

# Property Rights (*Huquq*) and Civilizations

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## Abstract

Four arguments will be explored: 1) The current capitalist economic and political models will never result in sustainable environments. The Western mode of property rights leads to rules and regulations, which results in intervention, bureaucracy, monopoly, and stratification, while the Islamic legal system achieves the opposite through rights or *Huquq*. 2) Regardless of a people’s culture or religion, we may be able to save civilizations from pollution and climate change by learning from *Huquq*. Specifically, we can learn from the rights of individuals and properties which grant end-users maximum control, thereby reducing monopoly, stratification, and unemployment. 3) Unemployment is often used as a means of increasing mass production, as unemployed people are often willing or even forced to work extra hours for basic needs. This leads to maximized production at the expense of the poor, while the rich become wealthier and extravagant in consumption. The Islamic legal system or *Huquq*, however, provides access to resources for all and allows individuals to start businesses or factories without the need for permission from authorities, as long as they do not harm others or the environment. This creates a different model of production that is not based on capitalism, leading to reduced pollution. 4) Stratification and monopoly are the major causes of pollution. In other words, we are not short of technical ideas to reduce pollution, we are short of understanding the relationship between pollution and Islamic rights or *Huquq*. This is what Western thinkers such as David Harvey and Paul Mason are missing. Even worse, the development of the “internet of things” has led some, such as Jeremy Rifkin, to become blind to the importance of rights in favour of technology in their efforts to stop climate change. Thus, technology within capitalism is shaping property rights in a way that leads to a different type of monopoly that will continue to pollute the environment. Jeremy Rifkin, who will be criticized in this essay, is a good example of a researcher who is still operating within capitalism and therefore contributing to the continuation of pollution. He is in fact, as will be proved, introducing a new version of communism. This essay argues that it is impossible for Western paradigms of civilization to lead us to a prosperous and sustainable environment with justice for all, due to the inevitable monopolization which leads to poverty, stratification, pollution, and misery. On the other hand, *Huquq* has the potential to create prosperity for all people, regardless of their religion. This essay will criticize new economic models and those who criticize them as merely attempts that will end up by reproducing either capitalism or socialism.<sup>1</sup>

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<sup>1</sup> This essay is based on data from three papers and two books. The papers are: 1) “The Merits of Cities’ Locations.” 2) “Rights and Civilizations.” 3) “Interventions, Territorial Structure and Environmental Knowledge in Muslim Built Environments.”

The two books are: *Crisis in the Built Environment: the Case of the Muslim City*, 1st. Ed. 1988, 2nd. Ed. (2021) ISBN 978-975-574-960-0 and *Qas al-Haq*, 1st. Ed. 2014, 2nd Ed., (2022) ISBN: 978-625-7489-133.

## Introduction

As Islamic Legal System did not have the chance to perform under modern knowledge and technology, solutions that might be created by implementing *Huquq* are not experienced yet. On the other hand, failure of modernity (claimant change for example) led thinkers to search for answers in diverse disciplines in all cultures except in *Huquq* of the Muslim World. Moreover, humanity is searching for a system that is fair, open and transparent, a system that is based on meritocracy. After the fall of communism, “History has ended” for some, and thus capitalism triumphed. Liberal democracy and free market are in the lead. Some even argues that Capitalism is a self-correcting system and that the world had accepted a political system that is democratic, innovative and flexible and thus free market absorbs disturbances and shocks.

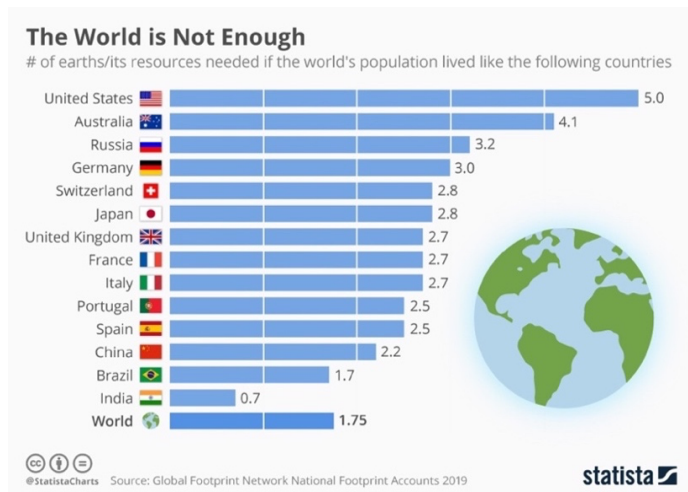


Fig. 1

### How many countries are required to meet the demand of its citizens...

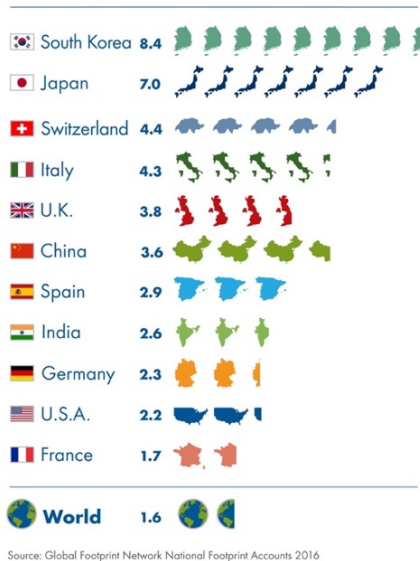


Fig. 2

However, as evident, Western style civilizations are pushing societies to stratification, poverty, pollutions, climate change, habitat destruction, .. etc. Fig. 1 illustrates that if all earth populations live as U.S. citizens, we will need 5 times the current size of our earth. Fig. 2 shows how many countries are required to meet the demands of its citizens.

This rupture between what capitalism is producing and its potential of possible self-correction led thinkers to search for answers. Let us review three of them. The first is David Harvey who criticized capitalism and demonstrated that although capitalism appears to be a liberating force, it is indeed dominating. He pointed out that artisanal means individuals having crafts, skills and means of production and thus power. Industrializations means stripping people of those crafts and thus powers. He criticized capitalists as wanting more expansion, more machines for more profits and less labors. The claim of unleashing the market to solve poverty has led to inequality. He stated that

capitalism came up with the definition of civilized society which is kind of one where workers do what they are supposed to do, and it always talked about pre-capitalistic society as being uncivilized.” In pre-capitalist societies people worked 4 hours a day. Capitalism is about realization, products has to be sold, thus creating markets for more commodities. Capitalism produce things that do not last: Why not use your grandmothers spoons and forks?

He concluded that “the future has got foreclosed by debt, that debt is a claim of future labor and its claim on your future labour”. When asked about the need for a State for benevolent and redistributive role, his answer was:

There have to be a mechanisms for redistribution and the like and mutual support, and that has to be organized, now when you use the term ‘State’ we often think of a capitalist state, and I do not like the capitalist state, but we do need a form of governments and governmental interventions and the like, ... municipal socialism or local socialism .. assembly, super assembly, super super assembly ...

The question that this essay raises is how can we redistribute wealth justly? No answer except defending communism. For example, if one wants to develop a new housing complex which is a normal commodity, (residential development of affordable housing), one probably need the city to help him acquire the land, however, land is monopolized which will give a price that is often beyond the needy.<sup>2</sup>

As evident from Harvey’s criticisms of capitalism, he has no clear proposals beyond criticism. The same is true for others researchers. Let us look for a second example: Paul Mason argues that

information technology is different. It cheapens real things so rabidly that disrupts capitalism’s normal mechanism of adaptation and survival. Our utopia for 200 years, as for Marx, was based on ‘work’, but we are to change that. We have to come up with utopias that are no longer based on work because work isn’t going to be necessary for our great-grandchildren, ..., Is the management of scarcity in the favor of poor people, in favor of social justice ...?

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<sup>2</sup> <https://youtu.be/EL7zEVhPHQU>

Mason further argues by saying: “You have to plan, you have to nationalize, you have to take control of various means of production...”. He explains: “in general, what I would like to see: [are] small scale diverse projects of nonprofit nature whether they are co-ops, whether they are credit unions, whether they are small worker co-op on factories ..”<sup>3</sup>

This essay will raise the questions regarding the future of capitalism, automation, artificial intelligence and robots, etc. Who decides? Who acts? All such wishes of Mason and others will lead to the creation of authoritarian state and thus monopoly.

### *Jeremy Rifkin*

The third example<sup>4</sup> is a well-known fighter of climate change as he claims. He is Jeremy Rifkin who is advertising for the “Internet of Things” to fight pollution.<sup>5</sup> His basic argument revolves around the history of the future based on past paradigm shifts. He explains revolutions of the industry that shapes cultures in three concepts: manage, power, and move. Manage means new communication technologies to manage economic activities. Power means new sources of energy to power economic activities. Move means new modes of mobility to move things. He explains that the first industrial revolution in England was caused by the telegraph, cheap coal from hinter lands, and steam engine creating rail roads, and thus all economic activities changed. The second industrial revolution was in the USA. The telephone, the radio and television that managed businesses while cheap Texas oil powered movements by cars busses and trucks to move things. Now, we are in the “Third Industrial Revolution” which is the internet of things. Renewable energy, digital technology where everything is connected to everything to everyone. For him, this is a Global brain that is connecting economy, society and nature. The digital revolution is almost zero marginal cost. Societies are moving from ownership to access, markets to networks and commissions on access. Sharing economy is on the rise. The cost of a solar watt in 1979 was 78\$, in Jan 2017 it was 0.53, and now it is 10 cents or even less.

Rifkin claims that the Third Industrial Revolution is a new economic paradigm, where the Communication Internet, the Energy Internet, and the Logistic Internet will come together. This new paradigm will allow for the production and distribution of goods and services at near zero marginal cost, which will be produced and shared by “prosumers” over the internet, thanks to 3D printing. The Third Industrial Revelation will be characterised by the sharing of

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<sup>3</sup> <https://youtu.be/KaUs-zssPE4>, <https://youtu.be/cQyr9I22fLE>, <https://youtu.be/LS0OUv6eiO4>,

<sup>4</sup> Among the examples that is still within capitalism is Christian Felber’s attempt. He proposed a movement to punish greedy companies. He proposed actions against them. He asked: what if the common good, i.e. not money, was the goal of the economy, and that private enterprises and free market causes the common good? The common good balance sheet measures to which degree a company lefts and promotes constitutional values from human dignity or sustainability to democracy. This approach of the “Economy for the Common Good” is accepted alternative by some to overcome the inhumane, instable and unsustainable ruling economic model. The claim is that such approach is a post-dualistic one to overcomes both capitalism and socialism. It is based on the values that make human relationships flourish, values such as empathy, dignity, solidarity, cooperation, justice, and sustainability. This approach was received enthusiastically worldwide, and more people, companies, universities and governments are joining the movement. However, it did not yet eliminate monopoly. [https://youtu.be/dsO-b0\\_r-5Y](https://youtu.be/dsO-b0_r-5Y)

<sup>5</sup> <https://youtu.be/11LJBsTugWo>

bikes, cars, clothes, and even homes over the internet as well as energy collection and sharing over the internet. Logistics of the Internet will be based on open supply web managed by sophisticated analytics and algorithms. This new economic paradigm will increase the efficiency of the economy from 14% to 40%. It will be a sharing economy based on access rather than ownership, where private property and profit margins will be replaced by sharing, Open Source, and near zero marginal cost, resulting in a society of abundance, where everything is practically free and available at all times. This new economic paradigm is already co-existing with the Second Industrial Revolution and will eventually become dominant, and it is the millennials who have grown up with this new economic paradigm and will be its primary carriers.

I will try to prove that Rifkin's Third Industrial Revolution is merely a **new version of communism**. Let's begin by examining some criticisms of Rifkin's proposal by Western researchers. The purpose of this is to show that both those who propose new theories and those who criticize them are operating within a Western mindset. We will focus on the criticisms of two researchers: David Lauterwasser and Lawrence C. Chin.

As Lauterwasser noted, Rifkin makes it very clear that his economy is smart, “[s]mart phones, smart vehicles, smart roads and smart houses. He makes no effort to hide his enthusiasm for advanced technology, and this already almost-all-embracing technosphere would have to be expanded by a whole lot, in both amplitude and latitude.” Lauterwasser found that Rifkin's ideas “are not ‘radically new’, but merely a new version of the same old ‘more is better’ paradigm — more technology, more energy, more people, more jobs, more work, more impact, more control.” This paradigm is questioned by Lauterwasser who argued that “[s]mall is better. Simple is better. Local is better. Independent is better. *Less* is better.” This is the opposite of what Rifkin is calling for. Lauterwasser continues:

[t]hink about it for a second: less technology, less pollution, less cars, less airplanes, less highways, less shopping malls, less noise, less trade, less work, less destruction, less disruption, less control, less worries... This doesn't sound so bad after all. But it is the opposite of what Mr. Rifkin has in mind for this world.

Lauterwasser, a **naturalist**, criticized Rifkin's limited understanding of deep history and that he forgets that a sharing economy, referred to as a “gift economy” by anthropologists and economists, existed for over 95% of human history and was sustainable. Lauterwasser explained that this system still exists today in the form of primitive tribes living in harmony with the environment. The anthropologist Marshall Sahlins, for example has referred to such societies as “original affluent society” in his book *Stone Age Economics*, showing that they were not poor and had everything they needed.<sup>6</sup>

Lauterwasser's main criticism of Rifkin centers on metal consumption. If we look at the periodic table of elements, we will not be able to find substitutes for beyond the 118 elements

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<sup>6</sup> <https://medium.com/@FeunFooPermacultureRewilding/a-third-industrial-revolution-would-seal-our-fate-why-jeremy-rifkin-is-dead-wrong-d224127ec195>

that we know. Seventeen elements of those are Rare Earth Elements (REE)<sup>7</sup>, (elements 57–71, the lanthanides and scandium and yttrium), and usually used to create batteries, magnets, solar panels, touchscreens, and other advanced technological appliances. To obtain them, Lauterwasser argues that “we have to severely ravage the biosphere, which puts us into a dilemma that Mr. Rifkin fails to address.” Chemically, he point out that it is not possible to create gadgets like a smartphone without certain elements, and it is impossible to obtain them without destroying an already battered environment.<sup>8</sup> Lauterwasser clarifies that the extraction and processing of Rare Earth Minerals (REMs) needed to produce advanced technology is directly connected to the destruction of ecosystems globally, such as the Samarco tailings dam collapse (2015) in Brazil.<sup>9</sup> Several examples of ecological disasters were caused by mining and extraction of REEs as the Silicon tetrachloride spill by a solar energy company in Henan province, China (2008).<sup>10</sup> A recent study in the journal *Nature* suggests that as global demand for REEs increases, the risks will not decrease.<sup>11</sup> The study suggests that there is no less harmful way to extract, refine and process REEs, and that more environmental restrictions will lead to a soaring increase in the price of essential elements for technology. Indeed, many technologies, such as smartphones, computers, electric cars, solar panels and missiles, require a broad spectrum of Rare Earth Elements, without which their production would be impossible.

Most of such minerals (REEs) are located in conflict zones and are mined under semi-slave conditions, as reported by The Washington Post in relation to the Congo.<sup>12</sup> The same in other third world countries. Lauterwasser relates: “[t]here is ample evidence to assume that Western corporations have a high economic interest in the region remaining unstable, since they get much better prices for the minerals desperately needed for the production of mobile phones, laptops, and other digital technology.”

Now let’s consider another scholar who criticized Rifkin. Lawrence C. Chin criticized Rifkin’s calculation of sustainability in relation to overpopulation as does everyone else. In 1961, the total population of the earth had an ecological footprint only about half of the planet’s biocapacity, but by 2008, the human population’s ecological footprint had surpassed the 12 billion hectares of the planet’s biocapacity. The United States, with only 4% of the world’s population, was using 21% of earth's available biocapacity. Rifkin quotes Lester Brown, the founder of the World Watch Institute, to suggest that if everyone on the planet lived like an American, the earth could only support 2.5 billion people. The number increases to 5 billion people if they lived like an Italian and 10 billion people if they lived like an

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<sup>7</sup> <https://www.nature.com/articles/s41598-017-10256-7>

<sup>8</sup> Lauterwasser explains that “[t]hose elements are used because they exhibit desirable qualities, such as the ability to absorb certain wavelengths particularly efficient in the case of solar panels, produce strong magnets for the massive generators used in wind turbines, and colourful lights for the displays of our mobile phones, computers and TV’s. Of the 17 REE’s, the only one that is *not* found in smartphones is the radioactive promethium.” “Modern smartphones contain almost three quarters of all the elements in the periodic table, and all of them are essential for those devices to function.”

<sup>9</sup> <https://www.theguardian.com/world/2018/feb/28/brazil-dam-collapse-samarco-fundao-mining>

<sup>10</sup> <https://www.theguardian.com/world/2018/feb/28/brazil-dam-collapse-samarco-fundao-mining>

<sup>11</sup> <https://www.nature.com/articles/nature21359>

<sup>12</sup> <https://www.washingtonpost.com/graphics/business/batteries/congo-cobalt-mining-for-lithium-ion-battery/>

Indian. Rifkin believes that the average Italian lifestyle is the healthiest, and thus human population must be reduced to 5 billion.<sup>13</sup>

Moreover, Chin criticizes the basic philosophy that Rifkin is relying heavily on the attitudes of millennials. He describes the ideas of Rifkin on how different economic paradigms in history have correlated with a particular type of consciousness, where each economic mode is associated with a specific world-view that legitimizes the current economic paradigm. Rifkin asserts that there have been four main historical economic paradigms: hunting-gathering, hydraulic agricultural production, coal-powered industrial nation-states, and fossil fuel-based industrial societies, each of which has conditioned a particular type of consciousness: mythological, theological, ideological, and psychological respectively. With the emergence of a new economic system based on the Internet of Things and renewable energy, there has also emerged a new “biosphere consciousness” among the Millennials, who tend to be more empathic towards not just fellow human beings, but all life forms and the environment. Rifkin terms this new consciousness as *Homo empathicus* in contrast to the human nature assumed by previous economic paradigms where humans were seen as autonomous and rational agents motivated by self-interest with little interest in others.

Chin’s main criticism is based on Rifkin's false evaluation of the millennial generation. He argues that Rifkin's belief that the millennials will bring about a sustainable civilization is wrong as he has no scientific proof beyond praise for the millennials. He explains:

He [Rifkin] cites studies demonstrating that the Millennials are more empathic of others, more concerned with others, more oriented toward others; less trusting toward governments, business community, and experts of all kind; far more socially progressive (positive toward women, people of colour, homosexuals, and people with disability) than their parents; and generally less materialistic (more interested in living a meaningful life than simply making money) – this. This is precisely the personality which corresponds to the Collaborative Commons. Rifkin confirms my general impression of the Millennials – less materialistic, more progressive – except this. The Millennials *try* to be, *want* to be, more empathic of others, but have in fact lesser ability to understand other people's psychology because they are much dumber than the previous generations and much simpler in psychological make-up. Once again, the problem is: having the habit for one thing doesn't necessarily mean one is good at it. Just because the Millennials are more social and more concerned with other people, just because they are habitually more empathic, this doesn't mean they are *good* at empathy. The Internet they have grown up with has significantly eroded their ability to understand other people’s psychology along with their critical thinking ability just as it has simplified their psychological make-up. My criticism of Rifkin, just like my criticism of Putnam, is thus that his understanding of the matter is rather shallow. This, for example, sums up his admiration for the Millennials (their embodiment of the new economic paradigm).<sup>14</sup>

Chin continues his criticism on the question of the millennials to conclude that “Rifkin could have considered the most intolerant and unsympathetic generation as *Homo empathicus* is indication of the shallowness and superficiality of his whole understanding. The Millennial bunch appears to be empathetic when you see them shower ‘empathy’ upon those who fit

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<sup>13</sup> <https://enlightenment1998.com/rifkin/rifkinc.pdf>

<sup>14</sup> [Ibid.](#)

their notions of things. Few pay attention to their lack of any empathy toward the slightest deviance due to their intellectual deficiency.” Although such discussion on the Millennials could be labelled as value judgmental, Chin’s criticism regarding the **commons** is fundamental.

### *The tragedy of the commons*

In economics and ecology, “the tragedy of the commons” is a well-known phenomenon where individuals have access to a resource without restrictions or conventions governing use of the resource or location. The common good is for users to share and can be depleted if their consumption is uncoordinated, especially if there are too many users relative to the available resources. Therefore, the availability of resources and the number of users benefiting from the commons should be balanced, as Hardin argued, otherwise users will care less about what is common.

There are two types of commons: open-access and limited-access. Open-access commons can suffer from overuse and may collapse, such as in the case of overfishing. Limited-access commons are clearly defined and the beneficiaries are known. There are many examples of communities that cooperate through conventions to sustainably exploit resources, as demonstrated by Elinor Ostrom in her book *Governing the Commons*. However, some argue, such as Dieter Helm, that Ostrom’s examples are specific to certain contexts and that the tragedy of the commons is not generally solved. It is often the case that tragedy occurs when too many group members prioritize their own short-term profit and satisfaction at the expense of the group’s long-term interests, leading to the destruction of natural resources. Rifkin’s economic model of “Collaborative Commons” is in correlation to the Third Industrial Revolution. As well know, the Commons structure was the dominant economic model during the Medieval period, but it disappeared by the First Industrial Revolution, with the enclosures of Commons and their conversion into private properties for exchange on the market. However, Rifkin predicts that the Commons structure will soon be revived as the dominant model in the economy of the Third Industrial Revolution. This economic model is based on the idea that all the resources will be public property managed by all the participants (prosumers) themselves and congruent with the upcoming near workerless society, as automation, robotics, and artificial intelligence increase productivity while shedding human labour. Additionally, the Logistics Internet as open supply web managed by sophisticated analytics and algorithms, will replace traditional point-to-point transportation and will be used for those products still produced in factories and distributed in the Collaborative Commons model.

Chin criticizes Rifkin’s overly positive view of the “commons structure” as a false evaluation. He states:

Rifkin is more or less an ideologue of cyber-libertarianism. He shares the cyber-libertarians’ passionate belief in the superiority of peer-to-peer Commons management: in his view it will not only result in greater productivity and



sustainable civilization but is also desirable for social justice reasons, i.e. “the best governing model to ensure that the benefits of a near zero marginal society are realized rather than stymied” (p. 172), namely, that benefits will be fairly distributed to all. For this reason, he has nothing but praises for the prosumer model (Amazon, Facebook, Twitter, Wikipedia). He pays no attention to the growing criticism of such system – ‘the blind leading the blind’, or Andrew Keen’s *The Cult of the Amateur*, especially given the Millennials’ universal distrust of experts. Thus he completely brushes aside the negative consequences of the Commons model, i.e. without the guidance of experts in a “top down structure” (“vertically integrated structure”), the Millennials will become dumber and dumber as they confuse each other in their increasingly lateral peer-to-peer environment. Rifkin praises the lateral structure because peers helping each other without an authority above them and directing them sounds “democratic”. (See, for example, his praises for the emerging health care Commons where patients’ sharing information with each other about their medical conditions actually leads to everybody’s (including the physicians’) better understanding of the diseases.) He has completely overlooked the dark side which, for example, my story has illustrated: tens of thousands of young people connecting with each other online to track, complain about, and take down a “misogynist terrorist stalker” – Rifkin will certainly praise this community vigilantism made possible by social media – without understanding that this “stalker” is but a figment of their imagination. ... [O]rdinary people, because they are dumb and don’t live in reality, are merely wasting their, and other people’s, time when they come together for a common cause. Because Rifkin has a shallow understanding of reality, his conception of the peer-to-peer Commons is limited to economic causes, i.e. when people come together to share consumer products and electricity. In this the Millennials are blameless because it doesn’t require much brain-development to share things. Rifkin’s mistake here is consistent with his pervasive over-evaluation of the Millennials’ ‘empathy’. Brain-development is simply not an issue for him because he only understands things on a superficial level.<sup>15</sup>

We will return to the concept of the “commons” later, as it illustrates the narrow-mindedness of Western thinkers. Those who have accepted capitalism, criticized it (such as David Harvey, Bhaskar Sunkara, Richard Wolff, and Paul Mason), proposed new approaches (such as Christian Felber and Jeremy Rifkin), or criticized such approaches (as Chin), **all share their ignorance of *Huquq***. Let me explain.

### *Justice*

The Parthenon was constructed using approximately 100,000 tons of cut marble. What was the average cost of cutting and transporting this amount of marble per ton at that time? The Parthenon is known for its 34-foot-high Doric columns and 50 impressive marble figures sculpted into the frieze. What was the cost of carving and installing these columns and figures on site? Is it approximately 1,000 working hours per column? What was the cost per hour for a well-trained craftsman at that time? How many columns were in the city at that time? And what about Rome (Figure 3)? How many tons of stone were used to build the Colosseum? It is possible to calculate the cost using modern technology, but to determine the cost using **manual labour** from that time period would require further research. In any case, the point is that a significant portion of the society's wealth at that time was invested in

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<sup>15</sup> [ibid.](#)

Rome. In other words, Rome was a parasitic city compared to the surrounding towns. The wage of one craftsman working for one day in Rome might have been enough to build a house in another town in the empire, such as Jerash in Jordan. The picture in Fig. 4 illustrates this point. If we consider the man being carried by the slaves as representing Rome, then the rest represent Algeria, Tunis, Lebanon, etc. The picture should help clarify the issue of justice.



Figure 3.



Figure 4.

Why do we glorify the end products (such as the Pantheon, Parthenon, and Colosseum) without considering justice? If power, wealth, and knowledge are concentrated in a place like Rome, it is certain that the environmental impact will not be just on other sites. The reason for this is that the inhabitants outside of Rome had weak capabilities and were often not professional in producing urban elements. Unfortunately, this is not limited to Rome - the same can be said for Vienna under the Habsburgs, Moscow under the Russian tsars, London, Paris, etc., each representing a dynasty and a source of power in the past. This is also true today, although the sources of power are different - they are economic and bureaucratic, such as in Cairo, Riyadh, Bombay, and Lagos. This was also true to a lesser degree in past Islamic urbanism. When wealth was concentrated in Baghdad during the construction of the circular city by the Abbasids (which was not in line with Islamic principles as it involved wasting wealth on projects instead of helping the needy, as required by Islamic law), the built environment in other towns was obviously not “purely Islamic.”<sup>16</sup> The reason for this is that such towns were created by Muslims who were neither wealthy nor powerful, and their knowledge was often less thorough because *Huquq* was not fully implemented. The people did not enjoy their Islamic rights. They may have included bent entrances in their houses, but the overall quality of the built form was not at its full potential. Their houses were quite small with poor amenities. They could not afford to include *mashrabiyyas* on the facades of their houses, for example.

My argument is that, excluding *Huquq*, there has been a problem at the philosophical level with achieving balance between justice and power in all cultures in terms of allowing individuals to enjoy freedom, dignity, and creativity while creating civilizations. For example, Noam Chomsky discussed anarcho-syndicalism, while David Harvey criticized

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<sup>16</sup> For this concept of “purely Islamic”, see, Akbar, J. Rights and Civilizations. *The Future of the Built Environment*. ISL@H 2019, pp. 39-68.

capitalism, etc. In other words, no path has yet been defined to avoid oppression, coercion, and autocratic rule in order to unleash humanity's capacity for prosperity.

### *Is Islamic City Vernacular or Organic or ... etc.*

This confusion about the balance between justice and power and their relation to sustainability is evident in the field of urban studies. The reason is that the rights of any group or individual are a reflection of the relationship between justice and power. How so?



Figure 5.



Figure 6.

Most pre-modern environments that were not created by authorities were characterized by winding alleys, dead-end streets, and unorthogonal layouts of properties. Scholars who study these environments often label them as “vernacular,” “traditional,” “organic,” “decentralized,” “preindustrial,” “architecture without architects,” and environments with “bottom-up decision making.” However, these labels are misleading because they do not consider the rights of groups or individuals, which affects people's capabilities and therefore raises issues of justice.

For example, compare the settlement in Morocco (Figure 5) with the Hafsiya housing project in Tunis that won the Aga Khan Award (Figure 6). The first settlement was built by poor people, while the second was designed and built by a developer with the approval of the municipality, who owns the land. Some researchers might immediately conclude that the second development could be considered “Islamic,” while the first is simply a squatter settlement. In reaching these conclusions, questions about the rights of groups or individuals are often not raised. Despite their severe poverty, residents in the first settlement claim ownership, although the government does not recognize their claim. However, they still show a lot of care for the site. On the other hand, residents in the second development are often tenants and therefore have a lower interest in maintaining the environment. If we take into account the innate characteristics of the inhabitants, then the initiatives of the residents in both cases should be remarkably different. In the second development, the residents are not as responsible, even though the project is considered “Islamic” because the designer used traditional patterns from old Tunis, such as overpasses and dead-end streets. In fact, this

method of design process that copies certain elements or patterns from traditional environments and reproduces them for current designs is the norm among most designers.

### *What is a Mechanism?*

How *Huquq* guide, influence and draws the limits of individuals' and institutional' actions and how such limitations affect sustainability? The answer is through "mechanisms". Let us take one example. In *Shari'a* any property owner can raise his edifice as long as he does not damage others or the environment. If his action damages others, he needs the damaged individuals' permission. "Neither *darar* nor *dirar*" refers to a tradition of the Prophet (peace be upon him) that translates as: "[T]here should be neither harming nor reciprocating harm". This was interpreted to mean that one may alter the built environment so long as the alterations cause no harm to others, and was used constantly by Muslim authorities to evaluate the legality of one's actions in the physical environment. In such situations, he who wishes to raise his edifice, needs his neighbors' permissions as any addition will harm them through, for example, the increase of the number of passers-by (especially vehicles). Whether the neighbors were Muslim or not, this "mechanism" of placing decisions in the hands of the community, will certainly control density as it is often impossible to corrupt the residence to accept damage. If they accepted, they are the ones to suffer. Contrarily, if control is in the hands of outsiders such as municipal officials, some powerful property owners might corrupt officials as evident from high-rise buildings in which neighboring residents have no right to object to such a huge scale development although it will affect their community. Even if the capacity of water electric and sewage networks were increased to suffice the projected needs (which will affect the city's budget), the passers' by numbers will increase (whether pedestrians or vehicular) which will affect the neighborhood thus affecting the quality of the environment.

This is one mechanism. There are over one hundred mechanisms that would enhance the quality of the built environment through *Huquq* regardless of the residents' religion. A Muslim might argue that such mechanisms will be more efficient if implemented using Muslims' values especially the ones of respecting and caring for neighbours; meanwhile a non-Muslim might argue the same being proud of his values. For example, the residents' property-right living around a dead-end street having access to it is that they are the sole owners of the place, and thus no one could enter that space without their permission. They have the right to build a gate to demarcate their territorial claim (for some, this might resemble spaces within gated-communities; in fact, there are many differences, Akbar, 1987b). In such situation, the burden of maintaining the dead-end space is the residents' responsibility. This shared responsibility that brings the residents to meet and discuss their communal tasks will increase their social bonds, whether they were Muslims or not. Nonetheless, the usage of the space will be affected drastically: if the residents for example were Muslims, they may pray in it in *Ramadan* evenings; if they were agnostic, they might drink alcohol and dance in it. Although the nature of use is quite different in both cases, environmental consequences are quite similar. The cost of implementing services such as

street paving or lighting is the residents task, thus one should expect the cost to be reduced if the residents will do it themselves. They may both light the street from a power source connected to their properties directly without using separate street lighting cables. Or to the contrary, the cost will increase if they hired a contractor as they are ignorant of such technical requirements. In both cases, this might lead to a society with competing companies to provide such services under the residents' control which will increase quality and reduce cost. All this will mean a State with less bureaucracy, less budget, less taxes, which will increase the residents' wealth leading to higher quality built environments because the residents are much richer and thus can invest much more in their communal space. Of course, several questions regarding the practicability of these mechanisms will be raised which are answered in *Qas al-Haq* (Akbar, 2022a). Let us take a second example with some details which will hopefully clarify the balance between justice and power to delineate the relationships between mechanisms stemming out of *Huquq* and the quality of the built environment and sustainability.

### *Why Malthusian theory leads to pollution?*

The more owners in society, the more wealth is distributed justly. Although this is a well-known equation, mechanisms that lead to a society with a higher percentage of owners are fought through **monopoly**. Monopoly leads to an unsustainable environment. A good example is the Malthusian theory. How?

In 1798, Malthus wrote about the dangers of excessive population growth as world resources according to his thesis will be depleted one day. He argued that food production increases arithmetically and thus populations can outgrow their resources as their increase is geometrical. The Irish potato famine of the 19th century is a classic example. As known, this argument affected the field of economy leading to the control of access to resources (minerals, lands, etc.). Challenging Malthusians, anti-Malthusians claimed that if resources were wisely consumed, the more inhabitants, the more knowledge is advanced, and thus the more sufficient the resources for humans will be. However, as pollution is inevitable within current Western systems, their challenge was not materialized by, for example, proposing a sound societal system whether political or economic. As evident from pollution indicators, if all populations consume as Westerners do, pollution is imminent. Thus, unit-Malthusians search for wisdom in consumption was not materialized in a sound economic political theory while States continued regulating access to resources hoping for wiser exploitations of resources.

As pointed out by many scholars, globalization is unfortunately stratifying citizens into two distinct groups, the rich and the poor. This is one major plight among many produced by capitalism. However, even if one accepts that other plights, such as pollution and environmental degradation, can one day be controlled under the existing internationally accepted democratic political structure (although refutable), then this plight (rich vs. poor) arises as a serious one. It would result in divided, inefficient, crowded, and unjust cities for

some residents. The nature of urbanism and the socioeconomic structure of our contemporary cities reflect this situation. Our major contemporary cities are often parasitic, depending for their survival on the products of surrounding localities (as with lavish Rome during the Roman Empire). This illogical and unacceptable human misery, although severely criticized, is largely practiced as other societal alternatives beyond capitalism (such as Islam) are not envisioned.

### *Migration to Sites of Resources*

To clarify a remedy for this, let us explain in brief three mechanisms stemming out of *Huquq*: the first is the right of access to resources, the second is the concept of *'Ibn as-Sabil*, or the traveler; and the third is almsgiving (*zakat*).

In modern societies, access to resources, minerals for example, is limited to those individuals who have the means to obtain the required permission from the State (being influenced by Malthusian theory for wiser consumption). The system of rights in modern societies is much based on the vertical obedient relationships between individuals and the State. The State, for example, defines what constitutes the common interest for the public. If the State decides that such a mineral is quite rare and thus should not be exploited without its permission, it will have the right to limit access to that resource. This might lead to the manipulation of that mineral to the advantage of some over others. With *Huquq*, however, the situation is drastically different. No one, including the State, has the right to limit any resource to any individual. Those who manage to reach a mineral will have the right to possess it, own it and sell it or manufacture it. Certainly, one would ask: but this would deplete some rare resources? Other might argue: for sure, this will lead to the misuse of some minerals (uranium for example). Fortunately, this will not happen. The place to answer such concerns is not here as it is already discussed in "*Qas al-Haq*" (Akbar, 2022a). However, in this short essay it might be convincing if we discerned the impact of recognizing ownership of minerals (not lands) to those who possessed them, on the quality of cities. I will first explain briefly the different opinions of Muslim scholars regarding access to resources.

The relationships between individuals and the State were explained by jurists at the theoretical level, but were not fully implemented in practice except during the reign of the first four Caliphs. In general, early rulers within each dynasty (Umayyads, Abbasids, Ottomans, etc.) were much keener to implement *Huquq*. Thus, what will be explained next was not practiced in most past Islamic eras nor in our contemporary societies. Therefore, because *Huquq* was not fully implemented, one can argue that most past settlements plus all contemporary ones cannot be characterized as "**purely Islamic**", but rather as built environments inhabited by Muslims. Why?

The Prophet (peace be upon him) announced three traditions, or *Hadiths*. The first is: "No *himā* [protected area] except for God and his messenger." The second is: "He who preceded other Muslims [in possessing] what they did not [possess], it is his [ownership]." The third is:

“Muslims are partners in three [things]: water, grass, and fire.” Jurists used these traditions and the method of *Qiyas*, or logical reasoning, to come to conclusions about the rights of access to resources.

Jurists have distinguished two types of mineral: surface minerals (*ma‘adin zahirah*) and hidden minerals (*ma‘adin batinah*). Surface minerals are the ones that can be obtained with little effort such as salt, while hidden minerals are those that need a great deal of effort to obtain such as gold. Hidden minerals were further divided into two types: solid minerals such as silver and liquid minerals such as oil. Further, jurists have classified properties that hold minerals into three types: private properties, treasury properties (owned by the State), and *mubahah* or accessible properties for the public (this last category does not exist in most if not all contemporary societies). To minimize land speculation in order to maximize its utilization by as many individuals as possible to exploit minerals, *Huquq* has devised mechanisms to ensure that unutilized lands containing minerals could not be owned by any institution or individual, even by the State (Akbar, 2022a).

Regarding minerals on lands not owned by the State, rulings of jurists varied if a mineral exists on privately owned land. Most Maliki scholars had the opinion that minerals on all lands, including private lands should be owned the State. The ruler should decide on their exploitation. On the other hand, the jurists of the three remaining schools of law, as well as some Maliki jurists, although agreeing that minerals on private lands are **not** owned by the State, had two different rulings. The first is that of all Ḥanafī jurists, some Shafī‘ī jurists and Saḥnūn (a prominent jurist from the Maliki School of law, d. 854 AD) which states that ownership of minerals belongs to the owner of the land. The second ruling is that of most Ḥanbalī jurists and some Shafī‘ī jurists which states that solid minerals should be owned by the land owner, however, liquid minerals should **not** be owned by the land owner. If such liquid minerals could be reached from neighboring property, it should be owned by those who managed to obtain them.

The jurists of the Ḥanafī, Shafī‘ī, and Ḥanbalī rites agreed that land containing surface minerals could **not** be revived or owned and could not be allotted by rulers. The reason for such prohibition is to facilitate public access to such minerals. Those minerals are just like water and pasture. They are for those who collect them. They argued that if such lands were owned, a class of wealthy people would be created who is not in fact productive.<sup>17</sup>

What if a group of individuals as partners managed to discover a remote site with hidden minerals, and invested much time by erecting the needed construction for mining, do they own that land, or should they be forced to give others the right to collect minerals from the same spot? Regarding hidden minerals in dead lands (lands not owned by any one, known as *mawat*), the majority of rulings of jurists gave those who invested the right to remain in the area for mining, but that they should not hinder others trying to reach the same source of mineral from a neighboring site.

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<sup>17</sup> This concept will be explained after few pages within the concept of *himā* in *Huquq*.

These are a few detailed glimpses of *Huquq* out of many that open the door to accessing resources. Jurists' rulings in fact allowed for the maximum exploitation of resources by opening doors to as many end users as possible. This will create a society with maximum percentage of owners. This simple concept will have a fundamental positive impact on both: quality of life and quality of the built environment sustainability (Akbar, 2022a). How?

As resources distributed naturally in distant sites from each other, *Huquq* devised another mechanism that encourages travelling to mining, agricultural or pasture lands. *'Ibn as-sabil*, or literally, the sun of the road, is a specific term for the traveler whose travel expenses is funded by *zakat*, or alms giving. Taxation in Islam, known as *zakat*, is generally 2.5 per cent of a merchant's annual income. If the person is a farmer, it is 5 per cent of the annual crop if the land is irrigated by human effort or 10 per cent if it is irrigated naturally. If the income is from mining, then it is 20 per cent of each extraction, etc. In fact, many details of *zakat* for all types of human activities were explained by jurists. What is interesting is that *zakat* should be given to eight types of people (not to infrastructures or externalities such as schools or hospitals). Among those types are: the poor, the in debt and *'ibn as-sabil* (the wayfarer or the traveler). Jurists insisted that it is not even the right of the State to relocate the funds of *zakat* to any other project (a dam or a road or even a mosque for example). I. e., Islam invests on individuals and not in infrastructures. Those empowered individuals will for sure add to the society's wealth leading ultimately to increase available funds for services and infrastructures (Akbar, 2022a).

With this wealth of funds designated for *'ibn as-sabil*, jurists have developed an extensive literature on the conditions that give an individual the right to obtain funds to travel. If one reviews those conditions he will conclude that they are minimal, such as that a person will not be funded if he declared that he is travelling for a vacation, or if he is touring several regions. However, it is essential to favor *'ibn as-sabil* if he is seeking a job or knowledge. In fact, *'ibn as-sabil* was mentioned eight times in *Qur'anic* verses encouraging Muslims to pay generously those wishing to travel.

In other words, society has designated much of its resources to encourage job seekers, mineral explorers, and merchants to explore new sites for jobs, minerals and imports. Meanwhile, Islam did not recognize borders between regions. The concept of a country demarcated by borders controlled by a State is modern in the Middle East. A world without borders would create a truly global situation that allows all members of society, especially the needy, to travel with the funds of *'ibn as-sabil* and exploit land resources. Definitely, such travelers will transport some products with them that might be dismantled in the new site to be reproduced by other entrepreneurs. Above all, they will transmit knowledge with them. I.e., *Huquq* was pushing for globalization since then. This is the opposite of our contemporary situation where borders between countries are opened only for the rich and the powerful to invest in poor countries by exploiting the needy.



## *The Nearer Then the Nearer*

Moreover, *Huquq* devised other mechanisms that would reduce the chance of crating mega cities through decentralizing most political, economic and administrative activities (Akbar, 2022a). In such decentralized conditions, travel would obviously be to merited locations that contain minerals and life supporting resources; i.e. to sites of productive jobs, and not to capital cities or regional cities occupied by bureaucrats as in our contemporary world. It is a well-established fact that current migration from rural areas to cities is due to several reasons among which are job opportunities in major cities. Most investments of contemporary societies (universities, hospitals, stadiums, etc.) are in cities where the rich and powerful live at the expense of rural areas. Thus, hoping for a better life, migration of the poor has crowded cities while States have controlled access to resources. Although locations of some contemporary cities do not support life, much of society's wealth is invested in them. Water is brought to Amman and Riyadh, food is brought to Dubai and Casablanca. The location of unjust modern cities does not reflect the merit of their sites, but rather the socio-political structure. Even mega cities, with merited sites, such as Cairo, are over-crowded and thus became consuming parasitic cities living on surrounding economies.

On the other hand, if *Huquq* is implemented, job seekers will be drawn to sites that need jobs and sustain life necessities. A major mechanism in *zakat* is that it should first be given to the local needy but not even to relatives living in close by cities for example. The prophet, peace be upon him, has declared that the poor of each locality are more entitled to *zakat* and then the next closest ones depending on their locations. I. e., distance decides priority of rights (*al-'aqrabu fa al-'aqrab*). This mechanism, coupled with the *'Ibn as-sabil*, will draw the unemployed to sites of those who can pay *zakat*. The ability to pay *zakat* means that *zakat* payers are living in sites that are saturated with minerals, crops, etc. Thus, settlements created by *Huquq* compared to contemporary cities would reflect the merit of the site and not the bureaucracy of the powerful. In such a scenario, settlements would attract job seekers. Over time, the unemployed (the poor) in crowded settlements would be attracted to newly established sites that are saturated by *zakat*. In other words, unemployment with *Huquq* means that settlements of the unemployed can no longer absorb emerging new hands as the resources and manufacturing activities depending on them would not support new jobs. Thus, they have to travel.

## *Should one pays Zakat as Objects Or as a Cash Money?*

Among the interesting mechanisms of *zakat* devised by *Huquq* (excluding *zakat* from merchants) is that *zakat* could **not** be given as cash money (*'athman*) in most cases. It should be given as objects (*'a'yan*) from the same products. The *zakat* of cows should be cows; dates should be dates, etc. This mechanism makes it difficult to transport objects as a *zakat* to the location of the poor, rather the poor will be drawn to the sites of those products. If the surplus of a product as a *zakat* is olive, this means that this site is willing to absorb more working hands to grow olive trees. Meanwhile, *zakat* of merchants are usually cash money (*'athman*).

Part of *'athman* will be paid to travelers to cover their traveling expenses. I. e., two mechanisms create the movement of manpower to saturated lands with promising productive jobs (and not bureaucratic jobs); one pushes the unemployed, and the other pulls them. This is one example of how few mechanisms work together to fight poverty which will change quality of life and consequently the environments. These mechanisms by moving the unemployed will reduce the rate of unemployment to almost a zero level. Ultimately, these mechanisms will lead to a continuous balance between various settlements to maximize the benefit of all working hands for the benefit of the society (Akbar, 2022a).

### *Comparisons*

In such cases, the difference between the rich and the poor would certainly be much less than the disparity which current globalization is producing. In June 2019 for example, the richest 0.1 per cent of Americans held nearly a fifth of the country's wealth, up from 7 per cent in the late-1970s and equal to the wealth of the bottom 90 per cent. Nowadays it is even worse. Thus, with *Huquq* we should expect a higher quality of life in such economically homogenous settlements, unlike the case of contemporary globalized cities that are gradually being transformed into few islands of the rich in an ocean of the impoverished as in Mumbai. Moreover, it is very crowded. Number of residents per square mile for example in Ulaanbaatar, Mongolia are 670,261 individuals. However, major Western cities such as New York, although, managed to some extent to overcome crowdedness and poverty, still some residents, especially emigrants, did not enjoy their share of opportunities in education, training and health, thus affecting quality of life and consequently the built environment.

With *Huquq*, residents will not be forced to transport goods and life necessities from one site to another (which is costing much and polluting the environment) as settlements are merited to sustain life necessities since first explorers selected sites that sustain life requirements. Of course, not all sites could support all life necessities; some transportation of goods will be needed.

For sure, one will ask that resources will be depleted if taken by those who managed to exploit them! Indeed, the opposite will happen. Consumption will drop. The reason is that capitalism which created the poor (through monopoly) who are forced to work extra hours, led to the maximization of production of minerals by the rich who are seeking more profit. Charles Dickens critique of unrestrained capitalism by the heartless business men was lucid. Extreme poverty forces the poor to work extraordinarily just to survive, while the consumption of the rich increases. A rich man's house that has thirty aluminum windows in a mansion is a good example of extravagance. Undoubtedly, the argument is not to prohibit the rich from enjoying their wealth, but rather, their wealth accumulation should not be from manipulating others by enjoying extra rights over others. Most of the rich became richer often because of monopoly at all levels.

If access to resources is made available as *Huquq* suggests, it would be difficult for a wealthy person to hire others (because there would be no poverty), unless they offered much higher wages. In such situations, people may join forces and work as partners or become competing producers. To give an example, if you need a job, why then should you work in others mineral mine and not extract the same mineral from the next site! Often, the answer might be: “I do not have the means in terms of capital or knowledge to start mining”. *Huquq* devised other mechanisms to overcome accumulations of wealth in few hands. *Huquq* also pushed for sharing knowledge without hindering the process of knowledge growth (Akbar, 2022b). Thus, the logical situation is that most workers will join as partners and thus will not exhaust themselves as they are not starving. This will reduce their production while for sure it will increase its quality as production processes becomes enjoyable-gathering and not a mandatory duty for survival. Such ambiance will affect them socially and psychologically raising quality further. Notably, the summation of all those partners without bureaucracy will increase the percentage of producers adding to the quality of life. This happens because the society at large is based on the absence of bureaucratic governmental institutions which will increase the number of producers (Akbar, 2022a).

Now days, companies are owned by those who hire the unemployed, thus owners do not have to be on the production sites. A billionaire living in Geneva may own factories in India or Bangladesh. If a factory pollutes the environment owners will not be affected as they are not on site. Or even they might corrupt official of the factory’s site to maximize profit by avoiding possible treatment of industrial waste. However, when most people have similar income levels, the production industry will primarily rely on companies that are owned and operated by the individuals working within them as partners. The production method will be characterized by the lack of ownership by individuals who are not actively involved in the operations. In these situations, if the factory is causing pollution, the owners will be the ones who suffer the consequences. Thus owner-workers will search for manufacturing methods that does not pollute. If we add to this the mechanisms stemming from *Huquq* of damage in which surrounding residents will have the right to stop polluting factories; gradually all polluting factories will be eliminated. The production system will change to technologies that produce factories that will never pollute. Not polluting becomes the norm and the convention.

### *Shipping*

Now let us imagine that settlements were created by referring to *Huquq*, the people will not be forced to work extra hours to live lavishly, and their consumption will concentrate on life necessities as each purchase of complementary goods means extra hours of work. Shipping goods from overseas will diminish as their prices are higher compared to goods manufactured locally which depend mostly on 1) workers who own and thus will not pollute, 2) and on existing raw materials, local plants, etc. Let us not forget that all imported goods or raw materials will also be produced under similar conditions, that is, by individuals who own the means of production. In these circumstances, not all sites will be polluted because

workers who are also owners will not be forced to work excessive hours just to make ends meet.

Pollution will be in its maximum when the residents of the site are powerless and have no right to mine. A *Daily Mail* reporter who travelled to Baotou, China, observed mines, factories, and dumping grounds of the rare-earth industry to conclude that the site was horrific. Lauterwasser describes a situation where villagers are experiencing various health problems, including hair loss, skin and respiratory issues, and an increase in cancer rates. He also mentions radiation levels being significantly higher in a nearby lake. Additionally, it's stated that the local environment has been negatively affected, with plants not growing and animals falling ill or dying.<sup>18</sup>

With current capitalist societies, container vessels are essential for global economy. Such massive vessels cannot move with “renewable” energy. Fred Pearce noted in Nov. 2009 that the 16 super-ships emit as much sulphur as the world fleet of cars at that time (an estimated 800 million cars driving around the planet).<sup>19</sup> Although it is based on his calculation, it made big headline to be further investigated. Cost of transport is so cheap because ships are allowed to burn the dirtiest fuels and pay no taxes for it. The cost is cheap enough to send salmon caught in Scotland to Vietnam for processing and ship the filet right back to Scotland. Moreover, the shipping industry is not complying with international law by burning thick, sulphur-laden fuel, and that the shipping industry emit a large quantity of CO<sub>2</sub> and other pollutants. Despite this impact, the shipping industry has a powerful lobby that works to downplay its impact on climate change from the public. The International Maritime Organization (IMO) which is responsible for policing the shipping industry, has not been taking sufficient action to address the pollution caused by shipping vessels.<sup>20</sup>

### *Principles of Ownership within Huquq*<sup>21</sup>

In a capitalist society, the percentage of ownership of dwellings might reach 65%, while in a socialist society it might drop to 20%. However, with *Huquq*, ownership will reach 100%. How?

“Whoever is killed while protecting his property then he is a martyr.” This is a tradition or *hadith* said by the Prophet peace be upon him. Under Islam, the owner of a property is entitled to defend it as he would defend his life, even if such defense results in the death of an

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<sup>18</sup> <https://medium.com/@FeunFooPermacultureRewilding/a-third-industrial-revolution-would-seal-our-fate-why-jeremy-rifkin-is-dead-wrong-d224127ec195>

<https://www.dailymail.co.uk/home/moslive/article-1350811/In-China-true-cost-Britains-clean-green-wind-power-experiment-Pollution-disastrous-scale.html>

<sup>19</sup> <https://www.dailymail.co.uk/sciencetech/article-1229857/How-16-ships-create-pollution-cars-world.html>

<sup>20</sup> <https://medium.com/@FeunFooPermacultureRewilding/a-third-industrial-revolution-would-seal-our-fate-why-jeremy-rifkin-is-dead-wrong-d224127ec195>

<sup>21</sup> For further explanation see Ch. 2 of *Crisis in the Built Environment*, (Akbar 1988, 2021).

aggressor. This respect for ownership is implicit in the *Qur'an* and the Prophet's tradition and grants owners immense control.

The first principle of ownership is that everything necessary and useful for survival is subject to ownership, and conversely, what is not necessary or useful cannot be owned. Meanwhile, such ownership should not harm others, according to the tradition that "there should be neither harming nor reciprocating harm." Or: "*la darar wa la dirar.*"

*Shari'ah* invests the claim of control in the owner. Those things that contribute to living cannot be fully useful unless they are utilized, maintained, modified, developed, or built. They must be controlled by someone. Almost all definitions of ownership given by Muslim jurists explicitly express the principle of control. 'Ibn Taymiyyah's (d.728/1328, from the Hanbali rite) definition of ownership is "the legitimate ability to manipulate the objects."

Need and control without harming others have been the main prerequisites for establishing ownership. The ownership of heights is an illuminating example: A debate took place regarding the limits of owning what is below a territory. Al-Qarāfi's (scholar from the Maliki school of law) opinion is that the owner of a territory usually benefits from heights for viewing rivers and gardens or for protecting his privacy by building parapets on his edifices, but such benefits do not exist beneath the ground beyond the foundation. Thus what is beneath a territory cannot be owned. This opinion was contested by 'Ibn ash-Shat (from the same school) who pointed out that the owners of territories can, indeed, benefit from the ground by, for example, digging deep wells or basements. He argued that according to the principle of need there is no justification for preventing a person from deepening his well. Thus the owner of a territory has the right to raise or deepen his territory as he wishes so long as he does not harm others.

Regarding controllability as a determining principle of ownership, jurists debated the selling of the space on one's roof as a piece of land. Some schools of law consider the selling of heights-right as a selling of the air above a territory, which is not controllable and therefore illegal. Other schools of law consider it as an ownership and rule that an owner can sell the space on top of his house, as long as an agreement is reached between concerned parties. Meanwhile, all schools of law agree that an owner can sell the upper floor(s) or any part of his building - such as cantilevered parts - as long as it is built since anything built is well defined and controllable. These principles will lead to a high percentage of owners in society through revivification if implemented.

### *Revivification* <sup>22</sup>

Land appropriation was common since during the early Islamic period towns were expanding and land was often vacant. Not unexpectedly, appropriation has been extensively

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<sup>22</sup> For further explanation see Ch. 1 & 4 of *Crisis in the Built Environment*, (Akbar 1988, 2021).

discussed by Muslim jurists. They recognized unowned and unused land as *mawāt* and followed certain principles in utilizing it.

*Mawāt* literally means “dead”. Concerning property, it means unowned and unutilized land. Land is considered dead if there is no trace of building or cultivation; if it is not used by the neighboring locality as, for example, a burial ground, or as a source of wood or food for cattle. However, differences among schools of law exist regarding the status of unutilized land abutting urban areas. Is it to be considered dead land or not? All schools of law except for some jurists from the Ḥanafī rite, consider it dead land.

According to custom, deadlands may be revived and consequently owned by the reviver. *’Iḥyā’* literally means “life-giving”; or controlling and using dead lands brings ownership to the reviver. This will increase the percentage of owners in society. There is ample evidence from the Prophet’s traditions, rulers’ actions, and jurists’ opinions to support the principle of assuming ownership of dead land by reviving it through cultivation or building on it.

The Prophet said, “The people are God’s people, the land is God’s land, he who revives a piece of dead land will own it, and the unjust root has no right.” In another tradition, he declared, “He who revives dead land will be rewarded by God (in the day of judgment).” A man who had revived dead land came to ‘Alī (the fourth caliph) and said, “I came across a land that was ruined or its (original) inhabitants had left it, and I dug streams and cultivated it.” ‘Alī responded, “Eat pleasurably (enjoy it) you are righteous, not impious, a reviver, not a destroyer.” ‘Ibn Qudāmāh relates that “Reviving dead lands is the custom in all regions even if there are differences among jurists regarding its regulation.”

Differences arises among jurists regarding revivification of unutilized lands that are owned. These are classified into:

1. Unused land that is owned by someone — through purchase, for example – but not utilized by him. It is the consensus that such land may not be revived.

2. Land that is owned by someone who revived it, that has since been neglected and consequently became, over time, dead land again. Mālik’s opinion is that such land may be revived again and owned by others. ‘Abū Ḥanīfah maintains that if the original owner is unknown, then it may be revived and owned. Ash-Shāfi‘ī states that it cannot be revived.

Action which results in ownership is considered reviving if it leads to the conventional use of the intended form of revivification. For example, if the reviver intends to reside there, he must erect walls. If he intends to cultivate, he must supply water to dry land, or drain water from a marsh; then he must plow the land.

### *Allotment*

Allotment in *Ḥuquq* is similar to revivification. *’Iqtā’* literally means the act by the ruler of bestowing or allotting a piece of land to individuals. Allotments are, in general, of two

types: the first type is one of allotting fiefs to be owned through revival. The second is that of allotting land with the right of utilization but not ownership. In both types the ruler may give allotments to individuals from dead lands or lands owned by the State.

According to the principles of ownership (need and controllability), the authority does not have the right to own public lands. The lands owned by the state are the ones given voluntarily to the state by the original owners - which is quite rare - and the lands owned by those who used to rule the conquered areas, such as those properties that formerly belonged to the Persian king and his family. Thus, allotments were often from dead lands.

If the people could revive dead lands, then why was allotment practiced? It was practiced mainly in cases of new towns. Documented examples of fiefs are numerous. To name one example, al Balādhuri, in his documentary, *Futūh al-Buldān*, mentioned the word 'iqṭā' (allotting) more than ninety times. In one citation he reports that when the caliph Ja'far resided (232/847) in Hārūni he "built many buildings and made allotments to the people in the back of (the town of) Surrah-man-ra'a ... Then he established the town that he called al-Mutwakkiliyyah." Allotting lands was a common and well-understood mechanism practiced by all rulers at all times for establishing ownership. Yet, this mechanism is obviously not like revivification which leads to a higher percentage of owners at the expense of what previously was dead land.

From these principles of ownership, we may conclude that unutilized lands were not considered to be owned by individuals or the state and that lands outside towns and villages were consequently dead lands. Revivification and allotment were the mechanisms for establishing ownership in most, if not all, urban areas.

### *Principles of Revivification and Allotment*

All the principles applied to revivification and allotment provoked and helped the people to act and own lands in the Muslim world, thus the percentage of owners will be much higher than other societies. Let us now review some issues regarding revivification.

#### *Negligence*

All schools of law agree that the ownership of a property which is not owned through revivification does not lapse as a result of the owner's negligence. However, a few jurists argue that some small and invaluable objects, because of their nature, can be taken over by others if neglected by the owner for a long period of time. An example of such objects would be building materials which may be picked up since the person who picks them up derives benefit from them. This principle does not apply if such objects fall from a building without the owner's knowledge. Ziyad proposed rebuilding the governor's building in al-Basrah to eradicate the association of his name with the building. He was told that such reconstruction

would, to an even greater extent, link his name to the building. Thus he demolished it and abandoned it. “Thereafter, most of the dwellings around it were built by (using) its deserted muds, bricks, and doors.”

Is the ownership of revived dead land rescinded because of the reviver’s abandonment? Some of the Ḥanafī jurists consider long term negligence as tacit permission for others to use the property and not a relinquishment of ownership. Others argue that ownership lapses with negligence. The prevailing school of law in North Africa, the Mālikī school, consider revived land that is neglected for a long time to be dead land again, thus it can be revived by others.

### *Demarcation and Time Limitation*

Does demarcating (*’iḥtijār*) a piece of land with stones or the like constitute revivification? What is the time limit for keeping land demarcated without reviving it? What is the time limit for having an allotment without utilizing it? Whether a person demarcated land or was allotted a fief by the ruler, the limit is three years, then his right lapses. Regarding demarcation as a first step towards revivification, the Ḥanafī school of law considers placing stones or other markings around the land merely an action preceding others, giving the reviver the right not to be harassed. The Shāfi’ī rite considers that whoever begins reviving a piece of land by demarcating boundaries, i.e. digging foundations or marking it out or nailing up wood as columns, but cannot continue reviving, has for three years, by virtue of the demarcation, the right of privatation (taking precedence over others) but not ownership. From opinions of jurists and actions of rulers, it is evident that demarcated lands or allotments are not owned and so may not be sold unless they have been revived.

### *Overlapping Efforts*

To own the property, the reviver or allottee must exert some effort. Even for demarcation, jurists require that some effort, such as building a wall around the land, be made to establish the right of privatation (*’iḥtijār*).

The principle of revivification, by its nature, invites the overlapping of efforts. A person may revive deliberately or inadvertently land that is owned by others. However, the reviver’s effort is not wasted. The Prophet said, “He who cultivated the land of others without their permission will have his expenses, but not his cultivation.” However, if the owner refuses to compensate the reviver, then both the owner and the reviver will share the property as partners. Meanwhile, the reviver will not be compelled to pay the owner the value of the land. If a person builds on land owned by others while the owners witnessed but did not react, then the owner must compensate the builder in cases of dispute. But if the owner objected, then the builder must demolish what he has built and has the right to take away what he has built. Finally, “the reviver is more rightful (in owning the land) than the demarcator,” i.e. if a person revives land that is demarcated or allotted to others he will own it. In fact, many cases



were reported in which overlapping of efforts took place during the early Islamic periods. Those cases were used as guidelines by Muslim jurists in resolving such disputes.

Regarding permission of the authorities, all schools of law except a few jurists from the Ḥanafī rite agree that, according to the Prophet's tradition, the permission of the state is not needed to revive dead land. They also recommend that the state recognize the reviver's right in cases of dispute. Mālik makes a distinction between dead land abutting urbanized areas and those which are distant from it. He concedes that the former requires permission, but not the latter.

### *Incentives to Act*

In all these principles of allotment and revivification, one fact is evident: land is never sold by the state. Rather it is taken at no cost by those who put in the effort to make it usable. This basic concept implies incentive which leads to a society with a high percentage of ownership. Individuals are provoked to act to own properties. If an individual realizes that he can claim property without permission from the authority he will do so, simply because for most individuals owning property is a desirable accomplishment. If the an individual, as a reviver, knows that he will not only own the land by reviving it but will also be rewarded by God on the day of judgment, he will act. If a person knows that unutilized lands are considered dead land by some schools of law, or has tacit permission of other parties to utilize the land, he will be motivated to act. If he realizes that land revived by others but neglected by them becomes dead and can be owned through revivification, he will be stimulated to act. If an individual recognizes that if he does not utilize his own revived land other parties may revive and take it away, he is apt to act. If a person recognizes that he can build by using what others have neglected and left behind, such as wood or bricks, he may act. If an individual that is allotted a fief knows that unless he utilizes the land within three years, he will lose it, he will be provoked to act. If a an allottee knows that his allotted or demarcated land is not yet owned by him and that there is a possibility such land can be taken over by others through revivification, he is more likely to act. If an individual knows that if he acts and puts in effort, such an effort will not be wasted even if it turns out that the land belongs to another, he will be stimulated to act. In these cases, we should expect the society to be characterized with a very high percentage of owners in the Muslim built environment compared to other societies.

It is a natural tendency of individuals to wish to expand; otherwise, the Prophet would not have said, "Whoever takes the land of others unjustly, he will sink down the seven earths on the Day of Resurrection." In fact, if the principles of ownership are re-examined in the light of this tendency to expand, it becomes clear that they were established to deal with conflicts between expanding parties.

The inevitable disputes arising between motivated expanding individuals have traditionally been solved by communication and dialogue leading to agreements. The resulting built environment was one in which ownership was based on conventions between

neighbors rather than legal documents. Many historical incidences demonstrate that most lands were owned without the authority's permission. When az-Zāhir Baybars took power (658/1260), he decided to take over all the lands in the hands of those who could not prove legal ownership and turn them over to the Muslim treasury. The Muslim jurists, led by an-Nawawi, protested that such action is illegal in Islam, and whoever had a property in his possession, owned it. They recommended that the authority should not annoy the owners and owners should not be required to give proof of ownership so long as ownership was accepted by neighbors, which the Sultan did. Intervention by the authorities has thus been minimal in the area of ownership of property.

Several questions would arise. Would not these principles lead to a chaotic environment? How streets exist without preplanned rules? Who controls the owner's actions especially the rich and powerful? All such questions are dealt with in the book of *Qas al-Huq*. However, for the purpose of this essay, advantages of comparing *Huquq*, which will increase the percentage of owners, with current legal systems that leads to stratification are endless. Advantages of implementing *Huquq* can be predicted in all aspects of life such as happiness, efficiency, prosperity, justice, sustainability, etc. . Let us think of just two examples; first: the less poverty there is, the less crime, the less the need for police, courts, jails, etc.; consequently, the more the financial power of society will be, the better the education and awareness will be. Second: "The Tragedy of the Commons" will not appear if we activated "rights of precedence" and "accretions of decisions". How?

### *Right of precedence*<sup>23</sup>

The idea that creating a high-quality, sustainable built environment that meets the needs of its users requires changes to the system of rights influenced by capitalism. Understanding how different systems of rights interact with the built environment is important in this process. There are three types of decisions and actions that can shape the built environment: 1) those that are governed by the laws and regulations of democratic capitalist societies, 2) those based on new philosophies within capitalism (such as the "internet of things"), and 3) those based on principles that generate rights (as in *Huquq*). There are two types of environmental rights: rights based on laws as in contemporary societies, and acquired rights that result from actions as with *Huquq*. The second rights based on *Huquq* are in contrast to codified modern height regulations for example, which set the same building height for all properties in a particular location.

As explained, the Prophet's tradition "neither harm nor reciprocate harm," governed actions and resolved disputes related to the built environment. Eliminating damage allowed for freedom of action within a property, as long as no harm was caused to others. Jurists recognized that some actions, such as blocking a neighbour's windows or cutting off their light and fresh air, may cause harm but are necessary for the benefit of the acting party. The

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<sup>23</sup> For further explanation see Ch. 5 of *Crisis in the Built Environment*, (Akbar 1988, 2021).

principles were used to judge actions that could impact the surrounding area and to resolve disputes between parties of different properties. Thus, bureaucracy needed to control the environment was eliminated, which helped to prevent corruption and social and financial stratification. How?

The principle of “damage” implies that an acting individual does not need permission to act. However, when a damaging situation arises and the damage is interpreted differently by the involved parties, dialogue among involved parties and jurists, if needed, will resolve the dispute to reach an agreement. The differing perceptions of damage held by various parties, will lead to agreements or rulings that will be created within a framework of avoiding dominance as agreements are reached between parties of different properties. How?

The Prophet’s tradition of “neither *ḍarar* nor *ḍirār*,” was used to evaluate the legality of individual actions in the environment such as changing the function of a property, to resolve disputes between parties. Different types of damage, including audible, olfactory, and visual, were taken into consideration when deciding whether an action should be allowed or not. As parties were given freedom to act as long as they did not cause harm to others, damages has to be counteracted in order to avoid disputes. This allowed for maximum freedom while also regulating the relationship between adjacent properties and preventing dominance.

Damage is classified into two types: new and pre-existing. Pre-existing damage or “*hiyazat ad-darar*” is further classified into two types: “damaging precedents” (actions taken in the past that will inevitably damage others later on) and “damaging acts” (actions that could potentially but not inevitably damage others in the future). Jurists’ opinions varied on the continuation of “damaging precedents,” with some allowing them to continue regardless of the amount of time that has passed, and others not allowing them to continue.

The concept of “right of precedence” dictates the limits of control that parties have over their own properties in relation to their neighbours. The “right of precedence” refers to the right of a property to damage other properties within certain limits, even if the other properties do not have the same right. This concept is based on the principle that parties should have maximum freedom while also respecting the relationships between them. The “right of precedence” is determined by the order in which parties take actions, rather than the order in which properties are built. It applies to different types of ownership, such as individual, collective, and public, and applies to new and pre-existing damage. In situations where one party initiates a damaging action, other parties has the right to object and the initiating party must either eliminate the damage or have his action forbidden. For example, if a person changes the function of his house to a mill that causes damage, he has to eliminate the damage of noise or vibration. If he could not, he will be stopped from changing the function into a mill. This will widen the residents responsibility and thus experience as if the whole site is transformed into a laboratory for inventing environmental solutions. I.e., “right of precedence” ensured that dominance is eliminated and that the relationship between properties is ordered and regulated, without external intervention.

Thus the role of agreements and responsibility in determining the “rights of precedence”, can be viewed as a tool creating an ordered environment in which relationships between properties are regulated as a **series of constraints**. The “right of precedence” is determined by the preceding action and not by the preceding building, and that parties who acted later had to accept previous damaging acts as constraints. This means that parties were careful to realize their rights in the environment. The relationships between parties of different properties were regulated and ordered by the physical environment as a **series of constraints**, created by the responsible parties rather than an outside authority. Those series of constraints include building heights, and functions, the width of streets as a result of revivification, window locations, drainage facilities, etc.

If “*hiyazat ad-darar*” is a concept which means first revivers or initiators will possess the amenities which make their properties functions properly; then for sure, one would ask: is not such right unjust for later revivers? Again, *Huquq* devised other sets of rights which led to the creation of environmental conventions. Conventions which all residents followed willingly. In other words, rights of precedence are group of rights that are very vital to order the relationships between neighbours without the need for external authorities’ interventions such as municipalities (Akbar, 1988). Rights of precedence will reduce societies’ spending. For example, all elements between properties in traditional Muslim built environments such as overpasses (*sabat*), single party-walls, water discharge channels, etc. are signs of materialized rights of precedence without possible future conflicts. They are elements that ordered the relationships between property owners; otherwise, the environment will be chaotic. Rights or precedence brought order without bureaucratic class.

What is even more interesting is that *Huquq* are grouped to salvage and support each other. Trying to understand a group of rights separate from other rights will not often make sense. For example: “the tax or *zakat* of 40 sheep (up to 120) is one sheep”. It cannot be cash money. The *zakat* of, for example 120 sheep is still one, but not one sheep plus some cash. The question is then, why *Huquq* insisted on *zakat* of livestock to be of the same type and not cash? Moreover, why an owner of 40 sheep is asked to pay his *zakat* as one sheep (the equivalent of 2.5%) which is as much as those who own 120 sheep (the equivalent of 0.83%)? I. e. both will pay the same, one sheep, as it is impossible to pay half or third sheep. The reason is that half a sheep cannot be alive and thus should not be shared by more than one destitute to avoid possible conflicts. This right may not make sense till we refute it to be salvaged by another right which is: “those who give away their *zakat*, are not allowed to repurchase their *zakat* item”. In such situation, it will be difficult for merchants of livestock to monopolize the market as the market is always saturated with livestock from their own *zakat*. If *Huquq* allowed *zakat* of say 100 sheep as one sheep plus some cash, this might be interpreted as allowing the possibility for cash payments for all *zakat*. Islam insisted to close such door fearing misinterpretation which might create monopoly if *zakat* was paid cash. These mechanisms will help the needy as it will bring down prices of vital commodities. Thus, the first obstacle facing destitute to work, which is hunger, is eliminated. These are few examples of how *Huquq* jointly create higher quality environments by employing the

maximum through supporting them by eliminating hunger. Let us not forget that famine is often caused by misusing power and not shortage of resources as Malthus claimed.

In this essay, I reviewed the impact of a few mechanisms. *Huquq* is composed of over a hundred mechanisms interacting together to push societies, whether Muslims or not, to a higher quality of life in all aspects, not just urbanism. If *Huquq* is implemented, innovations of those well-off masses will be unleashed without damaging others or the environment. Those masses that are enjoying freedom, honour, respectability and dignity will be creative in all aspects of their productions whether in the economical or environmental level. Their environments might commence with poor shapes and forms in new locations; nonetheless, gradually it will be crystalized to sophisticated compositions that suits their conditions. In these circumstances, the built environment is not an end in itself, but rather, means for a dignified life.

Before we explain “the Tragedy of the Commons” once again, let us first understand the cultural impact of not ruling by *Huquq*.

### *Cultural Impacts*

In his book *Beyond Nature and Culture*, French anthropologist Philippe Descola argues that in order to be sustainable, a culture must have a close connection to the natural environment surrounding it.<sup>24</sup> This is the case with primitive societies, which do not have a clear separation between nature and culture. These societies do not distinguish between the concepts of nature and culture because they are so closely intertwined in their daily lives.

Another author, Daniel Quinn, argued that there is not a single correct way for all people in the world to live because cultures and ecosystems are too diverse.<sup>25</sup> A diversity of cultures can increase resilience and the ability to respond to catastrophic events. This is similar to a field with a variety of crops, which is more likely to provide a stable food supply even in the face of irregular weather. The example is given of having only one sensitive crop, which could be wiped out by a late frost, leading to starvation, compared to having a variety of crops, which could provide enough to survive. On this matter, Lauterwasser criticizes Rifkin. He describes the idea that a culture that is closely connected to its ecosystem is more sustainable than one that is disconnected from it. Lauterwasser argues that helping countries to “develop” by introducing them to the digital world, as proposed by Mr. Rifkin, is actually moving them away from sustainability. He also suggests that Mr. Rifkin’s plan for “developing” countries is based on a sense of superiority and that Mr. Rifkin doesn’t understand the importance of preserving the natural ecosystem. He asserts that balancing a global economy with the needs of the planet’s biosphere is impossible. He suggest that we

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<sup>24</sup> Philippe Descola, *Beyond Nature and Culture*, Trans., Janet Lloyd, 2013, the Un. of Chicago Pres.

<sup>25</sup> *The Story of B* is a 1996 philosophical novel by Daniel Quill. Published by Bantam. It chronicles a young priest’s movement away from his religion and toward the environmentalist teachings of an international lecturer known as “B”.

must prioritize the survival of the planet by preserving its ecosystem, over the growth of the global economy, in order to survive in the long term.<sup>26</sup>

Now let us talk about China, the “People’s Republic”, which advocated for the Internet of things to lead the world into the “Third Industrial Revolution” by accepting Rifkin’s advice. Whether people want it or not, sensors will be everywhere, collecting data and connecting everyone. Imagine that people’s daily activities are constantly monitored and evaluated by the government, with data collected from sources such as shopping, Google, Facebook, and health tracking apps. These behaviours are then rated as either positive or negative and distilled into a single “Citizen Score” which indicates a person’s trustworthiness. This score would be publicly ranked against the entire population and used to make decisions about things such as mortgages, jobs, school enrolment, and dating prospects.<sup>27</sup> If the people do not revolt, soon, advanced technology coupled with Artificial Intelligence and Big Data will make China the worst dictatorship in history because of Rifkin’s “internet of things.”

### *Conventions*

After more than forty years of research I concluded the following: 1) there is no legal system that can give end users maximum freedom of action without damaging others or the environment as *Huquq* does. 2) There is no legal system that can give all members of society access to resources to empower them as *Huquq* does without depleting resources. These are two among other principles that would create civilizations without monopolies which would change almost all societies’ characteristics including quality of life and the environment. Furthermore, in modern societies, rules and regulations were enacted to avoid possible conflicts between acting parties whether in the political, economic or environmental arenas. This resulted in massive number of laws leading to diverse interpretations of those laws and thus more additions of rules creating the need for more lawyers, courts, etc. However, with *Huquq*, expected conflicts are minimized as those empowered individuals or institutions will run in separate tracks engraved by *Huquq*.

The argument for the existence of “Islamic environments” stems from the following logical constants or parameters that is inherent in the basic human tendencies: the more individuals having access to resources and freedom of action without damaging the environments and others (as *Huquq* leads to), the less the society is stratified and thus the less individuals are monopolized. Moreover, if those individuals had the freedom to access knowledge (as *Huquq* give them the right), and because those individuals are within different circumstances, they will produce inventive solutions suitable for their own sites. Hence, composed environmental configurations resulting from *Huquq* should produce different solutions for those different sites. If those innovative solutions are successful and thus

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<sup>26</sup> <https://medium.com/@FeunFooPermacultureRewilding/a-third-industrial-revolution-would-seal-our-fate-why-jeremy-rifkin-is-dead-wrong-d224127ec195>

<sup>27</sup> <https://www.wired.co.uk/article/chinese-government-social-credit-score-privacy-invasion>

convincing to others, they will be copied or even reproduced by those facing similar circumstances. Remember, there are no rules preventing people from acting. Such replicated solutions will gradually become conventions (Akbar, 1987a).

Conventions in its simplest form mean sustainability. The reason is that if people are empowered and not forced to work extra hours, and thus they are relatively close in income, their environments will be made from their immediate surroundings because the super-rich, who might have the funds to import materials from far away locations, are not present. Houses in mountainous sites will be built of stones, houses within woods will be built with lumber, and so on. Even each quarter may develop its own distinct environmental solutions in some details. Therefore, it would be almost impossible to argue for the existence of an Islamic Architecture or Urbanism on the physical or spatial level unless all circumstances are quite similar among most if not all sites, which is almost impossible. In other words, for a physical or a spatial configuration or a pattern or a typology to be labelled as an Islamic, it should not resemble others in their composition unless all circumstances are similar which is quite rare. This argument negates what most researchers were trying to prove on the physical or spatial level. Of course, some elements invented by Muslims solely should be labelled as Islamic, such as *muqarnas*. What about the configurations of elements that are unmistakably named Islamic composed of, for example, bent entrances, dead end streets, *mashrabiyyas*, etc. and above all, Mamluk's or Ottoman's mosques which I love much?<sup>28</sup>

When the Prophet peace be upon him arrived to Medina, he did not ask newly Muslims to leave their dwellings to new ones because they were built by them when they were not Muslims. In fact, gradually, following *Huquq*, their environments were transformed to be an Islamic. From this, few questions emerge: is the built environment that is inhabited by non-Muslims such as Damascus will be considered Islamic after, say, fifty years of its occupation by Muslims although it's original layout was planned by non-Muslims? To the contrary: is the environment that is laid out and occupied by Muslims for centuries such as Granada is considered Islamic although it is now inhabited by non-Muslims for centuries too? In other words, what are the inhabitants' urban actions' limits for an environment to be distinguished as Islamic? Is the Mosque that is designed by a non-Muslim architect using some church vocabulary considered Islamic as in Hassan II Mosque in Casablanca? Searching for answers for such questions to prove some claims on the identity level as most scholars did might make some dignified. However, searching for rights' mechanisms isolated from occupants' beliefs, whether they were Muslims or not, might benefit humanity at large. In other words, this position which I am taking should reveal new avenues for research whether it is proved right or wrong.

This position raises another set of questions: Of course, environments created by Muslims using *Huquq* will be considered Islamic, but what if non-Muslims create environments using *Huquq*? This is a possibility, as non-Muslims could uphold their values (such as drinking alcohol and dating) while using *Huquq* to create their environments if they were convinced of

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<sup>28</sup> Discussion of this issue is elaborated in the article titled "Interventions, Territorial Structure and Environmental Knowledge in Muslim Built Environments", (Akbar, 2020).

its importance. Finally, what about current Muslim environments that use non-Islamic systems of property rights, such as in Saudi Arabia, are they considered Islamic?

Muslims and their cities vary in almost every circumstance whether it is a geographical location, ethnic origin or cultural custom except in Islam which is supposed to unite them; otherwise there is no need to talk about Islamic environments. In other words, the suggestion in this essay is to separate between peoples' customs, ethnic origin, geographical conditions, etc. which are often changing as variables on the one hand, and the residents' decisions and actions stemming from their rights which is always influenced, directed and limited by *Huquq* on the other. This separation was quite confused by most scholars especially orientalist as evident.<sup>29</sup> What Rifkin is advocating for example, will lead to a resemblance between various cultures as goods are moved from site to site.

Furthermore, if *Huquq* is implemented, the workers who extract materials will also be the owners. As a result, they will not pollute their sites or harm themselves. Therefore, as conditions vary among different sites, each town or city should have its own unique conventions. Conventions for creating forms, conventions for extracting materials without polluting others and the environment, etc. which will lead to sustainable mining and manufacturing technology.

Moreover, with *Huquq*, almost all services would be provided by the private sector in a society with open resources, leading to a minimal role for the government. As well known, services provided by the private sector are more efficient especially if we remember that the private sector with *Huquq* will not be monopolized as current companies of service-providers in the globalized systems are. This will reduce cost of services while improving quality. Or even services might be decentralized thus reducing pollution. For example, rather than collecting waste-water in faraway locations for treatments, new decentralized technologies will spread such as the use of digesters which will become part of the environmental conventions leading to even new decentralized inventions and thus shaping the societies' culture.

It is also important to remember that with *Huquq*, all companies, including those providing services, are owned by the workers, thus reducing pollution. Additionally, as people are relatively close in terms of income, they will be able to donate to *waqfs*, as they have for centuries. A significant portion of services will be covered by *waqfs*, such as schools, universities, and hospitals. Furthermore, people will be able to purchase services such as infrastructure, like electricity and water and donate or create institutions through *waqfs* since they will be well-off due to the implementation of *Huquq*.

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<sup>29</sup> For detail, see: Akbar, J. Rights and Civilizations. *The Future of the Built Environment*. ISL@H 2019, pp. 43.



## *Finally, Who Decides?*

Now let us criticize Rifkin on the issue of the “commons” to demonstrate that thinkers will not be able to propose a new paradigm to stop pollution as long as they are not considering *Huquq*. Rifkin confused two issues: “technology vs. rights” and “sharing vs. commons”.

Regarding “technology vs. rights”, his proposal of connecting everything raises the question of who decides. Excluding renewable energy, most decisions of producing goods are **not** in the hands of those who consume (clothes, furniture, etc.). Rifkin’s economy is not much different from today’s capitalist system. With his third industrial revolution, there will be markets, stocks, monopolising corporations, powerless workers, bosses, all of which seem a lot like the system we have right now. A new economy would not have the same elements and procedures. Furthermore, the production system is still dependent on by-products of fossil fuels such as plastics and fertilizers. The gadgets needed for connections (smartphones, solar panels, wind turbines, electric cars, etc.) still depend on the second industrial revolution (using his definition). Despite his claims that it will change, the current polluting system of mining, extraction, transportation, smelting, refining, assembly, shipping, and distribution will continue unless issues of property and individual rights are addressed. If these rights are not reformed, capitalism will persist. However, if the pattern of rights is reformed to align with his vision of “Collaborative Commons,” a new socialist system may become inevitable."

What is important is the second confusion which is “sharing vs. commons” (remember Chin’s criticism mentioned earlier). From understanding *Huquq* from previous pages, we can now criticise Rifkin’s vision. However, we should first have a glimpse on commons within *Huquq*.

Commons can be classified into two types: 1) a defined area for the benefit of a specific group, such as pasture lands; 2) areas where people can extract minerals through mining, fishing, etc. These two types are known as *ḥimā* in *Huquq*.

Elinor Ostrom demonstrated that usually Groups exploited their common sustainably through conventions. Likewise, with *Huquq*, tragedy of the commons will not occur as other members cannot prioritize their own satisfaction at the expense of the group’s long-term interests, leading to the destruction of natural resources. The reason is that commons are considered as *ḥimā* in Islam. *Ḥimā* is an urban element in what I called “the unified form of submission,” in which the claim of ownership and control are invested in those who use the commons. It is defined as a protection from being revived or owned exclusively by individuals so that it can be owned and used by either a specific group of people or Muslims collectively.

Regarding the first type, or *ḥimā* for specific group of people, the convention among jurists is that some urban elements will not function properly if they are owned by the State or any individual, such as pasture lands and riverbanks. ’Abū Yūsif relates that “if the residents of a village have a common land for grazing animals or cutting wood, that land is

owned by them. They can sell it or inherit it ... as any person does with his property.” This principle of *Huquq* will maximize users’ care which will develop conventions of sustainability. Regarding control, ’Abū Yūsif adds that the inhabitants of a village have the right to prevent others from grazing animals or cutting wood from their land if such use would harm the owners of the *himā*. This is especially true if many villages exist in a valley or on a mountain where the residents of each village have their own pasture land. Thus, the traditional society unified responsibility of such spaces in the hands of the users leading to sustainability.<sup>30</sup>

As the population increases, new *himās* will emerge, all in the unified form of submission. These *himās* will be sustainable as they follow conventions and principles that prevent damage. No one will pollute the environment because owner-workers will be impacting themselves. With regard to mining Rare Earth Minerals (REMs), no one will dare to pollute because all residents living nearby are powerful and will object and stop the mining. They are able to prevent damaging investments because there is no powerful individuals as there is no bureaucracy, stratification, or monopoly. It is important to remember that under *Huquq*, there is no unemployment. Therefore, no investor can hire the unemployed to work in a distant location and damage themselves.

With Regard to the second type, or *himā* for all Muslims, jurists argued that lands which are **indispensable** to the public such as sources of salt, forage, pitch, and building materials (such as quarry where stones can be acquired with little effort), should not be owned by one person but should belong to all Muslims, i.e., it is *himā*. Such areas cannot be possessed by miners.<sup>31</sup> Their existence in that location is for mining, and thus they cannot stop others from mining from the same oil field or metal vein from a nearby sites. This right within *Huquq* will lower prices of raw materials without pollution.

If you remember, Lawrence Chin has criticized Rifkin’s Third Industrial Revolution, which is described as a “Collaborative Commons” in which all resources are considered public property and managed by prosumers. The question then arises: how does this model work in reality if it is not a socialist ideology? Rifkin’s economic model of the Collaborative Commons, which envisions a future workerless society enabled by automation, robotics, and artificial intelligence and resulting in a nearly workerless economy, also raises the question of who will manufacture those robotics. Furthermore, if goods produced in factories are to be distributed on an open logistics infrastructure, which will be an open supply web managed by sophisticated analytics and algorithms and will replace traditional point-to-point transportation, who will decide the criteria for these algorithms?

One of the differences between *Huquq* and Rifkin’s “Collaborative Commons” is that under *Huquq*, minerals would be owned by those who extract them, which would eliminate poverty and unemployment. In contrast, the “Collaborative Commons” would require some

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<sup>30</sup> For *himā* see Ch. 6 of the book of *Crisis in the Built Environment* (Akbar 1988)

<sup>31</sup> Remember, under the title of “Migration to Sites of Resources” we summarized this.

form of hierarchy for redistribution, which could lead to dominance and the formation of monopolies. Despite Rifkin's intentions as Marx, this could result in a socialist system.

Rifkin has conflated three issues: access to resources, decision-making, and networks. With regard to access to resources, our lives entail more than just sharing renewable energy. We will continue to consume thousands of products that require thousands of materials. If the issue of access to resources is not addressed, it is likely that the capitalist system will result in monopoly and concentration of wealth. While it is true that the adoption of renewable energy may lead to the decline of oil companies, new companies will likely emerge to take their place. There is a clear lack of clarity about who would decide the rights of mining. If it is the State that makes this decision, then the society could be either capitalist if the mining is franchised or socialist if it is owned by the State. If the decision-making falls on the miners or consumers, then what mechanism would be used to decide? In any case, all approaches are significantly different from *Huquq*. Thus monopoly is inevitable compared to what *Huquq* does.

With regard to **networks**, if Rifkin is referring to networks in which data and power can be exchanged from producers to consumers and vice versa, depending on demand and supply, material goods such as food and clothing will only move in one direction: from farmers or mine owners to manufacturers to consumers. In other words, the same capitalist system is at work. As long as most of our consumer goods flow in one direction, dominance, as J. Habraken elucidated in his book *The Structure of the Ordinary*, is inevitable. Dominance invites monopoly.

Let's talk about sharing. Earlier, we discussed sharing natural resources, such as minerals. Now, let's consider sharing in terms of consumption. Some products, like food, are not easily sharable, while others, like clothing, can be reused. Recently, there has been an increase in the concept of sharing for mutual benefit. A good example of this is car sharing, which is cost-effective.

Is a car owned by the police in the same condition as a privately owned car that has been carelessly overused, despite having similar mileage? Of course not. The level of responsibility and initiative taken towards the car varies depending on whether it is owned or just used. This is related to the criticism of Rifkin's views on the millennial generation by Chin. Let's examine this further by looking at different examples of sharing practices.

One example of sharing is the model used by Uber. Uber offers transportation as a service through booking. The company takes a commission for each booking. They use a dynamic pricing model that is based on the local supply and demand at the time of booking, and the fare is quoted to the customer in advance. In this case, the drivers own their cars and are responsible for their maintenance. Sharing here is not about ownership, but rather the customer reaps the benefits, similar to hotels or apartments (Airbnb). This type of sharing is preindustrial and technology has made it possible to connect owners and consumers. It has no relation to the Third Industrial Revolution.

Another example is how Zipcar operates. The company owns thousands of cars and parks them in specific locations for customers to rent using an app and a card to open the car. In this case, the company is able to reduce costs by not having to deal with bureaucratic procedures. A reviewer complained that the previous driver left the car with an almost empty fuel tank, dirty interior, and a strong smell of marijuana.<sup>32</sup> However, like the Uber-style model, this is a capitalist one rather than a sharing system as advocated by Rifkin's Third Industrial Revolution.

A third possibility is for a group of families to share cars. For example, let's say that ten families decided to share five cars. In this case, each car would have to travel extra mileage as it would have to be driven to reach the family that needs it, or vice versa, the user would have to travel to the car. In contrast, if each family had its own car, the cars would only need to be driven when the owner is using them and wouldn't need to travel extra distance. Although the number of cars is less when they are shared, the total mileage is much greater. Therefore, in the long run, more cars would be needed. Additionally, cars are less likely to be misused as responsibility is concentrated among those who own them. In my doctoral thesis (Akbar, 1984), I investigated claims of ownership, control and use and concluded that the more a society invests in ownership and control for users, the higher the quality of the built environment will be.

Finally, the concept of a "Circular Economy"<sup>33</sup> which aims to replace the traditional linear model of production and consumption with more sustainable methods, is clearly an attempt to use people's awareness to extend the lifespan of products and recycle all materials without producing waste. While this effort, along with many others such as that proposed by Christian Felber, may lead to some improvements, it will not bring about lasting change unless the basic rights within society are re-evaluated.

Instead of inventing new paradigms of rights, we should first understand those that are already in place. If we exhaust this exercise and anomalies appear, then it would be logical to suggest a new paradigm of rights. Unfortunately, Western rationality does not attempt to understand the wisdom in other cultures beyond art and customs, but instead tries to impose its own pattern of rights on others. Logically, supporters of Western modes of rights do not have the right to do so unless scholars have exhausted all efforts to explore paradigms in all cultures. If we share and pollute one world, we should work together to find the proper paradigm of rights, regardless of their origin.

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<sup>32</sup> <https://youtu.be/DGNia1fEJcQ>

<sup>33</sup> [https://tcocertified.com/circular-economy/?utm\\_term=%2Bsharing%20%2Beconomy&utm\\_campaign=Circular+-spring2020&utm\\_source=adwords&utm\\_medium=ppc&hsa\\_acc=6451387163&hsa\\_cam=9512205992&hsa\\_grp=97392443259&hsa\\_ad=421501608879&hsa\\_src=g&hsa\\_tgt=kwd-455894183909&hsa\\_kw=%2Bsharing%20%2Beconomy&hsa\\_mt=b&hsa\\_net=adwords&hsa\\_ver=3&gclid=CjwKCAiA2fmdBhBpEiwA4CcHzRKPijjByFk1XPe2sKVKIjHN9wxGYyhbqxdVo4\\_g\\_gf3c4-2DnSxoCTnsQAvD\\_BwE](https://tcocertified.com/circular-economy/?utm_term=%2Bsharing%20%2Beconomy&utm_campaign=Circular+-spring2020&utm_source=adwords&utm_medium=ppc&hsa_acc=6451387163&hsa_cam=9512205992&hsa_grp=97392443259&hsa_ad=421501608879&hsa_src=g&hsa_tgt=kwd-455894183909&hsa_kw=%2Bsharing%20%2Beconomy&hsa_mt=b&hsa_net=adwords&hsa_ver=3&gclid=CjwKCAiA2fmdBhBpEiwA4CcHzRKPijjByFk1XPe2sKVKIjHN9wxGYyhbqxdVo4_g_gf3c4-2DnSxoCTnsQAvD_BwE)

What is truly remarkable is how *Huquq* invests in people's self-interest while promoting justice, dignity, decency, innovation, prosperity, and sustainability for society, without tyranny, poverty, pollution, and, above all, without the negative consequences of capitalism and globalization.

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