pay it or not? For the Caliphate this question was a matter of serious concern, as its public expenditure (court, administration, and especially the army) could not be met by the income from *zakāt*. Another constraint to the state incomes from *kharāj* was posed by Arab Muslims who had acquired so-called *kharāj*-land and demanded that they only pay *‘ushr*, i.e., the tithe, which was equal to *zakāt*. Therefore, during the reign of the Umayyad Caliph ‘Umar II (717–720), a further tax reform, which was to be implemented during the Abbasid Caliphate, was laid out to avoid a fiscal crisis. Due to the reform, the difference between *‘ushr*- and *kharāj*-land was established.⁶⁷ Those who held *‘ushr*-land were exempt from paying *kharāj*. All others, whether Muslims or not, had to pay *kharāj*.⁶⁸

The outcome of the tax reforms during the Umayyad and early Abbasid era, in the case of obligatory almsgiving, was that the Muslim state was no longer concerned with the collection and disbursement of *zakāt*.⁶⁹ The Caliphate and

⁶⁶ This act of ‘Umar ibn al-Khaṭṭāb has been used by modern scholars to argue for a change of the *zakāt*-rules, which have been unaffected by external factors since the codification of Muslim law (Mannan 1970: 292–293; Ahmad 1992: 81–83). See further Kuran 1986: 147–148, who argues that “within each school [of Islamic law] ... *zakāt* eventually became an ossified, dysfunctional ritual, increasingly divorced from its original purpose.”

⁶⁷ See further al-Māwardī (1996: 176, 213–217, 246) on the taxation of *‘ushr*- and *kharāj*-land. See also Becher 1924a: 226–233.

⁶⁸ See further Løkkegaard 1950; Bæk Simonsen 1988; Feldbauer 1995. An overview of the impact of the various early tax reforms, especially the case of the land tax, is presented in Haque 1977. For a general discussion, see Noth 1987: 90–92, 95–96, 134–135.

⁶⁹ Shemesh 1969: 25–32. One reason for the shift of *zakāt* from the public to the private sphere during the Abbasid era might have been due to the creation of the system of *iqṭā’*. This system consisted in an assignment or grant of land or of its revenues by a government to an individual. The original idea with this system was to find a solution for the maintenance of army units, yet the outcome was that it removed the revenue collection from the control of the state administration. Another reason for the shift of *zakāt* from the public to the private sphere was due to the development of the institution of *waqf* or pious foundations (see further Cahen 1970: 534–537; Hodgson 1974b: 95–102). However, in case of the *waqf* (pl. *awqāf*) one could claim that the actual shift was one from a state-controlled system for the provision of public institutions to a system where private individuals through the establishment of *awqāf* were providing the material and economic bases for public institutions such as Qur’anic schools, hospitals, or *ṣūfī* *zawāya*.

also later Muslim states throughout the Islamic world came to rely on the income derived from the land tax, various dues and customs tolls as well as, whenever possible, booty.⁷⁰ The collection of *zakāt* was transferred to the local Muslim community and its religious head, the *imām*.⁷¹ As a consequence, one could say that with the continuing disintegration of the Abbasid Caliphate after the 10th century AD, the question of *zakāt* became a matter of the private sphere of every Muslim and the Muslim state had little to do with the whole matter. Studies on public income in the Abbasid Caliphate, as well as the Ottoman Empire, confirm this picture.⁷² Also, a close reading of scholarly treatises as, for example, of al-Ghazālī's "Mysteries of Almsgiving",⁷³ shows no debate on the role of the state in collecting *zakāt*. Clearly, by the 11th century AD, the whole question of *zakāt* was a private one that concerned the giving of alms between individuals,⁷⁴ and al-Ghazālī's treatise was concerned with the rules and conditions concerning *zakāt* as a private and individual act.

The above outlined development of an increasing limitation of the possibilities of the government to control the political, legal and fiscal spheres of their realms resulted, among others in North Africa but also elsewhere in the Islamic world, to an increased importance of religious centres and pious settlements. With the support and under the leadership of the "marabuts", the founders of such centres and settlements, and in the absence of influential governments, local communities not only resolved their factional conflicts but also resisted the legitimate intervention or the illegitimate intrusion of government authorities. As Fritz Meier has underlined in the case of Morocco,

⁷⁰ Thus, most Western scholars would argue that the economic relation between the rulers and the ruled in the Muslim states was basically the creation of an economy of patronage. Throughout many of the pre-modern Muslim states in the Middle East, North Africa and Asia, surplus agricultural production was extracted by the state through a series of taxes, the most important of which was the land tax. For example, as Sabra argues for Mamlūk Egypt, through the adoption of the *iqṭāʿ* system, the sultan and the leading *amīrs* came to dominate the urban market for agricultural products due to their status as recipients of taxes. These recipients of the taxes and tributes would in their turn pay off their retinue and clients, and, during times of distress, perhaps organize some sort of famine relief among the urban poor. See further Sabra 2000: 135–137.

⁷¹ Hitti 1970: 132.

⁷² von Kremer 1888; Shimizu 1966; Gibb & Bowen 1950. See also Morimoto 1981 and Ismail 1989.

⁷³ al-Ghazālī 1966.

⁷⁴ The role of the state as an active agent in the collection and distribution of *zakāt* was already discussed by the early Muslim jurists. The Mālikī position was that *zakāt* never should be given directly to a recipient, whereas the Shāfiʿī scholars, among others al-Māwardī (d. 1058), would argue that those who pay *zakāt* may distribute it themselves to those entitled to it (al-Mawardi 1996: 186).

... at the cost of the governor or by way of lightening the latter's responsibilities, the government transferred to him [i.e., the founder or leader of a religious centre or pious settlement, HW] the task of looking after peace and order in his district and of actively playing a civilizing and educational role, and remunerated him for this by exempting him from compulsory labor and state taxation, and by according him the right to spend the taxes demanded from him by religion on the poor of his family and for his own undertakings, in fact even to levy such taxes on certain parts of the population and to keep the money for the same purpose [emphasise mine, HW].⁷⁵

Such tax exemptions were known as *hurma*, a charter of such as *mahrām*, and, as will be discussed in Chapter IV and VII, such exemptions were very common in some of the precolonial states in the Bilād al-Sūdān, among others the Songhay Empire, Borno, Wadai, Dār Fūr and the Funj Sultanate.

Another outcome of the various tax reforms was a rising discrepancy between fiscal reality and religious legal principles.⁷⁶ This has been clearly laid out by Shemesh in his studies of three early Muslim corpora on taxation. First, the terms *'ushr*, *zakāt* and *ṣadaqa* are often used as synonyms and equivalents for each other. For example, Abū Yūsuf stated that "if sown on *kharāj* land the *kharāj* tax will be calculated on the same basis [as the *'ushr* tax]."⁷⁷ Secondly, it is unclear whether taxation in praxis ever followed Islamic principles. For example, taxes under the *muqāsama* system, a reform of *kharāj* under the reign of the Abbasid Caliph al-Mahdī (775–785), were between 40 and 50 per cent. The term *'ushr* ('tithe') was used much more frequently than *zakāt*. However, it was used to describe *zakāt* and often used as a synonym for *zakāt*. This might have enabled the ruler to use the income of *'ushr* for his expenditure and it gradually became secularised, as *'ushr* was not a religious institution.⁷⁸

One has to bear in mind the foregoing outline of the shift of *zakāt* from being a public and government supervised matter to emerge as a private and individual act when studying *zakāt* in the Bilād al-Sūdān. By the 11th century, when the first rulers in the Sudan savannah converted to Islam, one could argue that there already existed two practices of dealing with *zakāt*. One was the ideal setting outlined in the treatises by Muslim scholars, the other was the fiscal practice in the Muslim states throughout the Islamic world. As will be argued throughout this study, such a discrepancy between ideal and reality also prevailed in most of the pre-colonial Muslim states in the Bilād al-Sūdān. Most of these states relied on income from dues and tolls levied on traders, usually called *'ushr* and thus, in theory at least, governed by the rules of *zakāt*. Whenever possible, taxes and rents on land and harvest were collected by the state, sometimes termed *kharāj*, some-

⁷⁵ Meier 1999: 361.

⁷⁶ See Becker 1924a: 172, and 1924b: 232.

⁷⁷ Shemesh 1969: 130.

⁷⁸ Schacht 1934: 1304; Shemesh 1969: 21–23.

times *'ushr*. However, as will become evident in the survey, much depended on the ability of the ruler to control and tax his subjects, and in most cases this was a delicate question. As long as the rulers were able to cover their expenses by taxing trade and raiding (non-Muslim) neighbours, it seems as if most Muslim rulers in the Bilād al-Sūdān had no need to introduce the collection of *zakāt* by the state. On the other hand, some of the rules of *zakāt* as outlined by Muslim scholars were in fact applied throughout the Bilād al-Sūdān.

An Outline of the Rules of *Zakāt*

Neither the Prophet nor the Qur'ān have provided the community of believers with a precise and clear set of rules that would govern the assessment and payment of *zakāt*, the kinds of wealth on which *zakāt* must be paid as well as their ratios. Muslim scholars and jurists have therefore spent much time in establishing an elaborate set of rules that guide the collection of *zakāt*. The background of these rules is said to be outlined in the *Book of Zakāt* by 'Umar ibn al-Khaṭṭāb, the second caliph.⁷⁹ Later jurists and schools of law codified the rules of *zakāt*, and thus *zakāt* developed into a religious tax, the interpretation and supervision of the rules of *zakāt* being the task of the *'ulamā'* and not the secular rulers.

The basic outline of the rules of *zakāt* is that it is a "tax" on property and on individuals, payable only by Muslims on goods which have been in their possession for one year.⁸⁰ Further, only a free and mature individual is obliged to pay *zakāt*, but not those in debt as well as children, women, slaves and other "minors" such as the insane.⁸¹ Concerning those things that are subject to *zakāt*, Mālik ibn Anas, who was the founding father of the Mālikī *madhhab* which was to become the only school of Islamic law in the Bilād al-Sūdān, in his *al-Muwaṭṭa'*, which is the magnum opus of the Mālikī *madhhab*, states that "... *zakāt* is only paid on three things: the produce of cultivated land, gold and silver, and livestock."⁸²

⁷⁹ An outline of these rules are to be found in Ibn Anas 1989, Chapter 17.11.

⁸⁰ The ordinance that *zakāt* is due only from Muslims must have been stipulated only after the death of the Prophet. Some of the suras that deal with the collection of *zakāt* are without any doubt referring to an obligation of the Jewish community to pay *zakāt* to the community of believers and 'Umar ibn al-Khaṭṭāb also collected *zakāt* from the Nabatean Christians. See further suras 2: 43 and 5: 12 as well as Ibn Anas 1989: 106.

⁸¹ Aghnides 1916: 213–217. However, according to Mālikī and Shāfi'ī jurists, the property of minors and the insane is not exempt.

⁸² Ibn Anas 1989: 93. As I will concentrate in my study on the Bilād al-Sūdān, the interpretations of the Mālikī *madhhab* will be the starting point of my argumentation. My key references are therefore Bewley's translation of Mālik ibn Anas's *al-Muwaṭṭa'* and Ruxton's compilation of the *Mukhtaṣar* of Sīdī Khalīl. In addition, I will use the studies by Aghnides, who generally follows a Ḥanafī interpretation, as well as de Zayas and al-Qardawi, who both try to establish a consensus among the various schools of law.

A general division is made between apparent or *zāhir*-goods and non-apparent or *bāṭin*-goods. The right of the government to collect *zakāt* was restricted to *zāhir*-goods, namely livestock, agricultural products and mines, although there is no consensus⁸³ among the jurists about the exact division between these two conditions.⁸³ According to Aghnides,

... the Mālikītes virtually consider all *zakāt* property as apparent in contrast with the Shāfi'ites who almost go to the other extreme. Thus, unlike al-Shāfi'ī who recommends the disbursement of *zakāt* to its beneficiaries by the owners themselves, the Mālikītes, with a view to avoiding praise and insuring secrecy, recommend the disbursement of *zakāt* through an agent, that is the state, especially if the *zakāt* payer is ignorant of the law or the imām is just. In fact, the Mālikītes require the owners to disburse to the imām when he is just even the *zakāt* of their non-apparent property.⁸⁴

Goods taxable under *zakāt* had to reach a certain minimum, called *niṣāb*, which was different for every object.⁸⁵ The goods could either be real or hypothetical but they must be fully owned and must be over and above what is necessary for the satisfaction of the primary necessities of life. In addition, they must be free of debt. A general argument of the scholars has been that in determining the *niṣāb*, the rule is to add together only articles that belong in the same genus or categories, such as physical identity or commercial value. However, there is no consensus among the scholars about which goods belong to the same genus.⁸⁶ Mālik ibn Anas, for example, states that

... if someone asks, 'How can pulses be added up all together when assessing the zakat so that there is just one payment, when a man can barter two of one kind for one of another, while cereals can not be bartered at a rate of two to one?', then tell him, 'Gold and silver are collected together when assessing the zakat, even though an amount of gold dinars can be exchanged for many times that amount of silver dirhams'.⁸⁷

The most well-known debate among the jurists is whether *zakāt* is to be levied on horses or not. Whereas the Mālikī scholars and most other scholars argue that horses are not to be included,⁸⁸ some Ḥanafī scholars disagree.⁸⁹ Those scholars who argue for the zakatability of horses, claim that horses are taxable according to their value at 2.5 per cent.⁹⁰ However, as the Mālikī *madhhab*

83 Juynboll 1910: 105.

84 Aghnides 1916: 302.

85 See further Juynboll 1910: 102.

86 See further Aghnides 1916: 206–207, 225–227.

87 Ibn Anas 1989: 106.

88 Ibn Anas 1989: 107; Maghniyyah 1992: 125; al-Mawardi 1996: 172.

89 See further al-Qardawi 1999: 141–149.

90 Kuran 1986: 143.

was to become the prevailing one in the Bilād al-Sūdān, horses, mules and donkeys were exempt from *zakāt* in the region.⁹¹

Zakāt is levied upon wealth and income. Regarding wealth, one can distinguish two main categories of holdings, namely precious metals as well as articles of trade and livestock. Articles of trade, as well as precious metals, were hidden goods on which *zakāt* was to be paid but where the state had no rights of control. The *niṣāb* on these goods was 2.5 per cent but the rules are complicated and it was left to the payer to decide which products were taxable or not.⁹² The sources of income to which *zakāt* applies are mining and agriculture. Income from mining and agriculture as well as livestock were apparent goods. The *niṣāb* varied between 20 per cent for mining, 10 and 5 per cent for agriculture, whereas livestock was taxed according to a proportional rate.⁹³ Furthermore, *zakāt* is collected from Muslim traders whereas tolls are imposed on *dhimmī* and *ḥarbī* traders.⁹⁴ According to Mālikī view, both Muslim and non-Muslim traders pay 10 per cent (which would be termed *‘ushr*), whereas Ḥanafī scholars argue that Muslims should only pay 2.5 per cent, whereas *dhimmī* traders pay 5 and *ḥarbī* traders 10 per cent.⁹⁵

The rules for *zakāt* on flocks and herds are rather complicated. According to Ḥanafī and Shāfi‘ī scholars, *zakāt* is due on *sawā’im*, or animals that are pasturing but are not used for riding, carrying loads or ploughing. Mālikī scholars, on the other hand argue that animals are subject to *zakāt* even if they are used for work, whether or not they are *sawā’im* (with the exemption of horses), such as pack animals and draft oxen.⁹⁶ All scholars argue that camels, cattle, sheep and goats are *zakatable* animals. The *niṣāb*, however, varies for each animal. According to Ibn Khalīl, the *niṣāb* of camels is four; for every five camels but less than twenty-five camels, *zakāt* is paid with sheep or goats, one ewe or goat for every five camels.⁹⁷ The minimum assessable number of horned cattle is thirty, whereas for

91 Mischlich 1909: 234.

92 For a detailed outline, see de Zayas 1960: 55–125.

93 For a general introduction and outline of the rules governing the levy and the distribution of *zakāt*, see de Zayas 1960 and al-Qardawi 1999.

94 *Dhimmī* are those non-Muslims who live in and are protected by the Islamic state and who pay *jizya*; *ḥarbī* are those non-Muslims who do not live in an Islamic or Muslim state.

95 Aghnides 1916: 314, 317.

96 Ruxton 1916: 32. See further Aghnides 1916: 244–261.

97 A herd of camels larger than twenty-five camels is taxed according to a rather complicated assessment. If the herd consists of twenty-five but less than thirty-five camels, the tax is one she-camel one year old. If there are thirty-six but less than forty-five camels, the tax is one two-year old she-camel. From thirty-six to sixty camels, a three-year old she-camel is to be paid. At sixty-one and up to seventy-five, the assessment is one four-years old she-camel. Herds of camels bigger than seventy-six have to pay more than one she-camel. See further Ruxton 1916: 32–33.

sheep and goats it is forty.⁹⁸ The assessment of cattle, including bulls and cows, follows a similar logic of the assessment of camel herds. For a herd that consists of thirty to thirty-nine cattle, one two-year old calf or heifer has to be paid as *zakāt*. For forty to fifty-nine cattle, the assessment is one three-year old cow, from sixty to sixty-nine it becomes two two-year old calves. Ibn Khalīl concludes that:

... beyond sixty-nine, an assessment is arrived at based on each round number of thirty, or on each round number of forty, which may go to make up the total number of the herd: each round number of thirty being assessed at one two-year-old, and each round number of forty at one three-year old.⁹⁹

The assessment of flocks of sheep or goats is rather light compared with that of the larger livestock: a flock larger than 40 but smaller than 120 animals pays one animal, if the flock is bigger than 120 but small than 200, it pays two animals. Flocks over 200 pay one animal out of every one hundred.¹⁰⁰

Zakāt on agricultural products is 10 per cent; if grown on irrigated land, it is 5 per cent.¹⁰¹ It corresponds to the tithe and is called *'ushr* or half-*'ushr* and was collected after the harvest, as stated by Yaḥyā ibn Ādam: "About the passage 'And give the due portion of it on the day of its harvesting' (sura 6:142). He said: the *'ushr* and the half-*'ushr*."¹⁰² An outline of the *zakāt* on land, crops and fruits is provided in Yaḥyā ibn Ādam's *Kitāb al-kharāj*:

The *zakāt* is levied on land, crops and fruit and on all those lands on which no *kharāj* is imposed, and are *'ushr* land; as *'ushr* is the *ṣadaqa* which is the *zakāt* levied on the crops and fruits of the Muslims.¹⁰³

98 Ibn Anas 1989: 99–100.

99 Ruxton 1916: 33–34. However, the assessment of a herd larger than 120 cattle is based on the computation that follows the assessment of herds of camels larger than 200 animals.

100 Ruxton 1916: 34.

101 Ibn Anas 1989: 104; Yaḥyā ibn Ādam 1958: 77–82. A common reference for *'ushr* is the *ḥadīth* where the Prophet ordered Mu'ādh ibn Jabal to organise the collection of *zakāt* in Yemen: "*'Ushr* is levied on what is watered by heaven or streamlets and half-*'ushr* on what is watered by bucket."

102 Yaḥyā ibn Ādam 1958: 83, presenting a collection of *hadīths* which all are explanations of sura 6:142. Some Ḥanafī jurists, however, question whether *'ushr* is really a kind of *zakāt* or not, whereas others claim that there is a difference between *zakāt* and *'ushr*, the former being levied only on livestock and commercial capital and being an act of worship, the latter being primarily a financial charge but participating in the nature of worship. They also claim that unlike *zakāt*, *'ushr* is levied on property owned by minors, insane persons and even *waqfs* or pious foundations (see fn. 69). However, the presumption among the Ḥanafī jurists is that *'ushr* is like *zakāt*, especially as regards its religious aspects, the differences of the two being limited to the political and financial field: the right of the state to collect it. Mālikī and Shāfi'ī scholars, on the other hand, treat *'ushr* as being an integral part of, if not identical with, *zakāt*. See further Aghnides 1916: 284.

103 Yaḥyā ibn Ādam 1958: 77.

This short outline by Yaḥyā ibn Ādam summarises the essence of *zakāt*, namely it being levied on the fruits of the Muslims. Yaḥyā, who wrote his treatise in the early Abbasid era, also tried to sort out the confusion between the terms *ṣadaqa*, almsgiving in general, *zakāt*, obligatory almsgiving, and *‘ushr*, the tithe on the crops. Thus, according to his logic, *‘ushr* becomes *zakāt* and therefore also *ṣadaqa* if it is paid by a Muslim as part of his religious duties and not if it is paid as an ordinary secular tax. However, it has to be noted that Yaḥyā himself uses *zakāt* and *ṣadaqa* interchangeably and thus adds to the confusion himself. Further, Yaḥyā does recognise the already by then established practice of the division between *‘ushr* and *kharāj* lands, the former paying only *‘ushr*, the latter both *‘ushr* and *kharāj*.¹⁰⁴

Zakāt (*‘ushr*) is levied on grains, pulses and legumes, such as wheat, barley, *sult* (a kind of barley), Arabian wheat, rice, sorghum, pearl millet, maize, chick-peas, beans, haricots or broad beans, lentils, lupines, field peas, ordinary peas, as well as raisins, olives, sesame, the seeds of the horseradish tree and safflower seeds.¹⁰⁵ However, even during the early centuries of Islam, there was no consensus among the scholars concerning which products are liable to *zakāt*, as Yaḥyā ibn Ādam clearly underlined:

Some jurists say: *‘Ushr* or half-*‘ushr* is levied on all kinds of produce, even on a bunch of vegetables; but others say that on such things no *ṣadaqa* (i.e. *‘ushr*) is levied, but only on measurable things which remain with people after the year, such as sesame, rice, maize, thin husked barley, beans and grains like seeds and other kinds of grain. Again some say that this refers only to wheat, barley, dates and raisins, and this is what is handed down on the authority of the Prophet. Maize was mentioned in some traditions.¹⁰⁶

The *niṣāb* is five *awsāq* (sg. *wasq*) or camel loads.¹⁰⁷

If a man has four *awsāq* of dates he has harvested, four *awsāq* of grapes he has picked, or four *awsāq* of wheat he has reaped or four *awsāq* of pulses he has harvested, the different categories are not added together, and he does not have to pay *zakāt* on any of

¹⁰⁴ The rule that land subject to *kharāj* also pays *zakāt* is a Mālikī and a Shāfi‘ī one. According to the Ḥanafīs, either *‘ushr* or *kharāj* must be paid on the land but never both. *Kharāj*, which is the land tax, is only levied on the lands that come under the description of *kharāj* lands and can be either fixed or proportional. It therefore varies from one fifth to half of the entire harvest. See further Aghnides 1916: 378–389.

¹⁰⁵ Ruxton 1916: 42. In all cases, the assessment includes gleanings as well as the proportion of the crop given in payment to labourers and harvesters.

¹⁰⁶ Yaḥyā ibn Ādam 1958: 77.

¹⁰⁷ During the time of the Prophet, five camel-loads of grain represented the sum of 200 *dīrhams* of silver or 20 *mithqāl* of gold, both latter sums being the *niṣāb* for precious metals. However, more important was and is that five camel-loads of grain provided for one year’s provision of essential foodstuffs for one household (de Zayas 1960: 72).

the categories – the dates, the grapes, the wheat or the pulses – until any of them comes to five *awsāq* using the *ṣāʿ* of the Prophet.¹⁰⁸

One *wasq* contained 60 *ṣāʿ* and one *ṣāʿ* 8 *raṭls*.¹⁰⁹ However, the measure used for the payment of *zakāt* (*ʿushr*) was in fact a smaller one than what was in use for normal market transactions. According to Mālik ibn Anas,

... payment of all types of *kaffāra*, of *zakāt al-fiṭr* and of the *zakāt* on grains for which a tenth or a twentieth is due, is made using the smaller *mudd*, which is the *mudd* of the Prophet, may Allah bless him and grant him peace, except in the case of *dhihar* divorce, when the *kaffāra* is paid using the *mudd* of Hishām, which is the larger *mudd*.¹¹⁰

According to some of the testimonies quoted by Yaḥyā ibn Ādam, the difference between the larger and the smaller *ṣāʿ* seemed to have been established by the second caliph, ʿUmar ibn al-Khaṭṭāb, who sent a certain al-Ḥajjāj to Abū Iṣḥāq with a sealed *ṣāʿ* of ʿUmar ibn al-Khaṭṭāb: “This was twice the measure of the first [i.e. the ordinary one in use]. Zuhayr said: They measured with it and found that it contained two (*ṣāʿs*) of the *ḥajjājī* (*ṣāʿ*) [which was the one in use for the measurement of *ʿushr*, HW].”¹¹¹

Thus, from early times, Muslim jurists made a difference between two measures of grain. Whereas the harvest was counted by using the ordinary measure, the part given as *ʿushr* was levied according to the lesser measure. Such a praxis seemed to have been well established in the Bilād al-Sūdān. Chastanet notes the differentiation among Muslims in the Bakel region in Senegal between the *debi gume n muude*, the *mudd* given to the chief of the village, and the *minnan n muude*, the *mudd* given as charity. Further, the size of the *mudd* seemed to have fluctuated according to the quantity of the harvest: the *muude xensa* was used in “normal” times, whereas the *muude bamba* was used in times of scarcity. As a consequence, the *mudd* in Bakel varied from 2.5 to 4 kg.¹¹² According to Kane, the *mudo* (*mudd*) in use in Futa Toro and among the Moors in southern Mauritania measured some 3 to 3.5 litre of grain.¹¹³ In Hausaland, again, the *mudu* (*mudd*) was “a vessel of standard capacity for measuring out corn”, yet, in times of scarcity a smaller type was used, called the *dam mudu*.¹¹⁴ However, as will be

¹⁰⁸ Ibn Anas 1989: 105–106.

¹⁰⁹ Yaḥyā ibn Ādam 1958: 77, 89–92. According to de Zayas (1960: 67–68), one *ṣāʿ* would have represented a weight of c. 5.225 kg.

¹¹⁰ Ibn Anas 1989: 110.

¹¹¹ Yaḥyā ibn Ādam 1958: 92.

¹¹² Chastanet 1983: 24.

¹¹³ Kane 1974: 245.

¹¹⁴ Abraham 1962: 680.

pointed out in Chapter V, different measures were also in use in Hausaland, at least during the 19th century: the grain bundle given as *zakka* to the tax collector was smaller than the one stored in the granary of the *mai gida*, the head of a household. It is also noted by Abraham that in Hausaland *zakka* was a corn-measure equal to one *sa'i*, one *sa'i* (*ṣā'*) being equivalent to 16 handfuls of grain.¹¹⁵ In Dār Fūr, *ushr* was called *umm thalāthīn* or “mother of thirty” since it was assessed at a rate of three *midd* (*mudd*) in every thirty, whereas one *midd* was given as *zakāt al-fiṭr*.¹¹⁶ In similar ways the *zakāt al-fiṭr* was collected in Wadai, namely one, sometimes two, *mudd* of millet.¹¹⁷ However, at least in Dār Fūr, the *mudd* was not a fixed measure but was established through consultation with the villagers.¹¹⁸ An outline of the *mudd* in the Bilād al-Sūdān is presented in Table 1.

In only a few places have there been any attempts by the states to standardise the grain measure. The case of the Diina in Masina seems in this respect to be rather unique in the Bilād al-Sūdān as the state was able to introduce a standard grain measure.¹¹⁹ One reason for the failure to introduce a standard measure in most pre-colonial states in the Bilād al-Sūdān or, perhaps more likely a general resentment against any such attempts, was due to the flexibility of the prevailing systems. Harvests fluctuations, as well as the rise and fall of the grain price, could be checked by the use of a variety of grain measures. A good harvest led to a low price of grain in the market and thus a larger measure could be used, whereas during a dearth, when grain was scarce and the price skyrocketed, a smaller measure was used. However, the smaller measure still reflected the value of grain. Those who lost during a harvest failure were the receivers of the grain: the tax collector, the buyer in the market and the receiver of *zakāt al-fiṭr*. If a standard measure would have been in use, the cost of the harvest failure would have to be borne by the giver.

The levy called *zakāt al-fiṭr*, which has been referred to several times, is problematic, too. In many regions in the Bilād al-Sūdān, a tax called *fiṭra* or *fiṭr* was collected by the tax collectors at the end of Ramaḍān. The general perception has been that this levy would have been a tax, collected, controlled and distributed by the state. However, *zakāt al-fiṭr* cannot, in fact, be regarded as a religious tax at all but an obligation of every Muslim to give alms, usually food, directly to the poor and needy of the local Muslim community, without the state having any role in the supervision of the fulfilment of the duty.¹²⁰ To distinguish

¹¹⁵ Abraham 1962: 764, 963.

¹¹⁶ O'Fahey 1980: 102–103.

¹¹⁷ One *mudd* being equal to about 3 kg; see further Meier 1995: 69–70.

¹¹⁸ Kapteijns 1985: 39–40.

¹¹⁹ Loimeier 2000.

¹²⁰ Aghnides 1916: 207, fn. 3.

Table 1. An outline of the mudd in the Bilād as-Sūdān

Senegal		
Bakel ¹²¹	debi gume n muude (the mudd given to the village chief)	
	minnan n muude (the mudd given as charity)	
	muude zensa (the weight of the mudd in "normal" times)	~ 4 kg
	muude bamba (the weight of the mudd in times of scarcity)	~ 2,5 kg
Futa Toro ¹²²	mudo (mudd) = 3 - 3,5 litre of grain	
Futa Jallon ¹²³	muudo (mudd) = 2 kg (zakāt al-fiṭr)	
Masina (Diina) ¹²⁴	muudu = zakāt al-fiṭr = being the equivalent of one person's daily grain consumption	
Umarian state ¹²⁵	muḍu = annual alms (i.e., zakāt al-fiṭr)	
Samorian state ¹²⁶	muḍe = annual stipend paid by all subjects (whether Muslims or not) to the shaykhs of their villages	
Hausaland ¹²⁷	muḍu (mudd) = 1 sa'i = 16 handfulls of grain	
	dan muḍu	
Kano ¹²⁸	3 moudu = 33 lbs threshed grain = 1 zakka bundle	
Sokoto ¹²⁹	40 muḍu = 1 sa'i = sufficient of one man's daily food ration	
Imam Imoru ¹³⁰	4 muḍu as zakar nono (bowl tax) or zakar ci (eating tax) = zakāt al-fiṭr	
Borno		
(Nachtigal) ¹³¹	one mudd of sorghum as sadaqa	
Mandara		
Shuwa Arabs ¹³²	1 ṣā' = size of a calabash of 3 hand span and 3 fingers	
Dār Fūr ¹³³	ʿushr = 3 midd (mudd)	
	zakāt al-fiṭr = 1 midd (not fixed)	
Dār Masalit ¹³⁴	midd = grain measure in which the fitra tax was assessed (five and a half times two handfulls of grain)	
Wadai ¹³⁵	1 mudd = 3 kg	
	salam = 2 mudd	
	fitra = 1-2 mudd	

121 Chastanet 1983: 24.

122 Kane 1974: 245.

123 Marty 1921 in <http://www.fuuta-jalon.net/Diina/pmarty/chap7.html>.

124 Johnson 1976: 487.

125 Oloruntimehin 1978: 176-177.

126 Person 1979: 268.

127 Abraham 1962: 680, 963.

128 NNAK SNP 7/472/1909

129 NNAK Sokprof 985/1908

130 Ferguson 1973: 171.

131 Nachtigal III, 1987: 28.

132 Forkl 1995: 446.

133 Adelberger 1991: 73.

134 Kapteijns 1985a: 148.

135 Nachtigal 1971: 181.

between these two forms of *zakāt*, some scholars term *zakāt al-fiṭr* as *zakāt al-badan*, 'head tax' or 'zakāt of the body', whereas *zakāt* on wealth and income is called *zakāt al-māl* or 'zakāt of the property'.¹³⁶ *Zakāt al-fiṭr* has to be paid by the head of the household on behalf of all persons that he is responsible for, as stated in the *al-Muwatta'*:

... a man has to pay for every person that he is responsible for supporting and whom he must support. He has to pay for all his *mukatabs*, his *mudabbars*, and his ordinary slaves, whether they are present or absent, as long as they are Muslim, and whether or not they are for trade. However, he does not have to pay *zakāt* on any of them that are not Muslim.¹³⁷

Whereas there are some scholars who argue that the ordinary *zakāt* can also be given to needy non-Muslims, there is a consensus among the scholars that *zakāt al-fiṭr* never can be given to a non-Muslim. At least according to Mālikī and Shāfi'ī scholars, the amount given as *zakāt al-fiṭr* must be one *ṣā'* for each Muslim member of the household. These alms should be handed to the imam who distributes them to the poor.¹³⁸

The property collected through the various forms of taxes, both religious and secular, constitutes the public treasury or the *bayt al-māl*.¹³⁹ In general, the revenue is divided into *ṣadaqa* or *zakāt* revenue, booty revenue and *fay'* revenue.¹⁴⁰ However, whereas all of the *zakāt* is part of the public treasury, only four-fifths of the *fay'* and one-fifth of the spoils of war were considered to be part of the public treasury.¹⁴¹ The definition "public treasury" is, however, somewhat misleading as it does not necessarily refer to a fixed place or institution but rather to a financial sphere,¹⁴² as noted by Aghnides:

Every property which belongs to Moslems in general and not to any Moslem in particular constitutes a part of the assets of the public treasury (*bayt al-māl*). It is not necessary that the property should be actually in the vaults of the treasury for it to be considered an asset of the treasury, because the conception of *bayt al-māl* refers to the destination of the property, not to its actual location. Therefore every expenditure

¹³⁶ Juynboll 1910: 111.

¹³⁷ Ibn Anas 1989: 109.

¹³⁸ Juynboll 1910: 110–111. Ruxton 1916: 52–53. According to Ruxton, the *ṣā'* he was referring to was slightly less than a bushel. However, according to Shāfi'ī scholars, these alms can be distributed by the individual himself to the needy.

¹³⁹ According to al-Māwardī, the *bayt al-māl* consists of all the wealth to which the Muslims are entitled but which is not owned by any specific person (al-Mawardi 1996: 301).

¹⁴⁰ Income through the levy of *jizya*, the poll-tax on non-Muslims, the tolls on *dhimmī* traders and *kharāj* constitutes the *fay'* revenue (al-Mawardi 1996: 207).

¹⁴¹ However, the schools of Muslim law have different interpretations of which items of revenue are part of the public treasury. For an outline, see Aghnides 1916: 425–431.

¹⁴² Al-Mawardi 1996: 301.

which must be incurred in the interests of Moslems in general is a liability of bayt al-māl and when it is made, it is considered to have been made by it, whether or not it has actually been paid out of the vaults of bayt-al-māl; this is for the reason that a revenue which has gone into the hands of the public collectors or has been spent directly by them is really a part of the income and outgo of the bayt-al-māl itself, and is therefore subject to the regulations governing the same.¹⁴³

Therefore, it is not surprising that actual treasury buildings are usually not found in many of the precolonial states and Muslim communities in the Bilād al-Sūdān. Instead, in most cases the revenue collected was locally stored, the supervision of it being the task of the local *imāms* or village heads.¹⁴⁴ However, it was – at least in theory – the duty of the *imāms* and village heads to keep each of the classes of revenue apart from the others, if possible in separate “treasuries”. This, at least, was the case during the Mahdīya, when no less than four treasuries had been established by *khalīfa* ‘Abd Allāh (Abdullahi) in Omdurman (Umm Durmān; see further Chapter VI). As the *bayt al-māl* was the property of the Muslim community, and as *zakāt* is perceived as an act of mutual assistance from one Muslim to another, it follows that only Muslims could be the recipients of *zakāt*.¹⁴⁵ However, during times of distress, some scholars argued that the *imām* was allowed to sidestep this rule and give assistance to *dhimmi* who were starving.¹⁴⁶ Furthermore, the regulations governing the distribution of *zakāt* prevented the centralisation of it: *zakāt* was to be distributed in the same district as it had been collected. Only if there was no *zakāt* to be distributed in a district, was it permitted to transport *zakāt* from other regions to this district and distribute it among the needy there.¹⁴⁷

The Eight Categories of Recipients of *Zakāt*

It is somewhat puzzling for an outsider to note the contrast between the vigour of Muslim scholars to establish very precise regulations for the collection of *zakāt* and the general statements concerning the distribution of *zakāt*. In most cases, scholars and jurists seem to be satisfied by stating that the recipients of *zakāt* are the eight categories, and seldom give any further discussion on the qualifications of each of the eight categories or the exact allocation among the various catego-

¹⁴³ Aghnides 1916: 423.

¹⁴⁴ The position of the *imāms* in collecting and distributing *zakāt* is a contested matter. For example, according to al-Māwardī, the *qāḍī* is responsible for the collection and distribution of *zakāt* if there is no particular inspector (al-Mawardi 1996: 110).

¹⁴⁵ de Zayas 1960: 283; al-Mawardi 1996: 183.

¹⁴⁶ Aghnides 1916: 431–433. According to de Zayas (1960: 284), the non-Muslims would receive assistance from state funds, i.e., revenue collected through secular taxes.

¹⁴⁷ Ruxton 1916: 51.

ries. The reason for such an attitude might be due to the fact that it is the intention of the giver which is crucial in Islam, not the position of the receiver, which is noted in the *al-Muwaṭṭaʿ*:

Malik related to me from Zayd ibn Aslam that the Messenger of Allah, may Allah bless him and grant him peace, said: "Give to a beggar even if he comes on a horse."¹⁴⁸

Therefore, one of the basic virtues is to refrain from asking:

ʿUmar ibn al-Khaṭṭāb said: "By the One in whose hand my self is, I will not ask anything from anyone, and anything that comes to me without my asking for it, I will accept."¹⁴⁹

However, as Doi stresses, miserliness is condemned by the *sharīʿa* and a generous person is considered to be a friend of Allah. Yet, begging as such is condemned by Islamic law as an unlawful act itself. Muslims are asked to struggle to earn their lawful livelihood and not merely to depend on charity except in a situation of extreme necessity.¹⁵⁰

One reason for a lack of any elaborate rules governing the receiving and the condition of the recipients is due to the communitarian nature of *zakāt*. *Zakāt* was primarily collected from and distributed in the same local Muslim community where the *imām* was supposed to, and usually did, know the rich and the poor members. However, how was he able to decide who was poor and who was needy in times of scarcity, when the resources of the public treasury were low and there were more people in need of assistance than there were resources to alleviate their distress?

The key verse in the Qurʾān, which stipulated the distribution of *zakāt*, is sura 9:60. Here eight categories of recipients are presented: the poor (*faqīr*), the destitute (*miskīn*), the collectors of *zakāt*, those slaves who want to ransom themselves, the hard-pressed debtors, for expenditure in God's cause, the wayfarers and those people whose hearts have been reconciled.¹⁵¹ According to the Mālikī interpretation, the wages of the collectors are to be paid out of the *zakāt*-funds before anyone else, even if they should absorb the entire *zakāt*.¹⁵² Next, of what

¹⁴⁸ Ibn Anas 1989: 419.

¹⁴⁹ Ibn Anas 1989: 420.

¹⁵⁰ Doi 1984: 393–394.

¹⁵¹ See further Aghnides 1916: 440–452; Ruxton 1916: 49–50.

¹⁵² A somewhat similar position is found among Shāfiʿī scholars, such as al-Māwardī, whereas Ḥanafī scholars disagree. See further al-Mawardi 1996: 153.

is left, the poor and the destitute will receive twice as much as is granted to all the remaining categories.¹⁵³

The Islamic distinction between a poor person and a destitute one is rather unique, especially as both classes are included among the receivers of *zakāt*. The distinction between the two classes is usually made through their possibilities to satisfy their basic needs. According to al-Ghazālī, a pauper (*faqīr*) is someone who has no wealth and is unable to earn a living. Even if he or she possesses half of his or her daily food, the person would still be regarded as a pauper. Only such a person who possess his or her daily food and clothing, but still would have insufficient income to cover the expenses throughout a whole year, would be regarded as being needy or destitute one (*miskīn*).¹⁵⁴ However, according to the sources quoted by Aghnides, the definition of the pauper and the destitute would be the opposite: the *faqīr* is a person who lacks sufficient means to provide for necessities for a year, even if he or she possess a trade, whereas the *miskīn* is a person who does not have anything, and who needs to resort to begging in order to make a living and obtain enough clothing to conceal his or her nakedness.¹⁵⁵ Finally, an attempt to distinguish between the two “degrees” or categories of poverty are made by de Zayas, who stresses the difference of the possibility or insufficiency to provide for oneself the material necessities of life:

Faqr indicates the condition of those whose means are insufficient to adequately provide the basic lawful material necessities of life. *Maskanat* indicates the condition of those whose means are either totally lacking or are so deficient as to deny the basic lawful material necessities of life.¹⁵⁶

¹⁵³ Aghnides 1916: 445; Ruxton 1916: 50–51. A somewhat similar – but not as strict – division of the order of payment is presented by al-Ghazālī (1966: 58): “(The agents) are paid alike, and if any money is left from the eight (of the whole) after all have been paid it is transferred to the (proportion of the other) groups, and if (the amount) proves too little it will be supplemented from other revenues (i.e., from the public treasury).” However, according to a Shafī‘ī interpretation, the tax collectors would receive a fixed amount out of the *zakāt*-funds, the rest being equally distributed among the remaining seven categories (Juynboll 1910: 108).

¹⁵⁴ al-Ghazālī 1966: 53–58. However, a closer investigation into Muslim treatises of Islamic law reveal that the concept of *miskīn* is used in two ways. One group of *miskīn* (indigent) are those who are the recipients of *zakāt*, another – different – group are those who are entitled to receive support from *faqr* revenue. This difference is clearly elaborated by al-Māwardī (1996: 187).

¹⁵⁵ Aghnides 1916: 442–443. Doi, who makes a reference to caliph ‘Umar ibn al-Khaṭṭāb, is of the opinion that the word *masākīn* means the non-Muslim poor and *fuqarā’* means the poor Muslim. According to Doi, both should be helped, but such an interpretation could be challenged by other legal opinions, which deny a non-Muslim a share in *zakāt* (Doi 1984: 392).

¹⁵⁶ de Zayas 1960: 287.

One could in principle regard *zakāt* as a transfer of wealth from the rich to the poor.¹⁵⁷ However, the intention is not the eradication of poverty but the purification of wealth. Thus, although one might conclude that the uplift of the situation of the poor and destitute would have been the main concern of the Muslim scholars, it was not. Instead, the discussion of the Muslim jurists on the distribution of *zakāt* among the eight categories resembles to what I define as the *Sampo-model*:¹⁵⁸ almost anything can be covered by *zakāt*-funds. Thus Qudāma ibn Ja'far in his *Kitāb al-kharāj*, for example, states that *zakāt* can be distributed among auxiliary troops and even to raiders for God's causes in addition to the upkeep of hostels on public roads,¹⁵⁹ whereas Ibn Khalīl argues that a portion of the *zakāt* is to be devoted to those who are fighting infidels, for the purchase of war material and of horses required by the army, and even to well-off or rich soldiers.¹⁶⁰

The identification of a poor and a destitute person is left to the discretion of the *imām* and the giver. According to al-Ghazālī, "Pauperism and poverty depend upon the word of the recipient, who should not be required to produce any evidence or swear an oath."¹⁶¹ However, it might be easier to determine who is not eligible to receive *zakāt*, namely the rich and the affluent. Some jurists have fixed the amount of wealth that excludes a person from being a *zakāt* recipient to fifty *dirhams*, i.e., a quarter of the *niṣāb* of money, although this opinion has been contested by others.¹⁶² Al-Qardawi presents a modern interpretation of the dilemma:

Someone who has the means to satisfy his needs, whether subject to *zakāt* or not, or income and earnings, is not eligible to receive *zakāt*. Family needs are included. Consequently, waged or salaried individuals are not eligible as long as their periodical earning are sufficient to satisfy their essential needs, even though they may not own any *niṣāb* as a stock of wealth. But on the other hand someone who owns the *niṣāb* of one or more *zakāt*able items may be considered poor and eligible for *zakāt* if the property they own is not sufficient to fulfil their needs.¹⁶³

Among those who are refused *zakāt* are the poor who are capable of earning but choose to be idle because, as many traditional and modern Muslim scholars have underlined, Islam obliges each capable man to work. However, if the person tries to find work but fails, he or she is allowed to receive *zakāt*. In addition, those

¹⁵⁷ This is at least the projection by most contemporary Muslim scholars. See further al-Qardawi 1999.

¹⁵⁸ See further page 55.

¹⁵⁹ Qudāma ibn Ja'far 1965: 67–68.

¹⁶⁰ Ruxton 1916: 50.

¹⁶¹ al-Ghazālī 1966: 59.

¹⁶² See further de Zayas 1960: 57 and al-Qardawi 1999: 346–349.

¹⁶³ al-Qardawi 1999: 349.

who are totally devoted to worship are not eligible for *zakāt*, which is the reason why most Muslim scholars are also engaged in worldly matters such as trade or farming. Full-time students, on the other hand, are eligible for *zakāt*.

Finally – but most important – how much should a poor person receive? Two basic opinions prevail among the Muslim scholars, one which argues that *zakāt* should satisfy a lifetime's needs and the other which claims that *zakāt* should provide one year's sustenance. According to de Zayas, the key question is the provision of the basic lawful material necessities of life, namely sufficiency in food, clothing, and shelter.¹⁶⁴ Sufficiency in these three material necessities is called *ghinā*, i.e., the state in which one can dispense with the material help of others. Those in *ghinā* no longer have any lawful claim to *zakāt*. Therefore, as a rule, one could conclude that someone in need who has a lawful right to receive *zakāt* would receive enough to cover the minimum expenses of material welfare.¹⁶⁵

Giving and Receiving

Western scholars usually distinguish between charity and philanthropy when they discuss aspects of almsgiving and assisting others in need. Charity is defined as giving assistance to alleviate the need, suffering, and sorrow of both known as well as unknown persons. Philanthropy, on the other hand, is directed exclusively to the unknown other, who has no claim on the giver. However, as Robert Bremner has underlined that in terms of giving, charity and philanthropy have so much in common that the words are often used interchangeably. Yet, one respect in which they differ is in their degree of interest in the conditions of the receiver. Charity, a religious obligation to followers of Judaism, Christianity, and Islam, has an abiding commitment to relieve the poor, orphans, the friendless, and the homeless. Sympathy for the unfortunate and admonitions to love one's neighbours and co-religionists extend the meaning of charity to kindness to and consideration for others regardless of their need or faith.¹⁶⁶

¹⁶⁴ According to de Zayas, basic education and medical care are to be included. Together they would constitute the "minimum standard of material well-being recognised by Islam". See further de Zayas 1960: 287–288.

¹⁶⁵ Similar conditions were already presented by al-Māwardī (1996: 181), who claimed that the poor and destitute are to be paid as much as that they would be brought out of their state of poverty or indigence to the lowest state of wealth "and this is *relative* to their situation [italics HW]."

¹⁶⁶ Bremner 1994: xi.

Philanthropy, however, is secular in origin, emphasising the love of man rather than God and has not been as closely involved with the poor as charity.¹⁶⁷ Whereas during the 17th century, philanthropy meant a benevolent disposition and humanistic turn of mind, the term became associated in the 18th and the 19th centuries with active participation in humanitarian reforms to improve the treatment of prisoners and the insane, abolish slavery, and obtain rights for women and workers. Towards the end of this period, philanthropy also came to mean large contributions of money to a variety of causes intended to benefit all classes of society.¹⁶⁸

Bremner's distinction between charity as a mainly religious affair and philanthropy as a more or less purely worldly matter falls short of describing the situation in Muslim countries. Although *ṣadaqa*, voluntary almsgiving, clearly belongs to the realms of religion as being a form of piety, the matter is more complicated with regards to *zakāt*, the obligatory alms or the "poor tax". Although *zakāt* was perhaps never implemented in the way Muslim scholars would have liked it to have been, namely serving as a kind of general relief fund under state control and supervision, it is clear that the purpose of *zakāt* was meant to be a kind of backbone for a public social welfare policy. Thus, modern Islamic economists refer to *zakāt* as the basis of a (future) Islamic welfare state.¹⁶⁹ One consequence of the modern debate about and focus on *zakāt* is that it has become more than merely an act of private and individual belief and piety but is being transformed (or, alternatively, taken back) to the public sphere. Therefore *zakāt* is more than mere charity and extends the notion of philanthropy by bridging the private and the

¹⁶⁷ Although it is argued that the concept of philanthropy is not a very old one and that the concept itself is of a secular nature, the concept already existed in the ancient Greece world, where the word was not only a literary or philosophical ideal but was also a practical virtue applied by both the individual and the city state. The Greek conception of *philanthropia* was adopted by the early Christian community that grew into maturity in the Hellenistic intellectual and social milieu. As a syncretistic religion, Christianity absorbed much of the Hellenic spirit, and, along with Hebrew morals, it developed its own ethics which became pre-eminently theocentric. Thus, *philanthropia* became a virtue pursued primarily in imitation of God's example rather than an expression of humanistic pity or benevolent compassion towards man in need. In the Byzantine world, *philanthropia* was understood to be first and foremost a philosophical and theological abstraction: the intention was to please or to imitate God. It was believed that *philanthropia* was an expression of repentance and rededication to God. In addition, it was also perceived to be a political attribute, it was charity directed to the individual in want and was expressed in organised institutions. It was taught that deeds of mercy would lead to the eternal habitations of the Almighty; to be *philotheos*, God-loving, and *philoptochos*, poor-loving, was to achieve the supreme state of perfection. See further Constantelos 1991.

¹⁶⁸ See further Bremner 1994; for the change in attitude during the 19th century, see among others, Himmelfarb 1984, 1991.

¹⁶⁹ See further Weiss 2002.

public spheres: *zakāt* is an individual act, but its collection and distribution is to be handled and monitored by the state.

Thus, Bremner's distinction between charity and philanthropy is not the best way to engage oneself in a discussion about *ṣadaqa* and *zakāt*, giving or receiving in Islam. A thorough investigation has to include aspects of informal and formal ways of giving and receiving, to debate the notion of the private and the public and, most important, to underline the fact that there is an obvious rift between ideal and reality in Muslim countries. Moreover, an investigation into charity, benevolence and social welfare in Islam has to focus on five different actors: the giver of *zakāt*, the giver of *ṣadaqa*, the receiver of *zakāt*, the receiver of *ṣadaqa* as well as the various tax officials, who serve as intermediaries between the givers and the receivers of *zakāt*. Such a picture is, however, still too simplistic and even problematic, especially with regards to the go-betweens as there is no consensus among the 'ulamā' about the role and position of these persons. In fact, according to the Shāfi'ī school of law, there is no need for an intermediary in supervising the payment *zakāt*, whereas the Mālikī *madhhab* is definite in its requirement of an intermediary, otherwise the whole transaction of *zakāt* is regarded as unlawful.¹⁷⁰

The intermediaries comprise various groups, such as the collectors, the administrators and the supervisors which, together with the givers and the receivers, all act in various ways. The act of giving is a simple transaction only when two parties are involved, such as in the case of *ṣadaqa*. In this case, almsgiving correlates with the giving of a gift, as has been noted by Marcel Mauss. The giver of alms, *ṣadaqa*, acts in his own interests; the pious act of almsgiving is therefore a one way process, where the receiver is a mere passive spectator. One could argue that the intention of the giver of *ṣadaqa* is not the charitable act as such but to achieve grace, God's blessing or salvation in this life or in the hereafter. This one-way process has been clearly noted by Bukhārī when he discussed the intention of almsgiving in one of his recorded *hadīths* where the Prophet told about a man who had given alms to a thief, a prostitute and a rich man although his intention had just been to give away alms as such.¹⁷¹ This is further underlined by the Mālikī view that the *imām* might disburse the entire *ṣadaqa* [sic!] revenue or revenue collected through the religious taxes to public functionaries exclusively, even if they should be rich.¹⁷² However, to relegate the role of the receiver to mere passive spectatorship is too narrow as he or she would do anything to remind his or her fellows about his or her existence by begging, shouting and screaming instead of just sitting humbly and quietly in a dark corner.

¹⁷⁰ Aghnides 1916: 301–302.

¹⁷¹ al-Buḥārī 1991: 194.

¹⁷² Aghnides 1916: 428.

The crisis within the Islamic world, which concerned the leadership of the Islamic state, namely that of the Caliphate, and which resulted in the erosion of caliphate rule during the 10th century AD, could have been one reason why the Islamic world did not witness a similar development in the case of state responsibility for the provision of social welfare as occurred in the Christian world. As soon as the Islamic world was no longer ruled by a religious-cum-political ruler – the caliph – but by ordinary kings, emirs and other dignitaries, the moral obligation of state responsibility towards the provision of social welfare was put into question. The new rulers were still bound by Islamic law, but they were neither the executors of the Law nor the centre of an Islamic order. Furthermore, the difficulty if not impossibility of introducing changes in the *sharī'a*, which a caliph *perhaps* might have been able to press for,¹⁷³ more or less ossified Islamic law, although in its practical implementation the Muslim jurists and *qāḍīs* still were able to accommodate the rulings of the law to the needs of the local society. However, a comparison between the development of social welfare institutions within the Islamic world and Western Europe, especially in those parts of Europe where the structures and institutions of the medieval Church were destroyed during and as a result of the Protestant reformation, some remarkable differences can be identified – not least in the question of state or public responsibility towards the provision of social welfare. The crucial point in Western Europe was the emergence of the principle of public responsibility, namely that the state more and more took over the role of the Church as the provider of byzantinelike *philanthropia*. Whereas poverty and destitution became to be viewed as a social, economic, political and – most of all – a moral problem if not a vice, to which solutions had to be found, legislative or otherwise, no such development occurred in the Islamic world. Concepts like Poor Laws in many European countries did not exist in Islam as there were no attempts in pre-colonial Muslim states to establish any juridical regulations concerning the poor and beggars. Contrary to Western Europe and especially the Anglo-Saxon world, namely in England and New England, where statutory relief was to develop from the 16th century onwards, the state in the Muslim world did not try to regulate help for the poor and needy. What existed in the Muslim world were various kinds of charities, ranging from alms distributed casually in the streets to formally established charitable institutions like the various pious foundations or *awqāf* (sg. *waqf*).¹⁷⁴

173 This was at least the case for the first two caliphs who introduced changes in the law. Later caliphs had already lost this possibility.

174 For an outline of the development of the modern social welfare state, see Ritter 1991. On organised forms of precolonial social welfare in the Muslim world, see, for example, Jennings 1990; Peri 1992; Sabra 2000.

A comparison between the English Poor Law and the principles regulating *zakāt* provide an interesting illustration of the similarities and differences between a Western-secular and an Islamic system of poor relief. The English Poor Law of 1601 rested, according to Leiby, on four principles, which as such provide an interesting way to argue for a state-imposed but locally realised social welfare policy.¹⁷⁵ The first principle was public responsibility, which meant that the law designated officials and charged them with a duty. The parish, or local government, had to appoint such officials, and they had to help the poor. The central government, acting through the courts, might punish localities that did not carry out its intentions. According to Islamic law, *zakāt* also was a public responsibility, yet first and foremost it was an individual obligation. The state was to appoint collectors and public inspectors, yet they were restricted from collecting *zakāt* from non-apparent or hidden property.¹⁷⁶ However, if a person failed to pay his *zakāt* or if he refused to pay, his *zakāt* could be collected by force. As the existence of parishes in the Islamic world is impossible (as there exists no church), the leader of a local community was charged with the responsibility of enforcing the collection and distribution of *zakāt*.

The second principle governing the Poor Laws is local responsibility. Thus, the local parish congregation was held to be responsible for its own poor and was prohibited from pushing them out to other parishes during times of distress. In addition, Vagrancy Laws prohibited beggars to move from one parish to another. According to Islamic law, *zakāt* should in the first place be distributed among the local community and only when extraordinary circumstances prevailed was it allowed to move *zakāt* funds out of the locality of collection. However, there exists no restriction on begging or a prohibition against migrating out of the local area in Islamic law.

The third principle of the Poor Laws was the responsibility of relatives: the parish did not have to provide service and assistance if there were parents, grandparents, or (adult) children or grandchildren who could do so. A similar argument was presented by Muslim scholars: someone is eligible to receive assistance from *zakāt* funds only if close relatives cannot provide help. The fourth principle of the Poor Laws was that the overseers were authorised to put the poor to work. Such a principle is not found in Islamic law.

One consequence of the principles discussed above is that neither in the English nor in the Islamic case has the receiver any distinct right to relief. What

¹⁷⁵ Leiby 1978: 39–40.

¹⁷⁶ According to Islamic law, there are two classes of property subject to *zakāt*: apparent and non-apparent property. Non-apparent property includes gold, silver, articles of trade and treasure trove. See further page 27, as well as Aghnides 1916: 296–301.

existed was a set of religious obligations, which in the English case had been transformed to serve secular legislation, and mutual responsibility.

Despite the fact that none of the Muslim states ever stipulated any “poor laws” or seemingly were not engaged in establishing any social welfare institutions, such a picture is rather misleading. Whereas it might be true that *zakāt* never developed into a kind of public social welfare fund, other forms of both public and private intervention prevailed and were developed. Almsgiving or charity as such was basically an individual moral obligation as well as a virtue, and it was to be applied by both rulers and subjects. Therefore, almsgiving and charity also became a political act and tool. Adam Sabra’s study on poverty and charity in Mamlūk Egypt supports such a claim.¹⁷⁷ Generally, the Mamlūk state left most acts of charity, including the payment of *zakāt*, to the conscience of the individual believer and the Mamlūk state did not possess any system of government-sponsored poor relief apart from occasional famine relief. Moreover, as in other precolonial Muslim states, the Mamlūk rulers did not apply any particular social policy. However, *ṣūfī* scholars as well as other Muslim learned individuals in their sermons and scholarly treatises urged the believers to have mercy on the poor and the “deserving” beggars, and even presented guidelines on how and to whom alms are to be given.¹⁷⁸ Thus, one could argue that there existed a debate among the scholars about how alms should be distributed and to whom, i.e., a kind of “non-governmental social policy” that would influence the believers, including the ruler, and thus, in a way, lay the foundation of a public-cum-private social welfare policy. However, as Sabra has pointed out, the problem with the debate among the religious scholars was that the rulers, and especially the state bureaucracy, never institutionalised the pious acts and whatever policy that was applied by the rulers depended to a large extent on the considerations and motivations of the ruler to stay in power.¹⁷⁹

Whereas there existed no state-enforced social policy in Mamlūk Egypt (and it will be argued throughout the book that similar situations prevailed in most, if not all, precolonial Muslim states in the Bilād al-Sūdān), there existed a specifically “Islamic” form of institutionalised charity, namely the pious endowments. In Mamlūk Egypt (as well as in most Muslim regions but not throughout the Bilād al-Sūdān with some notable exceptions) there were a wide range of *awqāf* which supported hospitals and schools as well as provided for other services, such as housing, provision of food and water, and the burial of the dead. The establishment of *awqāf* allowed the Mamlūk elite an opportunity to win public support and

¹⁷⁷ See Sabra 2000.

¹⁷⁸ Such a treatise is, among others, al-Ghazālī’s *Mysteries of Almsgiving*. For a discussion on almsgiving in *ṣūfī* literature during the Mamlūk period, see Sabra 2000: 41–50.

¹⁷⁹ Sabra 2000: 32–40, 50–68.

demonstrate their piety.¹⁸⁰ Similar pious endowments were also established in Morocco where they are called *aḥbās* (sg. *ḥubus*). Although there are some indications that pious endowments were already established during the reign of the Idrīsids and Almoravids, it was during the reign of the Banū Marīn, a Berber-dynasty that reigned during 1258–1420, when the establishment of *aḥbās* started to flourish in Morocco.¹⁸¹ One could claim that due to the establishment of *awqāf* a special form of institutionalised but non-governmental form of charities emerged in the Islamic world (but not in the Bilād al-Sūdān) and that the network of *awqāf* for a long time replaced or substituted for direct government involvement in poverty alleviation. It is therefore striking that although there existed close scholarly links between the Bilād al-Sūdān and both Egypt and Morocco, only a few pious endowments were ever established in the Sudan savannah (see further Chapter VIII).

Creating an effective social policy is not an easy task. Whatever grounds are accepted as valid assistance or help have to be appropriate for the prevailing social and economic system. Therefore, the social policy has to be changed as society and economy develop. At the same time as a social policy might enable the redistribution and transfer of wealth in a particular society, it involves the rejection of some of its members as all social policies involve selection of and distinction between those who are eligible for help and those who are not. Thus, anyone who is in the position to decide about the distribution of help is in need of adequate information of the state of affairs of those in need, be it in a local area or on a national level. In addition to information, any social policy would be useless without the resources to back it. There are three main resources for poor relief, namely allocation by the central government of part of its tax-based revenue, local taxes and voluntary charity. The experience of the Western European states until the late 18th century was that systems controlled by the state usually faced the difficulty of getting adequate information due to bad communication and that funds were embezzled due to lack of supervision. In addition, a general problem was that the state received pressure from particular groups to distort the distribution of relief. Although a social welfare system based on the use of local taxes proved to be more efficient, in many regions and states the privileges of the nobility made the system not very effective until after the abolition of their privileges and tax exemptions. Voluntary charity, which was to be for centuries the backbone of poor relief in Catholic countries, was bound to the possibilities of collecting enough funds: when social priorities changed, charitable funds might even dry up as donations decreased.¹⁸²

¹⁸⁰ Sabra 2000: 69–100; Kogelmann 1999: 35.

¹⁸¹ Kogelmann 1999: 83–86.

¹⁸² Mitchison 1991: 27–34.

Recent studies on social welfare policies in Europe until about 1850 have indicated that across Europe (including Russia) there existed a sort of “mixed economy” of welfare, where the activities of the state, church and voluntary organisations were interwoven. Thus, the English Poor Law depended on volunteers for its operation, whereas in Catholic countries voluntary contributions might be distributed by official bodies. However, as Roberts claims, this was not a “zero-sum game” and especially during the 18th and 19th centuries there was a profound change:

Although in certain contexts it is certainly appropriate to talk of the state increasing its power at the expense of the church, or of the state retracting, or designating certain fields of activity properly the domain of civil society ..., in a larger perspective, the capacity and range of activity of state, civil society, and even, in certain forms, of churches can all be said to have grown during this period.¹⁸³

The notion of a “mixed economy” of welfare might also be applied when discussing the Islamic world. It could be argued that the triangle of government action – the collection and distribution of *zakāt*, the establishment of *ṣūfī* communities, as well as voluntary almsgiving, supplemented each other. However, the crucial point is the weak performance of most Muslim governments, which was mainly due to the inability of the state to enforce its will on the “civil society”: the case of 18th- and 19th- century Morocco being a good example of the split between “government controlled areas” and “no-man’s-land”.¹⁸⁴ On the other hand, the sensibility of some of the Mamlūk rulers to enforce regulations of the grain market is an example of strong government action.¹⁸⁵

Mitchison points to a crucial matter concerning the formulation of an efficient social policy, namely the problem of defining the poor – a matter that also will be raised in this study on *zakāt*, as the poor and the needy are identified by the Qur’ān as being two of the eight categories of receivers of obligatory alms and thus are the target of a social welfare policy. According to Mitchison, the problem is to identify the state of poverty of the poor and how many of them could be assisted, how these should be selected, how the help was to be given and what kind of assistance would be chosen.¹⁸⁶ Roberts, again, points to another problem which also has to be taken into account when *zakāt* is discussed, namely the possibility or ability of the central government to control the local agents, who usually acted on a community level:¹⁸⁷ If *zakāt* was supposed to function as the

183 Roberts 1998: 19–20.

184 See further Chapter VII fn. 8.

185 See further Lapidus 1969; Perho 1997.

186 Mitchison 1991: 39.

187 Roberts 1998: 28.

cornerstone of any Islamic social welfare policy where the state or the central government was supposed to have a key role, how was the central authority able to enforce its will and, by extension, to supervise the realisation of the principles of Islamic law that govern the collection and distribution of *zakāt*?

The Ideal of the Islamic State

A general trend within the political writing of Muslim scholars had been the argument of the corruptness of the time one is living in. Muslim regimes and rulers past and present are usually depicted as morally corrupt, the state as corrupt and the political arena having become a playing ground for individualists who only care about their own interests. Such arguments can be found in works by, among others, classical scholars as al-Māwardī, Ibn Taymīya and Ibn Khaldūn, but also among pre-colonial Muslim scholars in the Bilād al-Sūdān, such as Jibrīl b. ʿUmar from Agades, Usman dan Fodio (ʿUthmān ibn Fūdī) in Gobir, al-Ḥājj ʿUmar Tal in the Western Sudan and Muḥammad Aḥmad in the Nilotic Sudan, to mention a few.¹⁸⁸

The ideal Islamic state of the Muslim scholars was the Islamic community founded by Muḥammad in Medina. Within that community, the state was but the plurality of its citizens unified by faith and obedience to the commands of God. The army was but the citizenry in arms, and institutions such as the *shūrā*, the council, and the *bayʿa*, the collective oath of allegiance, were meant to ensure representative and responsible government. The idea of an ideal Islamic state in the political history of Islam has been used as a key element in the critique of the given state of affairs in any one society. The ideal Islamic state, however, is as much of an illusion as that of the ideal community, the *umma*.¹⁸⁹

However, although the ideal of the unity of state and *umma* remained the key concept and politico-religious idea within orthodox (Sunni) jurisprudence, the reality was the de facto division and distinction between state and society. Since the days of Umayyads the state consisted of the ruling dynasty with their retainers, functionaries and professional soldiery. Models and procedures of government were drawn from the pre-Islamic imperial traditions of Persia and Byzantium. The state became linked with the cities and Sunni Muslim literati and although it theoretically remained Islamic, the state was structurally separated from its subjects.¹⁹⁰ Sunni jurisprudence, such as al-Māwardī's *Al-aḥkām al-sultāniya*, tried *ex post facto* to reconcile the reality with the ideal, thus, on the

¹⁸⁸ See further Last 1987.

¹⁸⁹ Zubaida 1993: 44–45.

¹⁹⁰ Zubaida 1993: 41–42.

one hand, saving the Islamic character of the state by demanding that government and rule should not contradict or conflict with the *sharī'a*, while, on the other hand, supporting the idea that there was to be no questioning of the authoritarian rule of any Muslim ruler, be he just or unjust.¹⁹¹

The core argument for all scholars has been to underline the rift between the ideal concept and the political reality. The common argument among critical scholars, such as al-Ghazālī during the 12th century and Ibn Taymīya during the 14th century, was that the rulers of their times were perceived as unjust and oppressive, failing to rule according to the rules of the Qur'ān, the *sunna* of the Prophet Muḥammad and the *sharī'a*. These scholars pointed out that political and administrative development in the Muslim world had become non-Islamic and called for a return to, or a revival of, the ideal society of the Prophet and the four Righteous Caliphs. Thus, for example, Ibn Taymīya criticised the Mamlūk rulers in Egypt for sidestepping Islamic law and violating the rules of *zakāt*:

In the government revenues, right and wrong has been mixed up. So a number of religious learned and needy people are not paid their subsistence, while there are a great number of people getting a pension many times more than their need. These are groups of people getting grants in spite of their wealth and having no need for it.¹⁹²

While al-Ghazālī and Ibn Taymīya were neither the first nor the last scholars to criticise the “worldly affairs” of the rulers, later critics usually referred to these two scholars when they tried to establish their critique against Muslim rulers and governments of their own time.¹⁹³

The rift between the ideals of the Muslim scholars and the political reality had become too obvious by the 14th century when Ibn Khaldūn wrote his *Muqaddima*. Compared to the earlier jurists, who tried to place the state within the legal-religious sphere, Ibn Khaldūn clearly recognised the distinction between *mulk*, kingship or secular authority, and the caliphate. According to Ibn Khaldūn, *mulk*-rule should be based upon the use of political-military power and coercion whereas the '*ulamā'* were to assume a subsidiary position within government. The rule of the caliphate was to be based upon the application of religion and *sharī'a*. However, Ibn Khaldūn's distinction between kingship and caliphate was more than an *ex post facto* description because it resulted in an analysis of the cyclical behaviour of the rise and fall of states by emphasising that the caliphate-rule had been replaced by *mulk*-rule as part of a specific political cycle.¹⁹⁴

¹⁹¹ Al-Mawardi 1996; Tibi 1996: 160–164.

¹⁹² Ibn Taymīya in Islahi 1988: 204.

¹⁹³ See further Islahi 1988 and al-Azmeh 1996 (especially Chapter V).

¹⁹⁴ Ibn Khaldūn 1989: 200–206. However, the debates among the Muslim scholars on the question of justice and disobedience owed much to the various attempts to legitimise rebellions and find ways to articulate political and social tensions within the *umma*. Muslim

Islamic Economics within the Ideal State

In general, according to the ideas of modern, 20th-century Islamic economics, the state is to have an active role in the economy. Although there is no agreement among present Muslim economists on whether state intervention in the economy should be limited or not, there is a fundamental understanding among all of the writers about the responsibility of the state for the social welfare of all people. The emphasis on state responsibility within the social welfare sphere is not surprising, and gives an opening for addressing pre-20th-century attempts to create the ideal state as well as the Islamisation of the economy. However, it should be underlined that the idea of a public social welfare system cannot as such be applied to precolonial and pre-modern societies – one conclusion of the foregoing discussion about almsgiving and charity in Muslim societies is that there existed no such concept. In addition, it should be underlined that pre-20th-century Muslim scholars, who did discuss the need to give alms, usually discussed it as being part of the private or individual sphere.

The 20th-century debate among Islamic economists about the basis of an Islamic welfare policy and the question of *zakāt* has its pre-20th-century counterparts. The question of *zakāt* as a dividing line between just and unjust rulers is as old as the *umma*. The third caliph, ‘Uthmān, was accused by his critics of side-stepping the rules of *zakāt* and was killed by a member of the opposition.¹⁹⁵ In later periods, the demand for a just taxation and a revival of the Islamic principles of taxation have been the core element of many, if not all, militant reform movements throughout the Islamic world. Before the economists’ debate on the possibilities of an Islamic economy, the ideal Islamic state with its social-welfare-for-the-*umma*-principle had been debated and proposed by various Muslim literati. Whereas today’s approach towards Islamic economics confines itself within the margins of economics, the traditional debate was developed within Islamic jurisprudence. With its strong emphasis on social justice and public

scholars were painfully aware of the fact that the *umma* under the third Caliph had already become a fiction. The standpoint of the Sunni scholars, referred to earlier, was a result of the politico-religious critique from both Kharijites and Shi’ites as well as the thrust of Hellenistic philosophy during the 8th and 9th centuries AD and the change in political leadership of the Caliphate itself under the Abbasids. Sunni scholars had to explain and give their religio-legal backing to the shifts in political leadership of the Caliphate, such as the Abbasid rebellion and, later, the division of power within the Abbasid Caliphate. See further Tibi 1996: 160.

¹⁹⁵ According to ‘Abd Allāh ibn Ibād, the founder of the Ibadite branch of the Kharijite movement, ‘Uthmān was accused by his critics of nepotism and unlawful innovations, including of having spent the *zakāt* on his relatives, his friends and the rich (Sachau 1899: 53).

responsibility for social welfare, Islamic jurisprudence does present a model of a pre-modern Islamic social welfare policy. This policy was to be centred upon the collection and distribution of *zakāt* as legal alms as well as the establishment of a *bayt al-māl* or public treasury. The key understanding of the *bayt al-māl* was that its wealth was to be treated as Allah's wealth or the Muslim's wealth, and it implied that the revenue collected into the *bayt al-māl* were Allah's trust and the common property of all Muslims, the ruler being merely in the position of a trustee.¹⁹⁶

According to the financial doctrines of the Muslim scholars, the revenue of an Islamic state was divided between religious and secular revenue. A further distinction was made between the classes of revenue which accrue to the Muslim community or the Islamic state as distinct from the Public Treasury or *bayt al-māl*. However, there is a disagreement between the various Muslim schools of law on what should constitute the Public Treasury. Four-fifths of the *fay'* revenue, that is *jizya* and *kharāj*, to the Public Treasury according to the Shāfi'ī doctrine, whereas, according to the Ḥanafī and Mālikī doctrine, the entire *fay'* goes to the Public Treasury. One-fifth of the *fay'*, as well as one-fifth of the booty revenue, should be divided into three parts, namely the Prophet's share, the share of the Prophet's relatives and a trust fund for orphans, the indigent and wayfarers that would be part of the Public Treasury. Of this part, the Prophet's share would go to the Public Treasury, according to Mālikī and Shāfi'ī doctrine, whereas it should be kept outside the Public treasury according to the Ḥanafī doctrine. More complicated was the state of *zakāt* and *'ushr*. According to the Mālikī doctrine, *zakāt*, which is levied on both apparent and non-apparent property,¹⁹⁷ should be paid to state officials and thus would be part of the Public Treasury. However, according to Shāfi'ī doctrine, *zakāt* on non-apparent property was under no circumstances part of the Public Treasury while *zakāt* on apparent property might only be held as a trust and as such was not a part of the Public Treasury.¹⁹⁸

The problem of any Muslim state was how to secure enough income to cover its expenses. As long as there were enough subjects that paid *jizya*, there was enough revenue available, but when income from *jizya* declined, the state was facing a fiscal crisis. The fiscal crisis became aggravated if its expansion was halted and the income from *khums*, one-fifth of the revenues from military expeditions, disappeared. In such a situation, *zakāt* became a problem because the

¹⁹⁶ Doi 1984: 387–388. See further the sections on *zakāt* in Ruxton 1916 and the thesis of Aghnides 1916.

¹⁹⁷ In general, apparent property consists of animals and crops whereas non-apparent property consists of personal wealth and articles of trade. However, the various Muslim schools of law disagree among themselves on this distinction (Aghnides 1916: 296–301).

¹⁹⁸ Aghnides 1916: 423–428.

state could not use the income from it to cover its expenses.¹⁹⁹ Furthermore, to broaden the fiscal basis was, at least in theory, impossible due to the demand that only Qur'ānic taxes could be levied. However, the fiscal crisis usually led to a break with the Qur'ānic basis of taxation and the introduction of extra- and non-Qur'ānic levies (*mukūs*). Such a policy did, however, as a rule lead to fierce criticism from the 'ulamā', especially from those scholars who opposed the acts of the rulers and who demanded the abolition of such levies. It was therefore problematic for the Muslim state to push for a reorganisation of the tax basis. As long as Qur'ānic taxes were levied, the main pressure was put on the rural population, but any attempt to relocate the tax burden and shift it towards the urban population, trade and crafts, was ideologically, if not politically, more or less impossible.²⁰⁰ Therefore, the Muslim ruler was caught in a dilemma – to increase taxes and face the possibility of a revolt or to stick to the ideal and face a financial crisis. This dilemma provided Ibn Khaldūn with his theory of the rise and fall of states as well as Ernst Gellner (following Ibn Khaldūn) with his notion of the “permanent Islamic revolution”:

But what would happen (...) if some authoritative cleric, having with some show of plausibility denounced the impiety and immorality of the ruler, thereby also provided a banner, a focus, a measure of unitary leadership for the wolves? What if he went into the wilderness to ponder the corruption of the time, and there encountered, not only God, but also some armed tribesmen, who responded to his message? This every-latent possibility hangs over the political order, and is perhaps the Islamic form of permanent revolution.²⁰¹

Despite the efforts of the various Islamic schools of law to establish a genuine theory of how to handle social and economic problems of Muslim society, the outcome has been relatively confusing. One fundamental problem has been that the aim of the Muslim scholars was not the non-divine/secular society of the real world but was directed at speculation about the possibilities and outlines of a divine order. The fiscal and economic realities in Muslim societies were hardly mentioned. However, the legal speculation and outlines of Islamic taxation, together with the alleged responsibilities of an Islamic state, were used by leaders of revivalist and reform movements in their critique of the state of affairs in Muslim societies and their call for an overthrow of “unjust” rulers. The question

¹⁹⁹ For example, most scholars would reject the idea to use *zakāt* money to cover for the expenses for the regular army. Those soldiers that are registered in the *dīwān* are only entitled to the *fay'*, not to *zakāt*, whereas only volunteers and non-registered combatants are granted an amount from the *zakāt*. See further al-Mawardi 1996: 58: 188.

²⁰⁰ Feldbauer 1995: 279–281.

²⁰¹ Gellner 1981: 45.

of the just and legal collection of *zakāt* was especially used by the critics of unpopular Muslim rulers.

Interpreting *Zakāt*

The rift between the real world and the speculations about a perfect economic system within an ideal politico-cum-religious environment has had a great variety of consequences in the Islamic world. First, the rift might be interpreted in a negative way: the impossibility of establishing utopia on earth. Such an interpretation might result in a fatalistic worldview. However, as has become evident in the previous outline, Muslim intellectuals cannot be regarded as propagators of a lost cause, doomed to the darkness of fatalism. Instead, one key argument has been the need for change, usually the call for a revival of the “perfect community” which existed during the early days of Islam. Thus, the rift between the real and the ideal world demands an effort of the true believers “*fī sabīl Allāh*” – for the case of Allah. It is a future-oriented projection – the establishment of an Islamic state – although it rests on the re-enactment of a “true but lost reality”. Therefore Gellner’s notion of a “permanent revolution” captures one of the driving forces within the Islamic world: man’s failure to establish utopia on earth due to his imperfection is not the end of history but in fact the impetus behind it. As, according to Islam, no man can be above the Law, because it is God’s Law and man is only his vice regent here on earth, the caliph himself being only a *primus inter pares*, God’s Law must be the guideline of society as a whole, be it in politics, economics, trade or social life. Back to utopia? Not necessarily, because the demand for the rule of God’s Law on earth does give the custodians and interpreters of the Law a central position.

One consequence of the “permanent revolution” is that the question of obligatory almsgiving and, most important, the question of permitted and forbidden taxes is almost always raised by those Muslim scholars who were critical of the political regime. Any ruler who, deliberately or not, sidesteps the Qur’anic taxes or introduces extraordinary taxes and levies is faced with the charge by the scholars that he is breaking with the rules of Islam. Some scholars might even argue that time has come to topple the regime and replace it with a new one that would rule according to Islamic Law and ethics. If successful in their aspirations, an Islamic state might be established by the critical scholars. However, the problem with the scholar who becomes the leader of a religio-cum-political movement is that almost immediately after becoming the new ruler, he or she is no longer the erector of a perfect society but the administrator of a society where people are fallible. The moment the scholar starts to rule as a political authority and makes his or her first compromise, utopia is lost again and the

perfect Islamic state starts to fade away. After too many changes, compromises and the introduction of additional taxes to meet the growing demands of the court and the army, the Islamic state became a mere façade, or, following Ibn Khaldūn, one is dealing again with Muslim states ruled by “secular” Muslim rulers who have no religious impact or position; Islamic law is enforced and might even be the guideline in society, but would not confine the ruler as he would rule with or without it.

The foregoing discussion on the impact of the “permanent revolution” and *zakāt* does, in my view, have some crucial consequences for the way *zakāt* might have been implemented in Muslim/Islamic states and societies in the Bilād al-Sūdān. Following the ideal case, the establishment of Islamic states or Islamic rule in the region, the Qur’ānic taxes would have been the basis of taxation. *Zakāt* would thus have been collected and distributed according to the rules of *zakāt*; the government would have had the key role as the supervisor of the transition of the obligatory alms from the giver to the receiver. An Islamic government would have an indirect right to a share of *zakāt* as the collectors of the obligatory alms were allowed to be paid from *zakāt*-funds. Moreover, an Islamic government could argue that at least the volunteers, but not the soldiers, of the army could be paid out of *zakāt*. *Zakāt* would be collected, stored and distributed at the local, village level and thus serve as a kind of social welfare fund. In times of distress, the ruler, who as the reviver and builder of the ideal – Islamic – society, would follow the example of the Prophet: he would redistribute the *zakāt*-funds, especially the *zakāt*-grain.

The perception of the ideal state realised on earth had, following Michael Watts’s studies on the moral economy of the Sokoto Caliphate, formed the starting point of argumentation for academic research on pre-colonial Sudanic realities.²⁰² According to Watts, the grain collected as *zakāt* by state officials provided the cornerstone for a precolonial social welfare system that would have existed at least in the Sokoto Caliphate. Further, according to Watts,

... at an ideological level, the redistributive ethic was reiterated through a Muslim dogma which saw gift-giving as obligatory for the rich and the officeholders.²⁰³

The end result of Watts’s proposed system of a “collective welfare” is a situation where the collection and distribution of *zakāt* actually would have been realised according to the principles of Islamic law and order.

But does the idea of a moral economy based on *zakāt* exist? As will be pointed out in the next chapters, the political and economic realities within Afri-

²⁰² Watts 1979; 1983; 1987. See further Chapter V.

²⁰³ Watts 1983b: 49.

can pre-colonial societies and states underwent many changes. Islamic states were established from time to time as a result of a militant reform movement – the realisation of utopia. But, as will be argued, this utopia did not last for long. Generally, during the time of the second generation of rulers, the Islamic order – if still existing – had, for several reasons, been adjusted and accommodated to the demands of the “real” world. Thus, it would not be too surprising to find a rather differentiated system of taxation rather than a “pure” form of Islamic taxation. The distribution of state revenues might or might not follow Islamic law and principles, depending in most cases on whether the ruler followed Machiavellian guidelines or personal interests. Therefore Watts’s concept of a moral economy based on *zakāt* reads rather like a Western version of the argumentation of the adherents of Islamic economics. In the end, their projection is equal to the *Sampo*-model: the lost provider of all good.²⁰⁴ However, as little as the Islamic economists are able to describe the functioning of an economic and social welfare system in the real world (as the Islamic state and the Islamic economy yet have to be established) neither are the propagators of a moral economy able to indicate the existence of a real system but only the attempts to realise an ideal system.

Having critically argued against the possible functioning of a moral economy of *zakāt*, I have to reverse my argument when dealing with Muslim communities either within or outside Muslim societies. Whereas I do argue that the moral economy of *zakāt* within the sphere of the state, namely *zakāt* as a tax, is at least problematic if not more or less impossible, I do recognise that *zakāt* indeed might and did form the basis of a moral economy, not on a state level but on an individual and community level. Here I follow the idea of John Hunwick, who describes *zakāt* as a *moral economy of salvation*: the spending of one’s wealth with the intention to give *zakāt* not only purifies the wealth itself but the giver is promised a reward in heaven.²⁰⁵ First and foremost, however, *zakāt* is not a collective duty or even an obligation/responsibility incumbent upon the state but an individual one. In the end, the role of the state is the problematic one: it should only supervise, not control, the spending of obligatory alms and the fulfilment of the individual obligation.

Thus, the outcome is that the collection and distribution of *zakāt*, namely the fulfilment of the individual obligation, can be realised without the existence of an Islamic state. Within an Islamic environment, such as realised in the enclaves that

²⁰⁴ Weiss 2002: 176. *Sampo* is a mysterious object often referred to in the mythological songs of the Finns. It has the potency to provide various forms of prosperity. Usually it is portrayed as a magic mill or money spinner. The implementation of *zakāt* in an Islamic economy is regarded by the advocates of Islamic economics as creating all the good things that would be desirable from an Islamic standpoint.

²⁰⁵ See further Hunwick 1999.

Muslim traders and scholars established wherever they settled down in the Bilād al-Sūdān and further south towards the West African rainforest, these Muslims scholars in fact established what could be termed *prayer economies*. The term prayer economy was first introduced by Murray Last who used the idea to describe the complex but pervasive practices in Kano in Northern Nigeria where considerable sums of money were given to Muslim scholars for prayers, blessings, and Islamic medicine.²⁰⁶ The term was further expanded by Benjamin Soares who discussed the prayer economy in Niuro in Mali and included the giving of gifts to religious leaders:

the prayer economy operates through the circulation of capital – economic, political, and spiritual or symbolic – which particular social actors are able to convert from one domain to another.²⁰⁷

However, whereas Soares is interested in the fusion of the economic and political elite with religious leaders, I will use the notion of a prayer economy in Chapter VIII to describe the giving of gifts and alms to local *imāms* and especially local *ṣūfī shaykhs*, who are able to redistribute their charities received and gifts to followers and others and which, as a consequence, might strengthen their *baraka* or charisma and spiritual influence.

²⁰⁶ Last 1988.

²⁰⁷ Soares 1996: 741.