

# **Institutional Roots of Authoritarian Rule in the Middle East: The Waqf as Obstacle to Democratization**

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## **Abstract.**

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

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

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## 1. Introduction

Even after the Arab uprisings of 2011, the Middle East<sup>1</sup> remains the world's least democratized region. Its only predominantly Muslim country that qualifies as a full electoral democracy is Turkey, where as late as 1997 the military forced an elected government to resign.<sup>2</sup> Several other region-wide patterns point to weak political performance. Trust in strangers, or generalized trust, is strikingly low by the standards of established democracies.<sup>3</sup> Likewise, trust in institutions is very limited.<sup>4</sup> Corruption is common as perceived by both local residents and foreigners doing business in the region; so is nepotism, the tendency to favor relatives.<sup>5</sup> Civil society is weak, in the sense that involvement in politics is generally very low, and organizations are by and large ineffective in representing the interests of their constituents.

Although the literatures that explore these patterns are huge, even collectively they leave much to be desired. As numerous surveys have documented, some of the proposed explanations fail to generalize to the whole region. For example, the argument that oil revenues allow rentier states to buy off their critics leaves unexplained the persistence of autocratic rule in oil-importing Middle Eastern states. Various other popular arguments are inconsistent with evidence from outside the Middle East. Consider the treatment of the Middle East's low political performance as a legacy of colonialism. It begs the question of why many non-Middle Eastern former colonies, such as India and Brazil, have had better political records.<sup>6</sup>

Missing from writings focused on the Middle East's persistently poor political performance has been an appreciation of how the region's institutional heritage has hindered reforms. Colonial and post-colonial political institutions were superimposed on a deeply rooted institutional complex that was not at all conducive to democracy, or the rule of law, or basic human rights, as these terms are now generally understood. The purpose of this paper is to show

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

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

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

<sup>4</sup> Bohnet, Herrmann, and Zeckhauser 2010; ...[al-Ississ 2012].

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

<sup>6</sup> Diamond 2010 offers a critical survey of the most influential explanations. Ross 2001 provides evidence that oil wealth hinders democratization. Amin 1976 focuses on the deleterious effects of imperialism.

how one particular pre-modern institution, which played an important economic role throughout the region for a millennium, generated political pre-conditions that account for the slow pace of democratization. This institution is the waqf, a form of trust established and maintained under Islamic law. It is known also as a pious foundation. Within the Islamic legal system, the waqf is the closest thing to an autonomous private organization. As such, it served traditionally as a key determinant of civil society, political participation, and trust in institutions, among other indicators and components of democratization.

In what follows I argue that the waqf delayed and limited democratization through six mutually supportive mechanisms. First of all, by design its use of resources was more or less set by its founder, which limited its capacity to reallocate resources to meet political challenges. Second, it was designed to provide a service on its own, which kept it from forming durable political coalitions. Third, in providing a huge variety of heavily subsidized services, it habituated people to receive subsidized public goods; it also discouraged private initiative. Fourth, its beneficiaries had no say in selecting the waqf's officers, and they played only a very limited role in evaluating their performance. Fifth, circumventing its rules required the permission of a court, which fueled corruption. Finally, the process of appointing successive officials was not merit-based; it promoted and legitimized nepotism.

The upshot is that, for all the resources it controlled, the waqf remained a minor player in Middle Eastern politics. It thus contributed to keeping the Middle Eastern peoples politically docile, ignorant, and quiescent. As a key component of an institutional complex that kept the state unmonitored and unchecked by civil society, it set stage for the authoritarian regimes of the twentieth and twenty-first centuries. Unrestrained power usually breeds bad governance. So a consequence of the weaknesses to be identified and explained in what follows has been lack of legitimacy on the part of incumbent regimes.

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

## 2. The waqf and its economic significance

Under classical Islamic law, which took shape between the seventh and tenth centuries, a waqf is a foundation established by a Muslim individual through revenue-producing private real estate to provide a designated service in perpetuity. The purpose of the waqf, the assets that would be recorded by a judge, along with the assets that would finance its services, and how the revenues generated by the assets were to be spent. The founding deed (*waqfiyya*) was meant to govern the waqf's operation forever. To ensure the deed's durability, a major waqf would also have it carved in stone, on the façade of an imposing building.<sup>7</sup>

The service could be anything legitimate under Islamic law. Waqfs were commonly established to support mosques, schools, fountains, hospitals, soup kitchens, bathhouses, and inns. Whatever its particular service, the endowment of a waqf would be expected to support the maintenance of its physical structures, but also its operational expenses, including staff salaries. Certain modest waqfs offered services without any dedicated physical structure. They included waqfs established to pay a neighborhood's taxes and those to support prayers to someone's soul. With the latter type of waqf, one or more employees, working out of their homes, simply hired the requisite labor and handled the finances. Sometimes the deed explicitly named a set of beneficiaries: a particular family, or the indigents of a particular town, or the taxpayers of a specific neighborhood. When no beneficiaries were specified, the locational choice clearly privileged certain communities. Although a hospital built in Damascus would not limit services to local residents, as a matter of practice most of its patients would be Damascenes.

Responsibility for managing the waqf's endowment and implementing its deed fell to a caretaker (*mutawalli*). The caretaker rented out waqf properties, undertook or authorized repairs, hired and supervised employees, and managed the delivery of services. He performed all these duties as the founder's agent; expected to adhere rigorously to the deed, he was supposed to implement the founder's expressed wishes. The initial caretaker of a waqf was selected by the founder, who could specify how his successors would be appointed, and even designate a sequence of individuals, or a particular office holder, such as the imam of a certain mosque. Alternatively, the succession decision could be included among the caretaker's duties. In this case, the caretaker would appoint his own successor whenever he chose to retire. As a rule, the position was a lifetime appointment. When a caretaker died in office without a designated

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<sup>7</sup> For general accounts of waqf rules and practices, see Kuran 2001, Schoenblum 1999, and Barnes 1987.

successor, the new appointment was made by the judge (*kadi*) of the nearest Islamic court. The local judge had a broader role to play anyway, as enforcer of the law under which the waqf was founded. He was responsible for monitoring the waqfs that delivered services or held properties in his area.<sup>8</sup> In this capacity, he could remove a mutawalli for shirking or embezzlement. The local judge thus provided the waqf's final line of defense against mismanagement.

Ordinarily neither the waqf's income nor its payments and services were taxed. The output of a farm belonging to a waqf-managed school was free of taxation, as were the salaries of its teachers and the educational services it delivered to students. But many exceptions existed. Peasants living in village falling within a waqf's endowment might be required to pay taxes to the state, along with a share of their output to the waqf. The waqf would be harmed indirectly, through the consequent lowering of peasant incentives to produce.

Before modern times, property rights were weak in the Middle East. Expropriations were common by modern standards, though of course huge variations existed across time and space. Waqfs enjoyed considerable immunity against confiscations because of the belief, which was integral to the waqf institution, that its charitable functions made its assets sacred.<sup>9</sup> The exceptions occurred generally during actual or potential regime changes. Rulers would declare a share of the existing waqfs invalid, usually on the ground that their founders did not own the endowed assets, as waqf law required. Thus, waves of confiscations occurred under several Mamluk sultans facing an acute military threat; in the 1440s when the Ottoman Sultan Mehmet II wiped out Anatolia's Turcoman aristocracy at the end of a bitter struggle for control over the rapidly expanding Ottoman Empire; and in 1514-17, when the Ottomans added Syria and Egypt to their dominions. But even these exceptions prove the rule. The Mamluk sultans generally backed down in the face of resistance; the expropriations of Mehmet II sowed so much resentment that his successor Bayezid II opted to restore some of the destroyed waqfs; and, likewise, the Ottoman administrators of Egypt reversed many of their waqf annulment decisions. On balance, an asset was much less likely to be confiscated if it belonged to a waqf than if it constituted private property.<sup>10</sup>

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<sup>8</sup> The geographic contours of a judge's jurisdiction were not sharply defined. Two or more judges could be involved in monitoring any given waqf. Custom often dictated which court had jurisdiction.

<sup>9</sup> The belief in its sacredness was reinforced through waqf deeds, which typically contained statements to the effect that anyone who harms a waqf will suffer both on earth and in the afterlife. For examples, see Öztürk 1995, 23.

<sup>10</sup> On the three examples, see Oğuzoğlu 2000, 37-38; Winter 1992, 11; Lev 2005, 155; Barnes 1986, 38; Behrens-Abouseif 2002, 64-66; Irwin 1986, 96, 141; and Yediyıldız 1982, 161.

Precisely for this reason, vast resources were poured into waqfs. Although no comprehensive quantitative data set has been compiled, various indicators testify to their economic significance. First of all, practically every monograph on the socio-economic life of a pre-modern Middle Eastern city or region devotes at least a chapter to the local waqfs, invariably establishing that they carried great weight in the local economy. Second, quantitative efforts typically yield big figures. Three separate studies estimate the share of all public revenues accruing to Anatolian waqfs to be 27 percent in the 1530s, 26.8 percent in the seventeenth century, and 15.8 percent in the nineteenth century.<sup>11</sup> Third, waqf-related cases come up very frequently in court records. Of 9,074 commercial cases recorded in a sample of 15 court registers of seventeenth-century Istanbul, 1544 cases, or 17 percent, pertained to a waqf matter. By contrast, a state official was involved in just 694, or 7.6 percent, of the cases.<sup>12</sup>

### 3. Latent civil society

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

Each waqf's caretaker was appointed essentially for life. His authority was grounded explicitly in the deed. Whatever the circumstances of his appointment, he found himself in control of all of the waqf's assets as well as its staff, who served at his discretion. These factors alone made him a respected person. A common theme in historical accounts of Middle Eastern cities and neighborhoods involves the esteem enjoyed by waqf caretakers.<sup>13</sup> In charge of an organization commanding income-producing assets, the waqf's caretaker was also the natural

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<sup>11</sup> Barkan and Ayverdi 1970, 17; Yediyıldız 1984, 26; Öztürk 1995, 54.

<sup>12</sup> Kuran 2010-12. Pro-state biases of the judges, documented in Kuran and Lustig 2012, may have limited the latter number.

<sup>13</sup> Behar 2003, 65-83; ...

leader of the people the constituency the waqf was meant to serve—the teachers and students of a school, the poor who depended on a soup kitchen for survival, or the neighborhood residents who received water from a fountain. With each such waqf constituency, the caretaker provided a focal point for coordinating individual demands. For that reason alone, the constituencies formed communities capable, in principle, of collective action aimed at improving the supplied services. Insofar as waqf beneficiaries took part in collective action to advance their joint interests, as individuals they might have developed the organizational, communicational, and strategic skills to pursue collective action in other contexts and through different groups. Waqfs could have turned the Middle East into a region rich in “social capital,” in other words, an area hospitable to initiatives requiring social organization.<sup>14</sup> Such initiatives could have included ones aimed at influencing, if not also controlling, specific state policies.

Waqfs need not have pursued political activities in mutual isolation. They could have supported one another, formed lasting coalitions, and negotiated compromises with an eye toward maximizing their joint influence. Just as industrial workers formed national labor movements in the age of industrialization, so waqfs could have fostered region-wide political movements to advance their common interests, preserve their institutionalized privileges, and address their shared grievances. And just as the world’s labor movements produced a class of ideologies purported to represent labor interests, so waqf-based coalitions might have generated ideologies beneficial to waqfs and their beneficiaries. In Western Europe, cities, guilds, and universities organized as corporations did work together toward shared goals. In the millennium preceding Europe’s early democracies, cities worked together to limit state powers, as did other corporate entities.<sup>15</sup>

However, for all the wealth in their control, and all the status that their caretakers enjoyed at least locally, waqfs remained politically powerless. As such, they did not initiate what one would recognize as a democratization process. As we shall see, one reason is that their resources could not be managed flexibly, another that they were designed as apolitical organizations. Whereas an incorporated European church was free to participate in politics, a mosque waqf was not. And whereas European cities could form coalitions to resist a royal tax, the waqfs within a

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<sup>14</sup> There is a rich modern literature that treats social capital as a key ingredient of economic development. See, for example, Banfield 1958: ch. 5-8; Coleman 1990: ch. 12; Fukuyama 1995:3-57; Putnam 1993; and Guiso, Sapienza, and Zingales 2008. On the Middle East, specifically, see ....

<sup>15</sup> [European democratization]

city did not engage in collective action among themselves, to say nothing of forming a political bloc across cities. There emerged no super-waqf representing scattered madrasas, or one representing the interests of all mosques. The upshot is that in the pre-modern Middle East suppliers of social services, though well-funded, did not constrain sultans in any serious way. Unlike the politically vocal universities, professional associations, and municipalities of Western Europe, they did not provide counterweights to the powers of monarchs.

This is not the only factor that inhibited democratization in the Middle East. As various scholars have pointed out, several other factors played their part: the coalescence of political and religious authority in early Islam, the atomism of the region's private business sectors, and the reliance of Muslim rulers on slave soldiers for security.<sup>16</sup> These factors would have all reinforced each other in ways that will be suggested. However, because they all belonged to a complex system with interconnected components, none was a necessary condition for blocking democratization. As with complex systems generally, components could change substantially without upsetting the rest. By the same token, under the right conditions, the same systemic linkages allowed an intrinsically minor change in one component to trigger a dynamic capable, over time, of upsetting all the others.<sup>17</sup> Moreover, there could be multiple paths to the same outcome. The last claim is evident in the diversity of democratization paths followed in Europe. In some cases peasants played a more critical role in reining in the monarch than in others. Although England's Glorious Revolution of 1688 and the French Revolution of 1789 both put in place democratic checks and balances, the key coalitions differed substantially.<sup>18</sup>

What matters here is that tens of thousands of waqfs, had they been able to use their resources for political ends, could have triggered dynamic processes likely to erode other barriers to democratization. For example, the region's innumerable mosque waqfs might have united in the interest of giving their staffs greater independence from the political system; some separation akin to the church-state separation, might have been the outcome. Another waqf-based dynamic might have been started by the slave soldiers who endowed accumulated wealth. They and their descendants might have used their resources to secure greater autonomy in the use of waqf

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<sup>16</sup> On the coalescence of authority, see Lewis 1993, ch. 21; and Rubin 2011. Kuran 2012 (in press) links the size distribution of enterprises to political development. Chaney 2012 (in press) explains how rulers limited their own legitimacy, and thus political stability and economic growth, by relying on military slaves for security.

<sup>17</sup> Kuran 2009; Greif 2006, especially ch. 5-7.

<sup>18</sup> Moore 1966 and Anderson 1974 provide comparisons. For focused studies that jointly illustrate differences in trajectory, see also North and Weingast 1989 and Rudé 1988.

resources, greater security for their private wealth, and the right to participate in politics as individuals without putting themselves in mortal danger.

These counterfactual scenarios are worth keeping in mind as we review and interpret the actual history of the waqf with a view toward identifying its effects on the Middle East's political development.

#### **4. Origins of the waqf's distinguishing political features**

Nothing is certain about the waqf's origins except that it is not among Islam's original institutions. The Quran does not mention it, which suggests that it played no significant role in the west Arabian society that counted Muhammad among its members. Although subsequently recorded remembrances about early Islam (*hadith*) mention that Muhammad's companions formed waqfs, these accounts, like most such recollections, were probably concocted in later times to legitimize an addition to the Islamic institutional complex.

Institutions resembling the waqf were present in civilizations that preceded Islam, including the Sassanid and Byzantine empires. In all likelihood, the idea of endowing assets to provide a permanent service was appropriated from these empires during Islam's initial expansion into Syria and Iraq. By the time the caliph Ali, Muhammad's fourth successor at the new Islamic state's helm, died in 661, about half of the Byzantine Empire and practically all Sassanian territories were within the Islamic fold. With conquests continuing, Muslim leaders gained familiarity with Byzantine and Sassanian ways, and their administrations started to draw on the talents of bureaucrats who had served other great states of the Eastern Mediterranean.

The year 661 marks also the start of the first Muslim dynasty, the Umayyads, and the northward shift of the Islamic state's seat of power, from Medina to Damascus. The ensuing decades involved many adaptations and innovations, some of them designed to strengthen the Umayyad regime and weaken its potential enemies. The Umayyads ruled over the still-expanding Islamic Empire until 750, when they were overthrown everywhere but Spain, and power passed to a new dynasty, the Abbasids. Ruling for twelve years from Kufa, the Abbasids then shifted their capital to Baghdad.<sup>19</sup> Two patterns of governance are pertinent here. First, under both the Umayyads and the Abbasids, the consolidation of power involved new or higher

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<sup>19</sup> On the Middle East's political evolution during this period, see Lapidus 1988, ch. 3-8. Crone 2004, ch. 17-22 surveys the associated evolution of political thought.

taxes on various groups, with adjustments made and exemptions provided both to exploit opportunities and to accommodate political pressures. Second, the fiscal policies of the regimes and their searches for security bred insecurity among administrative cadres at all levels. Although a talented person could become very rich by serving an Umayyad or Abbasid caliph, he was always at risk of being fired, expropriated, even executed; a misplaced step or an unfortunate palace rumor could make him lose everything suddenly.

The resulting insecurity would have bred a search for institutions capable of alleviating the risks in question. No records survive of discussions held, contacts made, or coalitions formed to modify the law. What is known is that during the Umayyad and early Abbasid eras the waqf entered the Islamic legal complex. It must have met the needs of insecure officials by allowing them to shelter wealth from unpredictable rulers and to use some of the sheltered wealth for their own families and descendants. Judging by the lack of data pointing to resistance by rulers, they, too, must have welcomed this institutional innovation. Rulers would have benefited through the enhanced willingness of officials to serve them. Besides, waqf-supplied social services would have reflected well on their regimes. Apparently an implicit agreement was reached whereby state officials established socially beneficial waqfs in return for secure control over their income-producing assets and the right to receive a share of the income themselves.

Two properties of the waqf, both mentioned in section 2 above, betray that the benefits of forming a waqf were expected to accrue primarily to Muslim officials, excluding the ruler's ordinary subjects as well as most non-Muslims. The immovability requirement favored incumbent state officials, who received land grants in return for their service; it also favored other major landowners, including former officials who had been rewarded with land for participation in conquests. It excluded merchants, whose wealth typically consisted of movable goods. As for the requirement that the founder be a Muslim, it points to favoritism toward the politically dominant group. Indeed, non-Muslim officials were denied the privilege of forming a waqf, though with permission on a case by case basis they could form functionally similar organizations. Revealingly, no restrictions were placed on non-Muslims with regard to using waqf services. Ordinarily Christians and Jews were eligible to drink water from waqf-maintained fountains, stay in waqf-funded inns, and receive treatment in waqf-supported hospitals. True, they were not welcome in mosques, unless they intended to convert; and waqf founders were free to restrict services to Muslims. But the resulting consumption exclusions reflected separatist

biases that infused daily life rather than some requirement intrinsic to the waqf system. It was legitimate to form a waqf whose services would benefit a minority-dominated neighborhood.

What is critical is that the rules in question support the observation that the waqf emerged as a device to shelter wealth for state officials. At the top echelons, state officials were almost exclusively Muslim. Even though some of them participated in commercial ventures, the bulk of their wealth was held in real estate. In adapting the Byzantine and Sassanian models of the trust creatively, they established rules aimed at giving themselves the lion's share of the gains.

The Umayyad and Abbasid rulers who consented to adding the waqf to the Islamic legal complex must have understood that officials with sheltered assets would enhance their capacity to challenge the political status quo. Clearly, they had an interest in restricting the uses of waqf assets. They did so, and dampened the potential for waqf-based opposition, through the requirement to follow the founder's instructions, the courts' duty to keep an eye on waqf operations, and obstacles to waqf mergers. The upshot is that rulers gave high officials and their families considerable material security without destabilizing their regimes. It matters here that the officials of a substantial share of the high officials of Muslim-governed states had the status of a foreign-born slave. In privileging these officials rulers also retained the ability to fire, persecute, and even execute those who appeared to pose a political threat.

This interpretation is consistent with recorded correlations between democratic deficits in the modern Middle East and the spread of the Islamic institutional complex. Highlighting the reliance of Muslim sultans on slave armies, Lisa Blaydes and Eric Chaney (2011) find that this pattern of military recruitment caused Middle Eastern rulers to lag behind their counterparts in western Europe in legitimizing their regimes. Extending this argument, Chaney (2012) identifies a positive statistical relationship between the share of a country's landmass that early Muslim armies conquered and its "democratic deficit" in the early twenty-first century.<sup>20</sup> Insofar as pre-modern military recruitment practices affected modern political patterns, the influences would have operated through the entire institutional complex associated with slave armies. Slave soldiers recruited from foreign lands would have had difficulty forming coalitions with disgruntled local groups, as both papers correctly stress. However, slave soldiers and their descendants came to control a great deal of wealth. Besides, the latter often got assimilated into local communities. These factors would have worked in the opposite direction. They would have

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<sup>20</sup> Chaney measures democratic deficit according to the polity scores of the Polity IV Project.

stimulated power centers beyond the ruler's direct control. In fact, it is precisely to prevent rival power centers that rulers formed slave armies in the first place. If checks and balances did not emerge over time, it is because other institutions made it difficult for either slave soldiers or their descendants to form autonomous organizations. Among those other institutions, the most significant was the waqf, because of its indefinite life.

Ready to analyze how the waqf hampered democratization, we will consider, in turn, several key characteristics that shaped political patterns. For each characteristic we will draw attention to historical continuities between the past and the present, showing how current political patterns are rooted in distant history. The exercise will add a new dimension to a growing literature on the institutional roots of the Middle East's political underdevelopment.

### **5. Curbs on political participation**

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

Another characteristic feature of democracy is mandatory information sharing. Although certain sensitive data, such as defense strategies and personal health records, are deliberately kept secret even in the most transparent democracies, officials are required to issue periodic reports about their activities. Moreover, a wide range of government decisions, such as government budgets, are supposed to be debated in public. Whether the typical citizen becomes knowledgeable is beside the point.<sup>21</sup> For the system to work reasonably well, in the sense of decisions serving the electorate better than any practical alternative, it may suffice to have a representative share of the citizenry follow any given issue closely.<sup>22</sup> A common problem in any political system, including all known forms of democracy, is that officials and pressure groups distort information self-servingly, confusing even citizens intent on staying informed. With

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<sup>21</sup> A large literature on voter ignorance exists. See, for instance, Caplan 2007 and Zaller 1992.

<sup>22</sup> Hirschman 1970, pp. \_\_\_; representative democracy cite.

varying levels of success, democracies try to minimize information pollution by standardizing disclosure requirements through either law or custom.

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

It was not uncommon for waqfs to deplete their assets and wither away.<sup>23</sup> Unanticipated expenses lowered the survival rate, but so did the inadequacy of incentives to manage the endowment effectively. And incentives were lacking partly because of limited accountability. One indication lies in the tenures of caretakers. In the Anatolian town of Sivas, between 1700 and 1850, 1902 waqf caretakers were replaced; no fewer than 74 percent of the replacements followed a death in office. In the remaining cases, the successor was typically a person chosen by the retiring caretaker, who was often a son. Only occasionally was a caretaker fired due to incompetence. As a matter of practice, impediments to the performance of his duties had to become quite severe before his position was subject to challenge. One Sivas mutawalli was replaced by his son when he became deaf; another was dismissed when he could no longer read the Quran, which was among his duties.<sup>24</sup> In accounts of waqf histories, poor financial management rarely appears as a cause of dismissal, despite evidence pointing of commonness.<sup>25</sup>

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<sup>23</sup> Figures

<sup>24</sup> Demirel 2000, 127-31.

<sup>25</sup> Figures

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

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

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

A correlation exists between the number of ideas in circulation and the generation of new ideas. That is why metropolises, which bring together diverse people, contribute to knowledge

advancement far beyond their share of the world population.<sup>26</sup> The underlying logic suggests that the rules of the waqf, insofar as they contributed to excluding the masses from politics, would have reduced institutional creativity broadly, across the system. Creativity would have been affected adversely with respect to markets, finance, science, and of course policy making, among other domains. Awareness of shared problems would also have diminished. For both reasons, long-term economic development would have suffered, along with political development.

Students of participatory politics distinguish between "tame" and "rebellious" organizations.<sup>27</sup> In barring waqfs from political advocacy, Islamic law ruled out the latter type. But it limited participation even further by denying even the constituents of tame waqfs a hand in management. One consequence was to impoverish public discourse on the provision of services. Over time this exclusion would have diminished the efficiency of waqf services. Another long run effect, which would have outlived the waqf's popularity as a vehicle for providing social services, is that the masses would without the habits and skills to communicate their thoughts, expectations, and grievances concerning social services.

Remember that we are seeking insights into the perennial weakness of civil society in the Middle East. We will be returning to the present, after other political consequences of the waqf have been discussed. But one parallel may be identified now. An influential 2004 article on the persistence of Middle Eastern autocracies remarks that in Egypt "advocacy organizations have no constituency to which they are accountable."<sup>28</sup> The organizations in question relied on foreign funding, which the article holds responsible for the disconnection between their leaders and constituents. Although funding sources may have been a factor, lack of organizational accountability is not a new pattern in the region. It was a key characteristic of the waqf, long the region's chief vehicle for most social services.

The literature on non-governmental Middle Eastern organizations commonly notes that autocracies have used policies of legal constriction to defuse civic activism before it becomes threatening. Thus, they have used "associations laws" to deny operating permits to organizations considered potentially subversive. They have also made it a policy to infiltrate non-state organizations and launch prosecutions for even minor legal infractions.<sup>29</sup> A result of such

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<sup>26</sup> Glaeser 2011, ch. 1, 9; and Simon 2001, ch. 3.

<sup>27</sup> Fung 2003, 534-36.

<sup>28</sup> Langohr 2004, 199.

<sup>29</sup> Yom 2005, 24; Wiktorowicz 2000.

intimidation has been to limit collective empowerment on the part of non-governmental groups. While all this is true, we must not lose sight of what has allowed Middle Eastern states to get away with suppression of civic activity. Because of the history of the waqf, Middle Easterners were unaccustomed, in any case, to mass political participation. Their tradition of civic passivity facilitated the control of non-governmental organizations. It also limited citizen involvement in their activities.

## **6. Political consequences of inflexibility**

Although broad political participation provides political gains, it is never an unmitigated blessing insofar as substantive outcomes are concerned. Adding more participants to a decision can delay the process; it also raises the possibility of gridlock. Such decision making costs can swamp the benefits of fine tuning services to beneficiary preferences. In principle, then, a single caretaker might provide a waqf service more efficiently than a committee that includes multitudes of beneficiaries. The underlying logic guides the separation of constituency and management in modern charitable corporations. Consider Doctors without Borders, which provides medical aid to communities threatened by violence or catastrophe. Its managerial team constitutes a minute fraction of the people, spread around the globe, who receive aid from it or simply share its goals.

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

True, founders were free to insert into their deeds clauses giving successive caretakers discretion on particular matters, or the right to make certain types of changes. But the implied flexibility had to be limited; a deed could not grant caretakers unbounded discretion, for that would defeat the very concept of the waqf, which involved the declaration of a specific social purpose and the provision of an adequate endowment. Hence, every waqf imposed restrictions on resource use. This ensured that sooner or later changing conditions would render inefficient a waqf that adhered strictly to its deed. The founder of a Cairo hospital in 1600 would have constructed a stone building and endowed land to cover the salaries of physicians and other staff, food for patients, and the medical utensils of the time. He could not have anticipated the space needs of a modern surgery room, or the costs of an MRI machine or an electric generator.

The economic consequences of the inflexibilities in question have been discussed elsewhere.<sup>30</sup> In preparation for identifying the corresponding political costs, it will suffice here to categorize them. The restrictions on organizational choices may be *ex ante* or *ex post*; and the latter may involve the mission or the management.

To start with *ex ante* inflexibilities, they consist of restrictions on the founding of waqfs. The only formal restriction was that the mission be allowable under Islamic law. As a matter of practice, founders, and especially the wealthiest, came under pressure to make choices compatible with state objectives. They were expected to provide services in strategically sensitive localities and to constituencies that the ruler was courting. This policy is evident in the abundance of surviving endowed structures on major trade routes and in cities that served as an imperial or provincial capital. Whether or not state needs played a role in the founder's choice of service, there was no hard rule as to the discretion that he could grant to successive caretakers. The contingencies under which a caretaker might be allowed to reallocate resources were not legally specified. They were restricted by custom, but also by the limits of human imagination. As we shall see, an option that the founder had not explicitly provided could become costly to exercise, even prohibitively so, even if evolving conditions rendered it useful to the intended beneficiaries.

*Ex post* mission inflexibilities concerned the purpose of the waqf. Imagine a specialized hospital, such as a tuberculosis sanatorium. In the period when the sanatorium was considered the best vehicle for curing tuberculosis, a waqf-supported sanatorium would have been

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<sup>30</sup> Kuran 2001, 861-69; Kuran 2011, ch. 6.

welcomed as a charity compatible with Islamic law. It would have been built in the mountains for long stays, on the view that the best cure for tuberculosis is high altitude, fresh air, and good nutrition. The invention of antibiotics has made tuberculosis sanatoria obsolete, and this waqf would have been no exception. Although antibiotics would not have posed a physical or financial obstacle to a sanatorium's continued operation, the value of its facilities in their intended use would diminish greatly as its patients dwindled.<sup>31</sup>

Presumably the founder's overriding intention was to return sick people back to health. In his own time tuberculosis was a major menace, and he did his best to facilitate the cure of its victims, whom he expected to be present in abundance far into the future. Had he come alive in the age of antibiotics, he might have favored broadening his sanatorium's mission to include, say, all post-operative long-term recovery patients. However, under Islamic law, not even a waqf's founder was authorized to revoke, alter, or refine its charter. In principle, therefore, a waqf-financed sanatorium's facilities could remain underutilized indefinitely. In the meantime, courts could block its conversion to some other medical use. The inefficient use of the waqf's resources would necessarily come to an end only when its tuberculosis patients ran out. At that point, the waqf's resources would go to the poor, who are the ultimate recipients of every waqf's endowment income.

Finally, ex post managerial inflexibilities concerned the administration of waqf assets and the delivery of waqf services. Conscious of the advantages of giving discretion to caretakers on managerial matters, founders often pre-authorized certain operational changes, including asset swaps, reconstructions, and job reclassifications. The courts helped founders equip caretakers with operational options through formularies suitable to wide classes of waqfs and adaptable to others. But even with such precaution, it was just a matter of time before the restrictions of the deed, whether explicit or implicit, became binding. Unless the founder had explicitly allowed more than one adaptation, once a particular change option was used, further adaptations were disallowed. For instance, if the caretaker of a school had expanded the number of classrooms, no further enlargement of the physical space would be legitimate. The default rule, applicable to matters where the founder had not allowed modifications explicitly, was that his own choice prevailed. Eventually, then, even a waqf with an unusually flexible deed would suffer inefficiencies also because of restrictions on its management.

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<sup>31</sup> This second example is drawn from Posner 1992, 508-9, who points to the inefficiencies of trusts generally.

The previous section focused on political consequences that worked through the political participation of waqf constituencies. We are now ready to take up political consequences that flow directly through the quality of the services delivered. Insofar as people benefit from social services, their life satisfaction, and they view the prevailing political system as legitimate and worth preserving. Their satisfaction depends also on how their services compare with those supplied in other places and that that they themselves received in the past.<sup>32</sup> The management of waqfs would have mattered, then, to the legitimacy of the general political order. In cities where a broad array of waqfs supplied extensive subsidized services, residents would be more satisfied than if, all else equal, the same services were obtainable only through profit-seekers at market prices. That is why rulers of the Middle East made it a point of prodding their relatives, high officials, and other dignitaries to establish waqfs in strategically important places. Expecting the loyalty of their subjects to vary according to the waqf services that they received, they wanted those on key roads and leading cities to receive priority.

The very fact that made waqfs a source of legitimacy also constrained the ruler's actions affecting their services. As we know from prospect theory, losses hurt more than identical gains feel good.<sup>33</sup> For that reason alone, people react negatively to the withdrawal of services that they might not have bothered to secure. Eliminating a functioning hospital in order to gain control of its assets would upset its beneficiaries, making them less loyal to the ruler. Likewise, terminating a service that contributed to its efficiency, such as its water supply, would reduce general contentment with the prevailing regime. Vested interests generated by waqf services would be on guard against policies liable to reduce or eliminate them. Conscious of the potential resistance, rulers would try to avoid harming popular waqf services, and even to appear actively supportive, through complementary services. In restricting the ruler's policies, docile but potentially hostile waqf beneficiaries could thus have functioned as barriers to despotism.

This argument applies to socially beneficial waqfs. We already know, however, that waqfs commonly became dysfunctional. A political consequence would have been the loss of popular support and the weakening of resistance to hostile state policies. It follows that waqf inflexibilities would have undermined whatever checks and balances they created through vested interests. Let us reconsider the waqf-supported sanatorium that became useless with advances in

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<sup>32</sup> Oswald 1997; Easterlin 1974.

<sup>33</sup> Kahneman and Tversky 1979; Frank 1997.

medical knowledge. Tuberculosis patients will cease paying attention to it, showing indifference to its fate. New generations will view it as an anachronism. For these reasons the state will have a progressively easy time confiscating its assets; opposition to the confiscation will be limited to the caretaker, the sanatorium's employees, and their families.

If this logic is correct, the inflexibilities of the waqf system would have had particularly serious political repercussions in the era of modern economic growth, which began around 1750. This is when in western Europe technological and associated institutional innovations took a quantum, inducing the rest of the world to make adaptations that began to feed on themselves.<sup>34</sup> As the new economic era unfolded, waqfs faced increasing needs to reallocate resources and modify the delivery of their services. The inflexibilities of waqfs should have tarnished their legitimacy as the new economic era unfolded. Growing numbers of Middle Easterners, including elites with a stake in the efficiency and legitimacy of the social order, should have been drawn to organizational alternatives to the waqf. As we will see later, the nineteenth century did in fact witness the dismantling of waqfs on a large scale and the establishment of service suppliers using relatively more flexible organizational forms.

An alternative to the road actually taken would have been the transformation of the waqf itself. Emerging problems could have been handled by reinterpreting traditional waqf rules in a manner suited to changing economic conditions; or by creating new categories of waqfs for sectors, such as urban water delivery, where greater flexibility was becoming desirable. No such reforms took place, at least not until the nineteenth century. A factor in the delay must have been the sacredness of the waqf. Because of that property, challenges to the waqf could have been portrayed as attacks on Islam itself. Under the circumstances, 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 of static perpetuity—the commitment to perpetual fixity—would have become immune to fundamental change.<sup>35</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. In the nineteenth and twentieth centuries, the corporation, a transplanted institution, became the basic delivery vehicle for various services historically provided through waqfs. Along the way, it

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<sup>34</sup> Easterlin 1998.

<sup>35</sup> Rubin 2011 develops this argument with respect to Islamic institutions in general.

became common for caretakers to tamper with the objectives of the waqfs under their administration, or to circumvent their operational rules through illegal methods. The courts not only tolerated this corruption but they participated in it. Corrupt practices involving waqfs had political consequences of their own. They had unintended but long-lasting consequences visible even today, more than a millennium after the waqf system took shape.

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

No one could foresee all the economic conditions under which waqfs would operate into the indefinite future. Even a founder or caretaker unusually attuned to ongoing developments could take steps that unintentionally diminished a particular waqf's capacity for continuing to fulfill the waqf's mission. As we have seen, some waqfs fell on hard times, and then withered away, because caretakers lacked authorization to deal with budget deficits pragmatically. Yet opportunities existed to reinterpret a waqf's mission or alter its operations without violating the letter the law, at least not blatantly. The judges of Islamic courts were capable of stopping even these modifications. Nevertheless, they often ratified them, sometimes because the community would benefit, but at other times also, or instead, to share personally in the consequent gains. Breaking the law in order to derive a personal advantage amounts, by definition, to corruption.

The simplest form of adaptation involved convenient interpretations of ambiguities in the waqf deed. For example, the authority to make necessary repairs would be used to reconstruct a building in a manner that added a window, a room, or even an entire wing. An expansive interpretation of the maintenance requirement would thus serve to adapt physical structures to prevailing needs. Many modifications and expansions of this sort undoubtedly yielded benefits to constituencies that the founder had meant to serve. They were consistent with the spirit of the deed. However, ambiguities were also exploited to legitimize expenses contrary to the founder's intentions. An endowment established in sixteenth-century Jerusalem for the benefit "the poor and the humble, the weak and the needy, ... the true believers and the righteous who live near the holy places" was interpreted as encompassing all of the city's pious Muslims, including the city's richest residents and its top officials.<sup>36</sup>

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<sup>36</sup> Peri 1992, 172-74. The expansive interpretation rested on the premise that piety alone provided qualification for aid.

A second form of shady adaptation worked through transactions involving income-producing assets. The founder of a waqf might have authorized sales or exchanges beneficial to its constituents. And even when the deed was silent on the matter, judges were empowered to make exceptions in extenuating circumstances.<sup>37</sup> Conditions did arise that would justify adjustments to the waqf's portfolio of assets on efficiency grounds alone. Relinquishing a farm located at a distance of 300 kilometers from the caretaker's home for a farm in his own neighborhood could make it easier for him to monitor the farm's use and to collect payments; with the same expected income, the waqf's capacity to meet the founder's goals would grow. For all their benefits, transactions involving waqf properties were subject to abuse; they could be undertaken to enrich the caretaker and a cooperating judge at the expense of the waqf. The received property could be less productive than the one given up; presumably the caretaker and the judge would capture part of the difference. Property rentals to the caretaker's relatives at sub-market prices constituted another form of abuse. The records of an Istanbul waqf speak of farms rented to the caretaker's daughter and son-in-law at unusually low rates; with the connivance of judicial authorities, the caretaker avoided seeking other bids, let alone looking for the highest.<sup>38</sup>

A third form of corruption was based on yet another practice that could enhance the productivity of assets when used judiciously. To ensure that the caretaker maintained control over waqf properties, classical Islamic law capped the lease period at one year, except for land, for which the maximum was set at three years. This provision limited the lessee's incentive to make long-term investments; it even induced him to forego maintenance, lest the lease not be renewed. A common ruse 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 obeyed the letter of the law, everyone understood that it was intended to extend effective agreements beyond what was strictly allowed.<sup>39</sup> The lengthening of actual leasing periods must have improved asset productivity by inducing lessees to make investments. But it also caused the privatization of waqf assets, sometimes as the intended outcome of caretaker efforts to enrich themselves at the expense of their waqfs. Leases became inheritable, and waqfs effectively lost the ability to adjust the terms, even to reclaim their own property. Using a combination of guile,

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<sup>37</sup> For examples of sales and exchanges of waqf properties, see Hoexter 1998, ch. 5; and Jennings 1990, 279-80, 286; and Marcus 1989, 311. All involved the approval of a judge.

<sup>38</sup> Behar 2003, 74-75.

<sup>39</sup> Gerber 1988, 170-78; Gerber 1994, 108-10; Yediyıldız 1990, 113-18.

bribery, and force, the descendants of a lessee would assert outright ownership by virtue of long hereditary tenure.<sup>40</sup> If in the meantime waqf documents disappeared, the privatization could not be prevented even if the courts sought to preserve the waqf's integrity, which often they did not.

The privatizations in question were not necessarily harmful as measured by economic output. Insofar as they freed misallocated assets, the benefits to individuals would have exceeded the losses of waqfs. On the political side, there would have been three effects. In dampening the inflexibilities involving endowed waqfs, privatization would have increased the resources available for private political action. But this effect could not have been empirically important, because the lack of incorporation opportunities made it difficult for non-state actors to carry out sustained collective action. Secondly, corruption would have tarnished the waqf's image as a sacred institution used for charitable purposes. Finally, the collective reputations of judges and waqf caretakers could have suffered, reducing their trustworthiness. The second and third effects would have undermined popular commitment to waqfs in general. People's willingness to defend the institution against the state would have diminished. Some evidence will be presented further on.

The various methods used to adapt waqfs to changing circumstances, reallocate waqf resources, and privatize waqf assets contributed, over more than a millennium, to a culture of corruption. Buying off judges, exploiting ambiguities in wording, and getting authorities to look the other way became not only common but acceptable. Since even highly respected people engaged in such practices, they acquired practical legitimacy even as they remained deplorable in principle. Tolerated law breaking exists, of course, in every society. Although jaywalking violates American laws, it is common throughout the United States, and Americans do not necessarily consider it reprehensible. However, in the pre-modern Middle East circumvention of the law took place in many more contexts; and a greater share of resources was involved, than in an advanced modern economy. Remember that waqfs came to control huge amounts of real estate, and that they fulfilled functions that in western Europe communities met through more flexible organizational forms. As the economic modernization process unfolded, and the Middle East became underdeveloped relative to the West, the divergence was reflected in the extent of corruption. The Transparency International finding that business is perceived as more corrupt in

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<sup>40</sup> Gibb and Bowen 1957, pt. 2, 177. The extent of the privatization due to illegitimate leasing is a matter of controversy (Gerber 1988, 174). Measurement is complicated by the fact that the properties in question were often reconverted into waqf property.

the Middle East than in Europe is among the recent manifestations of the culture of corruption identified here.

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

In the historical literature on the waqf system evasions of waqf rules are often treated as substitutes for legally granted flexibility.<sup>41</sup> Although it is true that they made waqfs less rigid than a strict interpretation of traditional waqf rules would have required, the long term effects differed substantially. In overcoming immediate obstacles to resource reallocation, they also dampened pressures against law breakers in general. That made it harder to institute new rules and regulations, which is integral to modernization. Indeed, modernization involves the discarding of some rules, the modification of others, and the adoption of completely new ones. In societies accustomed to obeying the law, new laws are obeyed quickly, simply because following the law comes naturally. By contrast, in societies accustomed to circumventing rules, new laws are not taken seriously. People who grow up believing that breaking rules is essential to survival expect others to maintain their behaviors, and they avoid inconveniencing themselves. Free riding remains common and tolerated, hindering the success of cooperative projects toward widely supported ends. If the Middle East scores low also in regard to rule of law, a reason lies in the centrality, until modern times, of the waqf in daily life, especially in cities.

Had waqfs been allowed to restructure themselves and reorient their missions through fully legitimate means, they might well have generated a vigorous civil society. Communities of the Middle East might have enhanced their capacity for solving their problems autonomously, without state involvement beyond the enforcement of applicable laws. And the contemporary Middle East might not have consisted largely of weak societies governed by over-stretched and authoritarian states.

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<sup>41</sup> [Gerber and others]

## 8. Lack of accountability to beneficiaries

By design a waqf is required to deliver a specific service to specific constituents. The necessary instructions are in a waqf deed filed in court by the founder. Thus, the caretaker of a waqf-supported school is obligated to hire staff listed in the deed at stipulated salaries, ensure that the curriculum is followed as designated, and maintain the established physical facility. The deed is presumed to be clear about the requirements of the job. Likewise, it is taken for granted that the waqf's assets will remain adequate indefinitely to carry out the stated services, provided they are managed appropriately. The system further presumes that a long string of judges will perform their oversight roles properly. The judge who ratifies the deed will evaluate the assets competently; and both he and his many successors will all monitor caretakers effectively. Yet another critical assumption is that factors such as land values and maintenance costs will never change in ways that make it impossible for a qualified caretaker to fulfill his duties.

These are unrealistic and overly optimistic presumptions. In reality, the performance expected of caretakers and judges almost never materialized, which accounts for the steady decay and disappearance of established waqfs. What is particularly significant here is what the caretaker was not ever expected to deliver. He was not obligated to achieve any particular level of efficiency. If he was in charge of a school, for instance, he was not expected to reach some threshold of educational performance, such as a certain level of reading proficiency by a particular age. He did not have to please either the students or their parents. In fact, the preferences, opinions, and aspirations of the school's beneficiaries were immaterial to his job. He was accountable to the founder alone, and it was the courts, not the beneficiaries, that determined whether he was following the founder's stipulations.

In theory, the beneficiaries of a waqf could play an indirect supervisory role themselves. They could carry complaints of mismanagement or wrongdoing to a judge in the hope that his scrutiny of the caretaker's operations would improve the waqf's performance. Many examples exist of lawsuits brought by dissatisfied or potential beneficiaries against an ostensibly misbehaving caretaker.<sup>42</sup> Hence, the caretaker took a risk by ignoring expectations of the waqf's constituents. A lawsuit could result in a verdict of mismanagement, leading to his dismissal.<sup>43</sup>

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<sup>42</sup> Marcus 1989, 303-04; Hoexter 1998, ch. 5; Gerber 1988, 166-69.

<sup>43</sup> [Numbers from Istanbul court cases.]

But to make a convincing case it did not suffice to show that the intended beneficiaries were displeased; nor was this even required. The aggrieved parties had to prove that the waqf was not being run according to stipulations in its deed and that the caretaker was at fault.

In any case, the right to file a legal complaint was no substitute for formal accountability to beneficiaries. An honorable judge could dismiss a complaint as baseless. Besides, by no means was every judge committed to enforcement of the deed. Some judges were prepared to overlook improprieties in return what amounted to a bribe. Another deterrent to filing a formal complaint lay in the expenses of filing a case. Plaintiffs had to pay a court fee. In cases where the judge was in collusion with the caretaker, yet another option was to complain about both before higher authorities. That carried the risk of alienating an influential official capable of retaliation. The judge belonged to the corps of state officials who could make life difficult for ordinary subjects who threatened their privileges. There is evidence from seventeenth-century Istanbul that, precisely for fear of retaliation, people refrained from suing state officials unless their case was exceptionally strong.<sup>44</sup> The key implication is that a waqf's constituents had only a limited sway over its caretaker's actions. Although capable of preventing egregious mismanagement, they had no way to ensure his good will, let alone his competence.

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

It is worth recalling that waqfs were the primary delivery instrument for a wide range of services, including not only schools, but hospitals, water fountains, soup kitchens, roads, and caravanserais. The typical individual consumed waqf services from cradle to grave. None of the providers were accountable to him. So as a rule he did not participate in the determination of how resources set aside for his benefit would be spent, or in the selection of the people who would make the relevant resource allocation decisions. No formal mechanism existed for aggregating the sentiments of any designated constituency. Hence, the members of a constituency could not gauge the representativeness of their own satisfaction levels. The system

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<sup>44</sup> Kuran and Lustig 2012, \_\_\_.

was meant to keep the masses outside of the decision making processes that determined a substantial share of the services they consumed.

In the modern Middle East, as in most other parts of the globe, the services in question are provided largely by corporations. These corporations include municipalities and other government agencies. They also include private corporations, such as private schools, hospitals, and water companies. The consumers of these services do participate in the determination of the providers. In the last case, choices are made primarily through the marketplace. Parents choose among private schools depending on the education they expect their children to receive. In the case of public corporations, consumers are able punish poor performance at the ballot box. For instance, they can vote a mediocre mayor or party out of office. The power that consumers enjoy through the market or the ballot box gives them an incentive to keep informed about how resources are used. It motivates them also to communicate their thoughts about feasible alternatives and to form coalitions with like-minded people.

There are many reasons why modern consumers often fail to exercise their ability to punish poor service providers. Most basically, free riding may keep them uninformed, and vested interests may render government agencies unresponsive to the expressed wishes of voters. Nevertheless, there is a fundamental difference in accountability between the delivery of waqf services and that of services in a modern economy. In the modern world, including the Middle East, suppliers are expected to serve the end consumer. In the premodern Middle East, the end consumer was expected to be a passive recipient of goods provided by generous waqf founders.

### **9. Obstacles to resource pooling**

Still another factor that limited the political potential of waqfs is that, with few exceptions, they could not pool their resources. If the founder of a waqf had not explicitly allowed it join forces with other organizations, technically achievable economies of scale or scope would remain unexploited. Hence, services that a single large waqf could deliver most efficiently—road maintenance, piped water—might be provided at high cost by multiple small waqfs. Founders were free, of course, to stipulate that the income of their waqfs be transferred in part, or even fully, to a large waqf. Scattered examples of such pooling of waqf resources have been found.<sup>45</sup> A major reason for their uncommonness is that they required a coincidence of goals between the

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<sup>45</sup> Çizakça 2000, 48.

feeder waqf and the receiving waqf. In particular, the waqf supplying resources and the one accepting them had to be compatible in terms of what they were designed to accomplish.

One must distinguish here between waqfs endowed by a group and the pooling of resources belonging to waqfs established separately and possibly at different times. Neither kind of pooling was common.<sup>46</sup> It is easy to see why the latter would have been discouraged. With established waqfs founded by individuals, it was difficult, if not impossible, to ascertain that the founders agreed, or would have agreed, to the terms of a merger. Consider two schools built in the same neighborhood to teach the Quran, along with literacy and numeracy. Merging their waqfs could be mutually beneficial by economizing on administrative overhead. But would the founders have agreed to combining the classes in one building and renting the other for extra income? If the schools remained separate and administrative overhead shared, what would happen if one of the buildings happened to need repairs more frequently? Would the founder of the better constructed school have approved of the merger had he known that his side had to absorb a disproportionate share of the maintenance expenses? Such questions could not be answered affirmatively beyond the shadow of a doubt. Hence, as a rule, mergers were disallowed. If a waqf had not been designed to participate in resource pooling, it could not be converted into a feeder waqf of a larger waqf. Even if new technologies came to generate economies of scale unimaginable at the waqf's inception, the waqf would have to continue operating independently.

The foregoing logic does not apply, of course, to waqfs established, at the start, by a well-defined group. Six co-founders could all agree, at the outset, to allow future mergers under certain conditions. Group-established waqfs were uncommon because under Islamic law the waqf was supposed to be founded by an individual property owner. The reason for requiring the founder to be an individual is lost in history. It was probably motivated by the very consideration that accounts for the exclusion of the corporation from the corpus of Islamic law: rulers' aversion to private coalitions. A private coalition formed to endow a service could facilitate cooperation for political ends inimical to the ruler's interests. Whatever the exact motivations behind it, the requirement to limit the number of founders to one set the pattern for a millennium. Rifaah al-Tahtawi, a major Egyptian thinker of the nineteenth century, wrote that "associations for joint

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<sup>46</sup> For references to waqfs established through the pooling of resources within families, see Doumani 1998, 38.

philanthropy are few in [Egypt], in contrast to individual charitable donations and family endowments, which are usually endowed by a single individual."<sup>47</sup>

The near-absence of opportunities to pool resources had serious political implications. It kept waqfs with overlapping, and even common, needs from carrying out joint campaigns for external resources. Consider the caretaker of an educational waqf who finds that thieves operating under the cover of darkness are pilfering his school's food supplies. There is nothing to keep him from asking state officials for help in securing the school. But he cannot initiate an association to advocate better protection for all schools. Waqf regulations do not allow him to join forces with the caretakers of other waqfs that are suffering from theft. Each of the many caretakers must face the state bureaucracy alone. Their forces must remain fragmented.

In principle, there is nothing to keep the beneficiaries of the various waqfs from working together for the prevention of theft. Concerned parents from various neighborhoods could jointly appoint a delegation to plead with the Sultan for better policing. However, this is unlikely in the absence of leadership by the caretakers. All of the problems that bedevil collective action in large groups generally could block it here, too. Whatever their shared problems, isolated constituencies do not develop an awareness of the gains they might achieve through cooperation. Nor do they develop a common political identity. Moreover, individual beneficiaries who happen to notice the potential advantages of forming a political movement will lack the motivation, as individuals, to incur the costs of getting a political movement off the ground.<sup>48</sup> For all these reasons, in records of waqf-related complaints and requests brought to Sultans, one never encounters representatives of a broad-based group. They come from people facing the state as groups united around concerns about a single waqf, if not as lone individuals.<sup>49</sup>

Just as cooperation will be lacking within a sector such as education, healthcare, or water supply, so it will be for waqfs located within any given region. Imagine a school, hospital, and a water fountain, all delivering services to the same neighborhood through separate waqfs. The caretakers and beneficiaries of these waqfs have a common interest in developing the neighborhood's infrastructure. Good local roads will facilitate the work of all of them. Yet, they cannot combine their resources to campaign for better roads. Insofar as they stand to benefit from

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<sup>47</sup> As quoted by Cole 2003, 229.

<sup>48</sup> Olson 1971, chs. 1-3, 5.

<sup>49</sup> [Şikayet defterleri]

road construction, they must carry out their campaigns independently, without combining forces with other waqfs working toward the same end.

A basic cause of these operational restrictions is that the law gives supremacy to the founder's right to set the terms of management, treating the caretaker as an executor of his decisions. Just as the caretaker's preferences are irrelevant to charting the waqf's course, so is his political judgment. He is not at liberty to pursue opportunities for advancing his constituents' interests through cooperation with other groups or individuals. In the language of modern economics, the system thus treats the founder as a principal and the caretaker as an agent hired to implement directives conservatively, by favoring the status quo unless change was explicitly stipulated.<sup>50</sup> Insofar as the founder's directives are incomplete and his intentions unknown, the caretaker will lack certainty as to how the founder would have wanted him to act. But this does not give the caretaker a right to substitute his political judgment for that of the founder. If the deed makes no mention of collective action, he is to assume that the founder wanted him to keep the waqf's management and resources separate from those of other entities.

## **10. The twilight of the traditional waqf**

We have seen that the waqf limited political participation and kept civil society weak through a variety of mutually complementary mechanisms. If the empirical significance of these mechanisms is granted, we are left with the question of whether they shed light on the political patterns of the Middle East in the early twenty-first century.

The answer is not obvious, because the waqf's role in daily life has shrunk all across the Middle East. Two factors account for this abatement. One is that since the eighteenth century the formation of new waqfs has slowed dramatically. And the other is that, as the waqf's economic inefficiencies became increasingly conspicuous in the age of industrialization, the region's reformers, starting with those of Egypt and the Ottoman Empire, began to nationalize waqfs on a large scale.

The drop in waqf formation is attributable to partly stronger private property rights across the region. As arbitrary expropriations became less common, the need for wealth shelters

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<sup>50</sup> Agency problems and dilemmas receive attention in many contexts. Presuming the world is rife with opportunism and informational asymmetries, it focuses on finding second-best contracts that give the agent incentives to comply with the principal's directives. See, for example, Mirrlees 1976, 105-31; and Platteau 2000, 10-17.

diminished accordingly. More important, however, is the emergence of alternative means for securing wealth and for funding charity. In the early twentieth century it became possible to provide through corporations services historically delivered through waqfs. Municipalities largely took over the functions of urban waqfs; semi-official agencies, such as the Red Crescent, assumed responsibility for emergency aid and poor relief; and a panoply of private charitable corporations emerged to provide services once delivered almost exclusively by waqfs. A complementary impetus for the decline in waqf formation was the emergence of alternatives to the waqf. New investment opportunities and new vehicles for providing social services began to absorb resources that once flowed into new waqfs.

The nationalization drives were launched on the pretext that waqfs were hopelessly corrupted and that their founders' wishes could be met more reliably through the direct control of a public agency. To this end, states of the Middle East established waqf ministries or agencies to take over the functions traditionally assigned to caretakers. Thus, a "Ministry of Waqfs" was established in Istanbul in 1826, and in Cairo shortly thereafter.<sup>51</sup> Such public agencies were supposed to keep strictly separate accounts for each of the thousands of waqfs under their control. In practice, the assets of many waqfs have become part of a fungible resource base.<sup>52</sup> Many potentially useful mergers blocked by traditional waqf rules have now occurred, in effect, through means antithetical to the spirit of the traditional waqf system. The nationalization of waqf assets went hand in hand with a transfer of functions traditionally exercised by waqfs to service providers modeled after western archetypes. For example, urban services were transferred to newly established municipalities. This delegation amounted to the adoption of a 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.

As the waqf lost significance, it also changed character. Under legal reforms across the region, waqfs can now be formed by groups, including organizations. They can accept donations and run fundraising campaigns. They are directed by boards as opposed to a single caretaker.

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<sup>51</sup> As in several other Arab countries, in Egypt a Ministry of Waqfs remains in operation. In Turkey, the administration of nationalized waqfs was downgraded to a general directorate in 1924, as part of the Republic's drive to minimize the role of Islam in public life. The fungibility of waqf assets advanced a step further in 2012 with the transfer of the directorate's majority share in the Waqf Bank (*VakıfBank*) to the Treasury (*Radikal*, 15 October 2012, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1104047&CategoryID=80>).

<sup>52</sup> On the Ottoman transformation, see Öztürk 1995, 63-107, 379-471; on the Egyptian reforms, see Marsot 1984, —.

They now enjoy juristic personality, which means that they can sue and be sued as a legal entity; traditionally, it was the caretaker who had standing before the courts as an individual plaintiff or defendant. Merit plays a substantial role in the selection of their administrators. They enjoy operational flexibilities denied to their traditional namesakes. Perhaps most critical here, they are not precluded from politics. Although they cannot endorse political parties, they are free to express opinions on policy issues. They can organize conferences, issue publications, give awards, and make grants, all with an eye toward influencing political views and outcomes. They can pursue such endeavors in cooperation with other entities, including other waqfs. In short, they can participate in politics in all the innumerable ways that charitable corporations do.<sup>53</sup> In fact, the modern waqf is essentially what in the Anglo-Saxon world is known as a charitable corporation.

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

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

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

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<sup>53</sup> For a critical survey of various reforms, see Çizakça 2000, ch. 4.

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

Generalized trust refers to the readiness of people to cooperate and to engage in civic endeavors with fellow citizens.<sup>54</sup> It emerges, and is sustained, largely as members of society interact with and within associations that individuals create, operate, and transform essentially on their own, without direct guidance from the state. It tends to vary inversely with primordial attachments based on ties of blood, race, language, region, or religion. Thus it is low where kinship ties are relatively strong, as they are in the Middle East.<sup>55</sup> And kinship ties are strong precisely in societies that have historically inhibited the development of autonomous organizations that provide protection from the state. People living in a society of the latter type are relatively more likely to trust relatives and mistrust non-relatives.<sup>56</sup> So they try harder to keep their wealth within the family by operating, insofar as they join cooperative ventures at all, through family-owned and -managed enterprises. In such societies the prevalence of cousin marriages provides another indicator of low generalized trust.

The self-reinforcing process that kept civil society embryonic in the Middle East until modern times also kept its kinship ties strong. The waqf played a central role, as we saw, in that process. So it contributed to keeping families relatively powerful in the lives of individuals. Where civil society has strengthened over the past two centuries, families have also started to

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<sup>54</sup> Stolle 2002, Fukuyama 1995, Putnam 1993.

<sup>55</sup> The Middle East has the highest rates of consanguineous marriage rates in the world. The rate is 20.1 percent in Turkey and close to 30 percent in the Arab world, as against under 11 percent for the world as a whole ([http://ccg.murdoch.edu.au/consang/www.consang.net/global\\_prevalence/tables.html](http://ccg.murdoch.edu.au/consang/www.consang.net/global_prevalence/tables.html)). See also Tadmouri et al. 2009 and Meriwether 1999, 132-40. On a 0-200 scale, where 100 indicates that half of all people trusts others, the generalized trust score for the Middle East is 39.1, as against 72.2 for OECD (with Turkey included only in the Middle East). The scores are derived from values surveys conducted between 1995 and 2009. Ten Middle Eastern countries are included in these surveys: Algeria, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Morocco, Saudi Arabia, and Turkey (<http://www.jdsurvey.net/jds/jdsurveyMaps.jsp?Idioma=I&SeccionTexto=0404&NOID=104>).

<sup>56</sup> Fukuyama 1995, chs. 7-12.

weaken.<sup>57</sup> Judging by the experiences of regions that started to democratize earlier than the Middle East, the trend can be expected to continue. As stronger private organizations develop, family relations should continue to weaken, especially those outside the nuclear family. But an interactive process such as the kinship-civil society relation can take many generations to run its course. In the meantime, kinship ties that are strong by global standards will continue to inhibit democratization.

[Paras. on nepotism] ...

Another legacy of the Middle East's lack of experience with self-governing organizations lies in the susceptibility of today's autonomous organizations to government capture. Since Middle Eastern countries put in place, beginning before World War I, modern laws of associations, every country has seen the proliferation of non-governmental organizations, including charitable associations, trade unions, chambers of commerce, and professional associations, all organized as some form of corporation.<sup>58</sup> In the early 1990s, Egypt had 13,000 registered non-governmental organizations; in addition, there were thousands of non-registered communal and religious organizations, many of which had an Islamist affiliation.<sup>59</sup> Yet these non-governmental organizations were doing a poor job with respect to monitoring state officials and keeping them in check. Few had the clout to keep officials from bending or breaking laws. Nor were they effective at exposing corruption and mobilizing public outrage at the perpetrators. A basic reason was that the vast majority had agreed, if only implicitly, to respect the government's red lines with respect to policy positions and criticism. Only superficially were they serving the functions of monitoring and restraining the state.

The proximate reason for the ineffectiveness of Arab civil organizations is that the autocrats running Arab countries since the end of foreign rule have made a point of emasculating the news media, suppressing intellectual inquiry, restricting artistic expression, banning political parties, and co-opting regional, ethnic and religious organizations. Whether as a monarch or as a president, and regardless of political creed or agenda, the motivation for such policies has been to silence dissenting voices in order to facilitate the perpetuation of power. But these rulers achieved unchecked power, and managed to perpetuate their domination for years on end, precisely because intermediate associations were weak to begin with. After the expulsion or

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<sup>57</sup> [Trends]

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<sup>59</sup> Al-Sayyid 1993.

departure of Turkish, French, and British administrations, they faced societies unaccustomed to sharing political power through intermediate associations. The region's lack of experience with politically active non-governmental organizations was linked to the centrality of the waqf in the traditional order based on Islamic law.

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

Vicious circles rest on complementarities among specific institutions. That is what gives them durability. In this particular case, they suggest that the political characteristics underlying the Arab world's weak economic performance cannot be overcome on short order. The same complementarities imply that the right reforms, if somehow they get under way, may start to feed on themselves.

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

penalizing others merely for objecting to particular policies, diverse actors would promote political liberalization.

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

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