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## The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System

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Timur Kuran

The Islamic waqf appears to have emerged as a credible commitment device to give property owners economic security in return for social services. Throughout the Middle East, it long served as a major instrument for delivering public goods in a decentralized manner. In principle, the manager of a waqf had to obey the stipulations of its founder to the letter. In practice, the founder's directives were often circumvented. An unintended consequence was an erosion of the waqf system's legitimacy. In any case, legally questionable adaptations proved no substitute for the legitimate options available to corporations. As it became increasingly clear that the waqf system lacked the flexibility necessary for efficient resource utilization, governments found it ever easier to confiscate their resources. In the 19th century, the founding of European-inspired municipalities marked a formal repudiation of the waqf system in favor of government-coordinated systems for delivering public goods.

Whatever its level of development, every society must grapple with the challenge of providing "public goods"—goods that are nonexcludable (not easily denied to unauthorized consumers) as well as non-rival (capable of being enjoyed by many consumers at once). The private provision of such goods is not impossible; language conventions and measurement standards offer examples of pure public goods that have emerged without the guidance or interference of a governing authority. Yet, if only because competitive markets do not always supply such goods efficiently, various forms of state intervention have been ubiquitous. The public good of national defense tends to be supplied directly by governments. Other public goods are provided by government-enforced private monopolies. For example, technological innovations are promoted through patents that give inventors exclusive rights to exploit their inventions commercially. Of course, the known mechanisms do not guarantee efficiency (Cornes & Sandler 1996:ch. 1–2, 6–10). Nor are they necessarily motivated by this goal. Rent-seekers promote delivery mechanisms that raise prices

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above the levels necessary for profitability (Rowley et al. 1988; Shleifer & Vishny 1998:ch. 1–9).

In the premodern Middle East, from 750 C.E., perhaps even earlier, an increasingly popular vehicle for the provision of public goods was the *waqf*, known in English also as an “Islamic trust” or a “pious foundation.” A *waqf* is an unincorporated trust established under Islamic law by a living man or woman for the provision of a designated social service in perpetuity. Its activities are financed by revenue-bearing assets that have been rendered forever inalienable. Originally the assets had to be immovable, although in some places this requirement was eventually relaxed to legitimize what came to be known as a “cash *waqf*.” The reason the *waqf* is considered an expression of piety is that it is governed by a law considered sacred, not that its activities are inherently religious or that its benefits must be confined to Muslims.

Traditionally, various public goods that are now generally provided by government agencies were provided through private initiatives. Not until the second half of the 19th century did the giant cities of the Middle East begin to establish municipalities to deliver urban services in a centralized and coordinated manner. Even a lighthouse on the Romanian coast was established under the *waqf* system,<sup>1</sup> which is particularly noteworthy in view of the modern intellectual tradition that treats the lighthouse as the quintessential example of a pure public good that must be provided by the government out of tax revenues.

It is in reaction to this tradition that Ronald Coase (1974) drew attention to several 19th-century British lighthouses constructed and administered by private individuals.<sup>2</sup> However, contrary to what is sometimes presumed, Coase did not discover cases in which the state played no role whatsoever. In the cases that he discussed, the state granted the lighthouse owner a monopoly on the provision of illumination services at a particular location, enforced the right to collect tolls, and, where necessary, even aided the collection effort (Van Zandt 1993). As with these cases, the *waqf* system enabled lighthouse founders to earn a return from their investments. But the form of compensation was fundamentally different. In the Islamic Middle East, an individual who converted personal property into a lighthouse gained an ability to shelter some, even all, of his remaining wealth from confiscation. Usually he also escaped various taxes and effectively acquired testamentary powers denied by the Islamic inheritance system. On top of these pecuniary benefits, he earned social status as well as the satisfaction of having performed a pious service.

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<sup>1</sup> This lighthouse was built in 1745 near the port of Sünne, now known as Sulina (Yediyıldız 1990:44–45).

<sup>2</sup> There is a growing literature on the private provision of goods typically considered “public.” See, e.g., Klein 1990; McChesney 1986.

One purpose of this article is to elucidate these motives, which helped the Islamic world develop a distinct solution to a wide class of public goods problems. The task calls for an explanation as to why the state allowed the legal status of vast resources to change in a manner that shrunk its tax base. The waqf system served, I suggest, as a credible commitment device aimed at providing the owners of land and other immovable assets economic security in return for investments in public goods. The system thus promoted social services by providing their suppliers protections against revenue-seeking rulers.

Precisely because the waqf system played an important role in the premodern economy of the Middle East, it may well have contributed to turning the region into an underdeveloped part of the world.<sup>3</sup> Several claims are made here. Because Islamic law required the manager of a waqf, its *mutawalli*, to obey the founder's stipulations to the letter, the system lacked the flexibility to keep up with rapidly changing economic conditions. Reasonably well-suited to the slow-changing medieval economy into which it was born, it thus proved unsuitable to the relatively dynamic economy of the industrial age. By the 19th century the system's rigidities made it appear as a grossly inadequate instrument for the provision of public goods; and this perception allowed the modernizing states of the Middle East to nationalize vast properties belonging to waqfs.

The historical pattern might have been different had the regulations governing the waqf evolved into an enterprise enjoying corporate status. But no such transformation took place through indigenous means. Because of the very pecuniary motives that made the waqf system economically so significant, major reforms had to await the economic Westernization drive that began in the 19th century. Today, in the early 21st century, the waqf institution is equipped with adaptation facilities it traditionally lacked. Most significantly, it now enjoys juristic personality, which means that it can sue and be sued as a legal entity. Traditionally, it was the manager who had been standing before the courts as an individual plaintiff or defendant. Another major reform is that a modern waqf is overseen by a board of mutawallis endowed with powers similar to those of a corporate board of trustees.

Contrary to the interpretation just summarized, certain contemporary students of the waqf system are impressed by its flexibility. They point to the exploitation of ambiguities in waqf deeds, creative interpretation on the part of trustees and judges, and the commonness of corruption. In practice the waqf system was indeed less rigid than a strict interpretation of the traditional waqf regulations would have required. However, the frequent cir-

<sup>3</sup> For a critical survey of the major explanations for the Middle East's economic descent, see Kuran 1997.

cumvention of the pertinent regulations does not mean that these had no material consequences at all. Even a routinely evaded law can inhibit economic development by raising the costs of adaptation. More important for the long run, the legal status of the adjustments will affect economic possibilities. Had the waqfs<sup>4</sup> been allowed to restructure themselves and reorient their missions through fully legitimate means, they might well have generated a vigorous “civil society.” In particular, large and small communities of the Middle East might have enhanced their capacity for solving their problems autonomously, without state involvement beyond the enforcement of applicable laws. And the contemporary Islamic world might not have consisted of weak societies governed by overstretched and authoritarian states. Also critical, corruption might have been less rampant. An unintended consequence of rules that forced generations of waqf officials to make changes through means of questionable legality was to weaken respect for the law and legitimize rule-breaking.

As we shall see, the Islamic waqf system could have turned the Middle East into a region rich in “social capital”—the capacity to undertake initiatives requiring social organization.<sup>5</sup> Identifying why this potential was not realized is critical, then, to understanding the character of the Middle Eastern economy that eventually fell prey to European imperialism and still remains underdeveloped relative to the postindustrial world. Although my focus will be on the history of the system, I shall briefly return to these broader implications. I begin with an interpretation of the system’s origins, followed by evidence of its economic importance and analysis of its capabilities and limitations.

### Early History and Islamic Identity

The earliest waqfs that satisfy the definition given at the outset seem to date from a period about a century after the birth of Islam (Gil 1998:125–40; Powers 1999:1171–72). Although there exist indications that the term “waqf” was used early on, initially it appears to have designated booty and conquered land set aside permanently for the benefit of Muslims. Even these meanings probably emerged after Prophet Muhammad’s death in the year 632. The Qur’an does not even mention the waqf institution, let alone specify its legal parameters.

True, from the 8th century onward, at least a dozen Qur’anic passages have been interpreted as instructing believers to estab-

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<sup>4</sup> The Arabic plural is *awḳāf*.

<sup>5</sup> There is a rich modern literature that treats social capital as a key ingredient of economic development. See, e.g., Banfield 1958:ch. 5–8; Gambetta 1988; Coleman 1990:ch. 12; Fukuyama 1995:3–57; and Putnam 1993. For an inquiry into the mechanisms by which Islamic law creates social capital, see Rosen 2000:ch. 8, which focuses on North Africa.

lish foundations serving religious or charitable purposes. One such passage, “whatsoever ye spend for good, He replaceth it” (34:39). Another: “O ye who believe! When ye hold conference with the messenger, offer an alms before your conference” (58:12). But these passages readily admit other interpretations. Most obviously, they can be interpreted as instructing believers to be charitable or to pay the Islamic taxes known as *zakat*. So the Islamic justification for pious foundations has consisted primarily of *hadiths*—recollections of words and deeds of Muhammad and his companions.<sup>6</sup> As with so many other *hadiths*, many of these were recorded long after the Prophet’s death, which makes their authenticity questionable. They probably emerged as instruments of legitimation at a time when jurists alert to the changing character of the rapidly expanding Islamic community sought to institute a common legal framework to govern growing numbers of haphazardly established foundations. According to the standard of religious legitimation that gained currency after Islam’s first few decades, an institution not mentioned in the Qur’an could be accepted as Islamic only if shown that it was present in the Prophet’s time and received his seal of approval.<sup>7</sup>

What can be said with reasonable confidence is the following: At some point after Islam’s initial decades, privately endowed organizations began providing services that the original Islamic state provided through either property expropriated from non-Muslims or taxes collected under the rubric of *zakat* (Kuran 2000a). The juridical form of the *waqf* took shape beginning around the year 755, during the 2nd and 3rd Islamic centuries (Köprülü 1942:3–5; Deguilhem-Schoem 1986:ch. 2; Hennigan 1999). Why might Muslims of the 8th century have granted Islamic legitimacy to an institution that had played no formal role in the original Islamic economic system? In the first Islamic community of Western Arabia, suggests Bahaeddin Yediyıldız, the

<sup>6</sup> One pertinent *hadith* has Umar I, the second caliph, asking the Prophet how a certain plot of land might be used in a manner pleasing to God. The response: “Make the property immovable, not subject to sale, gift, or inheritance, and give its revenue to the poor” (Michon 1980:28; Akgündüz 1996:59). Another *hadith* has a certain Arabian Jew bequeath his wealth to the Prophet on condition that he use it for charity; the Prophet proceeds to establish the very first *waqf* (Akgündüz 1996:59). Still another has Muhammad say, “When a man dies, all his acts cease but three: recurring charity, beneficial knowledge, and pious offspring who pray for him” (Çizakça 2000:6). For many additional examples, see Gil 1998.

<sup>7</sup> Modern puritanical sects, including the Wahhabi sect of Saudi Arabia, treat *waqf* as a heretical innovation (*bid’a*) that appeared after the Prophet (Hatemi 1969:72). The proponents of Islamic economics—the contemporary school of thought that seeks to restructure economics in accordance with Islamic values and traditions—have not gone that far, but they have assigned the *waqf* no central role in the economy they envision, if any at all. The term “*waqf*” has no index entry in a recent survey of contemporary Islamic economic thought by Haneef (1995). And, although the most ambitious recent overview of Islamic economics by a leader of the school acknowledges the potential importance of *waqf*, it goes no further (Chapra 1992). Only in the late 1990s did Islamic economists begin treating the *waqf* as a key institution of the Islamic economy they are striving to establish.

state itself could provide public goods, because the community was sufficiently small and homogeneous enough to make basic wants transparent and a centralized delivery system efficient. The waqf as we know it, he adds, belongs to a larger and more complex society in which not everyone knows each other, no one can be aware of the distribution of wants, and the state, because its constituency is huge and the geographic span of its responsibilities immense, cannot possibly meet every odd need through available technologies, and may not even be interested in doing so in the first place (Yediyıldız 1990:35–39). Yediyıldız proceeds to document the proliferation of waqfs that accompanied the establishment and development of successive Muslim-ruled states. His observations are consistent with those of S. D. Goitein, who finds that, from the 12th century on, Fatimid Cairo saw “a vast increase in the number and scope of charitable foundations” (1999:133).

By itself, the emergence of a demand for privately provided public goods does not guarantee the requisite supply. Nor does it require the selection of the waqf, rather than some other delivery mechanism, as the solution to the problem. In any case, it is hardly obvious that the expansion of Islam made it efficient to deliver *almost all* public goods in a decentralized manner. A clue to these heretofore unaddressed puzzles is that the expansion of Islam fostered an increasingly large class of major landowners. Whereas in 7th-century Arabia most wealth was held by merchants and herdsmen in the form of movable commodities, in Syria and Iraq, seats of the Umayyad and Abbasid dynasties that subsequently ruled much of the Arab world (661–750 and 750–1258), agricultural land and urban real estate became the predominant sources of wealth. This transformation would have generated a demand for sheltering immovable wealth from arbitrary taxation and confiscation, two common dangers of the period.

Significantly, the rules for establishing a waqf require the endowment to consist solely of immovables. They also require the property in question to be available forever for the designated mission. Insofar as establishing a waqf provided advantages to the founder, the owners of land and buildings would have been their principal beneficiaries. Currency is movable, and its dissipation is harder to prevent. Earlier, when the seat of Islamic power was still in Arabia, analogous privileges were obtained by the owners of easily concealed and movable wealth. In particular, wealth held in the form of currency and precious metals effectively became exempt from zakat.<sup>8</sup> The primary beneficiaries of this ear-

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<sup>8</sup> This ruling, by the third caliph Uthman, turned the obligation to pay zakat essentially into a tax on agricultural output. It did so by leaving the assessment of dues on “hidden wealth” to the individual Muslim’s conscience (Ibrahim 1990:140). For a fuller interpretation, see Kuran 2000a.

lier ruling were probably merchants. It is perhaps no coincidence that the zakat system and the waqf system were partial to different economic classes.

Further on we will see that the benefits to waqf founders did indeed involve greater security of property and reduced taxation. Under the regulations that gained acceptance, these benefits were treated as perpetual, which raises the question of why top state officials would have acceded, even formally, to a permanent shrinkage of their revenue base. Had they been interested solely in promoting the state's long-term interests, they might have resisted the perpetuity principle. However, as members of the wealthy class, they were among those who stood to gain from provisions that enhanced the attractiveness of founding a waqf. Accordingly, the specifics of the waqf system probably emerged as a compromise between the personal incentives of these officials and their incentives as servants of the state.

The search for well-specified and strictly enforced property rights is a major theme in every society, past and present. The mere recognition of private property rights offers no solution, of course, as long as the state can revoke that recognition unilaterally. What is needed is some institution to make the state relinquish that power by constraining its own future actions. In the premodern Middle East, the waqf served as such a credible commitment device. The sacredness of the waqf gave it considerable protection against confiscation, for rulers were loathe to develop a reputation of impiety. The credibility of the commitment to respect the inviolability of the waqf strengthened insofar as rulers pursued a hands-off policy toward waqf-owned properties. It also got reinforced as the main beneficiaries of the resulting security bolstered the Islamic legitimacy of the waqf through the dissemination of hadiths. Finally, the establishment of a pattern of respecting the inviolability of the waqf made it all the more difficult for rulers to confiscate waqf assets without appearing impious. As Douglass North has shown in the context of Western Europe, credible commitment devices, once adopted, have a tendency to become entrenched. Acquiring durability through the very trust that they generate, they end up limiting the need for alternative institutions. They turn, in other words, into sources of institutional path dependence (North 1995:23–25; North & Weingast 1989; Tilly 1992:153–59).<sup>9</sup>

The waqf served, then, as a device to enhance material security. It also served as a vehicle for supplying public goods in a decentralized manner. From the standpoint of a waqf founder, these two functions are obviously in conflict. If the legitimacy of a waqf is predicated on its provision of public services, less wealth

<sup>9</sup> The latter two sources show that in England, following the Glorious Revolution of 1688, checks and balances served to limit the prerogatives of the Crown. On credible commitment devices generally, see Williamson 1985:ch. 7–8.



will remain for the founder's personal use. What limited the wealth-sheltering function of the waqf, it seems, is the demand for social services. The ruling class, which stood to lose tax revenue, generally went along with the process that gave the waqf Islamic legitimacy on provision that the founders be required to supply socially desirable services. Rulers had a stake in this requirement, for it relieved them of responsibilities believed to have been fulfilled under the rulership of the Prophet. Their implicit contracts with the founders of waqfs would foster growth and prosperity, thereby earning them legitimacy in the eyes of their subjects and solidifying their political power. To qualify these contracts as "implicit" is to note that no convention was held to reconcile conflicting social interests and establish a broadly acceptable *quid pro quo*.

The institution did not have to be developed from scratch because various ancient peoples—Persians, Egyptians, Turks, Jews, Byzantines, Romans, and others—had developed similar structures. Just as Islam itself did not emerge in a historical vacuum, so the first founders of Islamic trusts and the jurists who shaped the pertinent regulations almost certainly drew inspiration from models already present around them. Yet, the waqf is sufficiently different from each of its pre-Islamic forerunners to be considered a distinctly Islamic institution.<sup>10</sup> In any case, although non-Islamic influences were obviously important early on, the waqf subsequently took on a life of its own. Not only did the waqf turn into a defining feature of Islamic civilization, it went on to become a source of cross-civilizational emulation. There are indications that it influenced the development of unincorporated trusts in other regions. These regions included Western Europe, where the institution of the trust emerged only in the 13th century, a half millennium after it struck roots in the Islamic Middle East (Gaudiosi 1988).<sup>11</sup>

<sup>10</sup> One inspiration for the waqf was perhaps the Roman legal concept of a sacred object, which provided the basis for the inalienability of religious temples. Another inspiration might have been the philanthropic foundations of Byzantium, and still another the Jewish institution of consecrated property (*hekdeshe*). But there are important differences between the waqf and each of these forerunners. A Roman sacred object was authorized, if not initiated, by the state, which acted as the property's administrator (Köprülü 1942:7–9; Barnes 1987:5–8). By contrast, a waqf was typically established and managed by individuals without the sovereign's involvement. Under Islamic law, the state's role was limited to enforcement of the rules governing its creation and operation. A Byzantine philanthropic foundation was usually linked to a church or monastery, and it was subject to ecclesiastical control (Jones 1980:25). A waqf could be attached to a mosque, but often it was established and administered by people outside the religious establishment. Finally, whereas under Jewish law it was considered a sacrilege to consecrate property for one's own benefit (Elon 1971:280–88), there was nothing to keep the founder of a waqf from appointing himself as its first administrator and drawing a hefty salary for his services.

<sup>11</sup> According to Gaudiosi (1988:1254), the statutes of 1264 that established Oxford's Merton College as an unincorporated charitable trust fulfilled the conditions of a classical waqf. "Were [they] written in Arabic, rather than Latin," she observes, "the statutes could surely be accepted as a waqf instrument." Nowhere did Merton's founder declare that his source of inspiration was the Islamic waqf. But in view of the cross-Mediterranean contacts

## Economic Significance

Available aggregate statistics on the assets controlled by waqfs come from recent centuries. At the founding of the Republic of Turkey in 1923, three-quarters of the country's arable land belonged to waqfs. Around the same time, one-eighth of all cultivated soil in Egypt and one-seventh of that in Iran stood immobilized as waqf property. In the middle of the 19th century, one-half of the agricultural land in Algeria, and in 1883 one-third of that in Tunisia, was owned by waqfs (Heffening 1936:1100; Gibb & Kramers 1961:627; Barkan 1939:237; Baer 1968b:79–80). In 1829, soon after Greece broke away from the Ottoman Empire, its new government expropriated waqf land that composed about a third of the country's total area (Fratcher 1973:114). Figures that stretch back the farthest pertain to the total annual income of the waqf system. At the end of the 18th century, it has been estimated, the combined income of the roughly 20,000 Ottoman waqfs in operation equaled one-third of Ottoman state's total revenue, including the yield from tax farms in the Balkans, Turkey, and the Arab world (Yediyıldız 1984:26). Under the assumption that individuals cultivating waqf land were taxed equally with those working land belonging to state-owned tax farms, this last figure suggests that roughly one-third of all economically productive land in the Ottoman Empire was controlled by waqfs. Although these estimates rest on debatable assumptions, there is no disagreement over the orders of magnitude. They all testify to the massive economic significance of the waqf system. Comparable estimates are unavailable for assets other than land, but it is known that the waqf system came to control a vast array of urban assets, including residences, shops, and production facilities.<sup>12</sup>

There is abundant evidence that even a single waqf could carry great economic importance. Jerusalem's Haseki Sultan charitable complex, founded in 1552 by Haseki Hürrem, wife of Süleyman the Magnificent and better known in the West as Roxelana, possessed 26 entire villages, several shops, a covered bazaar, 2 soap plants, 11 flour mills, and 2 bathhouses, all in Palestine and Lebanon. For centuries the revenues produced by these assets were used to operate a huge soup kitchen, along with a mosque and two hostels for pilgrims and wayfarers (Peri

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of the time, the imitation thesis is plausible. It has been suggested that the concept of a trust was introduced to medieval Europe by the crusaders who, between 1095 and 1250, took note of the social institutions of their Muslim enemies (Thomas 1949). On the medieval evolution of the European trust, see Fratcher 1973:8–16.

<sup>12</sup> Given that immobilized assets tended to remain within the waqf system, this system's share in the economy at large must have been smaller in earlier times. Consistent with this inference, it has been estimated that more than twice as many new waqfs were registered in Egypt in the 18th century than in the 17th century (Crecelius 1986:186, Table 1). Unfortunately, there are no statistics to quantify the trend from the early Islamic centuries onward.

1992:170–71). In the 18th century, a waqf established in Aleppo by Hajj Musa Amiri, a member of the local elite, included 10 houses, 67 shops, 4 inns, 2 storerooms, several dyeing plants and baths, 3 bakeries, 8 orchards, and 3 gardens, among various other assets, including agricultural land (Meriwether 1999: 182–83).

Further evidence pointing to the immense economic significance of the waqf system lies in the range of services supported by the waqfs. The preponderance of the Middle Eastern mosques that date from the Middle Ages, including many of the architectural masterpieces that symbolize the region's great cities, were financed through the waqf system. So were practically all the soup kitchens in operation throughout the region. By the end of the 18th century, in Istanbul, whose estimated population of 700,000 made it the largest city in Europe, up to 30,000 people a day were being fed by charitable complexes (*imarets*) established under the waqf system (Huart 1927:475). Another category of waqfs supported hospitals, orphanages, and shelters (Stillman 1975:105–15). From the beginning, there also existed waqfs established for the benefit of constituencies that were not necessarily or particularly disadvantaged. Looking at records from around the Islamic world, one comes across such objectives as delivering water to a locality, defending a town, paying a neighborhood's taxes, supporting retired sailors, supplying fruits to the children of a community, organizing picnics for a designated guild, subsidizing the cultivation of rare roses, and operating commuter ships, among hundreds of other purposes of varying social significance.<sup>13</sup> One even finds waqfs for the benefit of nonhumans, including donkeys and storks (Michon 1980:29).

Waqfs thus served a wide range of social functions. Several distinctions may be made. While some waqfs supported services classifiable as pure public goods, others provided private goods. Tax relief is a private good, in that it is both excludable and rival. A second distinction concerns the intended beneficiaries. Some waqfs, such as those for tax relief, targeted identifiable persons along with their descendants. Many others, including ones that supported mosques and poor relief, had beneficiaries defined in terms of a geographical area, an organization, or a category of employment. Finally, one may classify waqfs according to whether they promoted Islam. A study of the Turkish waqfs founded in the 18th century shows that only 29% served a strictly religious function, and that an additional 25% supported schools that taught religion along with other subjects. The rest were "worldly waqfs" that financed essentially secular purposes

<sup>13</sup> These examples are drawn from the much longer list of Kozak 1985:20–35. The waqf-related articles cited in this essay contain a bewildering variety of further examples. For specific cases of waqfs dedicated to paying taxes, see Jennings 1990:310; and Barkan & Ayverdi 1970:nos. 1347, 2426.

(Yediyıldız 1990:82). A similar study of the waqfs founded in Aleppo around the same time shows that about 35% supported places of worship or religious schools. Most of the remaining 65% served causes unconnected to religion (Marcus 1989:304–5).

The key point is that waqfs supported so many economic sectors that the evolution of Islamic civilization is incomprehensible without taking account of them. “In the Ottoman period,” writes Yediyıldız (1990:5),

thanks to the prodigious development of the waqf institution, a person could be born in a house belonging to a waqf, sleep in a cradle of that waqf and fill up on its food, receive instruction through waqf-owned books, become a teacher in a waqf school, draw a waqf-financed salary, and, at his death, be placed in a waqf-provided coffin for burial in a waqf cemetery. In short, it was possible to meet all one’s needs through goods and services immobilized as waqf.

In the *Venture of Islam*, Marshall Hodgson (1974:124) observes that the waqf system eventually became the primary “vehicle for financing Islam as a society.” It follows that to understand the economic successes and failures of the Islamic world and, in particular, the distinguishing features of the contemporary Middle East, one must analyze the history of the waqf system, with particular attention to its efficiency.

Before we turn to the motives for waqf formation, it will be useful to note that the rules adopted in the 8th and 9th centuries required a waqf founder to be a Muslim and the act of establishment to be registered with the Islamic court. Accordingly, up to the 19th century Jews and Christians were ordinarily permitted to establish only functionally similar institutions (Akgündüz 1996:238–41). Unlike waqfs, these would not be overseen by the Islamic courts or enjoy the protection of Islamic law. We know that actual practices varied. In certain periods and regions influential non-Muslims were permitted to establish waqfs.<sup>14</sup> Yet, the requirement pertaining to the founder’s religion was generally effective. Non-Muslims were less inclined than equally wealthy Muslims to establish and fund charitable foundations of any kind, even ones to serve mostly, if not exclusively, their own religious communities (Masters 1988:173–74; Jennings 1990:308–9; Marcus 1989:305).<sup>15</sup> This pattern changed radically only in the 19th century, when the right to establish waqfs was extended to the members of other faiths (Çadırcı 1991:257–58). At this point

<sup>14</sup> Goitein (1999:131) notes that in 12th century Cairo some Jewish foundations were called waqfs. Saarisalo (1933) discusses a waqf established in 1580 for the benefit of Melchite monks and a monastery. For further examples, see Shmuelevitz 1984:58; and Marcus 1989:305.

<sup>15</sup> At least in the case of Jews, a contributing factor was that some rabbis objected to certain features of the waqf institution, e.g., its provisions for designating unborn descendants as beneficiaries (Shmuelevitz 1984:58).

it became common for wealthy Jews and Christians to establish waqfs under a permissive new variant of Islamic law (Shaham 1991:460–72; Afifi 1994:119–22).<sup>16</sup>

Both the traditional pattern and the liberalization of the 19th century are consistent with the interpretation given in the previous section. If the politically dominant class of the 8th and 9th centuries required waqf founders to be Muslims, the reason is that its primary objective was to give its own members opportunities to shelter property. Since non-Muslims were generally excluded from the ruling class, the adopted regulations limited the privilege of wealth protection to Muslims. To bar such religious discrimination would have amounted to providing benefits to subjugated outsiders. Insofar as waqfs enjoyed tax exemptions, it would also have dissipated the state's tax base, because in many regions non-Muslims still constituted the majority (Bulliett 1979). It is significant that Christians and Jews obtained the right to form waqfs at a time when they were rapidly gaining economic ground against Muslims. Their economic advances translated, I would suggest, into greater political influence, which they used partly to change waqf rules in their favor.

Whatever the obstacles to the founding of waqfs by non-Muslims, there was no legal barrier to including non-Muslims among the beneficiaries. A Jewish traveler of the 1640s relates how, during a journey from Egypt to Istanbul, he and his companions spent most nights at a waqf-endowed inn open to travelers of every faith (Lewis 1956:97–106). Soup kitchens, hospitals, shelters, and other social welfare institutions served people of all religions, and non-Muslims commonly served on their staffs (Stillman 1975:112–13). So it would appear that at least the "worldly waqfs" transferred income from the politically and militarily dominant Muslims to Christians and Jews. Accordingly, these waqfs probably countered the reverse transfers generated through religious discrimination in taxation. This inference follows directly from the fact that until the 19th century a huge majority of the waqf founders were Muslims. Even if founders tended to favor services of disproportionate use to Muslims, which they often did, there may still have been compensating transfers to the other religious communities.<sup>17</sup>

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<sup>16</sup> Even after the rule against non-Muslim founders was rescinded, there remained the restriction against un-Islamic activities. So the charter of a non-Muslim waqf could state that the entitlements of a designated beneficiary would become null and void were he found guilty of adultery, drinking wine, gambling, or dealing in interest (Shaham 1991:468). In addition, it remained illegal to found a church or synagogue under waqf law, even to endow a structure in which non-Islamic prayers were to be said. But exceptions were made. In late-Ottoman Jerusalem, the Islamic court allowed a waqf to use its facilities to house monks; and it explicitly permitted this waqf's tenants to recite the New Testament while on the premises (Shaham 1991:463).

<sup>17</sup> The magnitude of these transfers awaits investigation.

## Motives for Founding a Waqf

It is often said that Muslim piety contributed to the immensity of the waqf system. Although piety was by no means the most important factor, neither was it insignificant. As in the medieval West, in the medieval Islamic world the rich commonly set aside a portion of their wealth to draw near God and secure for their souls a place in heaven. Just as countless Christians of means funded the building and decoration of churches (Jardine 1996:124–26), so many mosques and Qur'an schools were financed by wealthy Muslims out of a desire to perform good works. The concept of good works included, as in Christendom, endowments for the benefit of the poor and the infirm (Yediyıldız 1990:41–44; Lambton 1997:308). It also included donations to the sanctuaries of Mecca and Medina—the Islamic equivalent of sending money to the Holy See (Hoexter 1998; Faroqhi 1994:ch. 4).

In the premodern Islamic world, as in other premodern societies, piety served as a key indicator of truthfulness.<sup>18</sup> People who did not fulfill the requirements of their religion—in the case of Muslims, those who did not attend Friday prayers—were considered unreliable witnesses in court. Precisely because establishing a waqf was considered a pious act, it served to cultivate a favorable reputation. In particular, just as a gift to a modern university affirms its donor's social prominence and civic mindedness, forming a waqf served as a vehicle for achieving status and authority. Nor do the similarities end there. To perpetuate their prestige, modern philanthropists often attach their names to structures built through their donations. The founders of waqfs often named their enterprises after themselves in the hope of immortalizing the obtained status. The structures endowed in 18th-century Aleppo included the Ahmadiyya College named after its founder Ahmad Efendi Taha Zadeh and the Bahramiyya Mosque named after Bahram Pasha (Marcus 1989:304).<sup>19</sup> Mosque founders would often seek to extend their social recognition by stipulating that after each ritual prayer the congregation should commemorate their benevolence. Such a requirement could be effective for generations on end. Half a century after the abolition of the Turkish monarchy and the relocation of Turkey's capital to Ankara, congregational services at certain Anatolian mosques still ended, in keeping with their deeds, with

<sup>18</sup> The underlying mechanism was probably that a pious person was likely to believe in divine retribution and, hence, to be more trustworthy. As Rubin (2001:75) has noted, it is costly for a nonbeliever to feign piety, so evidence of religiosity signals trustworthiness. On the theory of signaling in general, see Spence 1974.

<sup>19</sup> The desire to achieve perpetual fame and admiration has by no means been limited to Islamic civilization. For abundant examples from diverse societies, see Lowenthal 1996:ch. 2.

prayers for the health of the reigning sultan in Istanbul (Yediyıldız 1990:214). Successive sultans took care that the most magnificent and best-endowed mosques were built by them or their wives—part of a strategy to cultivate an image of just and caring administration through the establishment of prominent imperial waqfs.

Governments sometimes used the waqf system to woo selected constituencies. The Haseki Sultan waqf not only supplied social services but also, through the extension of patronage, consolidated the Ottoman government's political authority (Peri 1983:47–62). Like gift-giving in general, waqf formation could also be driven by a desire to spread an ideology. A donation to a modern university may serve to win converts to a political agenda, as when a donor funds an ideologically charged program. So it is that the founders of educational waqfs frequently required the appointed teachers to be loyal to them personally and resistant to ostensibly subversive ideas. The ultimate objective of these founders was to gain the political loyalty of students and, through them, control over public opinion (Yediyıldız 1990:215, ch. 12; Lambton 1981:307–8; Doumani 1998:10–12).

The three motives discussed thus far—piety, status, and politics—do not exhaust the pertinent factors. For some founders, perhaps most of those other than sultans and members of their households, the main motive was to shelter wealth. What fueled this fourth motive was that the Islamic world never developed effective safeguards against opportunistic taxation or expropriation. Sultans varied tax rates and forms when it suited their purposes. Where they could do so with impunity, part of the reason is that the Qur'an, the fundamental source of Islamic law, contains few specifics on taxation (Kuran 2000b). As with any rational ruler, sultans preferred taxation to confiscation, in order to maximize their subjects' incentives to produce.<sup>20</sup> Yet, in fiscal emergencies, they readily yielded to the temptation to confiscate. This is because they could not borrow directly from their subjects, at least not enough to meet their needs,<sup>21</sup> a consequence of the fact that their repayment promises lacked credibility.<sup>22</sup> The upshot is that rulers regularly confiscated private property, often by invoking the Islamic principle that all property belongs to God. The consequent weakness of private property rights made

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<sup>20</sup> For the underlying logic, see Olson 1993:567–76; and Cooter 1997:208–12.

<sup>21</sup> Tax farming, which became the most common instrument of taxation after Islam's initial centuries, amounted to indirect borrowing, because it involved front-loaded payments to the state. The Ottomans, like preceding and coeval Muslim dynasties, experimented with many innovative variants of it. Eventually, however, it proved inadequate (Çizakça 1996:ch. 5).

<sup>22</sup> North (1995:26–33) observes that the borrowing ability of the English kings dramatically rose in the 17th century, when the expanding power of Parliament provided some guarantee of repayment. In the Islamic world, such developments were delayed until the 19th century.

the sacred institution of the waqf a convenient vehicle for defending wealth against official predation.

Expropriations of waqf properties did occur, especially following conquests or the replacement of one dynasty by another. However, when they occurred, they usually generated serious resistance. During the two and a half centuries preceding Egypt's fall to the Turks in 1517, no fewer than six revenue-seeking Mamluk rulers attempted to confiscate major waqfs; primarily because of judicial resistance, their efforts were largely unsuccessful (Yediyıldız 1982a:161). In the 1470s the Ottoman sultan Mehmed II expropriated scores of waqfs to raise resources for his army and his unusually broad public works program. His conversion of hundreds of waqf-owned villages into state property generated a strong reaction, and it influenced the succession struggle that followed his death. Moreover, his son Bayezid II, upon acceding to the throne, restored the confiscated lands to their former status (Repp 1988:128–29; İnalcık 1955:533). Such episodes underscored the relative security of waqf property.

A closely related pecuniary motive for establishing a waqf was “asset laundering.” State officials who took over properties belonging to the government or to other individuals would transfer them into waqfs as a means of legitimizing their confiscations (Crecelius 1986:187). Precisely because of the commonness of this motive, when a state attempted to take over a waqf it usually justified the act on the ground that it was illegitimate (Akgündüz 1996:523–61). Accordingly, its officials tried to convince the populace that the expropriated properties belonged to the state to begin with or simply that the waqf founder had never been their legitimate owner.<sup>23</sup> There was no guarantee, of course, that the state's public relations drive would succeed, which is why the waqf often served as an effective asset laundering device.

The diversity of the motives for establishing a waqf gave rise to a distinction between the “charitable waqf” (*waqf khayri*) and the “family waqf” (generally *waqf ahli*). The founder of a charitable waqf retained little, if any, financial stake in the immobilized property. By contrast, that of a family waqf bestowed the main benefits on his own (less commonly, her own) family. It may seem that founding a waqf to help one's own family conflicts with the principle of providing a social service. But the early interpreters of Islamic law saw no contradiction. Holding that charity begins at home, they considered a family waqf as much an expres-

<sup>23</sup> When the Ottomans conquered Egypt, they placed all waqfs under the supervision of judges loyal to them. They also promulgated a law requiring every waqf to prove its legitimacy through proper documentation. Through such means, officials in Istanbul laid claim to substantial properties, thus enhancing their tax base while also diminishing the resources available to their opponents. It is significant that they trumpeted their recognition of Egypt's lawfully established waqfs. This action confirms that the sacredness of the waqf institution made shows of respect for its inviolability a potent signal of piety. See Behrens-Abouseif 1994:145–58.



sion of piety as a charitable waqf. Early on, this liberal interpretation of charity came to rest on sayings attributed to the Prophet. An example: "It is better to leave your heirs rich than to leave them destitute, begging from others" (Powers 1999:1176). Another: "One's family and descendants are fitting objects of charity. . . . To bestow on them and to provide for their future subsistence is more pious and obtains greater reward than to bestow on the indigent stranger" (Schoenblum 1999:1207–8). In practice, the distinction in question was one of degree. Most family waqfs provided some social services, although the emphasis was always on the family's own welfare.

The founder of a family waqf could stipulate that its manager, or mutawalli,<sup>24</sup> would earn a handsome salary, appoint himself as the first mutawalli, and, in that capacity, hire his relatives as salaried employees of the waqf. In this manner, he could devote a substantial portion of the waqf's resources to enhancing his and his family's financial security (Köprülü 1942:10–14; Gibb & Bowen 1957:168–70; Yediyıldız 1990:64–74; Powers 1993: 379–406).<sup>25</sup> The mutawalli of a family waqf, man or woman, normally received 10% to 15% of the waqf's income; but the social norms of a region could allow the percentage to be higher. In any case, the mutawalli generally had extensive authority over the disposal of the residual income after the expenditures designated in the waqf deed had been made, or the prescribed services had been performed (Baer 1997:270–71). Under some arrangements, the mutawalli's income consisted of the surplus after all other expenses of the waqf had been met (Creelius 1986:185). These encouraged the mutawalli to interpret the waqf's social obligations conservatively. An additional pecuniary benefit of turning property into a family waqf was that such a waqf's assets, like those of a charitable waqf, usually qualified for tax reductions, if not for outright exemptions (Løkkegaard 1950:53–54; Jennings 1990:336; Palairret 1997:44–45). Even the inhabitants of waqf-owned land might acquire exemptions, typically in return for supplying services to the waqf (Darling 1996:88).

While any waqf could erode the state's tax base, particularly alarming to rulers was the proliferation of family waqfs, which, by design, provided relatively few social services. Not surprisingly, successive dynasties tried to prevent their subjects from shifting land and other resources into family waqfs. Yet, the very officials responsible for discouraging family waqfs had a personal stake in

<sup>24</sup> In some times and places other terms were used to designate the manager: *nāzir*, *kāim*, *mushrif*, *mubashir* (Makdisi 1981:45).

<sup>25</sup> Powers (1999:1186–87) observes that one of the four schools of Islamic law, the Maliki school, does not allow the founders of family waqfs to place themselves among the initial beneficiaries. This prohibition was routinely circumvented by setting up a waqf for a minor child and then exercising control on his or her behalf.

keeping them legitimate. After all, the fragility of private property rights induced them, too, to look for wealth shelters. Also, given the lack of alternative property protection devices, it was in their interest to maintain the credibility of the state's commitment to keeping waqf property inviolable. The upshot is that family waqfs remained legitimate, and officials turned a blind eye when their colleagues converted state property first into private property and then into family waqfs.

The dilemmas faced by members of the ruling class, ostensibly all loyal servants of the sultan, are evident in statistics concerning the social composition of the founders. It appears that most of the individuals who sought to shelter property through the waqf system were members of the politically dominant class consisting of statesmen, bureaucrats, military officials, judges, educators, and clerics, and also that this class had the most property to shelter. In 17th- and 18th-century Egypt, the economically most important waqfs were established by members of the military, doubtless because it is they who acquired the largest properties (Crecelius 1986:185). Likewise, in 18th-century Turkey 80% to 90% of all waqfs were founded by members of the ruling class (Yediyıldız 1990:ch. 6, Table 8, 132–33). Although this estimate encompasses both charitable and family waqfs, the latter category must have consisted of a huge number, because less than a fifth of all Turkish waqfs were of the charitable variety (Yediyıldız 1982b:28–33, Table 1).<sup>26</sup> Members of the ruling class established family waqfs as a means of ensuring their families against loss of political influence and earning capacity. Over the centuries, countless overconfident state officials who failed to take this precaution in a timely manner saw their assets expropriated and their families driven into poverty (Findlay 1980:100–6; Zilfi 1988:205–6; Rafeq 1970:122, 180; Kuran 2000b).

The insecurity felt by elites varied over time and across space. In 19th-century Egypt, as in 17th-century Istanbul, high officials were unusually vulnerable to confiscation and execution; this vulnerability seems to have stimulated the establishment of family waqfs (Baer 1968b; Gibb & Bowen 1957:169; Zilfi 1988:ch. 3). But in 17th-century Bursa, Haim Gerber's (1988:156–58) research shows, only a small share of all new waqfs were family waqfs, and the category included only a single large waqf. The reason was probably that local officials considered their property relatively secure. In fact, expropriations were rare at this time, and the estates of dead officials were generally divided among their heirs according to the prevailing inheritance rules.<sup>27</sup> Other

<sup>26</sup> This does not mean that most of the waqf system's resources were held by family waqfs, because some charitable waqfs, including those established by rulers and their families, were far larger than the average waqf.

<sup>27</sup> Lambton (1997:303), draws a similar contrast between the late-Seljuk and Ilkhanate periods in Iran. In the late-Seljuk period, family waqfs seem to have been less

lists of waqf deeds show similarly wide variations in the share of family waqfs among all newly registered waqfs.<sup>28</sup> Local conditions must have influenced the eagerness with which people of means sought to shelter wealth.

If establishing a waqf provided a costless form of insurance, even the slightest risk of expropriation would have made every Muslim, even those residing in relatively secure Bursa, establish a waqf commensurate with his wealth. In fact, the insurance provided by a waqf was hardly costless. As noted previously, the social norms prevailing in most times and places required even foundations expressly established for the founder's own benefit to deliver some social service. The most ambitious empirical study of the Ottoman waqf system, that of Yediyıldız (1982b:28–33, Table 1), shows that only 7% of the foundations registered during the 18th century delivered no service at all to groups outside the founder's family. As many as 75% were family waqfs that devoted significant resources to serving outside constituencies, and the remaining 18% were strictly charitable waqfs.<sup>29</sup> Metin Kunt (1983:55) finds, likewise, that between 1550 and 1650 it was extremely rare for Ottoman elites to establish waqfs whose benefits were confined to family members.<sup>30</sup> These figures confirm that the cost of sheltering wealth through a waqf was anything but negligible.

A contributing factor here is that the masses expected wealthy and powerful individuals to share their good fortunes with others. This expectation generated social pressures akin to those captured by the French saying, "*noblesse oblige*." So strong was this expectation that when a wealthy person failed to found a waqf, the sovereign obtained a widely accepted excuse for confiscation (Kunt 1983:68). Consequently, the price of protecting some wealth was to give away the rest. Where the risk of expropriation was low, this price might have been considered unduly high, and the number of new waqfs limited.

Still another pecuniary motive for establishing a waqf was to circumvent the Islamic inheritance system (Barnes 1987:16, 41–44; Powers 1999:1176–89). Of all the economic rules in the Qur'an, these are the most detailed. Restricting the individual's testamentary power to one-third of his or her estate, the Qur'an allocates two-thirds to sons and daughters, spouses, parents and

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common, possibly because "the need to protect property from usurpation was not so strongly felt."

<sup>28</sup> Doumani (1998:11–12) finds that between 1800 and 1860, 79% of the waqfs founded in Tripoli, Lebanon, and 96% of those in Nablus, Palestine, were of the family type. According to Meriwether (1999:71) 43% of the waqfs registered in Aleppo in the period 1770 to 1840 were family waqfs. Marcus (1989:304–5) observes that between 1718 and 1800, 39% of Aleppo's new waqfs were family waqfs.

<sup>29</sup> For a somewhat different interpretation of the Yediyıldız data, see Gerber 1994:140–41.

<sup>30</sup> Kunt's observation is based on Barkan & Ayverdi 1970.

grandparents, brothers and sisters, grandchildren, and possibly even distant relatives. Also, in the Sunni interpretation, no one who inherits automatically may be named in a will, unless all other heirs give their consent. In the Shiite interpretation the testator is free to make bequests to relatives already entitled to a proportional share of the reserved two-thirds. In either case, however, the entire estate of a person who dies intestate is divided among all his legal heirs (Fyze 1964:ch. 11–13; Coulson 1971; Mundy 1988).

Establishing a waqf provides testamentary flexibilities that the Islamic law of inheritance explicitly denies. The founder can effectively disinherit Qur'anic heirs of his choosing, possibly even all of them in favor of a nonrelative. He can favor one relative over another to which the Qur'an accords equal treatment, for example, an older son over a younger one, or children from one wife over those from another. He can tamper with the gender distribution of his estate. He can regulate the transmission of usufruct rights across future generations of his descendants. Finally, he can prevent the fragmentation of his estate. The founder of a family waqf may accomplish any one of these objectives by naming chosen individuals as beneficiaries. And the founder of any waqf, including one of the charitable variety, may appoint himself the waqf's first mutawalli for life, name his successors, and allocate lucrative posts to persons of his choice (Baer 1997:275).

Among the nonrelatives commonly named waqf beneficiaries were freed slaves who, under the prevailing understanding of Islamic law, could not inherit property even from a master who died without heirs. By including a manumitted slave among the beneficiaries of his waqf, the founder hoped to ensure, and frequently achieved, the former's gratitude and loyalty. He also averted the danger that his Qur'anic heirs, lacking his own sentimental attachments to the freedman, would neglect him (Baer 1997:275). In the 16th and 17th centuries, Gabriel Baer (1997:275–80) has shown, the founders of certain large waqfs in Turkey and Egypt reserved major posts for freed slaves and their descendants, sometimes at the expense of Qur'anic heirs.<sup>31</sup>

Students of the Qur'anic inheritance system frequently remark that it gave females rights that they lacked under the tribal customs of pre-Islamic Arabia. Although the entitlements of females were set at half of those accorded to males of the same category (e.g., a daughter's share of an estate was half as large as a son's share), it is true that these represented an improvement for women. But there is evidence that in the 8th and 9th centuries the waqf system was widely used to preserve pre-Islamic in-

<sup>31</sup> Based partly on data in Barkan & Ayverdi 1970. See also Barkan & Ayverdi's (1970:xxv–xxvii) own interpretation and Shaham 2000. Lambton (1997:313–15) offers similar examples from Iran.

heritance customs.<sup>32</sup> One reason waqfs gained popularity, suggests William Jones, is that wealthy Arab converts of the early Islamic centuries were eager to circumvent the inheritance rights that Islam granted to female relatives. Some of these converts apparently founded waqfs expressly to sustain the pre-Islamic Arab custom of reserving bequests exclusively for male descendants (Jones 1980:27). Endorsing this interpretation, Yediyıldız (1982a:156; 1990:ch. 11) adds that in a later period some Turkish converts to Islam used the waqf system for the opposite purpose: to equalize the shares of their children in accordance with the gender-neutrality of their own pre-Islamic inheritance traditions.

Studies focusing on later periods contain examples of both patterns. Examining North African cases from the period 1258 to 1465, David Powers (1999:1177–79) finds that founders favored either sons or daughters. Interestingly, fathers favored sons three times as often as they favored daughters. By contrast, mothers were evenhanded. For the period 1800 to 1860, Beshara Doumani (1998:20–31) estimates that whereas 98% of the family waqfs established in Tripoli, Lebanon, included daughters among the beneficiaries, only 12% of those established in Nablus did so. We see again that local norms played a role in determining the beneficiaries of waqfs.

Nowhere were women denied the right to found a waqf. Records from the 15th century to the 18th century show that anywhere from 10% to 50% of all waqfs were founded by women. As one might expect, the share in any given locality reflected the ease with which women acquired property. In 19th-century Tripoli, where daughters were almost always among the beneficiaries of family waqfs, 47% of all new waqfs were founded by women. By contrast, in Nablus, where daughters were typically excluded from the set of beneficiaries, women founded just 12% of the new waqfs. Women were even more inclined than men to establish family waqfs. This is not surprising, given that their economic handicaps enhanced their need for wealth protection (Fay 1997:36–38; Doumani 1998:19, n.52).

To sum up thus far, Muslims have had various motives for founding waqfs—religious, social, political, and economic. These motives were by no means mutually exclusive: A person could establish a waqf both to shelter wealth and to gain entry to heaven. The economic motives stemmed from two factors: weak property rights and restricted testamentary rights. Driven to achieve lasting control over their assets, early generations of Muslims established an institution to enhance the security of prop-

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<sup>32</sup> The degree to which the Islamic rules of inheritance departed from the pre-Islamic norms of Arabia is a matter of controversy. Powers (1986) finds close similarities between Islamic inheritance law and that of the Eastern Roman Empire. He also shows that the Qur'anic verses on inheritance mark a smaller shift in Arabian succession patterns than is usually presumed.

erty. This institution was then given religious legitimacy as a means of reigning officials tempted to confiscate immobilized properties. In effect, the waqf's sacredness enabled the state to commit itself to upholding private property rights. Although examples of confiscation are plentiful, waqf-owned properties were substantially less likely than privately owned assets to be taken over by the state.

### **Static Perpetuity and Its Consequences for Economic Efficiency**

The rules for forming a waqf have varied across regions, time, and the schools of Islamic law; but up to the 19th century the basics exhibited remarkable uniformity. The legal owner of a property had to declare, possibly just orally, though the norm was to do so in writing and to make use of formularies supplied by notaries (Little 1984:317–18; Akgündüz 1996:110–18; Powers 1993:389–91),<sup>33</sup> that he was immobilizing the property for the purpose of providing a designated function in perpetuity. The founder designated the first mutawalli of the waqf, who could be himself; ordinarily he also prescribed a succession rule for the appointment of subsequent mutawallis (Makdisi 1981:35–36, 44–47). The mutawalli had a fiduciary duty to manage the waqf according to criteria and priorities set by the founder and in the interest of the selected class of beneficiaries. His or her responsibilities included the appointment of employees. The appointment and activities of the mutawalli were overseen by a local judge (*kādī*), although close supervision was generally confined to charitable waqfs. With all waqfs, including the family variety, disputes were resolved by this judge. In principle, then, the waqf system entailed five sets of players: founders, mutawallis, employees, beneficiaries, and judges. In practice, as we have seen, the state served as a critical sixth player. Through pressures on judges and mutawallis, the state influenced the character of new waqfs as well as the management of existing ones (Köprülü 1942; Barnes 1987; Yediyıldız 1990; Gibb & Bowen 1957:ch. 12; Çizakça 2000:ch. 1–3; Fyzee 1964:ch. 9).

How did this system affect economic performance? Seldom posed, let alone fully addressed, this question merits serious attention, both because of the waqf system's enormous weight and because the Islamic world, once an economic powerhouse, eventually became underdeveloped.

A major advantage of the waqf system is that it constituted a polycentric system for the provision of social services, including public goods. A polycentric, and thus decentralized, delivery sys-

<sup>33</sup> Illiterate waqf founders had to obtain professional assistance if their endowments were to be documented. For a general inquiry into the role of documents in Islamic law, see Wakin 1972.

tem allows the fine tuning of services. It also encourages experimentation. Of course, decentralization does not guarantee success; any given founder could overlook an undersupplied service in favor of one available in abundance. Yet, the multiplicity of waqf founders, together with the generally uncoordinated character of their choices, furnished abundant opportunities for learning from failures and successes. Although the consequent services lacked the order that might have resulted from a centralized delivery system predicated on uniformity, there is no reason to believe that any of the players listed above found them inherently confusing. Nor, for that matter, would these players have had a stake in uniformity. As James Scott (1998:ch. 3, 9) has shown, social and economic uniformity serves, above all, the interests of the state. It also privileges "outside knowledge," including that of revenue-hungry rulers, over the "local knowledge" of communities, families, and individuals.<sup>34</sup> Though it limited the information available to rulers, the polycentricity of the waqf system did not prevent groups from becoming knowledgeable about services directly relevant to themselves.

We must distinguish here between foundational flexibility and operational flexibility. While the polycentric character of the waqf system provided broad freedoms to founders, the principle of static perpetuity limited the flexibility of functionaries charged with operating waqfs already in existence. One of the literal meanings of the term waqf is "to stop," and another is "to make dependent and conditional."<sup>35</sup> What the system was meant to stop was, on one hand, the expropriation of waqf assets and, on the other, deviations from the founder's directives on the use of these assets. What it rendered dependent and conditional was both the waqf's objective and the means it used to reach the objective. The mandated operational rigidity may be analyzed under two headings: mission and management.

To start with the former type of rigidity, the designated mission of a waqf was irrevocable. Ordinarily not even the founder of a waqf could alter its goals. Wherever possible, the objectives specified in the waqf deed had to be pursued exactly. This requirement, if obeyed to the letter, could cause a waqf to become dysfunctional. Imagine a richly endowed waqf established to build and support a particular caravanserai. Two centuries later, let us also suppose, a shift in trade routes idles the structure. If the long-dead founder had neglected to permit future mutawallis to use their own judgment in the interest of supporting commerce through the most efficient means, his waqf's assets could not be transferred from the now dysfunctional caravanserai to, say, the administration of a commercial port. They could not be

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<sup>34</sup> For complementary perspectives, see Beito et al. 2002.

<sup>35</sup> For a fuller definition, see Wehr 1980:1091–94.

shifted even to another caravanserai. At least for a while, therefore, the resources of the waqf would be used inefficiently.

Probably because this danger of serious efficiency loss gained recognition early on, the architects of the waqf system made the residuary mission of every waqf the benefit of the poor.<sup>36</sup> This rule meant that the assets supporting a dysfunctional caravanserai would eventually be transferred to a public shelter or a soup kitchen, thus limiting the misallocation of resources. But in tempering one form of inefficiency this measure created another. The resources devoted to poor relief would grow over time, possibly dampening incentives to work. The earlier-reported evidence of Istanbul's soup kitchens feeding 30,000 people a day points, then, to more than the waqf system's success in providing social services in a decentralized manner. Perhaps it shows also that the system could generate a socially costly *oversupply* of certain services. This is the basis on which some scholars have claimed that the waqf system contributed to the Islamic world's long economic descent by fostering a large class of indolent beneficiaries (Akdağ 1979:128–30; Cem 1970:98–99).<sup>37</sup>

To raise this possibility implies neither that the identified incentive to avoid work constituted a critical obstacle to economic development nor that the adopted residuary rule yielded no countervailing advantages. The omnipresence of poverty—in the relative sense of the term, poverty is common even in the richest modern societies—made it legally unnecessary for a waqf deed to describe the founder's intentions in any detail. Indeed, since the resources of any waqf that became dysfunctional would be reassigned to poor relief, even a cursory declaration of purpose would suffice to make the waqf legitimate (Akgündüz 1996: 140–50; Lambton 1997:305; Cattán 1955:207–8).<sup>38</sup> The simpler the deed, the more flexibility subsequent mutawallis would effectively have. So an unintended benefit of the residuary rule would have been to empower mutawallis to make some changes on their own authority, thus limiting the inefficiencies stemming from the static perpetuity principle.

The drawbacks of the operational rigidities of the waqf system did not, of course, go unnoticed. Not only were these recognized but steps were taken to mitigate them. The typical Otto-

<sup>36</sup> Some waqf founders registered this condition in the waqf deed (Powers 1993:387–88).

<sup>37</sup> This claim, which pertains to long-term consequences, does not deny that there may have been short-term economic benefits in the form of a healthier and, hence, more productive lower class.

<sup>38</sup> The possibility of applying the benefit of the waqf to another object is analogous to the doctrine of *cy près* under the English law of trusts. But there is an important distinction. *Cy près* requires careful stipulation of the founder's intention to facilitate judicial determination, should the need arise. Under the waqf system there are no standard rules for determining a founder's intent. In any case, the founder need not have made his objectives explicit.



man waqf deed contained a standard formulary featuring a list of operational changes the mutawalli was authorized to make. However, unless explicitly stated otherwise, he could make only one set of changes; once the waqf's original rules had undergone one modification, there could not be another reform (Akgündüz 1996:257–70; Little 1984:317–18). This point qualifies, but also supports the observation that the waqf system suffered from operational rigidities. Sooner or later every waqf equipped with the standard flexibilities would exhaust its adaptive capacity. While it is possible that waqfs established according to a time-tested format were *relatively* efficient,<sup>39</sup> even their resources were vulnerable to eventual misutilization.

The mission of a waqf did not itself have to be perpetual. Although the matter was controversial, in practice it could be temporary, for example, to assist the victims of a particular flood. In such cases the mutawalli would eventually apply the waqf's revenue stream to a similar mission (Akgündüz 1996:143–47, 245–48). Thus, when the victims of the designated flood were back on their feet, the waqf would start assisting the victims of another flood; and, in the absence of more flooding, it would begin delivering aid to victims of other natural disasters. What was ordinarily illegal was to use the waqf's income for a new purpose, even for one encompassing the mission named by the founder. In the case at hand, one could not divert resources to the construction of a dam aimed at preventing floods.

Close adherence to the static perpetuity principle could generate further inefficiencies by constraining the management of waqfs. If an absent-minded founder had not allowed for repairs, funds could not be generated internally by amending the stipulated budget; in principle, income reserved for, say, the waqf's employees could not be trimmed even temporarily for the sake of restoring productivity. If the founder had stipulated that a certain farm assigned to the waqf was to grow cabbages—rather than specifying, as she might have, that it was to generate agricultural income, or simply kept economically productive—the farm could not be converted into an apple orchard. If the founder had not allowed an expansion of the workforce, no new positions could be created without violating the letter of the law. It is on this basis that in 1789, some 237 years after the establishment of the Haseki Sultan complex, its mutawalli decided against hiring a money changer, even though some employees wanted the appointment to cope with rising financial turnover (Peri 1992:184–85). It does not follow, of course, that mutawallis could not be authorized to transfer resources into repairs, shift between crops, or create new staff positions. What the illustrations show is that the default rule required the founder's intentions to

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<sup>39</sup> To my knowledge, this possibility has not been investigated.

be interpreted conservatively. If the founder was silent on a particular expenditure category, the presumption had to be that he would have withheld his endorsement. One was not to infer that the mutawalli enjoyed wide latitude in the fulfillment of his duties.

Finally, if the founder had not explicitly allowed the waqf to pool its resources with those of other organizations, technically achievable economies of scale could remain unexploited. In particular, 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, of course, to stipulate that part, even all, of the income of their waqfs be transferred to a large waqf. And scattered examples of such pooling of waqf resources have been found (Çizakça 2000:48).<sup>40</sup> The point remains, however, that if a waqf had not been designed to participate in resource pooling it could not be converted into a “feeder waqf” of another, ordinarily larger waqf. Even if new technologies came to generate economies of scale unimaginable at the waqf’s inception, the waqf would have to continue operating independently. Rifaah al-Tahtawi, a major Egyptian thinker of the 19th century, put his finger on this problem when he wrote, “Associations for joint philanthropy are few in our country, in contrast to individual charitable donations and family endowments, which are usually endowed by a single individual” (Cole 2000).

The root cause of these operational rigidities is that the traditional waqf system gives supremacy to the founder’s right to set the terms of management, treating the mutawalli as an executor of his or her decisions. At least in principle, the mutawalli’s own preferences are irrelevant to deciding cases. In the language of modern economics, the system thus treats the founder as a principal and the mutawalli as an agent hired to implement directives.<sup>41</sup> Insofar as the founder’s directives are incomplete and, hence, his intentions unknown, the mutawalli will have difficulty determining how the founder would have wanted him to act. But this alone provides no justification for abandoning the challenge of finding the most accurate interpretation. The mutawalli’s best understanding of the founder’s desires must form the basis of all decisionmaking related to the waqf. And the mere fact that operational changes would make the waqf more efficient does not

<sup>40</sup> One must distinguish between jointly endowed waqfs and the pooling of resources belonging to waqfs established separately. Neither kind of pooling was common. Doumani (1998:38) points to a few waqfs established through the pooling of resources within families.

<sup>41</sup> There is a huge modern literature on agency problems and dilemmas in a wide array of contexts. Assuming that 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, e.g., Mirrlees 1976:105–31; Williamson 1985:ch. 1; and Platteau 2000:10–17.

give the mutawalli an implied power to substitute his own judgment for that of the founder. Never forgetting that he is an agent, he must not usurp the rights of the principal. In any case, even in contexts where the mutawalli has authorized the trustee to exercise discretion, his capacity to effect changes will depend on the judge with jurisdiction over the waqf's supervision. The judge need not be forthcoming, for he, too, is an agent expected to enforce the founder's objectives. Indeed, it is his duty to block surreptitious changes that the mutawalli might seek to implement under the pretext of, say, repairs or staff replacement. There is no guarantee that these two agents—mutawalli and judge—will share the same interpretation of the founder's stipulations.

The net effect of all these sources of conservatism was to make waqfs favor ritual continuity over substantive effectiveness. Over long time periods, and especially under rapidly changing conditions, the consequent economic losses could have been substantial. Major assets would have been locked into increasingly suboptimal uses, diminishing their social utility. On this basis one may suggest that the "static perpetuity" principle of the waqf system was more suitable to a slowly changing economy than to one in which technologies, tastes, and lifestyles undergo revolutionary changes within the span of a generation. Even if adherence to the principle was only partial—as discussed later, violations were hardly uncommon—in a changing economy the efficiency of the waqf system would have fallen as a result of delays in socially desirable adjustments.<sup>42</sup>

This interpretation is consistent with the fact that in various parts of the modern Islamic world the legal infrastructure of the waqf system has been, or is being, modified to endow mutawallis with broader operational powers. Like many forms of the Western trust, a modern waqf is a corporation—an internally autonomous organization that the courts treat as a legal person.<sup>43</sup> As such, its mutawalli, which may now be a committee of individuals or even another corporation, enjoys broad rights to change its services, its mode and rules of operation, and even its goals, without outside interference. This is not to say that a mutawalli is now unconstrained by the founder's directives. Instead, there is no longer a presumption that the founder's directives were complete, and the mutawalli, or board of mutawallis, is expected and authorized to be much more than a superintendent following orders. A modern mutawalli is charged with maximizing the overall return on all assets, subject to intertemporal 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

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<sup>42</sup> Many complementary insights have been offered by Schoenblum (1999:1206–24).

<sup>43</sup> For a critical survey of various reforms, see Çizakça 2000:ch. 4.

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 mutawallis themselves are expected to play an integral role in defining how the goals of the waqf can best be served. If the board of a modern waqf were to keep a vastly underutilized hostel in operation merely out of deference to the founder's wishes, it might be considered irresponsible.

The ongoing reforms of the waqf system amount, then, to an acknowledgment that the rigidities of the traditional waqf system were indeed sources of inefficiency. They thus confirm that in a dynamic economy the optimal solution to the agency problems inherent in a waqf entails giving agents wider latitude than in the past. Finally, they hint that the inflexibilities of the system may have contributed to the economic difficulties that the Middle East encountered in the face of European economic growth.

Just as the premodern Middle East had inflexible waqfs, one might observe, the preindustrial and industrial West featured restrictions that inhibited the efficient administration of trusts (Fratcher 1973:22, 55, 66–71). The economies of the West have also suffered from institutions that have hindered socially desirable adaptations. As a case in point, even in modern times many residential developments have seen their market value plummet because of covenants that burdened their supervisors with costly maintenance and unanimous-consent requirements (Beito 2002). Do such facts invalidate the claim of this section, namely, that inflexibilities of the waqf system held the Middle East back as Europe took the lead in shaping the modern global economy? Two additional facts from European economic history may be advanced in defense of the presented argument. First, over the centuries the West developed an increasingly broad variety of trusts, including many that give a trustee—the counterpart of the mutawalli—greater operational flexibility. These came to include trusts to operate businesses, trusts to manage financial portfolios, and trusts to hold the majority of the voting shares in a corporation. Also, while it is doubtless true that certain Western trusts suffered from the sorts of rigidities that plagued the waqf system, other trusts mitigated these problems by equipping their trustees, or boards of trustees, with powers akin to those of a corporate board. That the institution of the trust could and was transformed into something similar to a corporation is evident from the fact that in the 18th and early 19th centuries some English trusts were established as alternatives to corporations. During this period, incorporation in England required an act of Parliament, so it became a common practice to have various business enterprises managed by trustees for the benefit of subscribers to their capital (Harris 2000:ch. 6). This development shows that the

trust, however similar to the waqf at its inception in the Middle Ages, underwent substantially greater modifications over time.

Another important difference concerns the powers of founders. As early as the 14th century, judges in England were discouraging waqf-like "perpetuities" through which donors could micromanage properties indefinitely, well after their deaths. Trusts providing benefits for unborn persons were declared invalid, or valid only if subject to destruction by prior beneficiaries. And in France, a law was instituted in 1560 to keep the founders of *fideicommissa*, trust-like devices grounded in Roman law, from tying the hands of more than two generations of beneficiaries (Fratcher 1973:11–12, 86). These cases of resistance to static perpetuity show that the immobilization of property also presented dangers in Europe. But they also demonstrate that successful attempts to contain the dangers came much earlier in Europe than in the Middle East, where legal reforms designed to give mutawallis greater discretion had to await the 20th century. In sum, there was a difference of degree that probably influenced the observed contrast in development patterns by hindering resource reallocation to a lesser extent in Western Europe than in the Islamic Middle East.

If the argument that the static perpetuity principle contributed to the economic inertia of the Middle East is granted, it raises the question of why the waqf system might have been burdened with it in the first place. Who would have wanted to limit waqf flexibility? What useful functions would this principle have served? And, insofar as the consequent rigidities resulted in mounting social losses, why was the principle not eventually abandoned?

The answers to the first two questions depend on whether the waqf in question is a charitable waqf or a family waqf. If it is of the charitable variety, the waqf will be subject to principal-agent dilemmas, if not immediately, then certainly after the founder's death. For one thing, the mutawalli and the appointed employees will be tempted to embezzle. For another, they might mismanage the waqf, causing its assets to lose value. Tight rules of management could promote honesty and protect the interests of the intended beneficiaries of the selected mission. Recall that the waqf system arose in an economic environment that changed at a glacial pace. Most people experienced little technological change, and the economy in which they ended their lives was hardly different from the one into which they were born. As in the rest of the world, the concept of steady development was absent (Arndt 1987:ch. 2). Accordingly, founders genuinely interested in providing a social service would have considered the drawbacks of immobilizing property and restricting its uses minor relative to the potential abuses that could arise from giving mutawallis sweeping operational powers. By the same logic, rul-

ers would have accepted the principle of static perpetuity as a device for ensuring a steady flow of social services.

To turn now to the family waqf, here, the incentives of founders and rulers would not necessarily have been congruent. Insofar as the founder had a personal stake in the waqf's returns, his incentives would have been mixed. On one hand, to maximize his own and his family's financial security he would have favored operational flexibility. On the other, to guarantee that his family and descendants were served according to his own priorities, he would have wanted to restrict the options of his mutawallis; he might have sought, for instance, to make it difficult for them to take market risks inimical to the interests of risk-averse beneficiaries. Insofar as the latter consideration dominated the former, the founders of family waqfs would have joined the supporters of the static perpetuity principle. In other words, they would have favored heavy restrictions on mutawallis and judges as the appropriate response to their agency problems.

Although many of the factors that shaped the waqf system are lost to us, these probably involved a give-and-take among powerful constituencies. Whatever considerations played a role, once the static perpetuity principle acquired sacredness, challenging it formally would have seemed like taking on Islam itself. Individuals poised to benefit from looser regulations would have considered it prudent to avoid criticizing the system or calling for basic modifications. Consequently, the principle would have become immune to fundamental change.<sup>44</sup> In any case, incentives to challenge the static perpetuity principle were dampened by opportunities for bringing about practical changes without taking on the relevant laws and norms. We shall see that these opportunities had unintended but long-lasting consequences visible even today, more than a millennium after the waqf system took shape.

## Evidence of Pragmatic Administration

A salient theme in contemporary waqf studies is that it was far less rigid in practice than one might infer from the corpus of rules requiring exact adherence to the founder's wishes. For one thing, founders would sometimes give their mutawallis broad powers to manage properties with an eye toward maximizing overall value, subject only to judicial review if challenged. For another, mutawallis, employees, and judges were not always committed to following the founder's directives; shirking their responsibilities, they would often make, encourage, or endorse pragmatic adaptations. Do these findings mean that the static perpetuity principle was irrelevant to the actual operation of the

<sup>44</sup> On the mechanisms through which expressive distortions sustain inefficiencies, see Kuran 1995:ch. 6.

waqf system? Not at all, but some interpreters have made it seem that the waqf had sufficient operational flexibility to lay to rest doubts about its compatibility with development.

It was not uncommon for founders to authorize their mutawallis to sell or exchange waqf assets (*istibdāl*). Miriam Hoexter (1998:ch. 5) has shown that between the 17th and 19th centuries the mutawallis of an Algerian waqf established for the benefit of Mecca and Medina managed, acting on the authority they enjoyed, to enlarge this waqf's endowment through shrewd purchases, sales, and exchanges of assets. In the same vein, Ronald Jennings (1990:279–80, 286) has observed that in 16th-century Trabzon some founders explicitly empowered their mutawallis to exercise their own judgment on business matters. He has also found that the courts with jurisdiction over Trabzon's waqfs tolerated a wide range of adaptations.<sup>45</sup> The waqfs in question were able to undertake repairs, adjust payments to suit market conditions, and rent out unproductive properties at rates low enough and for sufficiently long periods to entice renters into making improvements (Jennings 1990:335).

Other scholars, in addition to providing examples of founder-endorsed plasticity, have shown that there were limits to the founder's control over the waqf's management, especially beyond his or her own lifetime. Said Arjomand (1998:117, 126) and Stéphane Yerasimos (1994:43–45) independently note that the waqf deed could suffer damage or even disappear with the passage of time. It could also be tampered with, sowing doubts about the authenticity of all its directives. In such circumstances, the courts might use their supervisory authority to modify the waqf's organization, its mode of operation, and even its mission. Moreover, even when no disagreements existed over the deed itself judges had the right to order unstipulated changes in the interest of either the waqf's intended beneficiaries or the broader community. We have seen that such heavy handedness sometimes sparked resistance. Harmed constituencies might claim that the principle of static perpetuity had been violated. However, judges were able to prevail if they commanded popular support and the opponents of change were poorly organized. Yerasimos furnishes examples of 16th-century Ottoman construction projects that involved the successful seizure of ostensibly immobilized waqf properties, sometimes without full compensation.

Pursuing similar themes in a book focused on the flexibility of Islamic law in general, Gerber (1999:84) offers the case of a richly endowed 17th-century mosque that lost its congregation as a result of emigration. Asked to rule on whether the endowment

<sup>45</sup> The mutawallis of an endowed bathhouse were required to seek official permission to make repairs or change administrators. In the instances examined by Jennings, the local judges in possession of this waqf's deed endorsed the proposed expenditures and staff changes. For a similar example from 18th-century Aleppo, see Marcus 1989:311.

could be transferred to another mosque, a Palestinian jurisconsult states that "there is room for disagreement and permission for individual interpretation." The practical meaning of this ruling is that if a transfer seems reasonable, it is legitimate. Significantly, the ruling was based not on a reading of the founder's intent or on special provisions in the waqf deed but simply on the jurisconsult's own perceptions of efficiency. Where, as in this Palestinian case, the judicial system was cooperative, modifications could be made simply by exploiting ambiguities in the waqf deed. Through creative interpretation of the founder's directives, a mutawalli could bring about cumulatively large transformations that the founder would scarcely have imagined, let alone authorized.

Many more examples from the literature could be cited. But even a comprehensive survey of these examples would not prove that change was costless. There are ample indications that modification costs were generally substantial. As Murat Çizakça (2000:16–21) observes, only some of the Islamic schools of law allowed sales and exchanges of waqf properties, and even these schools imposed various restrictions. It bears repetition that the default was always static perpetuity. If the founder had not explicitly provided for flexible management, the presumption was that he had prohibited the alienation of properties, except in the extreme situation that they stopped generating revenue altogether. By this stringent interpretation, abnormally low productivity alone would not constitute a valid justification for selling a property. Where sales and exchanges were permissible such acts were always subject to judicial supervision. A judge could challenge an attempted change in a waqf's portfolio of assets simply on the pretext that in his opinion the change would lower revenue.

In and of itself, evidence that mutawallis exploited ambiguities in their directives does not mean that the waqfs displayed the optimal degree of flexibility. It is one thing to freely administer a waqf in the manner of a profit-maximizing investor, another to be dependent on zones of ambiguity in that waqf's deed. In the latter case, there will be desirable changes that cannot be implemented. Also, the possibility of legal challenges will be relatively high. After all, the very ambiguities that give trustees some flexibility are capable also of interpretations partial to the status quo. Insofar as mutawallis strove to avoid lawsuits, socially desirable property transfers and other adaptations would have failed to materialize.

A potent source of lawsuits was that the establishment of a waqf usually brought material harm to at least some of the founder's legal heirs. Expecting to inherit wealth upon the waqf's dissolution, these relatives would ask the court to redefine the waqf as the founder's private property and, hence, as part of his estate. Doumani (1998:30) cites the case of a Palestinian



woman who successfully sued her only son for refusing to hand over her and her daughters' inheritance shares after the death of her husband. The son had claimed that his father endowed all his property as a waqf designed to limit the benefits of female family members. Powers (1999:1175–76, 1187–89) offers other examples involving disputes over the transmission of benefits across generations. These disputes commonly turned on whether the founder had intended to have multiple generations benefit simultaneously.

Individuals with little stake in a particular waqf, if any at all, could also file complaints in the hope that evidence of wrongdoing would lead to close scrutiny of its operation and, if not to its dissolution, then at least to concessions from the relatives favored by the founder (Marcus 1989:303–4; Hoexter 1998:ch. 5; Gerber 1988:166–69). For their part, the waqf's beneficiaries would insist on the lawfulness of the waqf as well as of its management. The resulting uncertainty, which probably led mutawallis and employees to exercise caution in introducing change, was accentuated by a lack of judicial consistency in interpreting waqf deeds. Subscribing to the literalist method of interpretation, judges brought into waqf-related disputes might look to the plain meaning of the founder's words; or, favoring the intentional method, they might emphasize the spirit of the directives (Powers 1993:391–94; Makdisi 1981:ch. 3). If for no other reason than this methodological diversity, judges could disagree over practically anything in a waqf deed, even over the legal significance of a conjunction. A single word could trigger a dispute with huge material consequences for the litigants (Powers 1993:393–96). The dispute could produce a legally approved transformation that might not have received the founder's blessing. But it could also block changes that trustees, employees, beneficiaries, and even third parties might have welcomed.

Another Coasian insight is relevant here. According to the "Coase theorem," the allocation of a society's resources is guaranteed to achieve and retain efficiency only when all private property rights are well assigned at the outset and transaction costs associated with exchanging those rights are negligible (1960). A waqf deed always constrained the rights to transfer and rent property, often to the point of a complete ban, and it usually restricted the management of the property, if only by default. Moreover, judicial interference could make the cost of overcoming the restrictions prohibitively high. It follows that countless socially desirable waqf transactions and adaptations must have remained unimplemented. To show the contrary, it will not do to unearth examples of waqf flexibility. Changes that were not even attempted because of anticipated transaction costs would not show up in court records. Indeed, they would not necessarily have left recoverable historical traces.

One more source of flexibility remains to be considered. There is evidence that it was possible, increasingly so after the 14th century and especially so in Turkey and the Balkans, to circumvent a feature of the waqf system that was critical to static perpetuity: the legal requirement that waqf assets be limited to immovables. The holders of liquid wealth, particularly moneylenders, naturally favored the relaxation of this requirement in order to gain the asset sheltering privilege available to owners of real estate. "Cash waqfs" thus emerged as early as the eighth century, earning income generally through interest-bearing loans (Çizakça 2000:ch. 3). Uncommon for many centuries, these waqfs provoked intense controversy as their numbers multiplied, because they violated both waqf law and the prohibition of interest (Mandaville 1979; Kurt 1996:10–21). According to their critics, not only was the cash waqf doubly un-Islamic but it consumed resources better devoted to charity and religion. Interestingly, the defenders invoked neither scripture nor the law. Conceding that the cash waqf violates classical Islamic principles, they pointed to its popularity and inferred that it had to be serving a valuable social function. In effect, they held that the cash waqf should be tolerated because it passes the utilitarian test of the market—the irreligious test now commonly used to justify popular, but perhaps ethically troubling, economic practices. The defenders of the cash waqf, who included prominent clerics, also lamented that their opponents, though perhaps knowledgeable of Islam, were ignorant of both history and the prevailing practical needs of their communities (Mandaville 1979:297–300, 306–8).

Because they met important needs and encountered little opposition outside of legal and religious circles, cash waqfs became increasingly popular. By the 16th century, in fact, they accounted for more than half of all the new Ottoman waqfs. Most of them were on the small side, as measured by assets (Çağatay 1971; Yediyıldız 1990:118–22; Masters 1988:161–63). One factor that accounts for their enormous popularity is the ubiquitous quest for wealth protection. Another was that there existed no banks able to meet the demand for consumption loans, only moneylenders whose rates reflected the risks they took by operating outside the strict interpretation of the law. Where and when the cash waqf enjoyed legal approval, it allowed moneylenders to operate more or less within the prevailing interpretation of Islamic law. If nothing else, the sacredness that flowed from its inclusion in the waqf system insulated its interest-based operations from the charge of sinfulness. A further impetus to the formation of cash waqfs came from cash-rich individuals seeking to establish steady revenue streams to finance charitable services whose expenses were expected to remain roughly constant, for example, schools whose primary expense would consist of teacher salaries.

The cash waqfs undoubtedly limited one of the problems associated with static perpetuity. They enabled the transfer of waqf capital across economic sectors simply by redirecting loans from one set of borrowers to another. Where a waqf of immovables might have its capital tied up in an increasingly unproductive farm, a cash waqf's commitment to a particular sector was limited only by its loan periods. Yet, cash waqfs were by no means free of operational constraints. Like the founder of an ordinary waqf, that of a cash waqf could restrict its beneficiaries and limit its charges. Yediyıldız points to the deed of an 18th-century waqf whose founder required it to lend at exactly 10% and only to merchants based in the town of Amasya (Yediyıldız 1990:122). The restrictions imposed on a cash waqf typically reflected, in addition to the founder's personal tastes and biases, the prevailing interest rates at the time of its establishment. Over time, these could become increasingly serious barriers to the waqf's exploitation of profit opportunities. Precisely because the cash waqfs were required to keep their rates fixed, observes Çizakça (2000:52–53), only a fifth of them survived beyond a century.

Why might the founders of cash waqfs have fixed the rates that their mutawallis could charge for loans? Perhaps such a step was considered critical to having the cash waqfs qualify as waqfs. Given that static perpetuity was among the defining principles of the waqf system, it may have been thought that fixing its nominal fees was the least the founder of a cash waqf needed to do to meet the requirement of immobilizing the waqf corpus. By forcing mutawallis to charge a rate presumably consistent with meeting the waqf's designated expenses, he could ensure its permanent viability. Since it rests on the notion of an unchanging economy, this logic was bound to spell trouble in times of mounting interest rates. As nominal interest rates rose in credit markets outside the waqf system, the mutawallis found growing opportunities for enriching themselves through arbitrage. Revealingly, the borrowers of the 18th-century cash waqfs of Bursa included their own mutawallis. These mutawallis lent on their own account to the moneylenders of Ankara and Istanbul, where interest rates were higher (Çizakça 1995). Had the endowment deeds of these cash waqfs permitted greater flexibility, the gains reaped by mutawallis could have accrued to the waqfs themselves.

Cash waqfs have been likened to rudimentary banks, but there were important differences. Whereas a bank pools the deposits of multitudes of individuals, a cash waqf was typically formed through a single individual's savings. Moreover, just as there were legal impediments to resource pooling by waqfs of immovables, so it was with cash waqfs. This limited the size of the average loan, and probably also the size of the business enterprises formed. True, there was nothing to keep borrowers from pooling capital themselves by taking loans from multiple cash

waqfs. But borrowing is never costless, and the cost of taking many small loans undoubtedly exceeded that of taking an equivalent large one. There was, in fact, very little pooling on the demand side of this credit market. Insofar as the cash waqfs lent to individual borrowers, they generally made small-scale loans to consumers rather than to businesses (Çizakça 2000:45–56).<sup>46</sup>

To evolve into a type of bank, the cash waqf would have had to overcome an additional restriction of Islamic law: its aversion to the concept of a juristic person. This did not happen. Created as a device to circumvent the Islamic law of inheritance and enhance the credibility of private property rights, two major legal restrictions, it was unable to transcend the anticorporatism of the law. This anticorporatism was rooted in early efforts to unite the nascent community of Muslims by denying recognition to all political boundaries except those separating areas inhabited by Muslims from those inhabited by unbelievers (Lewis 1988:ch. 4; Lambton 1981:ch. 2). I have suggested elsewhere (Kuran 2001) that this anticorporatism became an enduring trait because the existing set of institutions prevented merchants and producers from gaining political influence, thus limiting social pressure for legal reforms. The key point here is that the cash waqf arose in a legal setting lacking familiarity with even the concept of a juristic person. Partly as a result of this limitation, the cash waqf failed to develop into a lending organization capable of raising large amounts of capital, responding flexibly to market opportunities, and refining its own business methods. Modern banking arrived in the Islamic world in the 19th century, through the impact of the West.

To recapitulate, one can recognize that the waqf system served many vital functions and that it was not totally inflexible without overlooking the barriers to its achievement of economic efficiency. There were indeed many practical opportunities for transforming the operations and objectives of waqfs. Given decades, if not centuries, the constituencies carrying the burden of any given inefficiency could exploit these opportunities to bring about desired adaptations. Nevertheless, the traditional waqf system was not flexible enough to remain the principal basis for social services in an increasingly complex and fast-changing economy. There is no theoretical or empirical basis for believing that the identified adaptation instruments avoided economic inefficiencies in even the relatively slow changing economic environment of the Middle Ages. In later times, as the pace of technological and organizational innovations quickened, the system's capacity for adaptation proved even less adequate.

<sup>46</sup> Gedikli (1998:96–97) reports examples of cash waqfs that ploughed their capital into commercial partnerships. But these were clearly exceptions.

## Urban Services in the Industrial Age

The most telling evidence in support of this interpretation lies in the modern urban history of the Middle East. In the course of the partly Western-inspired and -promoted economic transformations that began unfolding in the 19th century, services that had been provided by waqfs came to be delegated to fledgling municipalities. Within the Middle Eastern context, this amounted to the adoption of a system for supplying urban public goods in a locally centralized manner. The observed centralization was fueled by a growing perception that the region's traditional institutions for the provision of urban amenities had become outdated.

An old debate on the "Islamic city" is relevant here. Certain scholars have held that the typical urban settlement of the medieval Middle East, far from being a city in the proper meaning of the term, consisted of an agglomeration of disconnected groups. Lacking a municipality, the "Islamic city" provided services in a haphazard manner, which made it inferior to the better-organized European city (Stern 1970:25–50).<sup>47</sup> Other scholars have countered that cities of the premodern Islamic world, while neither politically autonomous nor served by municipalities, were administered by appointed officials who kept streets lit, regulated bathhouses, and enforced building standards. If the cities of the Islamic world now appear disorganized, they say, the reason is that their "social fabric and legal institutions," once sources of order and cohesion, were "transformed or supplanted by European-style concepts and institutions" (Abdel-Rahim 1980:41–51).<sup>48</sup>

Each of these polar arguments draws a caricature. To start with the negative assessment, unplanned order can be perfectly intelligible to the individuals whose lives it affects. The fact that the cities of the Islamic world lacked European-style municipal structures does not imply that their residents found them chaotic. And a decentralized system for the supply of urban services offers the advantage, as already noted, of utilizing fine-grained knowledge about individual wants. In any case, it is an oversimplification to treat the waqf-based supply system as totally decentralized. The states of the Islamic Middle East gave some direction to the provision of urban services by setting priorities and facilitating coordination. In the Seljuk, Ilkhanid, Safavid, and Ottoman states, Arjomand (1998:115–18) finds, leading educational and

<sup>47</sup> The disorganized nature of the "Islamic city" is evident, says Stern (1970), in the tortuous streets of the oldest major centers. Some of these streets had started out straight before the advent of Islam. Under Islamic rule, because of underregulation, they were encroached upon by shops and houses.

<sup>48</sup> The officials to which Abdel-Rahim refers include governors, judges, police, market supervisors, and heads of guilds.

philanthropic foundations were built within the purview of a systematic policy to improve leading centers. Also, when judges regulated particular waqfs they took account of the general interest, as defined by political elites of the time. These observations accord with the Yediyıldız (1982c) finding that most waqf founders in the Ottoman Empire were officials who had amassed fortunes through state-granted privileges. If only to protect their rents, these officials would have been sensitive to the objectives of their superiors.

Whereas relatively small waqfs tended to be established haphazardly, when sultans, members of their households, and other dignitaries endowed massive charitable complexes, they typically did so in accordance with state priorities and implicitly as instruments of state policy. Thus, major investments were typically made in towns or along trade routes considered strategically important. That Hürrem established her famous charitable complex in Jerusalem is no coincidence. It had been just a few decades since the Turks subjugated the Middle East, and they were endeavoring to win Arab loyalties (Peri 1983). From a legal standpoint she was free to establish a waqf dedicated, say, to assisting the lepers of Bosnia. But her husband the sultan was equally free to remind her of the Ottoman regime's geostrategic aspirations and to withdraw her privileges if she was uncooperative. The assets that Hürrem used to form the Haseki Sultan waqf were probably acquired in the first place with an understanding that they would be used partly to supply social services.

Nevertheless, this loose and informal administration of the waqf system turned out to be unduly limiting. For one thing, the static perpetuity principle slowed the reallocation of waqf resources to suit changing conditions. For another, the state did not aim to ensure the delivery of a full set of services in every odd locality. Halil İnalçık observes that the Ottoman regime provided public goods directly, or pressured subjects into providing them through waqfs, only when its financial or strategic goals were served. Most urban services were left to waqfs, and when communities appealed for state provision, they were almost always advised to seek private funding through the waqf system (İnalçık 1994:82–83).<sup>49</sup> Well-connected and prosperous constituencies naturally found donors more easily than politically marginalized, impoverished ones. And even in the best of circumstances there was no guarantee that any given service would be supplied, let alone supplied efficiently. Finally, rulers sensitized to military and fiscal needs would not always have been the best judges of how philanthropic resources might be used most efficiently.

<sup>49</sup> İnalçık adds that the huge public works program that Mehmed II undertook in Istanbul after 1453 constitutes an exception. In fact, it fits the pattern. This program was a key component of Mehmed's drive to solidify his control of the new Turkish capital.

So the claim that urban officials of the Islamic Middle East fulfilled all the functions of a competent municipality does not bear scrutiny. There are solid reasons to doubt that the traditional waqf system could have served as a vehicle for urban modernization. The main source of the waqf system's deficiency was not a lack of resources. Instead, at a time of rapidly changing tastes and opportunities too much capital was tied up in waqfs established in the past. The states of the Middle East might have tried to compensate for the rigidity of their waqf systems by pressuring the courts to play fuller roles in the management of existing waqfs and coordinating the formation of new ones. However, these tasks were hindered by two basic principles: static perpetuity and the founder's freedom of choice.

The inadequacies of the waqf system became increasingly clear in the mid-19th century, particularly to expatriate and local residents familiar with Europe. These groups found the roads, pavements, sewers, street cleaning, lighting, fire protection, and water delivery of their neighborhoods inferior to those of, say, the well-off neighborhoods of London and Paris. Supported by statesmen who were receptive to new models of administration, they formed the vanguard of a movement to look beyond the waqf system. The ensuing political pressures led to the region's first municipalities.

In Europe, the history of municipalities goes back to the 11th century, when commercially successful towns pooled the resources of their residents to achieve protection against pillagers. These collective defense projects enabled the towns to organize financially, giving their residents an ability to develop ports and markets, build bridges and churches, and regulate crafts and food supplies, all on their own (Pirenne 1933:49–56; Braudel [1967] 1973:ch. 8). In the Middle Ages, the services provided by these municipalities were not necessarily superior to those provided through the waqf system. Besides, the immensity of the major cities of the Middle East suggests that the waqf system fulfilled relatively more complex coordination tasks. But in the economic environment of the industrial age, the European model proved better suited to the financing and delivery of an expanding array of public goods. This is evident from loud complaints about the inadequacy of urban services in the 19th-century Middle East.

Attempts to establish municipalities in the Middle East were made as early as the 1820s, but the required legislative steps took several decades to complete. This is not surprising, for an autonomous urban administration would represent—and was understood to represent—a major institutional transformation. Modern municipalities began to function in Istanbul in 1856 and in Tunis two years later. Others were established in the 1860s and 1870s (Lewis 1960; Hill 1960; Samaran 1960; Baer 1968; Çadırcı 1991:254–78; Ortaylı 1985:ch. 6–10; Ergin 1936:103–53; Delcroix

1922; Kark 1980; Cleveland 1978; Rosenthal 1980). The new structures were all based on European models. Although it took decades for them to develop genuinely corporate identities and acquire substantial powers of enforcement, they were meant to enjoy autonomy. In particular, they were to command the authority to tax constituents, devise their own budgets, and impose local rules and ordinances.

The services that the new municipalities started delivering were mostly local public goods, such as street cleaning, sewers, water conduits, road maintenance, and market supervision. Contrary to the tradition of family waqfs, they were not intended to supply private goods as well. Some of the public goods delivered by the new municipalities, such as water conduits, had traditionally been provided by waqfs, but the complexity of the organization necessary for efficient delivery had grown immensely. For example, where conduits had typically led to public fountains, now neighborhoods demanded delivery to individual residences, a challenge that the waqf system was ill-prepared to meet. Other public goods supplied by the new municipalities constituted fundamentally new services. The need for traffic management grew acute with the emergence of new modes of transportation. This function of urban administration, which would soon be considered essential and taken for granted, had never been a function of the waqf system.

The foregoing account does not imply, of course, that the formation of municipalities and the reduced emphasis on waqfs merely tracked changes in the demand for public goods. Western governments encouraged the development of municipalities to gain control over urban administration. And their hostility to the waqf system was based on more than its inefficiencies. They found the waqf system a nuisance because it closed vast numbers of desirable properties to their own citizens and protégés (Cleveland 1978:37–40). It is revealing that the nascent municipalities were authorized to take over waqf properties, albeit with compensation. With huge segments of the urban Middle East immobilized as waqfs, this facilitated the expansion of old roads and the construction of new ones. It also opened the door to confiscations serving the private objectives of well-connected groups, including those of increasingly powerful communities of expatriate Westerners.

### **Broader Effects on Economic Development**

From a historical perspective, it is puzzling that the concept of municipal government came to the Middle East from abroad. One can imagine historical scenarios featuring the transformation of certain waqfs into homegrown forms of autonomous urban administration. Here is one possible counterfactual scenario.



The waqfs of a few Middle Eastern cities begin to coordinate their activities, at first informally and then, eventually, through a waqf council; over time, this council becomes powerful enough to assert some autonomy from the state; and it metamorphoses into an institution functionally equivalent to a municipality, thus producing the first prototype of a local corporation. Why might such a scenario have failed to materialize? The question is pertinent to understanding why the Islamic Middle East, once a source of institutional innovations that other regions borrowed liberally, turned into an underdeveloped area and became an importer of institutions. The Middle East might not have had to embark on Westernization, and it may never have had to face the West from a position of weakness, had its own social system produced indigenous variants of the economic institutions it ultimately borrowed from abroad.

Had the waqf system given rise to something like a municipality equipped with corporate powers, the Middle East would have solved more than the problem of delivering modern urban services in an efficient manner. As a by-product of this development, it would have overcome a major organizational limitation that, even before the industrial era, weakened the global competitiveness of its private commercial enterprises. As late as the 19th century, commercial enterprises of the Middle East remained small, whether measured by number of investors, size of workforce, or volume of business. Consequently, they were failing to exploit the economies of scale and scope that were contributing to the mounting global successes of their increasingly large Western competitors. The Western roots of this divergence in enterprise scale extend to the 10th century, when religious orders and universities started getting chartered as corporations. This development created a model conducive to forming large organizations enjoying autonomy from the state. Guilds and cities, and much later commercial and financial enterprises, made use of this model. Meanwhile, nothing comparable took shape in the Islamic Middle East. Right up to the 19th century most commercial enterprises consisted of two- or three-person partnerships; guilds, colleges, and cities lacked autonomy; and not one major business venture had been undertaken as a result of mass financial mobilization through nongovernmental channels (Çizakça 1995; Gedikli 1998; Toprak 1995:ch. 5–7). As I have shown elsewhere (Kuran 2001), the Middle East's failure to expand the scale of its business enterprises forms a major reason why, by the 19th century, economic relations between the Middle East and Western Europe fell largely under the control of Westerners and their local protégés. Waqf-generated municipalities might have provided a corporate model suitable to emulation by profit-making enterprises, including commercial ones. As such, they might have

helped local merchants resist the encroachments of European firms.

The waqf system's failure to generate municipalities contributed to the paucity of the intermediate social structures that we associate with "civil society" (Mardin 1969). Situated between the individual and the state, these intermediate structures perform two social functions. On one hand, they foster cooperation within associations that individuals create, operate, and transform essentially on their own, without direct guidance from the state. The cooperation occurs within decentralized units, which ensures perpetual experimentation and competition in various realms, including social institutions.<sup>50</sup> On the other hand, these intermediate structures monitor, criticize, and restrain the state. Countering the authoritarian and predatory tendencies of officials, they thus serve both as agents of democratization and as promoters of private property rights.<sup>51</sup>

In the early Islamic centuries, the waqf system put in place one necessary condition for a strong civil society: the freedom to found organizations of one's choice. At the same time, it inhibited another necessary condition: organizational autonomy. Since the directives of waqf founders were supposed to have the force of law, the waqf system could not produce *dynamically* perpetual organizations. In particular, they could not generate corporations able to refashion themselves openly and in full compliance of the law. The system precluded the emergence of corporations empowered to transform themselves in the interest of remaining socially efficient and politically effective. Had the waqfs gained corporate powers, they would have acquired the ability to transform themselves into organizations akin to municipalities. In addition, they would have formed power centers capable of blocking socially harmful policies, including arbitrary taxation and uncompensated confiscations—the very factors that made waqfs so beneficial to their founders in the first place. Although one cannot chart exactly how the Middle East would have evolved, or determine how strong its democratic institutions would have been, the historical pattern would probably have been very different.<sup>52</sup>

It has been said that the medieval West, despite persistent tendencies toward political centralization, became a federation of semiautonomous social units (Berman 1983; Tierney 1982). Numerous economic historians consider this fragmentation

<sup>50</sup> This function receives emphasis in Banfield 1958:ch. 5–8; Gambetta 1988; Coleman 1990:ch. 12; Fukuyama 1995:3–57; and Putnam 1993.

<sup>51</sup> The role of civil society in guarding individual freedoms and enabling democracy is a prominent theme of Tocqueville ([1835] 1989:ch. 1–8). For recent variants of this theme, see Gellner 1994:ch. 7, 24; and Shleifer & Vishny 1998:ch. 11.

<sup>52</sup> This pattern would also have been influenced, of course, by factors other than the vehicles used for providing public goods.

among the strengths of Western civil society as well as a major contributor to Western economic growth (North 1995; Beito et al. 2002).<sup>53</sup> To be sure, the differences between the civil societies of the West and the Islamic world were ones of degree rather than kind. Just as waqfs could be transformed from within by exploiting ambiguities and silences in the relevant deeds, innumerable Western examples exist of state intervention in the affairs of private organizations. However, even small differences between societies may be enormously consequential over time. Through their cumulative effects on political, social, and economic evolution, differences that appear minor when judged at any given moment may allow one society to overtake another in terms of institutional creativity, material wealth, and military might. To recognize this is not to invoke major, long-standing, and persistent cultural differences to explain the huge economic gaps of recent times. Initially minor differences can become self-augmenting by pushing societies onto separate evolutionary paths.

The cumulative effects of primary interest here arose through two self-reinforcing processes, one in the West and the other in the Middle East. In the West, the emergence of diverse corporate bodies stimulated the development of rules, regulations, and laws conducive to the strengthening of civil society. Over time, these corporations contributed to the success of movements to curb the powers of ecclesiastical and secular authorities. The advances of civil society facilitated the Protestant Reformation and the replacement of absolutist political regimes by constitutional monarchies and, eventually, democracies. In turn, these developments created a fertile ground for the further development of civil society. Moving to the realm of Islam, one finds what now, with the benefit of hindsight, may be characterized as a vicious circle. Waqfs lacking corporate powers kept civil society weak. And this weakness diminished the likelihood of an indigenous movement to amend Islamic provisions inimical to self-governing organizational forms.

Consequently, where absolutism gradually lost strength in the West, in the Islamic Middle East it faced no serious challenges until recent times,<sup>54</sup> and the region remains mostly undemocratic. In the 19th century, when the whole region succumbed to Western imperialism, even top political appointees lacked security, for they were deprived of any political base other than the goodwill of the sovereign. Accordingly, they generally remained servile to him, avoiding initiatives that could be construed as challenges to his authority (Mardin 1969:264–65; Gibb & Bowen

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<sup>53</sup> A related thesis, developed by E. L. Jones 1987:ch. 6–7, and Mokyr 1990:ch. 7, stresses the advantages of political fragmentation.

<sup>54</sup> This is not to say that the absolutism of Islamic states was ever unconstrained. There were always limits to what a sovereign could do (Lewis 1988:31–32).

1950:pt. 1, 26–45; Weber [1917–24] 1968:ch. 11–12). The resulting brakes on creative expression most certainly contributed to the economic impasses that the Middle East reached in the 19th century. Hence, they probably also helped prepare the ground for the radical measures that followed, including the establishment of municipalities.

The self-reinforcing process that delayed the Islamic world's modernization also shaped its kinship ties. Societies that develop strong private organizations, like those of Europe, tend also to experience a weakening of family relations, especially of kinship ties outside the nuclear family. By contrast, societies that inhibit the development of powerful, autonomous organizations keep the extended family strong. People living in a society of the latter type are relatively more likely to trust relatives and mistrust nonrelatives, 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 (Fukuyama 1995:ch. 6). The Islamic world was certainly not lacking in private organizations, if by this one means organizations formally outside the state apparatus. But the waqf system within which the largest of these organizations proliferated never became a major political force. Therefore, this system did relatively less to foster the confidence to weaken one's kinship ties and to pursue an independent vocation. In fact, through the device of family waqfs, it may well have facilitated and promoted the cultivation of kinship ties. Once again, a self-stabilizing process appears to have been at work. While the weaknesses of civil society kept families strong, strong families would have dampened the demand for adopting the legal provisions likely to strengthen the political influence of the waqfs.

### **Stimulation of Corruption**

The inference that rigidities of the waqf system ultimately harmed the performance of the Middle East's economies may be challenged by invoking the earlier-mentioned fact that waqfs enjoyed greater freedoms in practice than they did in principle. Mutawallis interested in operational adjustments would sometimes exploit ambiguities in the waqf deed, make modifications surreptitiously, wait for a sympathetic judge, or seek a judge prepared to look the other way in return for a bribe. Having seen that such opportunities burdened the waqf system with adjustment costs, we can now ask whether they brought lasting harm to economic development.

In a society in which even routine organizational adaptations—diverting funds to repairs, creating a new position, adjusting a service to changing demand patterns—may require the circumvention of rules, people in positions of responsibility

inevitably become lawbreakers. Respect for the law diminishes, making it difficult to enforce even socially beneficial rules. The perception that illegal behavior is common makes all personal virtues, including honesty and integrity, seem something of a sham. Children grow up believing that it is acceptable to break rules. Free riding becomes common and tolerated, hindering the success of cooperative projects toward widely supported ends. In short, social capital diminishes, and a pernicious culture of corruption takes hold. It is possible for the damage to be long-lasting. Many centuries after such a transformation, business enterprises based in this society will find themselves at a disadvantage in competition with enterprises based in societies where the law generally enjoys greater respect.

As of 2000, the "Corruption Perceptions Index" of Transparency International, an organization that monitors the business climate in a growing number of countries, shows that businessmen consider corruption a significantly greater problem in the Middle East and North Africa than in Western Europe. On a zero to ten scale, running from most to least corrupt, the countries of Western Europe receive an average score of 7.7, as against 4.3 for the five heavily Muslim Middle Eastern and North African countries that are being surveyed (Transparency International 2000).<sup>55</sup> Comparable data do not exist for even a quarter-century ago, let alone for the period in which the importance of the waqf system peaked. But many impressionistic accounts, as well as archival studies on particular cities and periods, suggest that corruption is hardly a recent phenomenon (Mumcu 1985). There is reason to believe, then, that the contemporary differences reflected in the Corruption Perceptions Index have historical roots. Among those roots were the extralegal methods used to evade the stringent requirements of the waqf system.

Insofar as these methods enhanced the acceptability of corruption, they would also have facilitated the embezzlement of resources ostensibly immobilized for the provision of social services, including public goods and charitable causes. Embezzlement often occurred through sales and exchanges of waqf properties. While such transactions could serve a waqf's financial interests, and thus its capacity for meeting the founder's goals, they were subject to abuse. Mutawallis found ways to line their own pockets through transactions detrimental to the waqf, for instance, the exchange of an economically valuable farm for the inferior farm of an uncle. A bribe-hungry judge might approve such a transaction under the pretext of duress, knowing full well that it was motivated more by personal gain than by civic duty. In certain times and places this form of embezzlement became so

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<sup>55</sup> The five countries are Tunisia (5.2), Morocco (4.7), Jordan (4.6), Turkey (3.8), and Egypt (3.1).

common that high officials took to treating waqf properties as alienable. In the early 16th century, right before the Ottomans occupied Egypt, a Mamluk judge ruled that the land on which the famous al-Azhar complex stands could be sold to someone looking for a site to build a mansion (Behrens-Abouseif 1994:146–47).

Another vehicle for embezzlement involved the exploitation of ambiguities in the founder's directives. Through self-serving interpretations of deeds, even charitable waqfs established entirely for the benefit of the downtrodden came to serve also, if not primarily, the prosperous and the powerful. Such was the eventual fate of the Haseki Sultan waqf. By the 18th century, this 16th-century waqf's major beneficiaries included people of all socioeconomic strata. What enabled such a transformation is the vagueness of Hürrem's founding declaration. Her waqf was to support, she stated, "the poor and the humble, the weak and the needy . . . the true believers and the righteous who live near the holy places . . . [and] hold onto the *shari'a* and strictly observe the commandments of the *sunna*" (Peri 1992:172). Since practically any Muslim resident of greater Jerusalem could qualify as either weak or devout, within a few generations huge numbers of families, including some of the richest, were drawing income from the waqf. Even an Ottoman governor managed to get himself on the waqf's payroll, and he took to using the waqf as an instrument of patronage (Peri 1992:173–74). As Hürrem's waqf turned into a politicized source of supplementary income for people whom she would hardly have characterized as needy, the government in Istanbul tried repeatedly to trim the list of beneficiaries. Evidently it sensed that continued corruption would cause the waqf, and therefore Ottoman rule itself, to lose legitimacy. Yet the government itself benefited from showering provincial notables with privileges, which limited the reach of its reforms. After every crackdown the waqf's managers returned to creating entitlements for the upper classes (Peri 1992:182–84). Ann Lambton (1997:305) gives examples of even more serious abuses from 14th-century Iran. Based on contemporary observations, she notes that practically all assets of the 500 waqfs in Shiraz had fallen into the hands of corrupt mutawallis bent on diverting revenues to themselves.

A third form of embezzlement worked through violations that may well have been intended, at least initially, to strengthen the waqf system. As part of its effort to curb agency problems, classical Islamic law allowed waqfs to lease property for at most one year at a time, except in the case of land, for which the lease period could extend to three years. This provision naturally limited the lessee's incentive to make long-term investments. In particular, it made the lessee avoid committing resources to property maintenance, lest the lease not be renewed. A common

stragem, developed to circumvent the restriction, was to sign a long-term contract that would lapse periodically for a few days and then get revalidated. Although the practice was legal in principle, all parties understood that its purpose was to extend contracts beyond the limits of the law. The common expectation of renewal at the original terms meant that there would be trouble if the waqf exercised its right to terminate the lease (Gerber 1988:170–78; Gerber 1994:108–10; Yediyıldız 1990:113–18). The consequent lengthening of leasing periods must have improved assets by inducing lessees to invest in maintenance. By the same token, it inexorably led to the privatization of these assets. Indeed, leases effectively came to be inheritable, and waqfs lost the ability to adjust the terms, even to reclaim their own property. The descendants of a lessee would assert outright ownership by virtue of long hereditary tenure, often using a combination of guile, bribery, and force (Gibb & Bowen 1957:pt. 2, 177).<sup>56</sup>

The extent of privatization due to illegitimate leasing is a matter of controversy (Gerber 1988:174).<sup>57</sup> What is certain is that it produced social benefits by freeing assets locked into unproductive uses on account of static perpetuity. But again, there were also social costs. By undermining the perceived sanctity of waqf property, this leasing dampened popular commitment to the waqf system. It also fueled more corruption and further undermined respect for the law. These costs might have been avoided had the waqf system been more flexible in the first place.

Each of the reviewed forms of corruption underscores the existence of a serious agency problem in the management of charitable waqfs. Nothing could ensure the compatibility of the founder's incentives with those of all future mutawallis, employees, and judges. Sooner or later, regardless of how diligently the founder had tried to bind the hands of his executors, someone would find a way to divert waqf resources from social to personal uses.

One must not infer that managerial harm to the efficiency of waqfs stemmed only, or even primarily, from corruption. As Richard Posner (1992:511) observes in regard to charitable trusts in common law jurisdictions, the managers and supervisors of trusts established for the benefit of broad social causes generally lack adequate incentives to manage properties efficiently. Their beneficiaries, too, suffer from poor incentives to press for efficient management; the costs of collective action prevent them from getting organized. Finally, charitable trusts operate without the beneficial checks of competition. Since they do not compete for customers with other suppliers, their managers are accountable

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<sup>56</sup> This privatization process was easiest when the waqf documents had disappeared.

<sup>57</sup> The task of measuring the empirical significance of this source of privatization is hindered by the fact that the properties in question were often reconverted into waqf property.

to no one but themselves. Posner's logic applies with equal force to charitable waqfs. While religious sentiment might have alleviated the temptation to shirk, it could not have kept waqfs permanently efficient. This observation is consistent with vast evidence that, in every age, charitable waqfs routinely fell into ruin as a result of poor management. The agency problems that afflicted purely charitable waqfs would have been relatively less serious in relation to family waqfs, whose mutawallis derived some personal benefit from improvements to their properties. However, since they were rarely the only beneficiary, the agency problems to which Posner refers were not completely avoidable.

### **Modernization of the Waqf System**

By the 19th century, irregularities and inefficiencies in administration had tarnished the waqf system's legitimacy. Although the pecuniary motives of the founders and mutawallis had never lacked salience, the sheer enormity of the prevailing legally questionable rents made these incentives loom larger than before. Another factor causing the system to lose luster was that governments began to play a progressively important direct role in the provision of public goods and charitable services (Özbek 2000; Ener 2000).

Throughout the Middle East, these transformations set the stage for massive confiscations of waqf properties. Chronically short of funds, governments of the region already saw the waqf system as a potential source of new revenue. Long strings of rulers had recognized that by declaring a waqf void one could change the tax status of its properties and increase revenue. Alas, as long as waqfs enjoyed legitimacy and were widely viewed as expressions of piety, the options available to rulers were limited. They could undertake small-scale confiscations here and there as opportunities presented themselves, but a massive assault on the system was out of the question, for it would be resisted by groups protective of religious symbols and also, of course, by hordes of beneficiaries. In highlighting the selfish motives of the founders and their families, the degeneration of the waqf system put nationalization within the realm of possibility.

An indication that states of the region were preparing to take advantage of this degeneration lies in a 1630 treatise of an Ottoman palace advisor. In this treatise, Koçi Bey ([1630] 1994:ch. 3–7, 11, 20) urges the Ottoman state to take over most of the waqfs established on its territories. The preponderance of these, he observes, satisfy only the letter of the sacred laws governing the waqf system. They are casuistical devices to enable the preservation and accumulation of family wealth; only tangentially, and quite inadequately, do they provide charitable services. He goes on to propose the abolition of all family waqfs as a means of



boosting imperial revenues.<sup>58</sup> Koçi Bey's proposal fell on receptive ears, forming the basis of the empire's long-term policy toward its waqfs. In stages, later sultans managed to assert control over vast waqf properties that had turned them into low-taxed, if not tax-exempt, private property.

For a while, the consequent confiscations left the traditional system essentially intact. But with the "beneficent reforms" (*Tanzimat-ı hayriye*) of 1839, the Ottoman Empire began pursuing an openly more meddlesome policy toward the waqfs. At this time, the Ottoman government decreed that all waqfs of the empire were to be attached to an imperial ministry empowered to regulate, if not to manage, them. This centralization of the waqf system's control amounted to a formal repudiation of the principle that stipulations made by waqf founders are inviolable. As matters of both state policy and state practice, waqf resources thus became fungible. Thousands upon thousands of families who had been treating waqfs as personal property saw their incomes diverted to causes crafted in Istanbul. Moreover, it became routine for the Waqf Ministry to subsidize one waqf's operations through the receipts of another, even to use pooled waqf revenues to finance new expenditures lacking any particular waqf founder's authorization. During the final century of the Ottoman Empire, the activities financed by the Waqf Ministry included imperial parades, the construction of new palaces, street-car services, and even the repayment of foreign debt (Barnes 1987:ch. 6–7; (Öztürk 1994a, 1994b; Çizakça 2000:79–86).

In the rest of the region, too, the 19th century saw steps toward centralization (Çizakça 2000:110–68). In effectively autonomous Egypt all lands belonging to existing waqfs were formally nationalized in 1812. Nevertheless, the legal framework for founding and administering waqfs remained in place, so in the following decades huge new waqfs were founded, with the usual effects on state revenues. Another attempt to impose state control over waqf properties was made in the 1860s, when the Egyptian government decreed that the revenues of all charitable waqfs would henceforth flow into a common treasury, for disbursement wherever it saw fit. As in other Ottoman territories, a wide variety of new projects thus came to be financed through revenues that had been reserved for different purposes (Baer 1968b:79–80; Crecelius 1991:75–78). In the process, the stipulations of waqf founders ceased to be treated as sacred and inviolable even in principle.

Several groups contributed to this radical transformation. It drew support from an assortment of Westernizers to whom the waqf system seemed retrogressive simply because of its identification with Islam (Köprülü 1942:24–25; Baer 1968b:83–88). Other

<sup>58</sup> Barnes (1987:ch. 4) discusses the relevant portions of the treatise.

reformers, though convinced that a reformed waqf system could contribute to economic development, pursued nationalization in order to deny clerics an economic base for resisting the broader agenda of modernization. Ottoman reformers aimed to reduce the waqf system's share of the empire's wealth as part of a deliberate strategy to weaken conservatives affiliated with mosques and religious schools. As intended, each centralization wave diminished the influence of the clerics, whose stipends and political support depended largely on the waqfs they served or supervised. Accordingly, the centralization of the Ottoman waqf system facilitated Westernization in a broad range of social, educational, political, and economic domains (Lewis 1961:92–94; Davison [1963] 1973:257–58).

European policymakers fanned the reforms for reasons of their own. They hoped to transform the world in the image of their own societies. They thought that stronger states would find it easier to pursue Westernization. As discussed in the context of municipalities, they wanted to facilitate foreign investment in the Islamic world. They sought to curb the losses that their subjects incurred in trying to have property seized for repayment of debt, only to learn that it was inalienable. Finally, European leaders wished to enable central governments to repay their Western creditors (Davison [1963] 1973:258; Köprülü 1942:24; Öztürk 1994b:25).

Whether interested in reforming the waqf system or in destroying it, all these groups exaggerated its inefficiencies. They also overlooked various inadequacies of the emerging centralized waqf administrations. The funds collected on behalf of the new waqf administrations went only partly into official coffers; embezzlement was common at all levels, and the governments that resorted to wholesale confiscations were themselves hardly paragons of economic efficiency (Barnes 1987:ch. 8; Çizakça 2000:85–86).

In view of these patterns, one might wonder whether the Middle Eastern regimes of the time might have been able to restructure the waqf system as part of a reinvigorated private sector. Through modifications of Islamic law, waqfs might have been given broader freedoms in regard to contracts, purchases and sales, and even purpose of operation. As for the acute need for government revenue, this problem could have been addressed through an overhaul of the tax system. For instance, the revenues of the family waqfs could have been taxed at the same rate as other private income, with tax exemptions only in proportion to the social services actually delivered. And the cash waqfs of the time could have been turned into tax-paying organizations able to transform themselves into diversified banks. The last of these measures might have lowered interest rates and alleviated the need for external borrowing.

One should not overlook the obstacles to changing the system without weakening the vested interests likely to defend the status quo. The reformers who may now appear to have missed golden opportunities for privatization and tax reform were probably right that their options were limited. During the preceding centuries, clerics of the region had undertaken no major efforts to discard the formal restrictions of the traditional waqf system or to reform taxation. Mired in debates on the legitimacy of cash waqfs and long-term leases, they had failed to provide a religious blueprint for the system's modernization. In the face of deepening economic crises, some of them still favored ritualistic accuracy over pragmatic adaptation. Others put their moral weight behind the centralization drive, objecting only when they themselves had something at stake (Köprülü 1942:24). No religious scholar or functionary of the time sought to make a radically reformed waqf system the basis of a decentralized economy tailored to the industrial era.

The reforms that might have been undertaken in the nineteenth century would be launched in the 20th century, often at the behest of coalitions that included pragmatic Islamists as well as secularists who sought to reinvigorate the waqf system as a means to strengthen civil society. The details of the waqf laws now in place in Egypt, Morocco, Iran, and Turkey, among other countries, speak volumes about the limitations of the traditional system. Waqfs are now treated as juristic persons. They may be formed by pooling the resources of thousands of small contributors. Their founders may include governments and firms. The assets that support their activities may consist partly or even entirely of movables such as cash and stocks. Their operations may be overseen by mutawalli boards rather than by mutawallis exercising responsibilities on their own, as individuals.<sup>59</sup> Mutawallis have broader powers than in the past to alter investment and spending. Because private property rights are much more secure than in the past, the waqf system is no longer seen as the most reliable vehicle for sheltering wealth. Finally, though still treated as an instrument for financing mosques, schools, libraries, and monuments, this system is no longer expected to be the primary supplier of public goods. Throughout the Middle East, many public goods that were once provided by waqfs are being supplied mainly, if not entirely, by government agencies.

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<sup>59</sup> As documented by Çizakça (2000:41–42, 60–61, 90–110, 119–168), there are variations across countries. See also Hatemi 1969:ch. 9.

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