

# Institutional Roots of Authoritarian Rule in the Middle East: Political Legacies of the Waqf

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## **Abstract.**

The waqf is the closest thing under Islamic law to an autonomous private organization. Hence, in the pre-modern Middle East it served as a key determinant of civil society, political participation, and trust in institutions, among other indicators and components of democratization. This paper argues that for a millennium the waqf delayed and limited democratization in the region through several mutually supportive mechanisms. Its activities were more or less set by its founder, which limited its capacity to reallocate resources to meet political challenges. It was designed to provide a service on its own, which blocked its participation in lasting political coalitions. Its beneficiaries had no say in selecting the officers, whom they could not evaluate. Circumventing waqf rules required the permission of a court, which galvanized corruption. Finally, the process of appointing successive officials was not merit-based; it promoted and legitimized nepotism. The upshot is that, for all the resources it controlled, the waqf contributed minimally to building civil society. As a core element of Islam's classical institutional complex, it helped to perpetuate authoritarian rule by keeping the state unmonitored and largely unrestrained.

**Keywords:** Middle East, Ottoman Empire, Arab world, waqf, democracy, autocracy, civil society, collective action, corporation, corruption, nepotism, trust, institutional change, Islamic law, sharia.

**JEL codes:** H11, N25, P51, O53, Z12

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## 1. Introduction

Even after the Arab uprisings of 2011, the Middle East<sup>1</sup> remains the world's least democratized region. Its only predominantly Muslim country that qualifies as a full electoral democracy is Turkey, where as late as 1997 the military forced an elected government to resign.<sup>2</sup> Several other region-wide patterns point to weak political performance. Trust in strangers, or generalized trust, is strikingly low by the standards of established democracies.<sup>3</sup> Likewise, trust in institutions is very limited.<sup>4</sup> Corruption is common as perceived by both local residents and foreigners doing business in the region; so is nepotism, the tendency to favor relatives.<sup>5</sup> Insofar as they exist, institutional checks and balances are unreliable, which is why secularists and Islamists, and also Shiis and Sunnis, are loathe to being governed by parties under the other's control.

For all their insights, the literatures that explore these patterns raise puzzles that have yet to be resolved.<sup>6</sup> Certain important findings relate to only a segment of the region. For example, the important observation that oil revenues allow rentier states to buy off their critics leaves unexplained the persistence of autocratic rule in oil-importing states. Various other popular arguments are inconsistent with evidence from outside the Middle East.<sup>7</sup> Consider the treatment of the Middle East's low political performance as a legacy of colonialism. It begs the question of why many former colonies outside the region, including India and Brazil, have better political records.<sup>8</sup> A problem common to many inquiries into the causes of the region's chronic political failures is a focus on proximate factors that are likely to have resulted from long-term social processes rather than some aspect of contemporary governance. With a few shining exceptions mentioned further on, researchers have left unexplored how the Middle East's institutional heritage may have constrained political possibilities, facilitated certain outcomes, and hindered reforms. Both colonial and post-colonial political institutions were superimposed on a deeply rooted institutional complex that was unsuited to democracy, the rule of law, and basic human rights, as these terms are generally understood. What I shall call the region's "pre-modern institutional complex" or its "Islamic institutional complex" has barely been examined from the perspective of its consonance with democratization.

The purpose of this article is to show how one particular pre-modern institution, which played an important economic role throughout the region for a millennium, generated political pre-conditions that account for the slow pace of democratization. This institution is the waqf, which is called habous in parts of North Africa and is known in English also as a pious foundation. The waqf is a form of trust established and maintained under Islamic law. Within the Islamic legal system, it is the closest thing to an autonomous private organization. As such, it might have promoted political participation, trust in institutions, and political accountability,

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<sup>1</sup> For the purposes of this article, the "Middle East" consists of the 22 members of the Arab League plus Iran and Turkey.

<sup>2</sup> On a standardized 0-10 scale (10 best), the population-weighted Freedom House civil liberties score of the Middle East is 4.7, as against 8.6 for the OECD; and the rule of law index of the World Bank is 3.7 for the Middle East, as against 8.0 for the OECD. In both calculations, Turkey, an OECD member, is included in the Middle East and excluded from the OECD.

<sup>3</sup> Evidence in Sect. 11 below.

<sup>4</sup> Bohnet, Herrmann, and Zeckhauser 2010.

<sup>5</sup> According to the 2012 Corruption Perceptions Index of Transparency International (<http://www.transparency.org>), the population-weighted average government cleanliness score of the Middle East is 3.0 on a 0-10 scale, as against 6.6 for the OECD, the club of advanced industrial democracies (the latter figure excludes Turkey).

<sup>6</sup> Diamond 2010 offers a critical survey of the most influential explanations.

<sup>7</sup> Ross 2001 provides evidence that oil wealth hinders democratization

<sup>8</sup> Ismael and Ismael 1997 focus on the deleterious effects of colonialism.

among other indicators and components of democratization. It might have generated a vibrant civil society capable of constraining rulers and majorities.

Civil society refers to the "arena, outside the family, the state, and the market where people associate to advance common interests."<sup>9</sup> Although political checks and balances can be built into the state itself, as with the tri-partite government of the United States, no known democracy relies solely on a division of powers. Every democratic regime relies on some combination of internal balances and external constraints. That is why generations of thinkers have viewed civil society as a vital component of democratic life. The concept has proven, of course, notoriously difficult to quantify. Thus, observers characterizing Middle Eastern civil society as weak have had a hard time establishing this claim independently of its purported outcome, persistent authoritarian rule. However, it is relatively easy to identify and measure certain manifestations of civil society, such as participation in politics and collective action. Hence, in exploring the long run political effects of the waqf, it makes sense to ask not how this institution affected civil society per se but, rather, how it may have shaped certain factors with which it is typically associated.

There is an analytical justification for this strategy. Today's democratic societies followed multiple paths to attain their present political characteristics. Beginning their transformations at different times, they also experienced different social cleavages. Their features characteristic of democracy—human rights, broad political participation through political parties and lobbies, autonomous legislatures and judiciaries, universal suffrage—did not develop in lockstep.<sup>10</sup> Hence, focusing on the manifestations of civil society allows one to rely on the experiences of other regions for hints as to what may have delayed democratization in the Middle East, without treating Britain, or France, or the United States as the only model likely to succeed. The multiplicity of Western paths suggests that the Middle East could have followed a distinct path of its own, even several paths unique to sub-regions or countries. Focusing on the manifestations of civil society rather than civil society itself forces us to consider numerous possible starting points for democratization.

For all their differences, the European paths to democracy also share some family resemblances. First, they all involved centuries of struggles involving perpetual private associations; the struggles in question resulted, with setbacks along the way, in the expansion of freedoms, as impoverished, dominated, and relatively poor groups found ways to get organized and to do so effectively. Second, they all produced checks and balances of some sort. Inquiring into the waqf's political consequences amounts to asking why the Middle Eastern counterpart of European private organizations achieved less political power. Two additional advantages will come from basing the analysis on a fine-grained identification of the waqf's political functions. It will yield insights into where a Middle Eastern democratization process might have started. It will also suggest what political reforms are likely to encounter particularly tough resistance in the present.

In what follows I argue that the waqf delayed and limited democratization through several mutually supportive mechanisms. First of all, by design its use of resources was more or

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<sup>9</sup> Heinrich 2010, 12-34.

<sup>10</sup> In some cases peasants played a more critical role in reining in the monarch than in others. The role of cities and merchants also differed across contexts. Although England's Glorious Revolution of 1688 and the French Revolution of 1789 both put in place democratic checks and balances, the key coalitions differed substantially. See Ziblatt 2006, Tilly 2005, Moore 1966 and Anderson 1974 for complementary comparisons.

less set by its founder, which limited its capacity to reallocate resources to meet political challenges. Second, in disregarding the preferences of service beneficiaries, it limited political participation. Third, designed as it was to provide a service on its own, it could not pool resources with other entities, to say nothing of joining durable political coalitions. Fourth, it limited political participation further by denying its beneficiaries a say in the selection officers. A fifth problem is that circumventing stringent waqf rules required the permission of a court, which fueled corruption. Finally, the process of appointing successive officials was not merit-based; it promoted and legitimized nepotism.

The upshot is that, for all the resources it controlled, the waqf remained both a minor mover in Middle Eastern politics and, through the corruption it invited, a hindrance to rule of law. It thus contributed, on the one hand, to keeping the Middle Eastern peoples politically docile, ignorant, and quiescent, and, on the other, to routinizing practices lacking legitimacy. As a key component of the institutional complex that kept the state unmonitored and unchecked by civil society, the waqf thus set stage for the corrupt authoritarian regimes of the twentieth and twenty-first centuries. Unrestrained power usually breeds bad governance. Indeed, a consequence of the weaknesses identified below has been lack of legitimacy on the part of incumbent regimes.

In the modern Middle East, the corporation, which is a self-governing organization well suited to politics, has taken over many social functions long performed by the waqf. Meanwhile, the waqf itself has changed form, taking on aspects of the non-profit or charitable corporation. This makes it useful, in identifying the waqf's political consequences, to keep an eye on corresponding developments in the region where the corporation first contributed to democratization, namely, Western Europe.

## 2. The waqf and its economic significance

Under classical Islamic law, which took shape between the seventh and tenth centuries, a waqf is a foundation that a Muslim individual establishes by turning privately held real estate into a revenue-producing endowment. The endowment is to provide a designated service in perpetuity. Ordinarily a judge would ratify the waqf's purpose. He would record, along with the assets placed in the endowment, the founder's stipulations regarding maintenance and the disposition of income streams.<sup>11</sup> The founding deed (*waqfiyya*) was meant to govern the waqf's operation forever. To ensure its durability and minimize disputes over the founder's intentions, a major waqf might have it carved in stone, on the façade of an imposing building.<sup>12</sup> It became customary to set a legal precedent for the deed's immutability by having the founder sue for modifications; the record of the court's refusal would constitute proof that his stipulations could never be changed.

The service could be anything legitimate under Islamic law. Waqfs were commonly established to support mosques, schools, fountains, hospitals, soup kitchens, bathhouses, inns, parks, and funerary complexes. Whatever its particular service, the endowment of a waqf would be expected to support its operational expenses, including repairs and staff salaries.<sup>13</sup> Sometimes

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<sup>11</sup> There existed waqfs founded by an oral declaration in the presence of witnesses. See Beldiceanu 1965, p. 29.

<sup>12</sup> For general accounts of waqf rules and practices, see Barnes 1987, Schoenblum 1999, and Kuran 2001.

<sup>13</sup> Certain modest waqfs offered services without any dedicated physical structure. They included waqfs established for such purposes as paying a neighborhood's taxes, assisting widows, liberating indebted prisoners, and conducting prayers for the dead. With such waqfs, one or more employees, working out of their homes, simply hired the requisite labor and handled the finances.

the deed explicitly named the beneficiaries: a particular family, or the indigents of a particular town, or the taxpayers of a specific neighborhood. When no beneficiaries were specified, the locational choice might privilege certain communities. Although a Damascus hospital would not limit services to local residents, as a matter of practice its patients would consist disproportionately of Damascenes.

Responsibility for managing the waqf's endowment and implementing its deed fell to a caretaker (*mutawalli*). The caretaker rented out waqf properties, performed or authorized repairs, hired and supervised employees, and monitored its services. He performed these duties as the founder's agent; expected to adhere to the deed, he was supposed to implement the wishes it expressed. The initial caretaker of a waqf was selected by the founder, who could specify how his successors would be appointed. Sometimes he would name a sequence of individuals. Still another common pattern was to reserve the position for a particular office holder, such as the imam of a certain mosque. Some founders simply included the succession decision among the caretaker's duties. In the latter case, the caretaker would appoint his own successor whenever he chose to retire. As a rule, the position was a lifetime appointment. When a caretaker died in office without a designated successor, the new appointment was made by the judge (*kadi*) of the nearest Islamic court. The local judge had a broader role to play anyway. It was among his duties to enforce the deeds of the waqfs that delivered services or held properties in his area.<sup>14</sup> In this capacity, he could remove a mutawalli for shirking or embezzlement. The local judge thus provided the waqf's main line of defense against mismanagement.

Ordinarily the waqf's income was exempt from taxation, as were its payments to employees and the services it delivered to constituents. The output of a farm belonging to a waqf-managed school was free of taxation, as were the salaries of its teachers and the educational services it delivered to students. But many exceptions existed. Peasants living in a village endowed to a waqf might be required to pay taxes to the state, along with a share of their output to the waqf.<sup>15</sup>

Before modern times, expropriations were common in the Middle East, though of course variations existed across time and space. Waqfs enjoyed considerable immunity against confiscation because of the belief, integral to the waqf institution, that its charitable functions made its assets sacred.<sup>16</sup> Sacredness thus served as a credible commitment device. Knowing that a ruler could not confiscate a waqf without appearing impious, people expected him to respect the inalienability of endowed assets.

The exceptions generally during actual or potential regime changes. Rulers would declare a cluster of waqfs invalid, usually on the ground that their founders did not own the endowed assets, as waqf law required. In the thirteenth through fifteenth centuries, waves of confiscations occurred under several Mamluk sultans facing an acute military threat; in the 1440s when the Ottoman Sultan Mehmet II wiped out Anatolia's Turcoman aristocracy at the end of a bitter struggle for control over the rapidly expanding Ottoman Empire; and in 1514-17, when the Ottomans added Syria and Egypt to their dominions. But even these exceptions prove the rule. The Mamluk sultans generally backed down in the face of resistance; the expropriations of Mehmet II sowed enough resentment that his successor Bayezid II opted to restore some of the

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<sup>14</sup> The geographic contours of a judge's jurisdiction were not sharply defined. Two or more judges could be involved in monitoring any given waqf. Custom often dictated which court had jurisdiction.

<sup>15</sup> Barnes 1965, p. 39. Double taxation would harm the waqf indirectly, by lowering peasant incentives to produce.

<sup>16</sup> The belief in its sacredness was reinforced through waqf deeds, which typically contained statements to the effect that anyone who harms a waqf will suffer both on earth and in the afterlife. For examples, see Öztürk 1995, 23.

destroyed waqfs; and, likewise, Egypt's Ottoman administrators reversed many of their waqf annulment decisions. On balance, a given asset was much less likely to be confiscated if it belonged to a waqf than if it was owned by an individual.<sup>17</sup>

Source	Place	Date	Tax revenue accruing to waqfs	Waqf assets	Estimation method
Ubicini 1853	Turkey	1800		Three-quarters of landed property	Aggregation of official opinions, reports
Behrens-Abouseif 2002	Egypt	1517		Half of land	Ottoman land survey
Berque 1974	Algiers	1830		Half of buildings in city	French land survey
Deguilhem 2004	Damascus and environs	1922		More than half of real estate	Impressions of historians
Barkan and Ayverdi 1970	Anatolia	1530	27%		Statistical sampling
Yediyıldız 1984	Anatolia	1601-1700	26.8%		Statistical sampling
Öztürk 1995	Anatolia	1801-1900	15.8%		Statistical sampling

**Table 1.** Waqf assets or revenues: Estimates

Precisely for this reason, vast resources were poured into waqfs. Although no comprehensive quantitative data set has been compiled, various indicators testify to their economic significance. First of all, practically every monograph on the socio-economic life of a pre-modern Middle Eastern city or region devotes at least a chapter to local waqfs, invariably establishing that they carried great weight in the local economy. Second, the available estimates of waqf assets and income involve huge figures (Table 1). The three studies using scientific sampling show that the share of tax revenue accruing to Anatolian waqfs was 27 percent in the 1530s, 26.8 percent in the seventeenth century, and 15.8 percent in the nineteenth century.<sup>18</sup> Given that the Ottoman treasury received about half of its tax revenue from real estate—poll taxes and opportunistic taxes (*avarız*) formed the other major categories—at least until the nineteenth century, which marked the start of fundamental reforms, waqfs received at least half

<sup>17</sup> On the three examples, see Oğuzoğlu 2000, 37-38; Winter 1992, 11; Lev 2005, 155; Barnes 1986, 38; Behrens-Abouseif 2002, 64-66; Irwin 1986, 96, 141; and Yediyıldız 1982, 161.

<sup>18</sup> Barkan and Ayverdi 1970, 17; Yediyıldız 1984, 26; Öztürk 1995, 54.

of all revenues from land and buildings. The dip in the nineteenth century (last row of table) accords with the nationalizations that accompanied the reforms; they are discussed further on. A third indicator of the economic significance of waqfs is that waqf-related cases come up very frequently in court records. Of 9,074 commercial cases in a seventeenth-century Istanbul data base, 1544 cases, or 17 percent, pertained to a waqf matter. By contrast, a state official was involved in just 694, or 7.6 percent, of the cases.<sup>19</sup> Finally, a large majority of all pre-nineteenth century Middle Eastern buildings that have come down to the present were financed through waqfs. The main exceptions are palaces, which were built by rulers, and military structures such as fortresses and harbors.

Though spatial variations existed, it is clear that in the aggregate waqfs achieved a massive presence in the Middle Eastern economy. They held significant assets in both cities and the countryside, which made them potentially powerful political players. Indeed, waqfs might have used their immense resources to constrain the state for the benefit of their constituents. In the process the nucleus of a civil society capable of advancing a political agenda might have emerged. The resulting decentralization of power could have placed the Middle East on the road to democratization. As a prelude to identifying and interpreting what waqfs actually did, it is useful to consider how they might have deployed their resources.

Each waqf's caretaker was appointed essentially for life. His authority was grounded explicitly in the deed. Whatever the circumstances of his appointment, he controlled the waqf's assets as well as its staff, who served at his discretion. These factors alone made him a respected person. A common theme in historical accounts of Middle Eastern cities and neighborhoods involves the esteem enjoyed by waqf caretakers.<sup>20</sup> In charge of an organization commanding income-producing assets, a caretaker was also the natural leader of the constituency that his waqf was meant to serve—the teachers and students of a school, the poor who depended on a soup kitchen for survival, or the community served by a particular fountain. With each such constituency, the caretaker provided a focal point for coordinating individual demands. Hence, every waqf constituency formed a community potentially capable of collective action aimed at improving the supplied services. Insofar as waqf beneficiaries took part in collective action to advance their joint interests, they might have developed the organizational, communicational, and strategic skills to pursue collective action in other contexts and through different groups. Waqfs could have turned the Middle East into a region rich in "social capital," in other words, hospitable to initiatives requiring social organization.<sup>21</sup> Such initiatives could have included campaigns to influence, if not also to control, specific state policies. Why waqfs did not play that role is the puzzle at hand.

### 3. Origins of the waqf's political features

Nothing is certain about the waqf's origins except that it is not among Islam's original institutions. The Quran does not mention it, which suggests that it played no significant role in the Arabian society that counted Muhammad among its members.<sup>22</sup> Although subsequently

<sup>19</sup> Kuran 2010-13. Pro-state biases of the judges, documented in Kuran and Lustig 2012, may have limited the latter number.

<sup>20</sup> Behar 2003, 65-83; \_\_\_. In court records waqf caretakers almost always carry an honorific title, which points to the institutionalization of their elevated social status.

<sup>21</sup> There is a rich modern literature that treats social capital as a key ingredient of economic development. See, for example, Banfield 1958: ch. 5-8; Coleman 1990: ch. 12; Fukuyama 1995:3-57; Putnam 1993; and Guiso, Sapienza, and Zingales 2008. On the Middle East, specifically, see Jamal 2007, especially ch. 6.

<sup>22</sup> Oberauer 2013.

recorded remembrances about early Islam (*hadith*) mention that Muhammad's companions formed waqfs, these accounts were probably concocted in later times to legitimize an addition to the Islamic institutional complex.<sup>23</sup> Leading scholars of Islam's first few centuries dismissed hundreds of thousands of such recollections as apochryphal, and modern scholars consider the bulk of the remainder fabricated.<sup>24</sup>

Institutions resembling the waqf were present in pre-Islamic civilizations. In the Sassanid and Byzantine empires, temples had long been financed through trusts of one kind or another.<sup>25</sup> In all likelihood, the idea of endowing assets to provide a permanent service was appropriated from these empires during Islam's initial expansion into Syria and Iraq. By the time the caliph Ali, Muhammad's fourth successor at the new Islamic state's helm, died in 661, about half of the Byzantine Empire and most Sassanid territories were within the Islamic fold. With conquests continuing, Muslim leaders gained familiarity with Byzantine and Sassanid ways. Their administrations started to draw on the talents of bureaucrats who had served other states of the Eastern Mediterranean.<sup>26</sup>

The year 661 marks also the start of the first Muslim dynasty, the Umayyads, and the shift of the Islamic seat of power from Medina to Damascus. The ensuing decades involved many adaptations and innovations, some of them designed to strengthen the Umayyad regime and weaken its potential enemies. The Umayyads ruled over the still-expanding Islamic Empire until 750, when they were overthrown everywhere but in Spain. Power passed to a new dynasty, the Abbasids. Ruling initially from Kufa, the Abbasids then shifted their capital to Baghdad.<sup>27</sup>

Two patterns of governance are pertinent here. First, under both the Umayyads and the Abbasids the consolidation of power involved new or higher taxes on various groups, with adjustments made and exemptions provided both to exploit opportunities and to accommodate political pressures. Second, the fiscal policies of both regimes bred insecurity among administrative cadres at all levels. Although a talented person could become very rich by serving an Umayyad or Abbasid caliph, he was always at risk of being fired, expropriated, even executed; a misjudgment or a malicious rumor could make him lose everything suddenly.

The resulting insecurity would have fueled a quest for institutions capable of alleviating the risks in question. No records survive of discussions held, contacts made, or coalitions formed to modify the law. What is known is that during the Umayyad and early Abbasid eras the waqf entered the Islamic institutional complex. It must have met the needs of insecure officials by allowing them to shelter wealth from unpredictable rulers, partly, if not largely, for the benefit of their own families and descendants. Judging by the lack of data pointing to resistance by rulers, they, too, must have welcomed this institutional innovation. Rulers would have benefited through the enhanced willingness of officials to serve them. Besides, waqf-supplied social services would have reflected well on their regimes. Evidently an implicit agreement was reached whereby state officials established socially beneficial waqfs in return for secure control over their income-producing assets and the right to receive a share of the income themselves.

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<sup>23</sup> Hâtemî 1969, 29-38.

<sup>24</sup> Brown 2011.

<sup>25</sup> Thomas 1987.

<sup>26</sup> Köprülü 1931. Providing a more nuanced interpretation, Yıldırım 1999 shows that in certain respects the waqf and the Byzantine "pious foundation" developed in parallel, influencing one another.

<sup>27</sup> On the Middle East's political evolution during this period, see Lapidus 1988, ch. 3-8. Crone 2004, ch. 17-22 surveys the associated evolution of political thought.



From the eighth century to modern times, some of the largest waqfs in the Middle East were established by members of the ruling family, including rulers themselves. Known as imperial waqfs, they include the Complex of Sultan Barquq in Cairo (1384) and the Süleymaniye Complex in Istanbul (1557).<sup>28</sup> Why might ruling families have wanted to shelter wealth against a state that they controlled. Part of the answer lies in rival factions within dynasties. Each member, including the incumbent ruler and his close relatives, found it advantageous to form waqfs as insurance against the ascendancy of rival factions. The mother of the crown-prince might want an autonomous financial base in case her son died prematurely or was outmaneuvered by a rival claimant. Another benefit of forming a waqf is that it provided considerable immunity against changes in state priorities. By virtue of the security of its assets, a waqf built in a Sultan's name could live on even if his descendants lacked interest in its objectives. Even a very powerful ruler had to worry about predation by future rulers.

Two waqf characteristics, both already mentioned, betray that the benefits of forming a waqf were expected to accrue primarily to high Muslim officials and their families. The immovability requirement favored incumbent state officials, who received land grants in return for their service; it also favored other major landowners, including former officials who had been rewarded with land for participation in conquests. This restriction discriminated against merchants, whose wealth typically consisted of movable goods. The requirement that the founder be a Muslim also points to favoritism toward political elites. By either birth or conversion most officials were Muslim. In denying non-Muslims the right to shelter wealth, the architects of the waqf left the door open to extending the privilege to strategically important non-Muslim allies. Non-Muslim elites could form a functionally similar organization by special permission.

The notion that the waqf was designed to serve primarily Muslim landowners goes against the grain of a huge literature that treats the waqf as an expression of pious charity. But it is consistent with the fact that no restrictions were placed on non-Muslims with regard to *using* waqf services. Ordinarily Christians and Jews were eligible to drink water from waqf-maintained fountains, stay in waqf-funded inns, and receive treatment in waqf-supported hospitals. True, they were not welcome in mosques, unless they intended to convert; and waqf founders were free to restrict services to Muslims. However, the resulting consumption exclusions reflected separatist biases that infused daily life rather than a requirement intrinsic to the waqf system. A Muslim could legitimately establish a waqf whose services would benefit a predominantly Christian or Jewish neighborhood.

Also revealing is that religious minorities were free to use the other Islamic institution that absorbed private capital: the Islamic partnership. Under Islamic law, the capital of an Islamic partnership had to be liquid, and this organizational form was meant to serve cooperative ventures of limited duration.<sup>29</sup> As such, the partnership could not serve as a wealth shelter. This explains why Christians and Jews, banned from forming waqfs, were given full use of Islamic partnership law.

The specifics of waqf law accord, then, with the waqf's emergence as a device to shelter wealth for high state officials and their families. At the top echelons, state officials were almost exclusively Muslim. Although some of them participated in commercial ventures, their wealth was concentrated in real estate. In adapting the Byzantine and Sassanid models of the trust

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<sup>28</sup> A waqf complex provided multiple services, typically including a mosque. Services commonly included within complexes were hospitals, schools, bath houses, soup kitchens, and guest houses.

<sup>29</sup> Kuran 2011, 48-52, 59-68.

creatively, they established rules aimed at giving themselves the lion's share of the gains. They placed into the corpus of Islamic law an instrument to preserve elite wealth.

The Umayyad and Abbasid rulers who consented to adding the waqf to the Islamic legal complex must have understood that in sheltering wealth officials would enhance their capacity to challenge the political status quo. They would have had an interest in restricting the uses of waqf assets. The potential for waqf-based opposition was dampened through several rules that came to characterize the waqf, all discussed in sections ahead: the requirement to follow the founder's instructions, the courts' duty to monitor waqf operations, and obstacles to waqf mergers. The upshot is that rulers tried to give high officials and their families considerable material security without destabilizing their regimes. It matters that a substantial share of the high officials of Muslim-governed states had the status of a foreign-born slave. In privileging these officials materially, rulers also retained the ability to fire, persecute, and even execute those who posed a political threat. They extended the right to shelter assets without giving anyone legal immunity as individuals.

This interpretation is consistent with recorded correlations between the "democratic deficit" of the modern Middle East and the spread of the Islamic institutional complex. Highlighting the reliance of Muslim sultans on slave armies, Lisa Blaydes and Eric Chaney (2013) find that this pattern of military recruitment caused Middle Eastern rulers to lag behind west European rulers in legitimizing their regimes. Extending this argument, Chaney (2012) identifies a positive statistical relationship between the share of a country's landmass that early Muslim armies conquered and its democratic deficit in the early twenty-first century.<sup>30</sup> Insofar as pre-modern military recruitment practices affected modern political patterns, the influences would have operated through the entire institutional complex associated with slave armies. As both works underscore, foreign-born slave soldiers would have had difficulty forming coalitions with disgruntled local groups. However, slave soldiers and their descendants came to control enormous wealth. Besides, the families of slaves often got assimilated into local communities. These two factors would have worked in the opposite direction. In particular, they would have facilitated the creation of power centers beyond the ruler's direct control. Yet, it is precisely to prevent rival power centers that rulers formed slave armies in the first place. If slave soldiers tended not to form durable oppositions, this is because other elements of the institutional complex kept either slave soldiers or their descendants from forming autonomous organizations. Among them, the most significant was the waqf, because of its indefinite life. In establishing waqfs, slave soldiers and their families, would have contributed to the processes blocking the emergence of political checks and balances.<sup>31</sup>

Islamic legal discourses customarily distinguish between the charitable waqf (*waqf khayrī*), whose stated objective is to serve a broad constituency such as a designated neighborhood or the poor in general, and the family waqf (*waqf ahlī*), established to provide an income stream to a family. In practice, these legal categories represented the ends of a continuum. Many family waqfs used some of their income to provide a public service; and charitable waqfs typically benefited the founder's family disproportionately. The caretaker of a charitable waqf often belonged to the founder's family. For his services he received either a fixed

<sup>30</sup> Chaney measures democratic deficit according to the polity scores of the Polity IV Project.

<sup>31</sup> Another key element of the institutional complex was the principle of bundling political and religious authority; Rubin 2011 and Lewis 1993, ch. 21 explore its implications for political development. Still another element consisted of rules that kept the region's private business sectors atomistic; Kuran 2013 links them to the region's political trajectory.

salary or the waqf's residual income after its deed-specified expenses had been met, sometimes both.<sup>32</sup> As Table 2 shows, family waqfs were typically very small in terms of assets, which is consistent with the objective of limiting autonomous centers of political power. The third canonical category in the table is the imperial waqf, mentioned above. The endowment of an imperial waqf could consist, in part or in full, of imperial real estate that had been granted to the founder, sometimes with the understanding that it would become the corpus of a waqf.

Ready to address how the waqf hampered democratization, we will consider, in turn, several key characteristics that shaped political patterns. For each characteristic we will draw attention to historical continuities between the past and the present, showing how current political patterns are not new. The exercise will add an additional dimension to a growing literature on the institutional roots of the Middle East's political underdevelopment.

	<b>Family waqf</b>	<b>Charitable waqf</b>	<b>Imperial waqf</b>
<b>Source of endowment</b>	Muslim individual outside ruling family	Muslim individual outside ruling family	Member of ruling Muslim dynasty
<b>Stated beneficiary</b>	Founder's family and descendants	Constituency much broader than founder's family	Large constituency outside of ruling dynasty
<b>Size of endowment</b>	Typically very small	Highly variable	Usually large

**Table 2.** Three categories of waqfs: Main properties

#### **4. Limits on self-management**

By design the waqf was a rigid organization. In its canonical form, its assets were inalienable; never sold, bequeathed, or transferred, they would serve, through rental income, to finance its activities forever. Likewise, it was supposed to deliver services in perpetuity according to instructions recorded in the founder's deed. A school built in a particular neighborhood was to teach designated subjects through an indicated number of teachers. The deed would specify each teacher's salary. It would also identify properties, not necessarily in proximity to either each other or the school, whose income would cover the waqf's expenditures. The expenditures would cover staff remuneration, but also student stipends, books, furnishings, and physical maintenance.

This operational ideal presupposed a static world—one in which relative prices, technologies, and demand patterns stayed fixed, along with everything else relevant to efficiency. For instance, land values and maintenance costs would never change in ways that

might prevent a qualified caretaker from fulfilling his duties. The ideal also presumed that successive caretakers would manage waqf assets competently. Furthermore, a long string of judges would perform their oversight roles with due diligence. The judge ratifying the deed would evaluate the assets competently; and both he and his many successors would all monitor caretakers effectively.

In practice, it was understood that the conditions relevant to the waqf's usefulness might change. To limit inefficiencies, the architects of waqf law allowed founders to pre-authorize specific modifications. Thus, the deed of a school waqf could permit the caretaker to swap one asset for a better asset. It could also allow the construction of new classrooms in case of need. Legitimate changes were limited to those explicitly allowed. If the deed permitted one asset swap, once that option was exercised, the waqf's assets became strictly inalienable, regardless of further changes in conditions. Any managerial discretion given to caretakers amounted to a degree of self-management. However, the discretion was exhaustible. Sooner or later, every waqf obeying the strictures of classical law would become totally frozen, at least in principle.

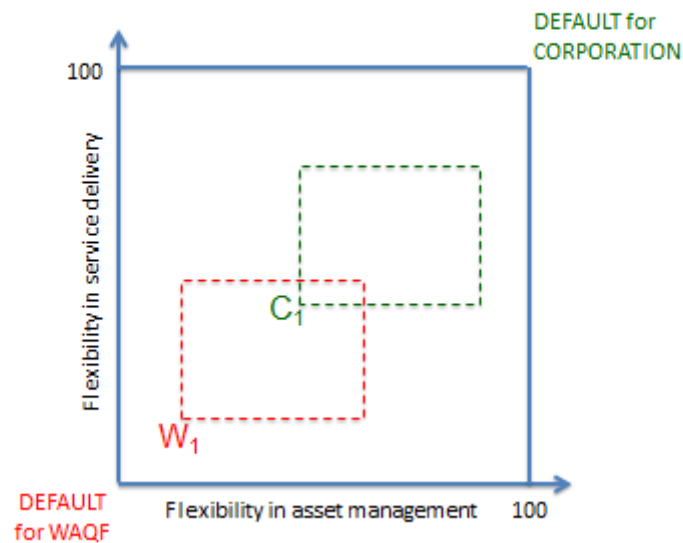
As significant as the operational restrictions on the caretaker is what he was not expected to deliver. He was not obligated to achieve any particular level of efficiency. If he was in charge of a school, for example, he was not expected to reach some threshold of educational performance, such as a certain level of reading proficiency by a particular age. He did not have to please either the students or their parents, or to be responsive to their demands. In fact, the preferences, opinions, and aspirations of the school's beneficiaries were immaterial to his job. He was accountable to the founder alone, and the courts, not the beneficiaries, determined whether he was following the founder's stipulations. The preferences of the founder, as interpreted by the local judge, trumped those of the end users. This was true for every type of waqf, a family waqf no less than a charitable waqf or an imperial waqf.

In view of the patterns just described, it should be obvious that the intended beneficiaries were not expected to participate in governance. They were not entitled to demand resource reallocations, or changes in the services delivered. They were to consume services passively, with feelings of gratitude toward waqf founders for their generosity. This expectation is consistent with the patterns of establishing waqfs. The living constituents were not asked what social services they wanted, to say nothing of their priorities. If the earliest beneficiaries were not consulted about their wishes prior to the deployment of buildings, why would later beneficiaries be consulted about changes to existing infrastructure? And if it made sense for society's elites to decide the public goods provided to one generation, why would they not entitle themselves to making decisions also for later generations, especially if the relevant conditions were expected to stay fixed?

Actual waqfs enjoyed greater managerial discretion than the canonical waqf. Because a waqf deed, however long, could not cover every possible contingency, it contained holes and ambiguities that gave the caretaker some room to maneuver. Through creative readings of the deed, he could make adjustments that the founder could not even have contemplated. The adjustments might well accord with the spirit of the founder's objectives. By the same token, the caretaker could use his discretion, whether explicitly authorized or creatively assumed, to make managerial choices that the founder would have ruled out, had he been able to imagine future circumstances and options.

The flexibility of the waqf can be contrasted with that of the corporation, whose use was spreading in western Europe at the time when the waqf saw increasing use in the Middle East. A corporation is an association of individuals established by law or under the authority of some

law; claiming collective authority in some domain, it has a perpetual existence independent of its membership, and both powers and liabilities of its own. Figure 1 depicts a waqf and a corporation, each established to provide the same service, for instance, elementary education. The horizontal axis represents the organization's flexibility in the management of its income-producing assets, and the vertical axis its flexibility in delivering its service, in this case education. Along both dimensions of the figure, the waqf  $W_1$  enjoys less flexibility than the corporation  $C_1$ .



**Figure 1.** Self-management in practice: the waqf vs. the corporation

The default for a corporation is self-management; taken to an extreme, this amounts to complete autonomy. In practice, a corporation had a charter that defined what it was to do. If its purpose was education, its resources could not be used to assist merchants or to provide poor relief. Its educational mission and its use of assets could be constrained further through its founding charter and state-imposed covenants.<sup>33</sup> The difference between the default conditions of the two organizations would not necessarily have mattered at the outset, when the respective founders could give or withhold flexibility at will. It would have mattered over time, as evolving conditions presented situations unimaginable in earlier periods. Whereas the corporation could have exercised options that might have been closed had they been known in advance, the waqf could not even exercise options that the founder may well have granted happily. This is one reason why the relative positions of  $W_1$  and  $C_1$  shown in Figure 1 would have been the norm.

Ordinarily, neither waqf caretakers nor corporate managers would obey all of the restrictions imposed on them. Where possible, or beneficial to themselves as individual decision makers, they would violate legal restrictions imposed on their organizations. The dotted rectangles in our figure depict the spaces in which our two organizations would operate as a

<sup>33</sup> Hansmann 1981.

matter of practice. We shall return to the possibility of circumventing organizational rules. Suffice it to note here that the differences in default conditions meant that an adjustment that a corporation could make legally would be illegal if made by the waqf.

## 5. Curbs on political participation

The many varieties of democracy have in common an emphasis on broad political participation, which is achieved through such means as chat groups, town meetings, referenda, recall drives, lobbies, protests, opinion polls, and elections. The masses participate in governance through choices at the ballot box, but also by voicing preferences, concerns, and ideas in between elections, and by linking their future votes to decisions of their elected officials. In the process, they help to shape public discourse on issues of the day and to set the agenda for public action. They also ensure that governance is based on some concept of the popular will.

Another characteristic feature of democracy is mandatory information sharing. Although certain sensitive data, such as defense strategies and personal health records, are deliberately kept secret even in the most transparent democracies, officials are required to issue periodic reports about their activities. Moreover, a wide range of government decisions, including government budgets, are debated in public. Whether the typical citizen becomes knowledgeable about the intricacies of public policies is beside the point.<sup>34</sup> For the system to work reasonably well, in the sense of decisions serving the electorate better than any practical alternative, it may suffice to have a representative share of the citizenry follow any given issue closely.<sup>35</sup> A common problem in any political system, including democracies, is that political players of all stripes distort information self-servingly, confusing even citizens intent on staying informed. With varying levels of success, democracies limit information pollution by standardizing disclosure requirements through custom or law.

The rules of the waqf promoted neither broad political participation nor transparency in governance. Authority to execute the waqf deed belonged to a single person, though he might have had a cadre of employees. Apart from the courts, no one, not even his own staff, was entitled to information about assets, rental income, expenses, constituencies, or service quality. The caretaker was not accountable to his waqf's constituents. He was not obligated to prove his managerial effectiveness. Ordinarily, the deed itself was public knowledge, which generated expectations concerning services. The residents of a neighborhood surrounding a fountain expected it to have flowing water, because typically it displayed a plaque publicizing the existence and purpose of its endowment. If the fountain dried up, the residents could ask the court to investigate; and if the caretaker was found negligent, he might be replaced. But no mechanism existed for optimizing waqf resources. By spending excessively on current maintenance, a caretaker might keep the water running during his own tenure, at the expense of the waqf's long-term viability. Though he himself would escape criticism, his successor would inherit an endowment so diminished as to make further maintenance unaffordable.

In theory, the beneficiaries of a waqf could play a supervisory role themselves. They could carry complaints of mismanagement or wrongdoing to a judge in the hope that his scrutiny of the caretaker's operations would improve the waqf's performance. Examples exist of lawsuits

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<sup>34</sup> A large literature points to widespread voter ignorance even on fundamental policies. See, for instance, Caplan 2007 and Zaller 1992.

<sup>35</sup> Hirschman 1970, ch. 7; \_\_\_.

brought by dissatisfied or potential beneficiaries against an ostensibly misbehaving caretaker.<sup>36</sup> Hence, the caretaker took a risk whenever he ignored expectations of the waqf's beneficiaries. A lawsuit could result in a verdict of mismanagement, leading to conviction for damages, even to his dismissal.<sup>37</sup> But to make a convincing case it did not suffice to show that the intended beneficiaries were displeased. The aggrieved parties had to prove that the caretaker was not managing the waqf according to stipulations in its deed. Because information concerning the waqf's finances and activities were not public knowledge, beneficiary-launched lawsuits against caretakers were rare. Out of 1544 waqf-related legal cases in a seventeenth-century Istanbul sample, six consisted of a lawsuit accusing a caretaker of mismanagement or fraud. Not one of these involved a plaintiff who was among the beneficiaries of the waqf in question. In each of the six lawsuits, the plaintiff was an active or former waqf official, who would have been privy to inside information.<sup>38</sup>

In any case, the right to file a legal complaint was no substitute for formal accountability to beneficiaries. An honorable judge could dismiss a complaint as baseless. Besides, not every judge was committed to enforcement of the deed. Some judges were prepared to overlook improprieties in return for what amounted to a bribe. Another deterrent to filing a formal complaint lay in the expenses of filing a case. Plaintiffs had to pay a court fee. In cases where the judge was in collusion with the caretaker, yet another option was to report both to higher authorities. That carried the risk of alienating an influential local official capable of retaliation. There is evidence from seventeenth-century Istanbul that, precisely for fear of retaliation, people refrained from suing state officials unless their case was exceptionally strong.<sup>39</sup> In practice, then, a waqf's constituents had only a limited sway over its caretaker's actions. Although capable of preventing egregious mismanagement, they could not ensure his good will, let alone his competence.

The powerlessness of constituents would have discouraged them from trying to influence policies of great significance to their welfare. It would also have made them refrain from seeking information about possible alternatives. Accepting what came their way, without providing feedback to the supplier or even reflecting on how the delivery could be improved, they would have become accustomed to being passive consumers.

It is worth recalling that waqfs were the primary delivery instrument for a bewildering range of services. Indeed, the typical individual consumed waqf services from cradle to grave. None of the providers were accountable to him. So as a rule he did not participate in the determination of how resources set aside for his benefit would be spent, or in the selection of the officials empowered to do so. He could not have had more resources shifted from, say, mosques to schools. No formal mechanism existed for aggregating the sentiments of any designated constituency. Hence, no member of a constituency could gauge the representativeness of his own level of satisfaction with the supplied service. The system was meant to keep the masses outside the decision making processes that determined a substantial share of the services they consumed.

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<sup>36</sup> Marcus 1989, 303-04; Hoexter 1998, ch. 5; Gerber 1988, 166-69.

<sup>37</sup> See the following adjudications in the Ottoman court records: Istanbul 3 (1618), 84a/1; Istanbul 9 (1662), 250b/2; Galata 130 (1683), 55a/5; Istanbul 22 (1695), 80b/2; Istanbul 3 (1696), 32b/1. All of these cases are reproduced in Kuran 2010-2013, vols. 5-8.

<sup>38</sup> These 1544 cases are in Kuran 2010-13, vols. 5-8.

<sup>39</sup> Kuran and Lustig 2012, 649-52, 659.

It was not uncommon for waqfs to deplete their assets and wither away.<sup>40</sup> Unanticipated expenses lowered the survival rate, but so did the inadequacy of incentives to manage the endowment effectively. And incentives were lacking partly because of limited accountability. One indication lies in the tenure of caretakers. In the Anatolian town of Sivas, between 1700 and 1850, 1902 waqf caretakers were replaced; no fewer than 74 percent of the replacements followed a death in office. In the remaining cases, the successor was typically the choice of the retiring caretaker, who was often a son. Only occasionally was a caretaker fired due to incompetence. As a matter of practice, impediments to the performance of his duties had to become quite severe before his position was subject to challenge. One Sivas caretaker was replaced by his son when he became deaf; another was dismissed when he could no longer read the Quran, which was among his primary duties.<sup>41</sup> In accounts of waqf histories, poor financial management rarely appears as a cause of dismissal, despite evidence pointing to its commonness.<sup>42</sup>

Low political participation on matters pertaining to waqf governance can be linked directly to the rules of the waqf. In view of the caretaker's limited discretion, it would have been odd to allow the targeted beneficiaries, never asked about what services they wanted in the first place, authority over the waqf's expenses. The system was predicated on the passivity of service recipients. A neighborhood's residents were expected to content themselves with whatever services wealthy waqf founders chose to supply; they would not be asked whether resources might be used more effectively on some other service. Accordingly, no arrangements existed for periodic feedback from residents, as municipal elections provide in a modern city. Consequently, if a reallocation of local waqf resources were to become desirable, there was to systematic way to know this. Moreover, if by chance someone sensed the misallocation, the existing institutions dampened incentives to communicate the problem. It did so by freezing the function of every waqf.

Precisely because ordinary subjects were expected to stay out of decisions concerning public goods, it was unnecessary to keep them informed about the uses of waqf assets. Whenever required to fulfill the wishes of founders, judges could make caretakers correct course. As for the masses, although they might raise complaints in response to egregious failures, such as an embezzlement that depletes a fountain's maintenance budget, they would not notice lesser failures on their own.

The passivity expected of consumers suited Middle Eastern rulers quite well, for it limited political activity among the masses. Likewise, their ignorance about waqf management promoted political stability by keeping waqfs from becoming foci of mass discontent. As designed and practiced in medieval times, the logic of the waqf was thus consistent with authoritarian governance. Making waqfs accountable to their end users might have induced expectations of official accountability in an expanding set of contexts. Requiring caretakers to issue reports about their activities would have set precedents for inclusive governance generally. And facilitating the acquisition or processing of information about waqf resources would have undermined the objective of keeping the masses politically passive.

The generation of new ideas is correlated with the number of ideas in circulation. That is why metropolises, which bring together diverse people, contribute to knowledge advancement

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<sup>41</sup> Demirel 2000, 127-31.

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far beyond their share of the world population.<sup>43</sup> Insofar as they contributed to excluding the masses from politics, the rules of the waqf would thus have reduced institutional creativity broadly, across the system. Creativity would have been affected adversely with respect to markets, finance, science, and of course policy making, among other domains. Awareness of shared problems would also have diminished. For both reasons, long-term economic development would have suffered, along with political development.

Students of participatory politics distinguish between "tame" and "rebellious" organizations.<sup>44</sup> In barring waqfs from political advocacy, Islamic law ruled out the latter type. But it limited participation even further by denying even the constituents of tame waqfs a hand in management. An already mentioned consequence was the impoverishment of public discourse on the provision of services. This impoverishment would have diminished the efficiency of waqf services.<sup>45</sup> Another long run effect is that the masses would have failed to develop the habits and skills needed to communicate thoughts, expectations, and grievances concerning social services. The latter effect would have outlived the waqf's popularity as a vehicle for providing social services.

## 6. Obstacles to coalition formation

Waqfs need not have pursued political activities in mutual isolation. They could have supported one another, formed lasting coalitions, and negotiated compromises with an eye toward maximizing their joint influence. Just as industrial workers formed national labor movements in the age of industrialization, so waqfs could have fostered region-wide political movements to advance their common interests, preserve their institutionalized privileges, and address their shared grievances. And just as the world's labor movements produced ideologies ostensibly favorable to workers, so waqf-based coalitions might have generated ideologies beneficial to waqf constituencies. In Western Europe, cities, guilds, and universities organized as a corporation did work together toward shared goals. In the millennium preceding Europe's early democracies, cities worked together to limit state powers, as did other corporate entities.<sup>46</sup>

However, for all the wealth in their control, and all the status that their caretakers enjoyed at least locally, waqfs remained politically powerless. As such, they did not initiate a democratization process. As we shall see, one reason is that their resources could not be managed flexibly, another that they were designed as apolitical organizations. Whereas an incorporated European church was free to participate in politics, a mosque waqf was not. And whereas European cities could form coalitions to resist a royal tax, the waqfs within a city did not engage in collective action among themselves, to say nothing of forming a political bloc across cities. There emerged no federation of waqfs representing scattered madrasas, or one representing the interests of all mosques, to say nothing of a confederation of diverse waqfs. The upshot is that in the pre-modern Middle East suppliers of social services, though well-funded, did not constrain sultans in any serious way. Unlike the politically vocal universities, professional associations, and municipalities of Western Europe, they did not provide counterweights to the powers of monarchs.

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<sup>43</sup> Glaeser 2011, ch. 1, 9; and Simon 2001, ch. 3.

<sup>44</sup> Fung 2003, 534-36.

<sup>45</sup> This is consistent with slower urban growth in the Middle East than in western Europe between 800 and 1800, a pattern documented by Bosker, Buringh, and van Zanden (2013).

<sup>46</sup> Berman 1983, ch. 12.

A factor that limited the political potential of waqfs is that ordinarily they could not pool their resources. If the founder of a waqf had not explicitly allowed it join forces with other organizations, technically achievable economies of scale or scope would remain unexploited. Hence, services that a single large waqf could deliver most efficiently—road maintenance, piped water—might be provided at high cost by multiple small waqfs. Founders were free to stipulate that the income of their waqfs be transferred in part, or even fully, to a large waqf. Scattered examples of such resource pooling have been found.<sup>47</sup> A basic reason for their uncommonness is that they required a coincidence of goals between the feeder waqf and the receiving waqf. In particular, the supplier of resources and the recipient had to be compatible in terms of their services.<sup>48</sup>

One must distinguish here between waqfs endowed by a group and the pooling of resources belonging to waqfs established separately and possibly at different times. Neither kind of pooling was common.<sup>49</sup> It is easy to see why the latter would have been discouraged. With established waqfs founded by individuals, it was difficult, if not impossible, to ascertain that the founders agreed, or would have agreed, to the terms of a merger. Consider two schools built in the same neighborhood to teach the Quran, along with literacy and numeracy. Merging their waqfs could economize on administrative overhead. But would the founders have agreed to combining the classes in one building and renting the other for extra income? If the schools were kept separate and administrative overhead shared, what would happen if one particular building needed repairs more frequently? Would the founder of the better constructed school have endorsed the merger had he known of the other school's maintenance needs? Such questions could not be answered affirmatively beyond the shadow of a doubt. Hence, as a rule, mergers were disallowed. If a waqf had not been designed to participate in resource pooling, it could not be converted into a feeder waqf of a larger waqf. Even if new technologies came to generate economies of scale unimaginable at its inception, the waqf would have to continue operating independently.

The foregoing logic does not apply to waqfs established, at the start, by a well-defined group. Six co-founders could all agree, at the outset, to allow future mergers under certain conditions. Group-established waqfs were uncommon because under Islamic law the founder of a waqf had to be an individual property owner. The reason for requiring the founder to be an individual is lost in history. It probably coincided with the very consideration that accounts for the corporation's exclusion from the corpus of Islamic law: rulers' aversion to private coalitions. A private coalition formed to endow a service could facilitate cooperation against the ruler. Whatever the exact cause, the requirement to limit the number of founders to one set the pattern for a millennium. Rifaah al-Tahtawi, a major Egyptian thinker of the nineteenth century, wrote that "associations for joint philanthropy are few in [Egypt], in contrast to individual charitable donations and family endowments, which are usually endowed by a single individual."<sup>50</sup>

The near-absence of opportunities to pool resources had serious political implications. It kept waqfs with overlapping, and even common, needs from carrying out joint campaigns for external resources. Consider the caretaker of an educational waqf who finds that thieves are pilfering his school's food supplies. He was free to ask state officials for help in securing the

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<sup>47</sup> Çizakça 2000, 48.

<sup>48</sup> Vanity must also have limited resource pooling. People with a strong desire to be remembered as a philanthropist would not have wanted the assets of their waqfs to be swallowed up by the corpus of a larger waqf.

<sup>49</sup> For references to waqfs established through the pooling of resources within families, see Doumani 1998, 38.

<sup>50</sup> As quoted by Cole 2003, 229.

school. But he cannot initiate an association to advocate better protection for all schools. Waqf regulations do not allow him to join forces with the caretakers of other waqfs suffering from theft. Each of the many caretakers must face the state bureaucracy alone. Their forces must remain fragmented.

Nothing in Islamic law keeps the individual beneficiaries of waqfs from working together for the prevention of theft. Concerned parents from various neighborhoods could jointly appoint a delegation to plead with the Sultan for better policing. However, this is unlikely in the absence of leadership by the caretakers. The problems that bedevil collective action in large groups would generally block it here, too. Isolated constituencies do not develop an awareness of the potential gains from cooperation. Nor do they develop a common political identity. Moreover, individual beneficiaries who happen to notice the potential advantages of forming a political movement will lack the motivation, as individuals, to incur the costs of getting a political movement off the ground.<sup>51</sup> For all these reasons, in records of waqf-related complaints and requests brought to Sultans, one never encounters people representing multiple waqfs at once, unless they happened to hold positions in all. Actions are initiated either by individuals acting alone or by groups united around concerns about a single waqf.<sup>52</sup>

Just as cooperation will be lacking within a sector such as education, healthcare, or water supply, so it will be for waqfs located within any given region. Imagine a school, hospital, and a water fountain, all delivering services to the same neighborhood through separate waqfs. The caretakers and beneficiaries of these waqfs have a common interest in developing the neighborhood's infrastructure. For instance, good local roads will facilitate the work of all of them. Yet, they cannot combine their resources to campaign for better roads. Insofar as they stand to benefit from road construction, they must convey demands independently, without combining forces with other waqfs working toward the same end.

A basic cause of these operational restrictions is that the law gives supremacy to the founder's right to set the terms of management, treating the caretaker as an executor of his decisions. Just as the caretaker's preferences are irrelevant to charting the waqf's course, so is his political judgment. He is not at liberty to pursue opportunities for advancing his constituents' interests through cooperation with other groups or individuals. In the language of modern economics, the system thus treats the founder as a principal and the caretaker as an agent hired to implement directives conservatively, by favoring the status quo unless change was explicitly stipulated.<sup>53</sup> Insofar as the founder's directives are incomplete and his intentions unknown, the caretaker will lack certainty as to how the founder would have wanted him to act. Nevertheless, he must not substitute his own political judgment for that of the founder. If the deed makes no mention of collective action, he is to assume that the founder wanted the waqf's management and resources to be kept separate from those of other entities.

## **7. Political consequences of inflexibility**

Although broad political participation, whether by individuals acting independently or by coordinated groups, provides political gains, its effect on any given substantive outcome need not be positive. Adding more participants to a decision can delay the process and raise the

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<sup>51</sup> Olson 1971, chs. 1-3, 5.

<sup>52</sup> Such cases are rare in any case. See Ursinus 2005.

<sup>53</sup> Agency problems and dilemmas receive attention in many contexts. Presuming the world is rife with opportunism and informational asymmetries, it focuses on finding second-best contracts that give the agent incentives to comply with the principal's directives. See, for example, Mirrlees 1976, 105-31; and Platteau 2000, 10-17.

possibility of gridlock. Such decision costs can swamp the benefits of fine tuning services to beneficiary preferences. In principle, then, a single caretaker might provide a given waqf service more efficiently than a committee composed of beneficiaries. The underlying logic guides the separation of constituency and management in modern charitable corporations. Consider Doctors without Borders, which provides medical aid to victims of disasters and wars. Its managerial team constitutes a minute fraction of its benefactors and beneficiaries, who span the globe.

But there is a critical difference between Doctors without Borders and a hospital established as a traditional waqf, under Islamic law. The former can shift its operations easily between regions; it can also adapt its surgical teams and procedures to suit new technologies. Although its board of directors may have trouble reaching a consensus on any particular point, wherever a sufficient number of directors agree on a modification, it will be made. For its part, the waqf hospital is unhampered by the challenges of bringing a group of officials to a consensus; if the caretaker needs to convince anyone, it is a single judge. By the same token, the deed of his waqf will limit his discretion. For one thing, the hospital's location will have been chosen by the founder, generally precluding the relocation of operations elsewhere. For another, he cannot adjust expenses just because technological developments make this efficient. This is so even if he has the support of the intended beneficiaries. Remember that a traditional waqf was not meant to be self-governing. It was designed to serve its founder's preferences, which would have been shaped by the conditions of his own era.

It is worth reiterating that founders could insert into their deeds clauses giving successive caretakers discretion on particular matters, or the right to make certain types of changes. But the implied flexibility was limited; a deed could not grant caretakers unbounded discretion, for that would defeat the very concept of the waqf, which involved the declaration of a specific social purpose and the establishment of an adequate endowment. Hence, every waqf imposed restrictions on resource use. Sooner or later, this means, changing conditions would render inefficient a waqf that adhered strictly to its deed. Consider a Cairo hospital established in 1600. Its founder would have constructed a stone building and endowed land to cover the salaries of physicians and other staff, food for patients, and the medical equipment of the time. He could not have anticipated the space needs of a modern surgery room, or the costs of an MRI machine.

The economic consequences of the inflexibilities in question have been explored elsewhere.<sup>54</sup> To identify the political costs, it will help to distinguish between *ex ante* and *ex post* restrictions. *Ex ante* inflexibilities consist of restrictions on the founding of waqfs. The only formal restriction was that the mission be allowable under Islamic law. As a matter of practice, members of the ruling dynasty as well as other wealthy and influential people faced pressures to make choices compatible with state objectives. They were expected to found waqfs serving strategic regions and constituencies. This policy is evident in the abundance of major endowed structures on key trade routes and in cities that served as an imperial or provincial capital. Whether or not state needs played a role in the founder's choice of service, there was no hard rule as to the discretion that he could grant to successive caretakers. The contingencies under which a caretaker might reallocate resources were not legally specified. They were restricted by custom, but also by the limits of human imagination. As we shall see further on, an option that the founder had not explicitly provided could become costly to exercise, even prohibitively so.

To turn now to *ex post* inflexibilities, they could involve the mission of the management. Mission inflexibilities concerned modifications to the intended purpose of the waqf. Imagine a specialized hospital, such as a tuberculosis sanatorium. In the period when the sanatorium was

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<sup>54</sup> Kuran 2001, 861-69; Kuran 2011, ch. 6.

considered the best vehicle for curing tuberculosis, a waqf-supported sanatorium would have been built in the mountains for long stays, on the view that the best cure for tuberculosis is high altitude, fresh air, and good nutrition. As such, it would have been welcomed widely as a charity compatible with Islamic law. Once the invention of antibiotics made tuberculosis sanatoria obsolete, the waqf's beneficiaries would have dwindled, dragging down the value of its facilities in their intended use.<sup>55</sup> In the founder's own time, tuberculosis was a major menace, and he did his best to cure of its victims, whom he expected to be present in abundance indefinitely. Presumably his overriding intention was to return sick people back to health. Had he come alive in the age of antibiotics, he might have favored broadening his sanatorium's mission to include all post-operative recovery patients. However, under Islamic law, not even a waqf's founder was authorized to revoke, alter, or refine its charter. Hence, a waqf-financed sanatorium's facilities could remain underutilized indefinitely. In the meantime, courts could block its conversion to some other medical use. The inefficient use of the waqf's resources would necessarily come to an end only when its tuberculosis patients ran out. At that point, the waqf's resources would go to the poor, who are the ultimate recipients of every waqf's endowment income.

Ex post managerial inflexibilities concern the administration of waqf assets and the delivery of waqf services. Conscious of the advantages of giving discretion to caretakers on managerial matters, founders often pre-authorized certain operational changes, including asset swaps, reconstructions, and job reclassifications. The courts helped founders equip caretakers with operational options through formularies suitable to wide classes of waqfs and adaptable to others. But even with such precautions, it was just a matter of time before the restrictions of the deed, whether explicit or implicit, became binding. The number of changes had to be finite, and the default rule was that the founder's choice prevailed.

The previous section focused on political consequences that worked through the political participation of waqf constituencies. Now we can take up those that flowed directly through delivered services. Insofar as people benefit from social services, their life satisfaction improves; they also view the prevailing political system as legitimate and worth preserving. Their satisfaction depends also on how their services compare with those supplied in other places and that they themselves received in the past.<sup>56</sup> The managerial efficiency of waqfs would have mattered, then, to the legitimacy of the general political order. In cities where waqfs supplied extensive subsidized services, residents would be more satisfied than if, all else equal, the same services were obtainable only at market prices. That is why rulers of the Middle East prodded their relatives and high officials to establish waqfs in strategically important places. Knowing that subject satisfaction depended on the quality of the services, they favored constituencies whose loyalty was most critical to the political stability.

The very fact that made waqfs a source of legitimacy also constrained the ruler's actions affecting their services. As prospect theory holds, losses hurt more than identical gains feel good.<sup>57</sup> For that reason alone, people object to the withdrawal of services that they might not have bothered to secure. Eliminating a functioning hospital in order to gain control of its assets would upset its beneficiaries, making them less loyal to the ruler. Likewise, terminating a service that contributed to its efficiency, such as its water supply, would tarnish the incumbent regime's image. Vested interests generated by waqf services would be on guard against policies liable to

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<sup>55</sup> This second example is drawn from Posner 1992, 508-9, who points to the inefficiencies of trusts generally.

<sup>56</sup> Oswald 1997; Easterlin 1974.

<sup>57</sup> Kahneman and Tversky 1979; Frank 1997.

reduce or eliminate them. Conscious of the potential resistance, rulers would try to avoid harming popular waqf services; they would seek even to appear actively supportive, through complementary services. In restricting the ruler's policy policies, docile but potentially hostile waqf beneficiaries could thus have functioned as barriers to despotism. The assets supporting the waqf would have enjoyed immunity not only by virtue of their perceived sacredness but also because of their social benefits.

The same logic would suggest that when, for whatever reason, the usefulness of a waqf diminished, its political support would have fallen in tandem. Specifically, its constituents' resistance to hostile state policies would have diminished. The inflexibilities of waqfs would thus have undermined whatever checks and balances they created through vested interests. Reconsider the waqf-supported sanatorium that becomes useless with medical advances. Tuberculosis patients would become indifferent to its fate. New generations would view it as an anachronism. As the waqf's beneficiaries dwindled, the state would find it increasingly easy to confiscate the waqf's assets. Opposition to the confiscation would be limited to the caretaker, the sanatorium's employees, and their families.

If this logic is correct, the inflexibilities of the waqf would have brought increasing harm to its perceived usefulness in the era of modern economic growth, which began around 1750. This is when technological and associated institutional innovations took a quantum leap in western Europe, driving the rest of the world to make adaptations that began to feed on themselves.<sup>58</sup> As the new economic era unfolded, waqfs faced growing demands to reallocate their resources and modify the delivery of their services. Their inflexibilities should have become an increasing burden on their intended beneficiaries as the new economic era unfolded. Growing numbers of Middle Easterners, including elites with a stake in the efficiency and legitimacy of the social order, should have been drawn to other organizational forms for delivering public goods. We shall see shortly that the nineteenth century witnessed the dismantling of waqfs on a massive scale and the emergence of service suppliers using relatively more flexible organizational forms.

### **8. Waqf corruption and the political opportunities it foreclosed**

No one could foresee all the economic conditions under which waqfs would operate into the indefinite future. Even a founder or caretaker unusually attuned to ongoing developments could take steps that unintentionally diminished a particular waqf's capacity to fulfill its mission. Some waqfs fell on hard times and then withered away, because caretakers lacked authorization to deal with budget deficits pragmatically. Yet opportunities existed to reinterpret a waqf's mission or alter its operations without violating the letter the law, at least not blatantly. Although the judges of Islamic courts were authorized to stop even these modifications, frequently they ratified them. Sometimes the community would benefit. But judges allowed transgressions also for personal gain. In allowing waqfs to break violate the spirit of the law, they took part in corruption.

The simplest form of adaptation involved convenient interpretations of ambiguities in the waqf deed. For example, the authority to make necessary repairs would be used to enlarge a building. An expansive interpretation of the maintenance requirement would thus serve to adapt physical structures to prevailing needs. Many modifications and expansions of this sort were consistent with the spirit of the deed, in that they yielded benefits to constituencies that the founder meant to serve. However, ambiguities were also exploited to legitimize expenses

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<sup>58</sup> Easterlin 1998.

contrary to the founder's intentions. An endowment established in sixteenth-century Jerusalem for the benefit of "the poor and the humble, the weak and the needy, ... the true believers and the righteous who live near the holy places" was interpreted as encompassing all of the city's pious Muslims, including its richest residents and its top officials.<sup>59</sup>

A second form of shady adaptation worked through transactions involving income-producing assets. The deed of a waqf could authorize sales or exchanges beneficial to its constituents. But even if the deed was silent on the matter, judges were empowered to make exceptions in extenuating circumstances.<sup>60</sup> Conditions arose that would justify adjustments to the waqf's portfolio of assets on efficiency grounds alone. Relinquishing a farm located far away from the caretaker's home for an equally productive one in his own neighborhood could make it easier for him to monitor the farm's use and to collect payments. In the process, the waqf's capacity to meet the founder's goals would improve. In spite of such obvious benefits, transactions involving waqf properties were subject to abuse. They could be undertaken to enrich the caretaker and a judge at the waqf's expense. Under one such variant, a waqf asset would be swapped with a less productive asset; the caretaker and the judge would share the difference. Another variant involved property rentals to the caretaker's relatives at sub-market prices. The records of an Istanbul waqf speak of farms rented to the caretaker's daughter and son-in-law at unusually low rates; with the connivance of judicial authorities, the caretaker avoided seeking other bids.<sup>61</sup>

A third form of adaptation took the form of lengthening lease periods beyond what the law allowed. To ensure that the caretaker maintained control over waqf properties, classical Islamic law capped the lease period at one year, except for land, for which the maximum was three years. This provision limited the lessee's incentive to make long-term investments; it even discouraged maintenance, lest the lease not be renewed. A common ruse to circumvent the restriction was to sign a long-term contract scheduled to lapse periodically for a few days and then get revalidated. Although the practice obeyed the letter of the law, everyone understood that it extended effective agreements beyond what was strictly allowed.<sup>62</sup> The lengthening of actual leasing periods must have improved asset productivity by inducing lessees to make investments. But it also led to the privatization of waqf assets, without adequate compensation for the waqf, if any at all. One problem is that leases became inheritable. Another is that caretakers effectively lost the ability to adjust the terms, even to reclaim waqf property. Through some combination of guile, bribery, and force, the descendants of a lessee could assert outright ownership by virtue of long hereditary tenure.<sup>63</sup> If in the meantime waqf documents disappeared, the privatization could not be prevented even if the courts sought to preserve the waqf's integrity, which often they did not.

The privatizations in question were not necessarily harmful as measured by economic output. Insofar as they freed misallocated assets, the benefits to individuals would have exceeded the losses of waqfs. On the political side, there would have been three effects. In dampening the

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<sup>59</sup> Peri 1992, 172-74. The expansive interpretation rested on the premise that piety alone provided qualification for aid.

<sup>60</sup> For examples of sales and exchanges of waqf properties, see Hoexter 1998, ch. 5; and Jennings 1990, 279-80, 286; and Marcus 1989, 311. All involved the approval of a judge.

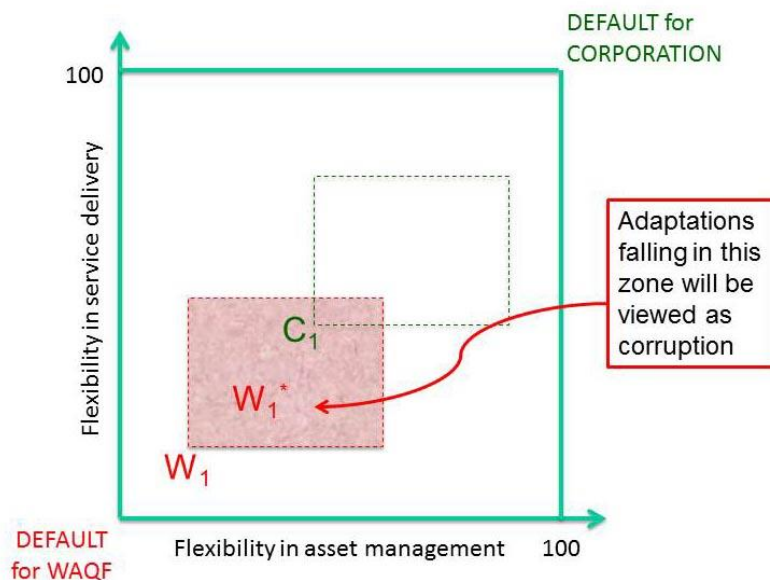
<sup>61</sup> Behar 2003, 74-75.

<sup>62</sup> Gerber 1988, 170-78; Gerber 1994, 108-10; Yediyıldız 1990, 113-18.

<sup>63</sup> Gibb and Bowen 1957, pt. 2, 177; Behrens-Abouseif 2002, 67. The extent of the privatization due to illegitimate leasing is a matter of controversy (Gerber 1988, 174). Measurement is complicated by the fact that the properties in question were often reconverted into waqf property.

inflexibilities involving endowed waqfs, the privatizations would have increased the resources available for private political pursuits. But this effect could not have been empirically important, because prior to the twentieth century the lack of incorporation opportunities made it difficult for non-state actors to carry out sustained collective action. Secondly, corruption would have tarnished the waqf's image as a sacred institution used for charitable purposes. Finally, the collective reputations of judges and waqf caretakers would have suffered, reducing their trustworthiness. The second and third effects would have undermined popular commitment to waqfs in general. They would have lowered people's willingness to defend the institution against the state. Evidence will be presented further on.

The various methods used to adapt waqfs to changing circumstances, reallocate waqf resources, and privatize waqf assets contributed, over more than a millennium, to a culture of corruption. Buying off judges, exploiting ambiguities in wording, and getting authorities to look the other way became not only common but acceptable. Since even highly respected people engaged in such practices, they acquired practical legitimacy even as they remained deplorable in principle. To be sure, tolerated law breaking exists is a universal practice. Although jaywalking violates American laws, it is common throughout the United States, and Americans do not necessarily consider it reprehensible. However, in the pre-modern Middle East circumvention of the law took place in a much broader set of contexts than it does in the most advanced economies; and a relatively greater share of resources was involved. Remember that waqfs controlled huge amounts of real estate and that they fulfilled functions that west European communities tended to meet through more flexible organizational forms. As the economic modernization process unfolded, and the Middle East became underdeveloped relative to the West, the divergence was reflected in the extent of corruption. The Transparency International finding that business is perceived as more corrupt in the Middle East than in Europe is among the recent manifestations of the culture of corruption identified here.



**Figure 2.** Illegitimate adaptations by a waqf.



Waqf services were not necessarily inefficient at their founding. They became inefficient through time, which created incentives to circumvent the stipulations in their deeds. Corruption thus became an issue, and an increasingly pressing one, as changing conditions made caretakers and beneficiaries want managerial and service modifications that the founder had not explicitly authorized. These modifications could include ones that would have been considered as legitimate had the services been delivered through a corporation rather than a waqf. The point is illustrated in Figure 2, where  $W_1$  and  $C_1$  represent the waqf and corporation shown earlier in Figure 1. Suppose that  $W_1$  was founded to provide health services. Two centuries later, because of advances in medical knowledge, it is no longer efficient to spend resources as the founder stipulated. It makes sense to use different cures within different structures. Without adaptations, there will be deadweight losses. Avoiding the losses requires the caretaker to exercise more discretion than the founder authorized; specifically, it requires him to move to  $W_1^*$ , which lies within the red zone in Figure 2. These adaptations will appear as corruption. The same flexibility would have been fully legitimate for corporation  $C_1$ . The waqf in the figure will appear as more corrupt than the corporation for making adjustments than the latter could make without raising eyebrows. The key implication here is that an unintended consequence of the waqf's legal restrictions was to broaden the set of adjustments that society would perceive as somehow illegitimate.

An unintended consequence of the Middle East's pernicious culture of corruption, and by implication of the waqf itself, has been a rise in the cost of making and enforcing laws. Where laws are commonly evaded, it is relatively hard to make people obey new laws. Because of its pervasiveness, the act carries no significant stigma, and enforcement is costly. Consequently, laws enforced easily elsewhere remain practically unenforceable. Indeed, traffic regulations, rules of hygiene, environmental regulations, and tax laws are openly flaunted in many parts of the Middle East even today. A basic reason is that for centuries circumventers of massively significant laws have enjoyed tolerance and respect.

In the historical literature on the waqf system evasions of waqf rules are often treated as substitutes for legally granted flexibility.<sup>64</sup> Although they certainly did make waqfs less rigid than a strict interpretation of the law required, the long term effects differed substantially. In overcoming immediate obstacles to resource reallocation, they also dampened pressures against law breakers in general. That made it harder to institute new rules and regulations, which is integral to modernization. Indeed, modernization involves the discarding of some rules, the modification of others, and the adoption of completely new ones. In societies accustomed to obeying the law, new laws are obeyed quickly, simply because lawfulness comes naturally. By contrast, in societies accustomed to circumventing rules, new laws are not taken seriously. People who grow up believing that rule breaking is essential to survival expect others to maintain their behaviors, and they avoid inconveniencing themselves. Free riding remains common and tolerated, hindering the success of widely desired cooperative projects. If the Middle East scores low also in regard to rule of law, a reason lies in the centrality, until modern times, of the waqf in daily life, especially in cities.

Had waqfs been allowed to restructure themselves and reorient their missions through fully legitimate means, they might well have generated a vigorous civil society. Communities of the Middle East might have enhanced their capacity for solving their problems autonomously, without state involvement beyond the enforcement of applicable laws. The contemporary Middle

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<sup>64</sup> Gerber 1999, especially 85-86, 102-3; ...

East might not have consisted largely of weak societies governed by over-stretched and authoritarian states.

### 9. The twilight of the traditional waqf

We have seen that the waqf limited political participation and undermined the rule of law through various complementary mechanisms. If the empirical significance of these mechanisms is granted, we are left with the question of whether they shed light on present political patterns of the Middle East. The answer is not obvious, because all across the Middle East the waqf's role in daily life has dwindled. Two factors account for this abatement. In the nineteenth century the formation of new waqfs dropped precipitously. And around the same time, as the waqf's economic inefficiencies became increasingly conspicuous in the age of industrialization, the region's reformers, starting with those of Egypt and the Ottoman Empire, took to nationalizing waqfs on a large scale. In waves, nationalizations continued in the twentieth century.

The drop in waqf formation is attributable to partly stronger private property rights across the region. As arbitrary expropriations became less common, the need for wealth shelters diminished accordingly.<sup>65</sup> Also important is the emergence of alternative means for securing wealth and for funding charity. In the mid-nineteenth century, it became possible to establish, under special laws, corporations to provide services that had long been delivered through waqfs. Thus, municipalities took on the functions of urban waqfs; and semi-official agencies, such as the Red Crescent, assumed responsibility for emergency aid and poor relief. Monarchs themselves started forming charitable organizations outside the purview of waqf law. By the early twentieth century, the adoption of corporate law codes made it possible for anyone to register a corporation, whether as a profit-seeking enterprise or a non-profit organization. As individuals and groups, private parties took to establishing perpetual non-governmental organizations to deliver social services more flexibly than through waqfs.<sup>66</sup> A complementary impetus for the decline in waqf formation was the emergence of new investment vehicles. The shares of publicly traded companies and interest-bearing bank accounts began to absorb investments that once flowed into new family waqfs.<sup>67</sup>

Nationalization drives were launched on the pretext that waqfs were hopelessly corrupted and that their founders' wishes could be met more reliably through bureaucrats housed in a public agency. To this end, states of the Middle East established waqf agencies to assume duties traditionally assigned to caretakers. Thus, a "Ministry of Waqfs" was established in Istanbul in 1826, and in Cairo shortly thereafter.<sup>68</sup> These new public agencies were supposed to keep strictly separate accounts for the thousands of waqfs under their control. In time, the assets of many waqfs became part of a fungible resource base.<sup>69</sup> Many potentially useful mergers occurred through means antithetical to the spirit of the traditional waqf. The nationalization of waqf assets

<sup>65</sup> In the Ottoman Empire, the practice of arbitrary expropriation was formally abolished in 1838 (Findley 1980, 145-46). Thereafter the security of property rights steadily strengthened at all levels of society. In Egypt, ...

<sup>66</sup> Focusing on the 1876-1914 period, Özbek 2002 documents the institutional transformation of charity in Turkey.

<sup>67</sup> Kuran 2011, 161-64, 251-53.

<sup>68</sup> As in several other Arab countries, in Egypt a Ministry of Waqfs remains in operation. In Turkey, the administration of nationalized waqfs was downgraded to a general directorate in 1924, as part of the Republic's drive to minimize the role of Islam in public life. The fungibility of waqf assets advanced a step further in 2012 with the transfer of the directorate's majority share in the Waqf Bank (*VakıfBank*) to the Treasury (*Radikal*, 15 October 2012, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1104047&CategoryID=80>).

<sup>69</sup> On the Ottoman transformation, see Öztürk 1995, 63-107, 379-471; on the Egyptian reforms, see Baer 1969, 79-92.

went hand in hand with a transfer of functions traditionally exercised by waqfs to service providers modeled after western archetypes. For example, urban services were transferred to newly established municipalities. This delegation amounted to the adoption of a locally centralized system for supplying urban public goods. The observed centralization was fueled by a growing perception that the region's traditional institutions for providing urban amenities were outdated.

An alternative to the road actually taken would have been the transformation of the waqf itself. Emerging problems could have been handled by reinterpreting traditional waqf rules in a manner suited to changing economic conditions; or by creating new categories of waqfs for sectors, such as urban water delivery, where greater flexibility was becoming desirable. No such reforms took place, at least not until the nineteenth century. A factor in the delay must have been the sacredness of the waqf. Because of the waqf's centrality to daily life in polities governed under Islamic law, challenges to it could have been portrayed as attacks on Islam itself. Under the circumstances, individuals poised to benefit from looser regulations would have refrained from criticizing the system or calling for basic modifications. Consequently, the principle of static perpetuity—the commitment to perpetual fixity—would have become immune to fundamental change.<sup>70</sup>

Incentives to challenge the static perpetuity principle were dampened, of course, by opportunities for bringing about practical changes without taking on the relevant laws and norms. In the nineteenth and twentieth centuries, the corporation, a transplanted institution, became the basic delivery vehicle for various services historically provided through waqfs. Along the way, it became common for caretakers to tamper with the objectives of the waqfs under their administration, or to circumvent their operational rules through illegal methods. The courts not only tolerated this corruption but they participated in it. Corrupt practices involving waqfs had political effects of their own. They had unintended but persistent consequences visible even today, more than a millennium after the waqf emerged.

## 10. Emergence of the modern waqf

As the waqf lost significance, it also changed character. Under legal reforms across the region, waqfs can now be formed by groups, including organizations. They can accept donations and run fundraising campaigns. They are directed by boards of trustees as opposed to a single caretaker. They now enjoy juristic personality, enabling them to sue and be sued as a legal entity; traditionally, it was the caretaker who had standing before the courts as an individual plaintiff or defendant. Merit plays a substantial role in the selection of their administrators. They have managerial flexibilities denied to their traditional namesakes. Furthermore, they are not precluded from politics. Although they cannot endorse political parties, they are free to express opinions on policy issues. They can organize conferences, issue publications, give awards, and make grants, all with an eye toward influencing political views and outcomes. They can pursue such endeavors in cooperation with other entities, including other waqfs. In short, they can participate in politics in innumerable ways.<sup>71</sup> In fact, the modern waqf is essentially what in the Anglo-Saxon world is known as a charitable corporation.

A modern waqf's board of trustees, which has replaced the single caretaker of the traditional waqf, is authorized to change services, rules of operation, and goals without outside interference. This is not to say that the board of a modern waqf is unconstrained by the founder's

<sup>70</sup> Rubin 2011 develops this argument with respect to Islamic institutions in general.

<sup>71</sup> For a critical survey of various reforms, see Çizakça 2000, ch. 4.

directives. Rather, there is no longer a presumption that stipulations in its deed constitute a complete blueprint, and that the board need only follow orders. A modern waqf board is charged with maximizing the overall return on all assets, subject to inter-temporal tradeoffs and the acceptability of risk. The permanence of any particular asset is no longer an objective in itself. It is taken for granted that the waqf's substantive goals may best be served by trimming the payroll to finance repairs or by replacing a farm received directly from the founder with equity in a manufacturing company. Another salient innovation is that the board of trustees is expected to play an integral role in defining how the waqf's goals can best be served. If it were to keep a vastly underutilized hostel in operation merely out of deference to a founder's wishes, it might be considered irresponsible.

Much more important than the waqf's structural transformation has been its loss of importance. No longer are social services provided primarily by waqfs. As in most other parts of the globe, in the Middle East they are supplied largely by corporations, including both private companies and public agencies. The consumers of these services do participate in the determination of the providers. With services provided through private corporations, choices are made primarily through the marketplace. For instance, parents choose among private schools depending on the education they expect their children to receive. In the case of public corporations, at least in places where some form of democracy exists at least locally, consumers are able to punish poor performance at the ballot box. For example, they can vote a mediocre mayor or party out of office. The power that consumers enjoy through the market or the ballot box fosters incentives to keep informed about how resources are used. It motivates them also to communicate their thoughts about feasible alternatives and to form coalitions with like-minded people.

There are many reasons why modern consumers may fail to exercise their ability to punish poor service providers. Free riding may keep them uninformed, and vested interests may render government agencies unresponsive to the expressed wishes of voters. In autocratic regimes, such as those prevalent in the Middle East, a more basic reason is that the threat of persecution may silence potential critics. Nevertheless, there is a fundamental difference in accountability between the delivery of waqf services and that of services in a modern economy. In the modern world, including the Middle East, suppliers are expected to serve the end consumer. In the premodern Middle East, the end consumer was expected to be a passive recipient of goods provided by generous waqf founders.

## **11. The persistent weakness of civil society**

This transformation of the waqf begs the question of whether the traditional waqf, with all its political limitations, matters to political trends in the present. Could it be that the premodern history of the waqf, however relevant to explaining patterns up to the nineteenth century, no longer matters to Middle Eastern politics?

This would be an invalid inference, because today's political patterns include ones that traditional waqfs helped to shape over a millennium. They include low generalized trust, low trust in institutions, pervasive corruption, and low organizational resistance to government capture. Such patterns have endured through a vicious circle whereby each strengthens the incentives for reproducing the others. Although magnitudes have changed under the influence of various reforms of the past two centuries, and although variations exist across regions and countries, the general patterns are sufficiently pronounced to make the Middle East stand apart

from other regions. As such, they help to account for various political indices that point to the Middle East's undemocratic features.

Generalized trust refers to the readiness of people to cooperate and to engage in civic endeavors with fellow citizens.<sup>72</sup> It emerges, and is sustained, as members of society interact with and within associations that individuals create, operate, and transform essentially on their own, without direct guidance from the state. It tends to vary inversely with primordial attachments based on ties of blood, race, language, region, or religion. Thus it is low where kinship ties are relatively strong, as they are in the Middle East.<sup>73</sup> And kinship ties are strong precisely where obstacles have existed to the development of autonomous organizations that provide protection from the state. Members of societies lacking autonomous organizations are relatively more likely to trust relatives and mistrust non-relatives.<sup>74</sup> So they try harder to keep their wealth within the family by operating, insofar as they join cooperative ventures at all, through family-owned and -managed enterprises. In such societies the prevalence of cousin marriages provides another indicator of low generalized trust.

The self-reinforcing process that kept civil society embryonic in the Middle East until modern times also kept its kinship ties strong. As we have seen, the waqf played a central role in that process. Family waqfs sustained kinship ties by making them a key source of individual well-being. Charitable and even imperial waqfs did the same by allowing caretakers to pass their lucrative positions down to their offspring. Thus, the waqf contributed to keeping families relatively powerful in the lives of individuals. Where civil society has strengthened over the past two centuries, families have also started to weaken.<sup>75</sup> Judging by the experiences of regions that started to democratize earlier than the Middle East, the trend can be expected to continue. As stronger private organizations develop, family relations should continue to weaken, especially those outside the nuclear family. But an interactive process such as the kinship-civil society relation can take many generations to run its course. In the meantime, kinship ties that are strong by global standards will continue to inhibit democratization.

Widespread nepotism is a related Middle Eastern pattern to which the waqf contributed. Family waqfs were meant to preserve family wealth, so their caretakers tended to be selected from among the founder's descendants. Charitable waqfs were much more likely to have a caretaker unrelated to the founder, but he would tend to pick a child as his own replacement. So nepotism, too, was already common in Middle Eastern societies at the start of the modernizing reforms of the nineteenth century. Today, it remains both common and tolerated in professional life. Indeed, people in positions of power are expected to use their privileges to reward their relatives, provided the favors remain within bounds. Hosni Mubarak was widely resented for grooming his son Gamal as his successor at Egypt's helm. Lesser instances of nepotism enjoy wide acceptance, whether in Egypt or elsewhere in the region.

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<sup>72</sup> Stolle 2002, Fukuyama 1995, Putnam 1993.

<sup>73</sup> The Middle East has the highest consanguineous marriage rates in the world. The rate is 20.5 percent in Turkey and 35.0 percent in the Arab world, as against under 11 percent for the world as a whole ([http://ccg.murdoch.edu.au/consang/www.consang.net/global\\_prevalence/tables.html](http://ccg.murdoch.edu.au/consang/www.consang.net/global_prevalence/tables.html)). See also Tadmouri et al. 2009 and Meriwether 1999, 132-40. On a 0-200 scale, where 100 indicates that half of all people trust others, the generalized trust score for the Middle East is 37.3, as against 67.5 for OECD (with Turkey included only in the Middle East). The scores are derived from values surveys conducted between 1995 and 2009. Ten Middle Eastern countries are included in these surveys: Algeria, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Morocco, Saudi Arabia, and Turkey (<http://www.jdsurvey.net/jds/jdsurveyMaps.jsp?Idioma=I&SeccionTexto=0404&NOID=104>).

<sup>74</sup> Fukuyama 1995, chs. 7-12.

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The culture of corruption rooted in waqfs did not vanish with the nationalization waves. People accustomed to bribing officials for routine activities and adjustments did not lose their incentives to grease the wheels of government just because of transformations in the provision of public services. Nor did the salaried ministerial officials who took over from waqf caretakers and judges the responsibilities to deliver and monitor services lack an interest in supplementing their incomes. Patterns of interaction simply got transferred from waqfs to state agencies. The reproduction of age-old corruption patterns was made easier by the fact that reformers gave the staff of nationalized waqfs preferential treatment in ministerial hiring decisions, doubtless to weaken their resistance. Many forms of corruption remain acceptable simply because they are customary. To be sure, people of all walks of life hold corruption responsible for various social ills. They resent its manifestations at high levels, because of the vast inequalities they create and sustain. They also resent bribe requests that appear as theft as opposed to compensation for a special service. However, just as waqf caretakers considered it routine to compensate judges for authorizing expenditures barred by deeds, so today people feel comfortable with various customary forms of corruption, provided the magnitudes remain within customary bounds.<sup>76</sup>

Another legacy of the Middle East's lack of experience with self-governing organizations lies in the susceptibility of today's non-governmental organizations to state capture. Since Middle Eastern countries put in place, beginning before World War I, modern laws of associations, every country has seen the proliferation of non-governmental organizations, including charitable associations, trade unions, chambers of commerce, and professional associations, all organized as some form of corporation.<sup>77</sup> In the early 1990s, Egypt had 13,000 registered non-governmental organizations; in addition, it had thousands of unregistered communal and religious organizations, many with an Islamist affiliation.<sup>78</sup> Yet these non-governmental organizations were doing a poor job with respect to monitoring state officials and keeping them in check. Few had the clout to keep officials from bending or breaking laws. Nor were they effective at exposing major corruption and mobilizing public outrage at the perpetrators. A basic reason was that the vast majority of non-governmental organizations had agreed, if only implicitly, to respect the government's red lines with respect to policy positions and criticism. Only superficially were they serving the functions of monitoring and restraining the state. It is revealing that non-governmental organizations played marginal roles in the Arab revolutions of 2010 and 2011. The fateful demonstrations were led and dominated by youths without any history of prior cooperation.

A proximate reason for the ineffectiveness of Arab civil organizations is that the autocrats running Arab countries since the end of foreign rule have made a point of emasculating the news media, suppressing intellectual inquiry, restricting artistic expression, banning political parties, and co-opting regional, ethnic and religious organizations. Whether pursued by a monarch or a president, and regardless of his political creed or agenda, the motivation for such policies has been to silence dissenting voices in order to facilitate the perpetuation of power. But autocratic Arab rulers achieved unchecked power, and managed to perpetuate their domination for years on end, precisely because intermediate associations were weak to begin with. After the expulsion or departure of Turkish, French, and British administrations, they faced societies unaccustomed to sharing political power through intermediate associations. The region's lack of

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<sup>76</sup><sup>77</sup><sup>78</sup> Al-Sayyid 1993.

experience with politically active non-governmental organizations stemmed from the waqf's centrality in the traditional order based on Islamic law.

In his work on the "third wave" of global democratization, Samuel Huntington attributes the lack of accountability on the part of Arab governments, a key indicator of poor political performance, to very limited taxation. Citizens are easily denied representation, he reasons, when they are not taxed.<sup>79</sup> Although low, if not non-existent, taxation has undoubtedly dampened the justification for democratic rights, the lack of government accountability in Arab countries rests on deep historical patterns. Pre-modern Arab rulers were unaccountable to their subjects, because they came under no significant pressures to justify their policies. One reason for the weakness of pressures is that for more than a millennium waqfs were barred from politics. Another is that their constituents had no say over the objectives, staffing, or management of organizations ostensibly established for their benefit. Arab countries have instituted the trappings of modern government—ministries, parliaments, budget hearings—without traditions of transparency in government and organized monitoring of office holders.

An influential 2004 article on the persistence of Middle Eastern autocracies remarks that in Egypt "advocacy organizations have no constituency to which they are accountable."<sup>80</sup> The organizations in question relied on foreign funding, which the article holds responsible for the disconnection between their leaders and constituents. A more basic factor is that lack of organizational accountability is deeply rooted in the region's institutional history. It was a key characteristic of the waqf, long the region's chief vehicle for most social services.

The literature on non-governmental Middle Eastern organizations commonly notes that autocracies resort to legal constriction to defuse civic activism before it becomes threatening. Thus, they use "associations laws" to withhold an operating permit from organizations considered potentially subversive. They have also made it a policy to infiltrate non-state organizations and launch prosecutions for even minor legal infractions.<sup>81</sup> Such intimidation limits collective empowerment on the part of non-governmental groups. While all this is true, we must not lose sight of what has allowed Middle Eastern states to get away with suppression of civic activity. Because of the history of the waqf, Middle Easterners were unaccustomed, in any case, to mass political participation. Their tradition of civic passivity facilitated the control of non-governmental organizations. It also limited citizen involvement in their activities.

The vicious circle discussed in earlier sections has mutated, then, but not disappeared. Before the modern reforms that enabled the formation of non-governmental organizations, the lack of waqf autonomy kept civil society weak and, in turn, the weakness of civil society made it impossible to generate alternatives to founder-controlled, rigid organizations. Thus, politically effective private organizations could not be founded; absolutist rulers were unlikely to be challenged from below; ideologies supportive of structural reforms were unlikely to be developed; and political checks and balances were unlikely to arise. Since the emergence of new organizational alternatives outside of government, the latter constraints have all weakened, but not enough to support democratic rule, strengthen the rule of law, and broaden personal freedoms, to say nothing of doing so sustainably. Organizational capabilities take time to develop, as do the social norms that support them.

Vicious circles rest on complementarities among specific institutions. That is what gives them durability. In this particular case, they suggest that the political characteristics underlying

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<sup>79</sup> Huntington 1991, \_\_.

<sup>80</sup> Langohr 2004, 199.

<sup>81</sup> Yom 2005, 24; Wiktorowicz 2000.

the Arab world's weak economic performance cannot be overcome on short order. The same complementarities imply that the right reforms, if somehow they get under way, may start to feed on themselves.

Suppose that an elected Egyptian government were to adopt an economic reform package supported by oil-rich Arab states. The consequent economic benefits might widen the constituency for political liberalization, raise the influence of reformist non-governmental organizations, make state agencies increasingly responsive to social pressures, and produce favorable demonstration effects in other countries of the region. As economic liberalization, democratization, and political decentralization gained steam, non-governmental organizations would feel freer to express their views and to publicize government inefficiencies. With dissenters no longer accused of sedition by state officials, debates concerning development problems would gain depth. Individual citizens would feel readier to criticize the leaders of organizations who are supposed to represent them. In tolerating respectful dissent and avoiding penalizing others merely for objecting to particular policies, diverse actors would promote political liberalization.

No magic formula exists for initiating such a virtuous circle. The political histories of countries with mature democratic regimes display various sequencing patterns, each shaped by more or less unique contingencies. The uprisings of 2011 have created the best opportunity in a half-century for non-governmental organizations to assert power and autonomy, and for state agencies to open themselves up to assistance and feedback from private organizations. Even under the best scenarios, however, the emergence of stable Arab democracies would take decades.



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