

The Evolution of the Institution of *Waqf* in its Historical Context in the Middle East: An Alternative View

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Abstract. This paper studies the concept of *waqf* in its historical evolution in order to understand its role as a substitute for government in providing social services to the most vulnerable parts of the population in Islamic history since the 7th century. In the literature, there are mainly two schools that explain why *awqaf* flourished during the medieval period with some ups and downs until the end of Ottoman rule with the fall and near disappearance of *awqaf* in the Middle East after the fall of the Ottoman Empire. The first school, among which orientalist constitute the majority, consider *awqaf* as the main culprit for the failure of the industrialization and modernization of Muslim economies to achieve the aspired economic growth. According to them, *awqaf* were mainly used as an instrument to shelter wealth, circumvent inheritance laws, avoid taxes, and state confiscations. On the other hand, researchers of the other school blame colonial and post-colonial influence for destruction and/or disappearance *awqaf* by centralizing existing *awqaf* under state control or confiscating *awqaf*. This study lays the groundwork for an alternative view explaining the harmful role of the state in the success or failure of *awqaf*. The independence of judicial systems, or lack thereof, has played a major role in defining the performance of *awqaf* in the Middle East.

Keywords: Waqf, Middle East, Trusts, Social Services, Economic Development, Public Goods

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1. Introduction

Economic development theories are debating the root causes of major economic crises and key successful development stories considering the role of the state (or government) in the socio-economic life. As Milton Friedman argues, in his famous study “Monetary History of the United States” (1963), the state or its inadequate monetary policy was a major source of Great Depression⁽¹⁾. Neo-classical economic development restricts the role of the state to its core functions, including defense, national security, and judiciary system. These three institutions form a public good. On the contrary, Keynesian school of thought advances the idea of market failure in providing certain services with a government being the source of response to the market failures. Hence, frontiers of public good are broader in the latter school of thought than the former one and it includes other public services, such as water supply, infrastructure, education, healthcare and so on. In the debate of less or more government in the economy or whether redistributive role of the government can be efficiently delegated to the private sector, one of the most important and unanswered question remains the capacity of so-called third sector⁽²⁾, social capital to fill the gap left by the incapacity of the government to efficiently provide public goods (referring to “government failure”) or by the profit-maximizing private capital leaving social challenges unaddressed (“market failure”). Recent rise of social capitalists (i.e. impact investors or philanthropists) demonstrated the need to rethink socio-economic policies in providing public goods and services in both developed and developing countries.

(1) Friedman and Schwarts (1963) blame Fed for not doing enough in terms of increasing money supply when it was needed.

(2) In contrast to public sector and private sector, third sector refers to non-profit sector (in 1965 Richard Cornuelle named as Independent Sector).

Philanthropic organizations (such as Melinda and Bill Gates Foundations), impact investors, non-profit and non-government, organizations or any other civil society organizations are driven by missions and objectives to create an impact in the society (e.g. clean air and water, community empowerment or uplifting women and youth). From the economic policy perspectives, whatever motives drive those civil society organizations which were in most cases independent from the government played an important substitute role to the government and provided to some degree of success broad range of social services. This paper studies the concept of *Waqf* to better understand how this Islamic institution played almost a substitute role to the government in delivering social services, especially in favor of the most vulnerable parts of population in Islamic history since 7th century. Widespread use of *Waqfs* is associated with greater economic growth and prosperity in Golden Age of Islamic history, while its decline can be observed in the troubling periods in the Middle East and Central Asia. On the other hand, some orientalist and students of essentialism claim that Muslim majority countries lagged during the European industrialization due to the rigid and conservative nature of Islamic institutions. In its comparative study, Kuran (2011) attempts to explain the divergence between the Europe and Middle East by pointing out Islamic legal arrangements which were unfavorable to capital accumulation, creation of corporations, hence economic modernization. Weberian thought puts the religion at the center of discourse having an aversion to innovation and modernity, (Djedi, 2011, p. 33-67).

According to this group of thinkers, *Waqf* being one of the determinant economic institutions seems to be a culprit of growing divergence between the Middle East and Europe in 17th century. To disprove this understanding that economic institutions in

Islam are not compatible with modernity and creation of corporation, many scholars provided legal, financial and economic justifications and explanations to conclude that the rise of Islam was associated with economic prosperity in pre medieval period. Accordingly, Muslim civilization started to decline due to the colonization of Muslim majority countries by the West⁽³⁾. However, it is noteworthy that Middle East was already facing socio-economic decline prior to the Western colonization. I will argue in this paper that the economic prosperity of the Middle East in pre medieval period and its subsequent decline in pre- and post-industrial periods can be explained by the deterioration of its economic institutions, particularly Awqāf⁽⁴⁾ ecosystem. I refer here precisely on the increasing role of the state in the Awqāf ecosystem, hence reducing its independence from the state caused major inefficiencies in delivering efficient and effective social services. It is important to note that the contribution of *Waqf* to the urbanization in the Middle East is undeniable and new cities and towns came to existence as a result of endowments (Hoexter, 2002: 128), while emergence of municipalities backed by the industrialization in Europe in late 18th century was mainly driven by the state. This is an interesting contrast when it comes to providing public goods using private social capital (on voluntary basis) in case of Islamic world in pre medieval period, while we observe emergence of public goods delivered by the state (using taxes of citizens). Although the scope of this paper does not include a comparative assessment of both models, it is

(3) Nazih Ayubi (2001) explain post-colonial identity in the Middle East.

(4) A waqf, (Arabic: وقف, pronounced ['waqf]; plural Arabic: أوقاف, awqāf); is, under the context of '*sadaqah*', an inalienable religious endowment in Islamic law. It literally means "confinement and prohibition". (<https://islam.fandom.com/wiki/Waqf>).

sufficient to mention here that social capital in the Middle East proved to be comprehensive enough to satisfy social needs in terms of education, health, housing and water supply until occurrence of tax-based state driven municipalities in 19th century. Decline of Waqf ecosystem left a vacuum in providing public services which the state has been unable to sufficiently fill in most of the Muslim majority countries, (Sait and Lim, 2006, p. 148).

The paper will review the concept of Waqf, its ecosystem and historical evolution. Specific characteristics of Waqf under the most important dynasties, including Umayyads, Abbasids, Seljuks, Mamluks and Ottomans will be reviewed. Some points of essentialist approach will be critically discussed, while an alternative view will be proposed based on the detrimental role of the state in deterioration of Waqf ecosystem and its subsequent decline in socio-economic policy in the region. The concluding section will draw some lessons from the past, with possible directions for future research and provide some policy recommendations on how to better formulate and implement Waqf-based social policies in Muslim majority countries in modern times.

2. The concept of Waqf and its historical evolution

Waqf is one of the most important economic institutions recognized, developed, and practiced under Sharī'ah for more than 14 centuries. Under the Waqf, the founder endows on permanent basis the property, its usufruct and/or its income to the use of beneficiaries with specific charitable purposes identified by its founder. Concept of Waqf encompasses perpetuity feature in a sense that it applies to non-perishable assets and properties whose usufruct or income can be used while maintaining and not consuming the property itself. It refers to "*Sadaqa jarriyah*" (continuous charity) reflected in some authentic

hadiths⁽⁵⁾ of the Prophet Muhammad (PBUH⁽⁶⁾) who said: “When a man dies, only three deeds will survive him: continuing alms, profitable knowledge and a child praying for him”. Although some scholars indicate that Waqf was not mentioned in the Quran, the fourth pillar of Islam is the institution of zakāh, obligatory charity, mentioned in thirty places, while non-obligatory charity appears thirteen times in the Quran. The first Waqf in the history of Islam was established by the Prophet Muhammad (PBUH) in 622 and it was the Mosque of Quba in Madinah. A confinement of real estate and properties for extending revenues to operate and maintain religious facilities is usually referred as religious waqf, while philanthropic waqfs aims at providing social services, including education, healthcare, housing, water supply, roads, bridges, with different categories of beneficiaries (if specified by the founder), such as poor, needy people or travelers, etc. It is also known, that the Prophet Muhammad (PBUH) was also the first to establish philanthropic waqf when Mukhairiq made his will that his seven orchards in Madinah be given after his death to Prophet Muhammad (PBUH) who subsequently established charitable waqf for poor and needy. This practice was followed by his companions, including Umar ibn Khattab who also made palm orchard in Khaibar charitable waqf, as per the suggestion of the Prophet Muhammad (PBUH) who said “if you like, you may hold the property as waqf, and give its fruits as charity”, (Kahf, 1999). Since inception of this charitable trust concept, many waqfs survived more than thousands of years in different countries. The above prophetic tradition inspired Muslims so significantly that three quarters of the land in Arabian Peninsula and other territories became under waqf

(5) Sayings, deeds, and endorsements of Prophet Muhammad (ﷺ) narrated by his companions.

(6) PBUH - Peace be upon him

(Hayatullah, et al., 2021). The history of development of philanthropic institutions in Muslim majority countries is full of success stories, including significant architectures and historical buildings, but most importantly, remarkable achievement in science, education and delivering public goods to population without the help of the state can be attributed to the concept of waqf, (Çizakça, 2000). Waqf based education and scientific facilities in Muslim world produced well known astronomers, biologists, mathematicians, chemists, physicists, philosophers, geographers and many other scholars which had an enormous impact on the modern science and technology⁽⁷⁾. Golden age of science in Muslim world is explained by many contributing factors that created enabling environment for research and development. The reason why waqfs played key contributor role in producing such high-level science and education was due to complete independence of education and research facilities from the state, as the economic sustenance was ensured mainly from the proceeds of endowments. This helped creating enabling environment for critical thinking and curiosity with a sufficient level of financial support from the private and public charitable trusts, and not from taxpayers' funds. According to Gaudiosi (1988), Merton College of Oxford University which was established in 1264 and served as benchmark for further evolution of European universities, is fully in line with the concept of waqf. Public services including healthcare, housing, schooling was mainly provided and financed by proceeds from waqf while public infrastructure and utilities were built and maintained by waqfs.

(7) Well known scientists such as Avicenna (father of medicine), Ulugh Bek, Al Farabi (pioneer of social psychology), Al Biruni (father of geodesy), Al Khwarizmi (founder of Algebra and algorithms), Jabir ibn Khayan (father of chemistry), Ibn Haytam (founder of experimental psychology) and many others

Waqf has four institutional pillars (Kahf 2015), including the founder (al-wakif), beneficiaries (mawquf'alaih), entity of waqf (mawquf) and the statement of waqf (sighah). The founder should own a revenue generating property or asset that he or she wants to convert into waqf (endow) and identify who should be the beneficiaries of the revenues coming from the waqf. Also, founder designate who will be the administrator(s) or trustee(s) (mutawali or nazir). According to Islamic laws, founder appoints an administrator along with rules to appoint his/her successive administrators to manage the Waqf property and determines the purpose(s) of endowment and its beneficiaries⁽⁸⁾. There are two essential principles of waqf, namely perpetuity and irrevocability which make waqf different from conventional trusts and some scholars are arguing that especially this perpetual feature of waqf makes it rigid institution and prevented creation of corporations, hence failed to benefit from the industrialization (Kuran, 2012).

Although next section will detail some analysis to highlight the flexible nature of waqf, it is important to note here that Muslim countries failed to create large corporations and benefit from the industrialization process not because of intrinsic factors related to waqf, but mainly due to institutional inefficiencies reflected with centralization of waqf institutions either through confiscation of waqfs by the state or centralization through nationalization under state driven Waqf authorities. In a way political factors heavily contributed to the decline of the waqf through inherent conflict of

interest between the governments' needs to raise financing for public expenditures at the best or for maximizing extractive rents for other purposes at the worst scenario. These arrangements may lead to an opportunistic behavior of the government at the expense of long-term development needs (Haber et al. 2008). Also weakening of judiciary system and losing its independence largely explains decline of socio-economic and political institutions. As it is well known, traditional theory of Islamic jurisprudence derives from four sources, including Quran, Sunnah, Qiyas (analogical reasoning) and Ijma (juridical consensus). Sharia rulings were derived from the above sources using Ijtihad by the *private* religious scholars who were not dependent from the governments. These private scholars, such as founders of four madhhabs (legal schools), Abu Hanifa, Imam Malik, Muhammad ibn Idris Al-Shafi'i and Ahmad ibn Hanbal were not associated with the ruling class or not getting salaries from the governments at their times. In the process of Ijtihad, the government did not have an influence on the private scholars. In terms of implementation of laws and court rulings, independent nature of rulings (e.g. on what is permissible or not), both independence of the process of Ijtihad and divine character of Islamic laws explain intrinsic limitations of individual law-making, (Lau, 2004). Subsequent political transformations and processes in Middle East largely explains the decline of the waqfs as social institutions, especially in the redistribution of wealth. However, this is not because of insufficient level of flexibility or adaptability rather due to political interference of state (through confiscations and centralization) in private affairs when it comes to entrepreneurship and philanthropy. Goiten (1973) assesses the impact of waqf as "strange system by which the dead provide for the livings is typical for a society which is becoming static and ceases to be competitive and enterprising", (Heidemann).

(8) There are two types Waqf: (i) *waqf al-khayri*, charitable trust that provide income to a public purpose and *waqf al-dhurri* or *ahli*, charitable trust established for family members. In both cases, according to Shafei school of jurisprudence, ownership is transferred to God, hence there is no legal title for the endower or the beneficiary. However, according to Hanbali and Maliki schools of jurisprudence, ownership is transferred to beneficiaries. (<https://bit.ly/3w5oddH>).

However, later studies and research proved the opposite of this claim with significant impact of waqfs on urban transformation and socio-economic development of Muslim majority countries not only during the rulings of Ottoman empire (1299-1923), but also during Umayyads (661-750), Abbasids (751-983), Seljuks and Fatimids (984-1289), Mamluks (1250-1517) and Timurids (1369-16th century). Ahmet Kuru (2020) compares socio-economic development of Muslim countries with the Western European countries by identifying three major periods, including (i) the period of 7-13th century with superior and more advanced Muslim countries compared to the Western Europe, (ii) comparable level of development during 13-18 century when socio-economic decline with worsening of institution started to emerge; and (iii) industrialization period and subsequent years were marked by the Western European supremacy in terms of socio-economic and military dimensions. He argues that agents of transformation matter when it comes to socio-economic development and major factor behind the decline in the Middle East is the alliance between the *ulamā* (Muslim scholars) and the state, especially less economic independence of the former one from the latter. This economic independence of these scholars who were the pillars of independent judiciary system was mainly due to powerful role played by privately founded waqfs. According to Cohen (1970), out of reported 3,900 Islamic scholars between the 8th and mid-11th centuries, only 9% of them were state officials, indicating that scholars (not only religious, but also scientists and philosophers) were distancing themselves from the state officials and rulers. Source of financing for education and research was coming either from the private sources or the proceeds of waqfs. There are two major benefits of scholars being independent from the state: (i) scholars having their own business activities in different areas, including textiles, food, trade, garment, teaching, banking and

finance have been very close to the socio-economic realities, hence law making practices and issuance of fatwas were enabling them to understand real issues, proving that the fact that laws and rulings were quite flexible and adaptable to the times of socio-economic development; (ii) having independent sources of income enabled scholars and overall judiciary system to maintain its independence from executive branch of power, demonstrating one of the basic requirements of the modern democracy. Waqf, in a way, served as a powerful tool for ensuring sustainable financing of public services, including education and research facilities, maintaining critical and basic infrastructure needs of the population at large. Proceeds and incomes from waqfs were sufficiently replacing what the modern municipalities are providing nowadays, hence not depending on fiscal revenues.

2.1- Umayyads and Abbasids dynasties

Umayyad dynasty ruled Muslim territories during 661-750 with Damascus becoming a capital city covering of more than 11 million km² vast territories including Transoxiana, Sindh, Maghreb, and Iberian Peninsula. Umayyads' fiscal system was quite simple with only two types of taxes, including zakāh taken from Muslims and *Jizya* from non-Muslims.

Overall expansionary fiscal policy combined with high taxes was typical to this period with one exception of Umar ibn Abd al-Aziz who abolished jizya tax for converts to Islam which significantly reduced tax revenues. In this context, he reduced public expenditures starting from stopping the personal allowances to his relatives and reducing military expenditures. At the same time, he created an enabling environment for massive welfare programs for orphans and the destitute through waqfs. These types of measures enabled massive wealth creation and entrepreneurship. Low taxes and contained public expenditures during short lived reign of Umar ibn Abd al-Aziz (717-720)

allowed to reduce poverty to the point that it became difficult to find qualified recipients of collected zakāh. One of the most significant administrative reforms he initiated was to exclude any state officials from entering into any business, limiting possible conflict of interest situations. Therefore, almost all charity waqfs were mainly endowed and established by private businessmen and merchants (not government officials). Umayyad dynasty reigned 30 years after the death of Umar ibn Abd al-Aziz benefitting from the legacy of its successful socio-economic policies. As to the waqf ecosystem, independent qadi⁽⁹⁾ institution is typical to the Umayyads' reign. Steven Judd concludes in his paper (2015) that qadis enjoyed a surprising degree of independence from the rulers in property disputes, family law and criminal cases to the extent that he could defy and punish that ruler who appointed him, (Judd (2014). Independence of qadis in waqfs was essential to prevent confiscation, appropriation or forced utilization of waqfs' proceeds to the purposes other than that established by founders. Successive Abbasids reigns, especially from 9th century onward, with formation of different madhabs (legal schools of Fiqh), reinforced judicial independence from the political ruling classes. Fiqh which was elaborated by the private jurists and scholars established clear procedures making extremely difficult for rulers' infringement and interference into judiciary system, (Tillier, 2014). Many episodes in Islamic history showing some tensions between the judiciary (qadis) and political rulers defined and influenced institutional transformation of waqfs in socio-economic development of Muslim dynasties. Private scholars who were economically and administratively independent from political rulers were able to exercise independent law making and judiciary practices

(9) Qadi is magistrate or judge of court, and its jurisdiction includes both civil and criminal matters.

during Umayyads and Abbasids reigns. These historical facts reject a view of political theory of "oriental despotism" and confirm what is known today as the "rule of law". Private waqfs were able to withstand the pressure of the state thanks to the great level of independence of judiciary system during Umayyads and Abbasids.

2.2- Seljuks and centralization of waqfs

Closer look at the economic policy conducted by Seljuks, especially for example during the reign of Nur al-Din Mahmud (1174-1181), some of Sharia illicit taxes and urban dues, such as mukus (toll on long distance trade), dara'ib, rusum and huquq al-bai (intra-urban dues on sales) were abolished by the ruling government, despite growing public expenditures. To compensate this, Seljuk rulers used waqfs, in addition to iqta (tax from agricultural activities, kharaj), however, given strong spiritual importance of the former and its private law application made waqf a very important economic policy tool for Seljuks. Also, it is interesting to observe that Seljuks seem to have pioneered an establishment of regulatory body, "mutawalli nazr al-awqāf", to supervise waqfs financially independent from the ruler. This means that waqfs were not under the state supervision until early 12th century and the role of the state in waqfs started to increase with Seljuks, despite some episodes, like in the case of Nur al-Din Mahmud who abolished some illicit and inefficient taxes and replaced them with newly established waqfs. Series of devastating earthquakes in some of Seljuk cities during 1156-1159⁽¹⁰⁾ and dire need to quickly mobilize reconstruction funds pushed Nur al-Din Mahmud to tap on waqf resources and proceeds to finance those reconstruction works (be it mosques, education, or infrastructure

(10) E. Guidoboni and F. Bernardini and A. Comasrri: "The 1138-1139 and 1156-1159 Destructive Seismic Crises in Syria, South-Eastern Turkey and Northern Lebanon", Journal of Seismology, 8 (2004), pp. 105-127

facilities). These emergency situations enabled the state to centralize mobilization of waqf resources for these needs. The endowed properties, including shops, markets and workshops in the markets and many other buildings increased urban economic activity hence contributing to overall economic growth. However, this period marks somehow a beginning of enhanced and increased role of the state in both establishing, supervising, and even mobilizing proceeds of waqfs as a public policy tool. During Seljuks reign, waqf continued to play major role in providing public services with higher degree of involvement of the state.

2.3 - Mamluks

Waqfs attracted a special interest of the Mamluks given their policies and traditions requiring the lands to be owned by the state with limited income rights from allotments (iqta's) only during their service to the state. Permanent ownership of iqta was not allowed for the civil servants and after the end of their service or their death, property was transferred back to the government for the subsequent allocation to the succeeding civil servant, (Petry, 1998). Waqfs were providing such an instrument to ensure not only for consumption of the usufruct but most importantly to practice pious deeds of amirs (civil servants) in a way by sharing the usufruct of those properties. It is interesting to observe that out of one thousand waqf documents reflecting catalogue of Mamluks' charitable trusts three key personalities of Mamluk dynasties in the mid-15th century, including al-Ashraf Qaytbay, his wife al-Khawand Fatimah al-Khassbakiyah and Qansuh al-Ghawri established thirty-five percent of all waqfs. Unlike traditional point of view that Mamluk amirs and rulers used waqfs to shelter their properties, historical evidence shows the opposite: for example, Qaytbay who was the eighteenth Mamluk Sultan (1468-1496) started to endow and establish charitable trusts seventeen years prior to his succession to the

throne. However, Petry (1998) highlights from his assessment of waqf transactions that between 80 to 90 percent of waqf incomes were undesignated, with similar figures reflected in Garcin and Taher's study of Jawhar al-Lala's waqfs. These authors advance the hypotheses and imply that motives behind the establishment of waqfs might have been sheltering properties from taxes and confiscations. Further analysis of documented and non-documented beneficiaries of these waqfs' proceeds would shed more light on the share of income being designated. However, it is important to note that religiosity of the institution of waqf was advanced as an argument by different orientalist to explain motives behind waqfs as avoidance from possible confiscations or taxations. However, according to the famous scholar al-Ghazali (d. 1111) who is known as "Hujjat al-Islam" (Proof of Islam), Maslaha (welfare or public interest), was God's general purpose of revealing the divine law and that specific objective was preservation of five essentials of human being (maqāsid al-Sharī'ah): religion, life, intellect, lineage, and property. Confiscation of private property was going against this basic requirement of Islamic doctrine, maqāsid al-Sharī'ah, hence confiscation of private property was equally, or in some instances even worse deeds than confiscation of waqfs. Therefore, in Islamic jurisprudence where confiscation of waqfs was not possible, it becomes clear that confiscation of private property was equally impossible. Therefore, this argument of sheltering property for avoidance of confiscation of private property should be revisited, since, from both legality and feasibility points of view, there is no proven evidence that confiscation of private property was easier than confiscation of waqfs.

2.4 - Ottomans' Waqfs

Since the properties used for waqfs were mainly real estates, buildings, while some

mobile assets, such as furniture, books and animals were also settled as waqf, there were some debates on permissibility of cash waqfs with subsequent approvals by the courts during the Ottoman empire in 15-16th centuries (Kahf, 1999). The reason why cash waqfs faced and still being subject of debates among Islamic jurists was due to intrinsic characteristics of traditional waqfs, namely irrevocability, perpetuity, and inalienability⁽¹¹⁾. These three characteristics do not necessarily imply rigidity of the waqf concept as many orientalist and economist studying waqfs qualify (e.g., Kuran who argues that rigidity of waqf prevented Muslim majority countries to benefit from modernization). In fact, these three features were always subject to interpretation of jurists and Islamic scholars given socio-economic realities of their times. Rulings of Ottoman courts allowing cash waqfs prove this point of view. Çizakça (2004) estimates that twenty percent of Ottoman cash endowments survived more than one hundred years (15-16 centuries), which is quite comparable to the real estate endowments. Although the inception of cash waqfs reflects flexibility of waqfs enabling greater capital accumulation and investment during Ottoman empire on one hand, long period of their reign had periods of

centralization and decentralization of waqfs with different level of state interferences. Noteworthy that Ottoman waqfs were mainly devoted to general welfare as opposed to the claim that waqfs were established to circumvent heritage laws (family waqfs). Yediyildiz (1982) reports from the Ottoman awqāf records that only seven percent of all awqāf were designated for the benefit of the founder's family. Looking at the contribution of cash waqfs to the economic growth, Çizakça (1998) highlights that cash waqfs could not fully enable capital accumulation due to its structure. Although Ottoman courts approved the use of *Istiqlal* as an instrument through which cash waqfs were established, Çizakça highlights the missed opportunity to use *mudarabah* financing instrument, referring to Imam Zufar's fatwa issued in 8th century⁽¹²⁾. According to Çizakça (1998), capital accumulation process could have been more pronounced if *mudarabah* instrument was used, hence *istiqlal* could enable only capital redistribution. However, the way how Gerber (1988) described *istiqlal* looks very similar to what is known and approved by Islamic jurists a purchase and leaseback transaction. This tool helps mobilizing dormant savings, in this case of cash waqfs, rich Ottomans disposing large sums of cash seem to establish waqfs for perpetual charity purposes using permissible financial transactions. In this case real estate was mainly playing not a role of pledge of pawn, but mainly ensuring *Sharī'ah* compliance of backing the cash transactions

(11) *Irrevocability* refers to the lack of power of the founder of waqf to revoke his endowment at any time, since the founder transfers the ownership to Allah.

Perpetuity is from the Arabic word *ta'bid* having 3 meanings: (i) entering into effect and becoming legally binding immediately after declaration of waqf, (ii) waqf cannot be constrained by time and temporariness, and (iii) subject matter of the waqf should remain forever.

Inalienability means that after declaration of waqf, subject matter of this waqf cannot be alienated or transferred (be it for sale or gift). Implication of this requirement to the modern waqf lands is that it is not possible to mortgage or pledge waqf properties. At the same time, instrument called "esham" (plural from *sehm*, meaning "shares") was also used by the Ottoman government in 1774 to pay war indemnity due to war with Imperial Russia (Çizakça, 2016).

(12) According to Haim Gerber (1988, pp. 227), Ottomans called *Istiqlal* any lending under cash waqfs and "*istiqlal*... was outwardly construed as a sale: The borrower handed over to the lender a piece of real estate, supposedly as a sale, but actually as a pawn. According to him, if the borrower redeemed his debt after a year, the asset reverted back to him. In the meantime, the lender leased the asset to the borrower (so that the borrower could go on using it) and the "rent" which was often exactly 10% of the loan, was, according to Gerber, nothing but interest.

with a real asset. Nearly constant return of cash awqāf can be partially explained by constant leasing rents paid under these transactions and not necessarily something close to *ribā*. Pooling of cash waqfs at the supply level seems possible, in a way founders of cash waqfs could join existing larger cash waqfs, while it was not possible for an entrepreneur to get cash waqfs from different waqf founders, precisely due to purchase and leaseback transaction in which real estate was subject of sale (i.e. same house cannot be sold twice to two different buyer). Coming back to the criticism made by Çizakça on the method of lending leading to capital redistribution and not accumulation, it is important to highlight that redistribution of capital through cash waqfs from dormant to more productive sector could significantly contribute to higher economic growth during Ottomans. Therefore, an argument advanced by authors, such as Kuran or Çizakça that the fact that cash waqfs could not become Western type of banks to foster capital accumulation lies in the method of lending (Çizakça) or in the legal impediments to pool resources by cash waqfs with immovable assets (Kuran), while pooling resources at the supply-side was perfectly possible, (Kuran, 2001, p. 874). It is not straightforward to claim, as Çizakça does in his paper, (Çizakça, 1998) that cash waqfs were mainly used for consumption rather than investment for many reasons. If this was the case, it would be impossible for cash waqfs to exist so long period of time during the reign of Ottomans, as it would not be possible to borrow for consumption and return it with higher yield if the purpose was only consumption. Secondly, although detailed transactions of waqf deeds were recorded in books, it is less probable that authors did detailed analysis of business endeavors undertaken with borrowed cash money which seems almost impossible to do due to lack of data or records. Similarly, although Çizakça argued about the missed opportunity for cash waqfs to foster capital

accumulation, he recognizes that one of the major reasons behind the demise of cash waqfs was mainly administrative reforms by the state, (Çizakça, 2000, p. 39). Legal amendments with introduction of Law of Endowments in 1935 and subsequent transfer of capital of endowments to Vakıflar Bankası as well as establishment of Directorate General of Foundations (Vakıflar Genel Müdürlüğü) by post-Ottoman / Atatürk Turkish government led to further centralization of waqfs and further conversion of all cash waqfs into bank's shares later in 1967 marking the terminal era of Ottoman cash waqfs. Based on this assessment of waqfs' historical evolution under different Islamic dynasties, preliminary conclusion can be drawn that major declines and revivals of waqfs are not necessarily reflecting "design problem" of the waqf institution, but rather external factors related to overall political environment when it comes to the level of state interference in waqfs through centralization, forced distribution of private waqfs' income for undesignated purposes or even state confiscations of waqfs.

3. Major factors contributing to successes and failures of waqfs

In the literature of waqfs there are mainly two schools explaining why waqfs could prosper during the medieval period with some ups and downs till the end of Ottomans' reign with subsequent fall and almost disappearance of waqfs in the Middle East after the fall of Ottoman empire. The first one which constitute the majority among the orientalist is so called essentialist consisting of blaming the philosophy and institutional arrangement of waqfs as the main culprit why Muslim economies could not succeed in industrialization and modernization, while serving as an instrument for sheltering wealth, circumventing heritage laws, avoiding taxes and state confiscations. Another group of scholars are blaming colonial and post-colonial

influence which destroyed waqfs, by centralizing existing waqfs under the state control or by confiscating waqfs and completely replacing the social private capital with Western like municipalities under the colonial influence. Regarding the first thesis about intrinsic rigidity of waqfs due to its static perpetuity principle, Kuran (2011) argues that this prevented the allocation of capital to more productive use, hence losing the opportunity to adapt to the new economic transformations through creation of large Western like corporations. However, deterioration of waqfs cannot be analyzed in isolation from broader political economy and institutional changes during their respective periods of existence, (Malik (2012). For example, in the episodes of states becoming major landowners with arbitrary confiscations of private lands, waqfs were providing relative security of property rights which might have caused the opportunistic ruling class to take control of waqfs, if judiciary system was not sufficiently independent from the state. Weakening of institutions in terms of independence of judiciary system seems to be the primary cause for the deterioration of waqfs. Consequently, it led to a less efficient delivery of public goods which were historically rendered by waqfs in a decentralized manner. Root causes of decline of waqfs and their ecosystem, especially during the latest period of Ottoman reign should be studied by critically assessing factors contributing to deteriorating political situation and increasing role of “extractive institutions”⁽¹³⁾ in the Middle East where any organizational structure including Western like trusts with no static perpetuity would not be preserved. It is therefore very questionable to attribute the deterioration of waqfs to only legal structure of waqfs. In fact, waqfs demonstrated high degree of readiness and flexibility to transform and innovate throughout the Islamic

history (i.e., cash and moveable waqfs were indeed one example of such innovation of financial intermediation during the Ottomans). According to Malik (2012), the reason why waqfs became instrument of patronage and rent seeking, rather than production, is to be explained by political factors rather than organizational deficiencies of waqfs. Considering the dominance and importance of agrarian economy, Ottomans’ state budget was heavily dependent from the land rather than taxes coming from commercial activities of merchants. Significant increase of the state apparatus and military expenditures along with increased external debt of Ottomans has put pressure on the government to focus more on revenues coming from the land than trade and merchants as was the case in previous Islamic empires. Growing trend to centralize waqfs by the state was against the philosophy of waqfs of providing public goods in a decentralized manner. Centrally appointed provincial governors by Ottoman sultans were going in contrast with much more decentralized Western cities in the context of competing jurisdictions. In fact, a bureaucratic corpus of Ottomans significantly increased from of 2,000 civil servants in 1770 to 35,000-70,000 persons at the beginning of 20th century⁽¹⁴⁾. This competitive environment was one of the key factors for subsequent economic development resulting in industrialization and modernization of societies in Western Europe. Centralization of private waqfs under the state jurisdiction and control combined with an opportunistic use of waqfs by state officials to circumvent the prohibition to accumulate wealth through state privileges prevented waqfs to continue to effectively play “third sector” or civil society

(13) Borrowed from Acemoglu and Robinson (2006)

(14) Murray, Z. (2022). “Waqf in Transition: Tracing Local Institutional Change during the British Mandate in Palestine [Master's Thesis, the American University in Cairo]”. AUC Knowledge Fountain. <https://fount.aucegypt.edu/etds/1910>, p.29

role as effectively as before. Waqfs were not able to become powerful institution to check and balance the power of sultans and amirs, as was the case of Western endowments established by feudal class in Western Europe who imposed their interest on the state. As a result, the Middle East missed an opportunity to leverage from undoubtedly powerful institution of waqfs to boost its economy, advance its public services in a more inclusive way. Therefore, waqfs were made much more vulnerable by the state with growing instances of interferences, confiscations and even terminations. Again, it is not that waqfs lacked organizational resistance to government capture, (Kuran, 2016), or the idea that beneficiaries of waqfs “had trouble forming a political community” as advanced by Kuran (2013), waqfs could not contribute to building strong civil society. While agreeing on the statement that waqfs could minimally contribute to building civil society in the Middle East, it is quite questionable to attribute it to the fact that waqf’s activities were set by founders and that beneficiaries had “no say in evaluating or selecting its officers. On the contrary, waqfs have intrinsic and institutional characteristics of a “third sector” (civil society) and are neither representing public sector (not government institutions, at least by design), nor private sector (from profit maximization point of view). Weak public institutions, especially judiciary system, make it possible for the state to capture or close civil society organization, not the lack of activism of its beneficiaries (which is rather the consequence, not the reason of authoritarian regimes) that can be an impediment for building strong civil society. Waqfs during Umayyads, Abbasids, Seljuks, Mamluks and Ottomans produced independent universities where significant scientific discoveries were made and the most prominent religious scholars got graduated from, becoming pillars of independent judiciary system. State centralization process along with

coalescence of state and religious authorities, hence losing judiciary independence led to weakening of waqfs, paving the way for state confiscations and terminations.

4. Concluding Remarks and Recommendations

Causal relationships between the rigidity of waqfs and non-emergence of corporations in Middle East should be established based on the data and empirical evidence. The argument put forward in this paper is advancing a view of the need to look at the broader political environment with possible interplays between institutions, especially independence of judiciary system including religious scholars and qadis and organizations (waqfs in this particular case), between politics and religion in which extractive states utilize religious institutions to enhance and consolidate power. Essentialist view of waqfs and Islamic laws, in general, downplays its endogenous character to political situation at any given period of time. Some comparative historical methods juxtaposing different Muslim dynasties by defragmenting political situation from the legal structures and institutional framework from waqfs could help provide stronger evidence on what were the real causes of decline of waqfs. Although there are some attempts to compare waqfs with Western trusts in terms of structure or their sustainable character and conclude that one is better than other might not provide broader understanding of comparative advantage or disadvantage of waqfs if the broader political system is not taken into consideration⁽¹⁵⁾. The new perspective of looking at the role of the state or the government, as an institution in a broader socio-political context and its role in economic development as a regulator can be evidenced with some causal relationship with waqfs in particular and Islamic laws in general. More focused analysis of the most recent and

(15) For such comparative studies, please see: Oladapo Hakim et al. (2016), Obaidullah (2008), Chitranshi (2009).

available data from the Ottoman period should be conducted. This study would help understand why increased role of the government and extractive nature of institutions contributed to decline of powerful decentralized welfare and democratic instruments that could potentially play a civil society or third sector role in the modern Middle East. Finally, deeper research would be needed to see how decentralized and private charity-based delivery of public goods could be sustained over hundreds of years in Muslim societies until 18-19th century when Western municipalities emerged as more centralized forms of providing public goods.

To conclude, some policy recommendations can be proposed for policy makers drawing major lessons learnt from the historical evolution of waqfs. Firstly, waqfs can be very powerful tool in wealth redistribution and reducing income inequality if there is an enabling environment. Therefore, simply introducing or amending existing legislation to allow waqfs will not bring its desired outcome if judiciary system and courts as well as religious scholars responsible for issuing fatwas are not enjoying real independence from the political elites. This implies and advocates for more private charitable trusts as opposed to centralized waqfs. Secondly, to ensure that waqfs are serving intended purposes of delivering public goods in a sustainable way without facing the risk of confiscations or “repurposing” by the state nomenclature, it is imperative to have enabling political environment for democracy and rule of law. However, it does not necessarily mean that waqfs are destined to decline under dictatorship rule, but its socio-economic effects will be

limited. On the other hand, privately established waqfs can be a powerful institution to help democratize Muslim majority countries, similarly the way how Western endowments played powerful “third sector” role in balancing both private and public interests. Thirdly, in the context of difficult macroeconomic situation in the Middle East with growing public debt and fiscal deficits (even in oil-rich economies), it will be advantageous for the governments to reduce fiscal burden by enabling private waqf to gradually take charge of some social services, including religious institutions (mosques, madrasas), primary and vocational education facilities, health infrastructure. By delegating these social services and some public expenditures to charity trusts, governments can reduce taxes on small and medium enterprises and business, as there will

be less pressure to maintain those public expenses. Fourthly, Islamic banks somehow plays an intermediary function by pooling financial resources, just like cash waqfs were pooled during the Ottomans, but do not necessarily have features of cash waqfs which have both business and charity objectives. Islamic banks, though may occasionally have charity donations, does not have to earn income for charitable purpose, rather income earning part of awqāf operations will continue to not only maximize shareholders’ profit, but also impact to the community or country where they operate. Going forward, Islamic finance, fastest growing industry with \$2-3 trillion of assets, seems to have more opportunities to address what waqfs were historically delivering in terms poverty alleviation, reducing income inequalities, and empowering the poor.

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تطور مؤسسة الوقف ضمن سياقها التاريخي في الشرق الأوسط: وجهة نظر بديلة

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المستخلص. تُسلط هذه الورقة الضوء على مفهوم الوقف في إطار تطوره التاريخي لفهم دوره كبديل للحكومة في تقديم الخدمات الاجتماعية لفئات المجتمع الضعيفة في التاريخ الإسلامي منذ القرن السابع الميلادي. تُشير المصادر إلى وجود مدرستين تشرحان سبب ازدهار الأوقاف في القرون الوسطى، وذلك على الرغم من بعض التقلبات التي شهدتها الأوقاف في تلك الحقبة التاريخية. حتى نهاية حكم العثمانيين الذي أسهم في الاضمحلال شبه الكامل للأوقاف في الشرق الأوسط بعد انهيار الخلافة العثمانية. فالمدرسة الأولى، ويتشكل أغلبها من المستشرقين، وهي تعتبر أن الأوقاف مثَّلت السبب الرئيس في عدم تمكن اقتصادات البلدان الإسلامية من النجاح في التصنيع والتحديث لتحقيق ازدهار اقتصادي المنشود. وبحسب وجهة نظر المنتمين لهذه المدرسة فإن الأوقاف كانت في الأساس أداة لحماية الثروة؛ أي ثروة الأغنياء، ووسيلة لتجنب الضرائب ومصادرة الأموال التي قد تقوم بها الدولة. ومن جهة أخرى فإن الباحثين في المدرسة الأخرى يلقون باللوم على التأثير الاستعماري وما بعد خروج الاستعمار الغربي من البلدان الإسلامية الذي أسهم بشكل رئيس في دمار مؤسسات الأوقاف واضمحلال دورها، من خلال وضع الأوقاف تحت السيطرة المركزية للدولة أو مصادرتها.. تُرسي هذه الدراسة الأسس لوجهة نظر بديلة تشرح ما للدولة من دور حاسم في نجاح الأوقاف أو إخفاقها؛ حيث إن استقلال القضاء أو انعدامه يقوم بدورٍ كبيرٍ في تحديد أداء الأوقاف وبقائها في الشرق الأوسط.

الكلمات الدلّية: الوقف، الشرق الأوسط، التراسن، الخدمات الاجتماعية، التنمية الاقتصادية، السلع العامة

تصنيف JEL: B11, B55, L31, N35, Z12

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