Timur Kuran
Lectures and Readings

Lecture 1:

Timur Kuran and Scott Lustig, Judicial Biases in Ottoman Istanbul: Islamic Justice and Its Compatibility with Modern Economic Life. *Journal of Law and Economics*, 55 (2012): 631-66.

Lecture 2

Timur Kuran, *The Long Divergence: How Islamic Law held Back the Middle East* (Princeton University Press, 2011), chapters 4-7.

Lecture 3

Timur Kuran, Institutional Roots of Authoritarian Rule in the Middle East: Political

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Timur Kuran, *The Long Divergence: How Islamic Law held Back the Middle East* (Princeton University Press, 2011), chapters 9-12.

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Judicial Biases in Ottoman Istanbul: Islamic Justice and Its Compatibility with Modern Economic Life

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Abstract

The transition to impersonal exchange and modern economic growth has depended on courts that enforce contracts efficiently. This article shows that Islamic courts of the Ottoman Empire exhibited biases that would have limited the expansion of trade in the eastern Mediterranean, particularly that between Muslims and non-Muslims. It thus explains why economic modernization in the Middle East involved the establishment of secular courts. In quantifying Ottoman judicial biases, the article discredits both the claim that these courts treated Christians and Jews fairly and the counterclaim that non-Muslims lost cases disproportionately. Biases against non-Muslims were in fact institutionalized. By the same token, non-Muslims did relatively well in adjudicated interfaith disputes, because they settled most conflicts out of court in anticipation of judicial biases. Islamic courts also appear to have favored state officials. The article undermines the Islamist claim that reinstituting Islamic law (sharia) would be economically beneficial.

1. Introduction

Underdeveloped countries are often advised to improve their judicial systems in order to strengthen contract enforcement and increase gains from exchange. In particular, they are urged to institute laws enforced independently from the executive and legislative branches of government and impartially across society, without regard to such personal traits as sex, ethnicity, and religion (for examples, see Heckman, Nelson, and Cabatingan 2010; Dam 2006). The advice typically

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takes for granted that laws will not be based on any particular religion, in other words, that they will be secular. Yet in predominantly Muslim countries, there is a demand that legal reforms should draw on Islamic legal traditions stretching back more than a millennium. Sometimes it takes the form of a call for reinstituting Islamic law, or the sharia.

Certain elements of Islamic law have been studied for their economic implications. They include the prohibition of interest, the lack of legal personhood, the Quranic rules of inheritance, and penalties for apostasy.[1] What has not been analyzed, at least not rigorously, is the Islamic system of commercial adjudication. Did it satisfy the objectives of judicial impartiality and independence? This article seeks answers with reference to the Ottoman justice system in the seventeenth century.

There are four reasons for this choice. The first concerns data availability.

critics, stem from their subordination to the sultan. Indeed, Ottoman judges served as personal representatives of the sultan, who had the duty to deliver justice. As for pro-Muslim biases, they were rooted partly in the in-group biases of Muslim judges. Also relevant, however, were procedures that treated Muslim testimony as inherently more credible than non-Muslim testimony (Schacht 1964, p. 132). Insofar as they existed, the biases in question could not be countered through formal judicial review. The rulings of a court could be reversed only through a personal appeal to the sultan, which for most litigants was not a realistic possibility.

To one degree or another, premodern courts openly discriminated against outsiders all around the world. In the absence of equal-rights norms that are central to modern judiciaries, they favored local interests without apology. The Islamic courts of the Ottoman Empire provide no exception. In barring non-Muslims from testifying as witnesses against Muslims, they followed, in an extreme form, what was once a universal pattern.[3] This procedural discrimination lends credibility to highly critical Western accounts of these courts (North 1744, pp. 45–47; Porter 1771, pp. 139–43; Masters 2001, pp. 65–68; Ekinci 2004, pp. 28–41). Middle Eastern legal reformers of the nineteenth century not only accepted these criticisms but also considered the biases in question harmful to economic development. The commercial courts founded by reformers had a secular character.

Despite the criticisms, distinguished Ottoman scholars who are familiar with the historical records report that, though prone to corruption, these courts were not noticeably biased against local Christians and Jews or European foreigners or any other group (Ekinci 2004, esp. p. 43). Lacking evidence of bias, they infer that Ottoman judges treated all groups fairly. This is puzzling. If the evidence-generating procedures of the Islamic courts were stacked in favor of Muslims, how could their verdicts have been unbiased? Conversely, if the courts were unbiased against non-Muslims, why did European observers and Ottoman reformers find them blatantly unfair? It could be that the European claims reflect hostility to Islam. Yet certain critics of Islamic courts heaped praise on other Ottoman institutions, which begs the question of why they were negative in this particular context.[4]

Our unique data set provides an opportunity to reconcile the seemingly contradictory accounts of Ottoman justice. We start with a description of the Ottoman judicial system. Theoretical and empirical insights from the law and economics literature follow. Subsequent sections of the article address, in turn, the various biases that afflicted Ottoman trials. We conclude with implications for modern attempts to revive Islamic legal institutions. The inefficiencies of the

[3] As in other Muslim-governed polities stretching back to the early Arab empires, the ban was based on the belief that non-Muslims lack good character (‘*adl*), considered essential for credible testimony (Schacht 1964, pp. 193–94; Peters 1997, p. 207).

[4] Porter (1771, pp. 42, 49), who is highly critical of the Islamic court system, speaks of the elegance of Ottoman mosques and the beauty of Persian poetry.

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Islamic courts that operated in seventeenth-century Istanbul were not aberrations, we suggest. Rather, they stemmed from structural features of the Islamic legal system that modern promoters of the sharia consider relevant to modern life.

2. The Legal Marketplace in Seventeenth-Century Istanbul

In the seventeenth century, the legal system of the Ottoman Empire was based on Islamic law. Although it had its own particularities, it closely resembled the legal systems of previous and contemporaneous Muslim-governed states. Accounts of Mamluk courts in fourteenth-century Cairo and of Abbasid courts in tenth-century Baghdad resemble those of seventeenth-century Istanbul. In terms of organization, procedures, and principles of justice, the Islamic courts of the Ottoman Empire did not depart significantly from other Islamic courts.

Every Ottoman court was headed by a judge (*kadı*) who performed, in addition to several executive functions, two distinct judicial functions. On the one hand, he registered, and thereby authenticated, contracts, settlements, and transactions. A registered contract could be consulted should it become necessary to forestall or resolve a dispute. On the other hand, the judge conducted trials to resolve disputes brought before him.[5] A dispute could involve a criminal matter or what we would now characterize as a civil matter. In either case, the judge would hear the plaintiff, give the defendant a chance to respond, if necessary conduct an investigation of his own, and pronounce a verdict. Occasionally he would postpone a verdict to allow a litigant to bring evidence. A verdict might involve an order to fulfill a contractual term or pay damages. The records contain disputes involving debts, divorce and custody, estate settlements, guardianship, sales, property transfers, mortgages, pawning, tax payments, guild administration, communal rights, partnerships, and neighborhood norms. The burden of proof did not differ by the type of case, and neither did procedures.

Each judge had scribes record accounts of his activities in a register of cases (*sicil*), and during his tenure at any one court, he might use multiple registers. In small towns, judges had scribes record all their court business more or less chronologically in individual notebooks, moving to a new notebook when the first filled up. In major cities, the norm was to use a separate register for estate inventories and perhaps another for official directives. All other records ended up together, sometimes with certain government orders in the back, in general-purpose registers.[6]

When the tenure of a judge ended, his registers became closed books; his successor started one or more new registers. The departing judge generally

[5] The executive functions included enforcing public morals and keeping a record of official orders sent to the area. Ortaylı (1994), Imber (2002, chap. 6), and Gaudefroy-Demombynes (1950, chap. 10) discuss the functions of judges.

[6] Prior to the nineteenth century, judges had discretion on recording and categorizing (Mandaville 1966, pp. 313–14).

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handed over his registers to his successor or, in places with a court building, simply left them behind for storage (Faroqhi 1997). The notebooks used as registers varied greatly in size. A judge who opted for a thick notebook with huge pages might have fit the entire record of his tenure into one book, especially if his tenure was short. If his successor started a skinny notebook, he might have gone through several notebooks. Many old registers must have been discarded eventually; others perished in fires, earthquakes, floods, and wars; still others must have been destroyed deliberately by individuals with something to hide.[7]

A judge's time in any one place was limited to prevent him from developing local political ties. It could be as short as 3 months, but the norm was about a year; rarely did a judge serve more than 20 months in any one post. The judges of courts located in politically sensitive places tended to be rotated especially frequently, which is consistent with the political considerations that guided appointments (Ortaylı 1994, pp. 16–20). The reassignment probability of a judge depended on his reputation. This provided incentives to minimize complaints by adjudicating consistently and fairly. Complaints about a judge posted in Istanbul would reach the sultan more easily than those concerning one assigned to a court located far away from the capital. For that reason, too, judicial corruption would have been less common in Istanbul than elsewhere, which affords us with an opportunity to study Islamic adjudication in a setting where it was most likely to approach the ideal.

For their services, some judges received a salary; all were also authorized to charge litigants fees (*harç*) set by law. These fees were usually proportional to the plaintiff's financial claim. In a commercial dispute, judges might collect, for instance, 2 percent of the amount at stake (Ortaylı 1994, pp. 67–69; Bayındır 1986, pp. 88–89; Gaudefroy-Demombynes 1950, pp. 150–51). There appears to have been no set standard concerning the payee. The plaintiff and defendant might be expected to share the cost. In the absence of documentation on the fee structure of the Ottoman judicial system, we do not know whether charges differed by the substance of the dispute or the amount at stake.[8] We know that the winner of a lawsuit had to pay, at a minimum, a fixed fee for a document certifying the outcome, known as a *hujjet* (*hüccet*).

Although judges were assigned to a jurisdiction, such as the town of Amasya or the Eyüp neighborhood of Istanbul, Ottoman subjects and visitors were not required to use the court located where they lived or worked. They were free to take a dispute to a judge of their choice. In practice, then, the judges of Islamic courts were in competition for legal business.

[7] There is no evidence that willful destruction of records was either common or systematic. If the tampering of records was a major issue, the analysis that follows would need to consider an additional type of sample selection bias. Moreover, if documents were destroyed systematically to remove traces of state-favorable rulings, then the commensurate sample selection biases would suggest that the pro-state biases identified in Sections 7–9 of this article understate their true extent.

[8] It appears that, as a matter of practice, substantial variations existed among courts. Records of the Ottoman palace are replete with complaints about judges who exceeded the authorized fees (Uzunçarşılı 1965, chaps. 9–10).

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The vast majority of the Ottoman subjects adhered to one of the three monotheistic religions. Muslims, who formed the largest group, were required to live by Islamic law. This meant that to register a contract legally or to get a dispute adjudicated formally, they had to use an Islamic court. For their part, non-Muslims enjoyed choice of law: though entitled to use an Islamic court, on civil matters they were free to use a court of their own choice.[9] Thus, a Greek Christian could have a debt dispute with a coreligionist litigated before an official of the Greek Orthodox Church. All litigation involving both Muslims and non-Muslims had to be handled by a Muslim judge, because of the rule that Muslims had to live by Islamic law (Kuran 2004). This system of asymmetric legal pluralism meant that, at least in cases among non-Muslims, Muslim judges competed also with Christian and Jewish courts. Although it is certain that non-Muslims used courts of their own, these appear to have left no records (Al-Qattan 1999). This is undoubtedly because, in trying to minimize their tax obligations, Christian and Jewish communities sought to withhold information about their financial matters from state officials.

Under Islamic law, the responsibility to deliver justice belonged to the sovereign—in the Ottoman case, the sultan. He was free to litigate any dispute himself, and in principle anyone could take a case directly to him. In practice, he let his appointed judges try the vast majority of the lawsuits brought to an Islamic court. These judges differed in status and responsibility. Two chief judges (*kazasker*), one for Ottoman provinces in Europe and the other for the rest of the empire, handled appointments on behalf of the sultan. Moreover, the judges of politically strategic places such as Istanbul and Cairo, like those posted in the holy cities of Mecca and Medina, ranked above the rest. The salaries of judges were tied to rank. High-ranking judges could also earn more in fees by virtue of being posted to courts with exceptionally prosperous litigants.

In principle, high-ranking judges did not have more legal authority than the rest. The youngest judge on his first assignment in a sleepy town had as much authority to deliver a verdict as a chief judge. His verdicts were final, and from a doctrinal standpoint they carried as much authority as those of an experienced judge. Under Islamic law, there exists no standardized appeals process (Shapiro 1981, chap. 5; Ekinci 2001, pp. 27–82). Accordingly, an Ottoman disputant could overturn an unfavorable decision only by appealing directly to the sultan. The appeals system was thus biased in favor of elites with access to the sultan's palace. For most Ottoman subjects, appealing a court decision was not a realistic option, and it was particularly costly for the residents of places located far from the capital. None of this implies that Ottoman judges were free to rule whimsically. As we shall see, they were subject to constraints.

[9] All criminal matters, regardless of the identities of the accused and the victims, fell under the responsibility of Muslim officials.

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3. Sources of Judicial Bias

The social sciences do not provide a general theory of judicial fairness. Disappointingly, theories of dispute resolution that were developed within the law and economics tradition show that the fairness of courts is not measurable in any meaningful way. The key problem, as shown in a body of literature launched by Priest and Klein (1984) and developed by Shavell (1996), lies in heterogeneity among litigants in both information and reputational costs. Such variations make it impossible to recreate, from any given subset of actually adjudicated disputes, the underlying set of potential disputes that might have gone to trial. As van Tulder and van Velthoven (2003) put it, the cases that reach trial represent only the tip of the iceberg of all civil disputes.[10] Because forward-looking and utility-maximizing potential litigants may choose to settle rather than appear in court, one cannot even assess the social optimality of observed litigation and plaintiff victory rates. Questions over whether the lawsuits in a particular society contain too many frivolous cases, are socially destabilizing, and are too costly also pose serious theoretical difficulties.

Nevertheless, the social sciences have much to contribute to analyzing judicial decision making in a heterogeneous society. Three distinct literatures are relevant to the identification of intergroup differences in the application of justice. They involve competition among legal jurisdictions, judicial independence, and in-group bias.

3.1. Fee-for-Service Adjudication and Competing Legal Jurisdictions

In modern courts, judges are essentially indifferent to the number of cases that come before them, because it affects neither their promotion prospects nor their compensation. Before the modern era, however, the success of judges did depend on how many cases they adjudicated, because they derived income at least partly through litigation fees. The fee-for-service system fostered intercourt competition when multiple courts were in proximity. This claim has been tested through a comparison of England's courts before and after the English legal reforms of the early nineteenth century. Klerman (2007) finds that under the prereform period's fee-for-service compensation regime, judges were more likely to rule for plaintiffs than under the salary-based compensation regime that followed. He reasons that since plaintiffs decide whether to sue and also the adjudication forum, profit-maximizing judges would have tilted their verdicts in favor of plaintiffs.[11]

This finding is obviously relevant to Ottoman courts. Although Ottoman judges received a salary from the sultan, they also collected fees from litigants.

[10] Other important contributions include Kessler, Meites, and Miller (1996), Siegelman and Donohue (1995), and Siegelman and Waldfogel (1999).

[11] Building on Klerman's work, DiIanni (2010) adds that jurisdictional competition among courts will not necessarily generate a pro-plaintiff bias if the plaintiff and the defendant must agree on the adjudication forum.

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Moreover, individual plaintiffs could seek out judges known for their propensity to rule in favor of the plaintiff. One would expect judges to have ruled for plaintiffs more frequently than they would in the absence of a choice among courts. They would have exhibited a pro-plaintiff bias, regardless of the religious identities of the litigants.

Following Landes and Posner (1979), Klerman (2007) asks what might limit interjurisdictional competition from unraveling into a corner solution such that plaintiffs always win. In premodern England, he finds, in addition to the Chancery and the Parliament, the monarch's ability to appoint and remove judges limited the pro-plaintiff bias of the courts. Biased judges undermined the legitimacy of the monarch's rule. The monarch's oversight of the legal marketplace thus constrained judges' ability to compete with each other by tilting decisions in favor of plaintiffs.[12]

As in premodern England, in the Ottoman Empire any pro-plaintiff bias of the courts would have been known to potential litigants. Moreover, the sultan's executive oversight would have guarded against the excesses of judicial rent seeking. This oversight brings us to another potential source of bias in adjudication: the state's influence on judicial decisions. A sultan able to limit the pro-plaintiff bias of judges might have managed to tilt their verdicts in favor of the state in cases that affected him directly.

3.2. Judicial Independence

Judicial independence entails, on the one hand, the capacity to exercise judicial review and, on the other, counterpolitical judicial continuity. Judicial review gives courts the right to overrule executive decisions, to challenge the legitimacy of the government, and, under extreme circumstances, even to depose a ruler. The review process may result, of course, in the legitimization of government policies. Courts may support government rulings and facilitate their enforcement (Feld and Voigt 2003; Ramseyer and Rasmusen 2003; Hanssen 2004).

Over the course of Islamic history, the judiciary's ability to challenge the sovereign's authority has waxed and waned. Initially weak because of innumerable legal controversies, the court's powers expanded during the eighth and ninth centuries as schools of Islamic jurisprudence got established and legal traditions took hold. During this period, the judiciary occasionally challenged the sovereign's authority by rejecting legal innovations as deviations from the Quran. However, well before the establishment of the Ottoman state in 1299, sultans gained effective control over the judiciary. They then solidified this control by standardizing the code of law applied in their realms, assuming sole authority over the appointment and dismissal of judges, placing religious and judicial

[12] Court fees, too, limit pro-plaintiff bias. If the initiation of adjudication guaranteed the defendant's paying restitution to the plaintiff, the defendant would prefer to settle out of court in order to escape adjudication fees. The plaintiff would also prefer to settle for the opportunity to bargain with the defendant over the distribution of what would have been the judge's fees. Hence, court fees, along with the ability to settle out of court, will make judges cap their pro-plaintiff bias.

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officials on the state payroll, and binding the judiciary's well-being to state support (Coşgel, Miceli, and Ahmed 2009; Imber 2002, chap. 6). The cowing of the previously independent judiciary removed the threat of judicial review and bolstered the ability of the courts to legitimize the prevailing regime. In assuming control of the judiciary, the sultan incentivized judges to enforce imperial laws and the chief judge (*şeyhülislam*) to support the sultan whenever consulted on the legality of a decree.[13]

Counterpolitical judicial continuity exists when judges stay in office following a political change. The Ottoman sultan's policy of rotating and replacing judges regularly, which was meant to decrease local loyalties and reduce corruption, limited counterpolitical continuity. In keeping the terms of judges short, this policy prevented the judiciary from establishing patterns that could outlive the sultan's reign.

By the seventeenth century, then, judicial independence was essentially lacking in the Ottoman Empire. Hence, one would expect Ottoman subjects to have shown extreme caution in challenging the state in court.

3.3. In-Group Bias in Judicial Decision Making

All courts are prone to in-group bias, which is the tendency to give preferential treatment to people perceived as belonging to one's own group.[14] In modern jurisprudence, in-group bias is a recognized phenomenon that certain institutions are meant to counteract. A formal system of appeals limits a judge's ability to exercise favoritism, because having a decision overturned by a superior court would harm his reputation. Similarly, a norm of equal protection under the law makes judicial decision makers strive consciously to consider factors favorable to members of out-groups.

Such institutions may alleviate in-group bias but not eliminate it. Numerous studies indicate that even in liberal societies that promote the principle of equal protection under the law judges regularly exhibit in-group bias. Gazal-Ayal and Sulitzeanu-Kenan (2010) and Shayo and Zussman (2011) demonstrate that Israeli judges presiding over apolitical criminal and low-stakes civil hearings exhibit persistent in-group bias. Shayo and Zussman show also that the prevalence of in-group bias is correlated with security-related events that heighten political tensions.

There are also modern institutions that foster in-group bias. The jury system, whereby evidence is evaluated by the defendant's peers, promotes in-group bias favorable to defendants prosecuted by the state. By the same token, it can lead

[13] Judges may acquire greater judicial independence when they anticipate the replacement of the reigning sultan. They may begin to enforce the preferences of his expected successor in a display of proactive loyalty. For the underlying logic, see Helmke's (2002, 2005) work on judicial independence during regime transitions.

[14] Psychological experiments show that group members favor each other even when the group they share is random or arbitrary, such as having the same birthday (Tajfel 1982; Mullen, Brown, and Smith 1992).

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to in-group bias in trials that pit an insider against an outsider. In a study of international patent enforcement in American courts, Moore (2003) finds that jury trials are more likely to exhibit xenophobic biases than trials decided from the bench.

Islamic jurisprudence requires all lawsuits to be adjudicated before a judge. This reliance on bench trials would have diminished in-group bias relative to modern jury trials. However, in the absence of clear procedures for appealing a verdict, judges lacked professional incentives to take precautions against in-group bias (Shapiro 1981, chap. 5). Nor were judges trained to follow a norm of equal protection in evaluating evidence. On the contrary, they learned to give greater weight to the testimony of a Muslim than to that of a non-Muslim. This legal tradition was built into the adjudication procedures of Ottoman courts. The transcripts of seventeenth-century trials are replete with references to seeking out Muslims specifically for opinions regarding a dispute at hand.[15]

Given that institutional pressures to counteract intentional or unintentional in-group bias were lacking, in interreligious lawsuits the judges of Islamic courts were very likely to favor their coreligionists. Since all judges were Muslim by design, non-Muslims would have been at a disadvantage in lawsuits pitting them against Muslims.

4. The Courts of Galata and Istanbul

To test these hypotheses, we turn to the largest existing data set of transliterated and translated Ottoman court records. It includes 10,080 cases from 15 registers in the courts of Galata and central Istanbul (hereafter simply Istanbul).[16] The registers were selected to provide a more or less uniform distribution over the entire seventeenth century.[17] In each dated account, the scribe would record the identity of the litigants—always including their religious affiliations and titles and often also their neighborhoods of residence—the nature of the dispute, the evidence brought to the trial, and the verdict. These two courts were the most prominent of the 16 courts serving the Ottoman capital, which at the time had around 700,000 inhabitants. The Galata court was located near the empire's main

[15] See, for example, cases Istanbul 9 (1661) 171b/2 (Kuran 2010–, 7:122–25), Istanbul 22 (1695) 105a/2 (Kuran 2010–, 1:369–70), and Istanbul 23 (1696) 20a/1 (Kuran 2010–, 4:589–92).

[16] The data set is reproduced in Kuran (2010–) with full transliterations of the records in the Latin alphabet of modern Turkish, along with detailed summaries in both Turkish and English. The records are in Ottoman Turkish, which few Turkish speakers now understand, because of both the syntax and the high number of Arabic and Farsi loan words. Scribes kept the records, for the most part, in an Arabic script known as broken divani (*karma divani*).

[17] The chosen registers provide coverage across the seventeenth century among the surviving general-purpose registers; thus, ones reserved for estate inventories or official correspondence are excluded. Over certain time spans, the registers tended to be small; to be able to check for repeat use of a given court over the periods in question, we included some consecutive registers. Big gaps exist in the series because of fires. The main motivation for constructing the sample was to see whether the standards and processes of Ottoman courts, and the economic life that they supported, changed over the course of the seventeenth century.

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Table 1
Trial Records

	Year(s)	*N*	%
Registers:			
Galata 24	1602–3	46	2.0
Galata 25	1604	138	6.0
Galata 27	1604–5	153	6.7
Istanbul 1	1611–13	78	3.4
Istanbul 2	1615–16	50	2.2
Galata 41	1616–17	40	1.8
Galata 42	1617	85	3.7
Istanbul 3	1617–18	142	6.2
Istanbul 4	1619	107	4.7
Istanbul 9	1661–62	549	24.1
Istanbul 16	1664–65	163	7.1
Galata 130	1683	201	8.8
Galata 145	1689–90	247	10.8
Istanbul 22	1694–96	172	7.5
Istanbul 23	1696–97	111	4.9
Total		2,282	100.0
Courts:			
Galata		909	39.8
Istanbul		1,373	60.2
Total		2,282	100.0

port, and the Istanbul court was near the fabled Grand Bazaar. Precisely because of these courts' proximity to major commercial centers, their caseloads consisted primarily of commercial registrations and trials. Only the latter are of interest here.

As Table 1 shows, our records contain 2,282 commercial trials.[18] The court register number is that assigned by the Turkish archive where the registers have been housed since 1894. Thus, "Galata 130" refers to the 130th register in the archive's Galata series.

Dividing our trials by court, we find that 60.2 percent belong to Istanbul. As shown in Table 2, the two subsamples differ in terms of the demographic composition of the litigants. Disproportionately few defendants were Muslim in Galata, relative to Istanbul, probably because Galata had disproportionate concentrations of Greek and Armenian Christian residents.[19] In theory, the religious diversity of a neighborhood could have affected litigation patterns. In a neighborhood with a relatively high share of Christian residents, judges might have been more sympathetic to Christians, if only in the interest of attracting more

[18] This figure excludes nine trials whose accounts lack information relevant to some part of our analysis.

[19] Population estimates for seventeenth-century Istanbul do not distinguish between neighborhoods, so we are unable to quantify the demographic differences between Istanbul and Galata.

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Table 2
Muslim Share of Litigants by Court

Table 4
Number of Trials by Religion of Litigants

	Defendant		
Plaintiff	Muslim	Christian	Jewish
Muslim	1,413	224	41
Christian	96	377	7
Jewish	20	29	20

Note. The number of trials among litigants of these three religious groups was 2,227. This subsample excludes trials involving a foreigner (*müstemen*), gypsy (*çingene*), or recent convert to Islam (*mühtedi*).

Table 5
Plaintiff Win Rate by Religion

	Defendant		
Plaintiff	Muslim	Christian	Jewish
Muslim	59.0	57.6	65.9
Christian	71.9	59.4	57.1
Jewish	65.0	55.2	70.0

Note. The win rate for all plaintiffs in 2,227 trials limited to Muslims, Christians, and Jews was 59.7 percent.

cases. With all judges playing this game, the pro-plaintiff bias would have grown, and in the limit plaintiffs would have won all cases in every court. The limit would never be reached, of course, if potential defendants started refusing to appear before the most biased of judges. By the same token, insofar as judges were predisposed to compete for cases by favoring plaintiffs, the temptation to launch frivolous lawsuits would have increased, especially if judges made side deals with plaintiffs to share extractions from hapless defendants.

In fact, the verdicts delivered in our two courts do appear to have favored plaintiffs. They won 59.6 percent of all cases submitted to adjudication. As already noted, it is theoretically impossible to assign a benchmark of how a court insulated from interjurisdictional competition would perform. Hence, one cannot say whether this plaintiff victory rate deviates from the social optimum. Yet the number is clearly below the 100 percent figure we would have found if judges decided cases with the single goal of encouraging people to bring them lawsuits. Other considerations must have been in play. Fairness is, of course, the most obvious competing consideration. The sultan's executive oversight would have ensured that fairness played a significant role. For the sake of maintaining political

greater than 50 percent in intra-Muslim, intra-Christian, and intra-Jewish cases but also when the litigants are from different faiths.[23]

Religion was not irrelevant to the probability of victory. Focusing on the Muslim/Christian cases, where the numbers are high enough for meaningful statistical analysis, we find that the plaintiff victory rate differs depending on the side of the Christian. In view of the debates concerning abuses against Christians, the nature of the difference may come as a surprise. The plaintiff victory rate is higher, not lower, when a Christian sues a Muslim than when the roles are reversed.[24] Equally surprising, it may seem, is that Christian plaintiffs do better when the defendants are Muslim than when the defendants are co-religionists (71.9 versus 59.4 percent). For Muslim plaintiffs, by contrast, the defendants' religion does not matter.[25] Not even the Ottomanists who reject the strident charges of anti-Christian bias in Islamic courts would have predicted these findings. On the basis of casual observations, they suggest that the Islamic courts treated Christians fairly, not that Greek and Armenian Ottoman subjects benefited from pro-Christian judicial discrimination.

Counterintuitive as these findings may seem, they will not surprise students of modern litigation involving foreigners. In American courts, xenophobia in adjudication goes hand in hand with a high foreign victory rate in foreign-initiated lawsuits against Americans. Studying patent disputes, Clermont and Eisenberg (1996) find that American courts rule in favor of foreign firms suing American firms at a higher rate than they do in favor of domestic American firms suing other American firms.[26] Yet foreigners consider American courts to be xenophobic; they also expect that in patent cases pitting a foreign firm against an American firm, the foreign side will generally lose. The authors reconcile this perception with their finding by invoking selection bias. Expecting American juries to be biased against them, foreign firms sue American firms only if their cases are very strong. Their high victory rate thus reflects not xenophilia but the

[23] Testing the intrafaith results in Table 5 against the null hypothesis that the plaintiff victory rate equals 50 percent, we reject the null hypothesis for Muslims and Christians at the 99.9 percent level of statistical significance and for Jews at the 90 percent level (the *p*-values are .00 for Muslims, .00 for Christians, and .07 for Jews). We also reject the null hypothesis in interfaith cases involving Christians and Muslims (the *p*-values are .00 for a Christian suing a Muslim and .02 for a Muslim suing a Christian), but we cannot do so consistently in cases involving Jews or others, in all likelihood because of their small numbers in the data.

[24] The difference is statistically significant at the 95 percent level ($t = 2.42$).

[25] For Christian plaintiffs, the victory rate is significantly greater at the 95 percent level when the defendant is a Muslim ($t = 2.25$). For Muslim plaintiffs, the null hypothesis that the rates are equivalent cannot be rejected ($t = .39$). For the sake of completeness, we may compare across plaintiffs, holding the defendant's religion constant. When the defendant is Muslim, it matters whether the plaintiff is Muslim or Christian at the 95 percent level of significance ($t = 2.50$). When the defendant is Christian, the plaintiff's religion does not matter ($t = .44$).

[26] In lawsuits between domestic firms, the plaintiff victory rate is 64 percent. By contrast, in those that involve a foreign plaintiff and a domestic defendant, it is as high as 80 percent. The difference is significant at the 99.9 percent level. In lawsuits brought by domestic firms against foreign firms, the plaintiff victory rate drops to 50 percent. This percentage differs statistically from 64 percent, again at the 99.9 percent level of significance.

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strength of their lawsuits. This interpretation is supported by Bhattacharya, Galpin, and Haslem (2007), who study the impact of litigation on stock prices as a measure of expected judicial outcomes. They find that foreign firms sued in American courts are expected to do substantially worse than American firms sued in the same courts.[27] Our finding for seventeenth-century Istanbul fits these patterns. Like foreign plaintiffs in the United States today, non-Muslim Ottoman litigants did better in court than Muslims precisely because they had good reason to fear judicial discrimination.

One may wonder whether American courts differ at all from Ottoman courts of the seventeenth century in regard to biases against outsiders. The institutional biases of the Ottoman courts have no parallel in American courts, where American and foreign litigants enjoy identical formal rights concerning witnesses and where witnesses are not limited in terms of creed or nationality. What has not disappeared is in-group bias, which is resistant to legislation. Like juries everywhere throughout history, those in the United States are drawn from people predisposed to giving the benefit of the doubt to people like themselves. Thus, American jurors tend to find American litigants more credible than foreign litigants. Similarly, judges are predisposed to seeing conflicts from the perspective of American litigants.[28]

6. Non-Muslim Participation in Islamic Courts

If selection bias accounts for the high victory rate of Christians in their lawsuits against Muslims, they would have had special reasons to avoid Islamic courts. To determine whether Christians underutilized Islamic courts, we need to know the shares of each religious group in Istanbul's population. Although no population census was conducted in the seventeenth century, Mantran (1962) estimates that at the time Istanbul was 58.8 percent Muslim, 34.8 percent Christian, and 6.4 percent Jewish (Figure 1).[29] Most of the Christians were either Greek or Armenian.

Given these shares, let us conduct a counterfactual exercise to determine how

[27] Bhattacharya, Galpin, and Haslem (2007) employ a Heckman two-step regression process. In related work, Moore (2003) examines the number of international patent disputes while controlling for U.S. patents held by foreign and domestic firms, thus weighing the foreign litigation rate in U.S. courts against the number of foreign-held U.S. patents in order to determine how often international firms sue relative to American firms. She confirms that foreigners sue disproportionately less, given the distribution of patents held. This result is consistent with the inference that sample selection bias drives the high foreign victory rate in foreign-initiated lawsuits.

[28] Bodenhausen (1988) presents experiments concerning the psychological mechanisms through which juries interpret and internalize evidence presented in trials. Evidently, individual jurors tend to retain evidence consistent with their preexisting stereotypes and to discount exculpatory evidence.

[29] In his monumental history of Istanbul, Mantran (1962, pp. 44–47) provides, on the one hand, the population sizes of the Christian and Jewish communities in 1690 and, on the other, the Muslim and non-Muslim shares in the sixteenth century. There is no reason to believe that population shares changed significantly between the sixteenth and seventeenth centuries. By holding the relative sizes of the Muslim and non-Muslim communities constant, we are able to extrapolate the three shares.

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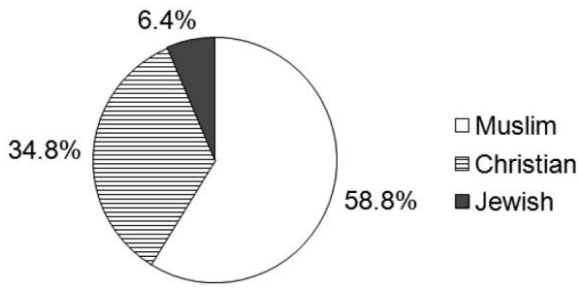

Figure 1. Population shares of the religious communities in seventeenth-century Istanbul

often the three groups would have faced one another in an Islamic court if, irrespective of faith, the residents of Istanbul interacted in pairs randomly. For the purposes of this exercise, we assume that for every type of pairing (Muslim/Muslim, Christian/Muslim, and so on), interactions give rise to litigation with the same probability and that all litigation takes place in an Islamic court. Under this random interaction and random litigation scenario, the distribution of pairwise litigation would be as shown in Table 6. The percentages for the intrafaith cases equal the squared shares of the communities in the population.[30] The interfaith shares are, of course, symmetric. For example, the share of Christian-initiated lawsuits against Muslims equals that of Muslim-initiated cases against Christians.

Table 6 also provides the observed adjudication shares in seventeenth-century Istanbul.[31] Clearly, intra-Muslim cases are vastly overrepresented relative to random adjudication, as are intra-Christian cases. The reason is that pairings did not occur randomly; Muslims interacted disproportionately with Muslims, and Christians with other Christians, which resulted in disproportionately many intrafaith disputes. Interactions were more likely among coreligionists because people found it advantageous to deal with individuals known to them personally, and typically they knew more about coreligionists than about religious outsiders. For Christians, another reason was that the two major Christian groups, Greeks and Armenians, favored Islamic courts over their own communal courts as a neutral ground for adjudication.

It is in interfaith disputes that the selection bias in question is detectable. Whereas under random interactions the share of Muslim lawsuits against Christians would equal the share of lawsuits with the roles reversed, in fact the two shares were starkly different: 10.1 percent of all disputes consisted of a lawsuit

[30] For example, the Christian intrafaith share is $(.348)^2 = 12.1$ percent. If Christians and Jews had an outside option, namely, adjudication in a court of their own religious community, their intrafaith shares would be lower than those given.

[31] These calculations exclude the few cases involving others (gypsies, foreigners, and new converts to Islam).

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Table 6
Distribution of Trials by Religion of Litigants

Plaintiff/Defendant	Random Pairings	Observed Pairings	*t*-Test of Equivalency
Muslim/Muslim	34.6	63.5	31.20
Muslim/Christian	20.5	10.1	16.37
Muslim/Jewish	3.7	1.8	6.52
Christian/Muslim	20.5	4.3	37.61
Christian/Christian	12.1	16.9	6.07
Christian/Jewish	2.2	.3	15.89
Jewish/Muslim	3.7	.9	14.01
Jewish/Christian	2.2	1.3	3.73
Jewish/Jewish	.4	.9	2.49

Note. Columns do not sum to 100 percent because of rounding. For each of the nine religious pairings, the hypothesized and observed shares differ at the 99.9 percent level of statistical significance.

brought by a Muslim against a Christian, but only 4.3 percent involved a lawsuit brought by a Christian against a Muslim.[32] This asymmetry holds regardless of whether the cases were adjudicated in Galata or Istanbul.[33]

The asymmetry in question suggests that Christians considered the courts to be biased against themselves, at least in cases in which they faced Muslims. Two sources of institutionalized bias have already been mentioned. First, the judges and assistant judges of Islamic courts were exclusively Muslim, as were the court-appointed professional witnesses (*şuhud ül-hal*) present at every adjudication or registration procedure. These officials would have been attuned to the customs, perspectives, and aspirations of their coreligionists. As such, even if they tried to be meticulously impartial, they would have been more receptive to arguments of Muslims than to those of non-Muslims. Hence, in Muslim/Christian cases, the benefit of any doubt would have gone to the former.

Second, Muslims and Christians did not have equal rights with regard to testifying as a litigant-invited witness. Under rules that became institutionalized early in Islamic history, whereas a Muslim witness could testify against anyone, non-Muslims were allowed to testify only against other non-Muslims.[34] Our own sample of cases shows that in seventeenth-century Istanbul, the ban on non-Muslim witness testimony against Muslims was obeyed strictly. As Table 7 shows, a total of 1,177 witnesses were called to testify in our 2,282 commercial lawsuits. Of these, an overwhelming majority were Muslim. Especially striking is that not a single Christian or Jewish witness appears in any intra-Muslim lawsuit. In

[32] The two interfaith proportions differ at the 99.9 percent level of statistical significance ($t = 7.79$).

[33] In both courts, the number of Muslim/Christian trials exceeds the number of Christian/Muslim trials at the 99.9 percent level of statistical significance ($t = 7.51$ for Galata; $t = 3.97$ for Istanbul).

[34] Peters (1997, p. 207) documents that every major Islamic school of law, including the Hanafi school followed by the Ottoman administration, accepted these discriminatory rules.

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Table 7
Religious Distribution of Litigant-Selected Witnesses

	Witnesses			
Plaintiff/Defendant	Muslim	Christian	Jewish	Total
Muslim/Muslim	741	0	0	741
Muslim/Christian	62	12	0	74
Muslim/Jewish	42	0	0	42
Christian/Muslim	39	16	0	55
Christian/Christian	99	76	0	175
Christian/Jewish	0	4	0	4
Jewish/Muslim	5	0	0	5
Jewish/Christian	9	5	0	14
Jewish/Jewish	0	0	13	13
Subtotal	997	113	13	1,123
All three religious groups	27	0	0	27
Other combinations	23	4	0	27
Total (%)	1,047 (89.0)	117 (9.9)	13 (1.1)	1,177 (100)

Note. $N = 2{,}282$. Other combinations include a foreigner (*müstemen*), gypsy (*çingene*), or recent convert to Islam (*mühtedi*) as a litigant.

sharp contrast, Muslims represent the majority of all witnesses called to testify in intra-Christian disputes (56.6 percent).

The presence of institutionalized judicial biases raises the question of why Muslims and Christians sued each other at all on economic matters. After all, Christians could have avoided the possibility of commercial lawsuits involving Muslims simply by doing business only with other Christians. Yet potential gains from trade would often have trumped the risk of biased litigation. A content analysis of the issues over which cases arose reveals that Christians and Muslims interacted most commonly through credit markets. We see in Table 8 that of all trials between Christians and Muslims, 65.5 percent concern debt. Typically, the plaintiff accuses the defendant of having failed to settle a debt linked to an installment sale with an implicit interest charge; hence, in the data debt and sales are positively correlated.[35]

To sum up thus far, we have (1) found a pro-plaintiff bias higher for Christians than for Muslims, (2) observed that, in line with the global norm of antioutsider judicial bias, Islamic courts were institutionally biased against non-Muslims, and (3) inferred that the anti-Muslim bias of the courts led Christian subjects to avoid suing Muslims except when their cases were particularly strong, which

[35] The coefficient of correlation between debt and sale is .09. It is significant at the 99.9 percent level. The plaintiff is the creditor and the defendant is the debtor 94.1 percent of the time. Given that the Muslim litigant is the plaintiff in 75.6 percent of the Muslim/Christian lawsuits involving a debt, we can infer that the Muslim was more often the creditor and the Christian was generally the debtor. Evidently, in the seventeenth century, in contrast to later times, Muslims supplied more credit than Christians. This disparity does not necessarily reflect a sample selection bias, because our usual indicator is absent: even though fewer lawsuits are initiated by a Christian than by a Muslim, the plaintiff win rates of the groups are statistically identical ($t = 1.31$).

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Table 8
Trial Topics as Percentages of Interfaith Adjudication

Topic	Christian Suing Muslim (1)	All Trials with Christians and Muslims (2)	Muslim Suing Christian (3)	*t*-Test of Equivalency: (1) versus (3)
Guild	6.3	3.8	2.7	1.54
Debt	53.1	65.3	70.5	3.03
Waqf	14.6	17.8	19.2	.98
Property	22.9	11.3	6.3	4.44
Tax	7.3	5.9	5.4	.66
State	19.8	11.9	8.5	2.89
Sales	36.5	30.0	27.2	1.65
Partnership	29.2	20.9	17.4	2.38
Inheritance	29.2	20.6	17.0	2.48

Note. Columns sum to more than 100 percent because many trials involved two or more topics.

resulted in a selection bias in the available data. Table 8 raises a potential problem with the first and third points. Could the figures in question be reflecting differences across the religious groups in the types of issues they brought to court? This possibility will be addressed in due course, after we deal with a possible objection to point 2.

7. State Officials in Islamic Courts

Because the Islamic legal system lacked a concept of legal personhood, in none of our cases does the state per se appear as a litigant. Individuals with a grievance against the state had to sue the state official responsible for the offending act. Similarly, individuals who shirked a civic responsibility could be taken to court by a state official rather than the state itself. The authority and responsibility of the state were thus personified.

The officials who appeared in court most frequently were tax officials and estate supervisors. Palace employees also showed up, usually in connection with guild matters and communal affairs. Of the 178 state officials in our data, 11.8 percent were either Jewish or Christian (Table 9).[36] Non-Muslims were commonly employed as tax collectors, so this percentage is not surprising. It bears reiteration that data drawn from adjudicated cases need not match the underlying religious distribution of officials.

State officials appear in about 7 percent of our seventeenth-century disputes, a total of 163 cases. In 15 of these lawsuits, they face each other, leaving 148 cases in which a state official faces a subject. Officials appear as plaintiff and defendant at a statistically equal frequency (Table 10).[37]

[36] All of these cases are recorded in Kuran (2010–, vols. 3–4), where additional statistical breakdowns may be found.

[37] We fail to reject the hypothesis of symmetry at a meaningful level of statistical significance ($\chi^2(1) = .97$).

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Table 9
State Officials by Religion

	Muslim	Christian	Jewish	All
N	157	7	14	178
%	88.2	3.9	7.9	100.0

Table 10
Distribution of Litigants by Relation to the State

	Defendant	
Plaintiff	Subject	Official
Subject	2,119	80
Official	68	15

Note. $N = 2{,}282$.

Table 11
Plaintiff Win Rate by Litigant's Relation to the State

	Defendant	
Plaintiff	Subject	Official
Subject	59.5	86.3
Official	30.9	73.3

Note. The plaintiff win rate for all 2,282 trials was 59.6 percent.

Turning our attention to the outcomes of these trials, we find significant variation in the plaintiff victory rate depending on the side of the state official. Whereas it is 59.5 percent when neither litigant is an official, it plummets to 30.9 percent when the plaintiff is an official and jumps to 86.3 percent when the defendant is an official (Table 11).[38] When officials face each other, the plaintiff victory rate is indistinguishable statistically from the baseline case.[39]

It appears, then, that cases between officials and subjects tend to be decided in favor of subjects. Given the judiciary's lack of independence from the executive, this observable outcome is almost certainly caused by extreme sample selection bias. No subject would have chosen to appear in court opposite an official unless highly confident of winning. However, in these cases we do not observe an inequality in the number of cases adjudicated. Hence, our previously applied heuristic method for identifying sample selection bias is not applicable

[38] The hypothesis of equality is rejected at the 99.9 percent level of statistical significance in both cases ($t = 4.75$ and $t = 4.83$, respectively).

[39] The hypothesis that the two plaintiff victory rates are equivalent is not rejected ($t = 1.09$).

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Table 12
Plaintiff Win Rate according to Involvement of State Official: By Plaintiff's Religion

	Defendant		
Plaintiff	Subject	Official	*t*-Test of Equivalency
Muslim	57.8	83.6	4.39
Christian	60.9	85.0	2.18
Jewish	62.3		

Table 13
Plaintiff Win Rate according to Involvement of State Official: By Defendant's Religion

	Defendant		
Plaintiff	Muslim	Christian	Jewish
Subject	60.6	59.8	64.6
Official	37.5	33.3	100.0
t-Test of equivalency	3.22	2.89	1.26

here.[40] Nevertheless, there is a hint of extreme sample selection bias that the smallness of our subsample precludes us from proving. Intriguingly, the asymmetry in the plaintiff victory rate is invariant to the religion of the subject where enough observations exist for statistical analysis (Tables 12 and 13). Evidently, the courts weigh the testimony of a state official equally regardless of the opponent's religion. This confounds the previous findings of institutionalized judicial bias against non-Muslims. Irrespective of religion, when a nonofficial opts to confront a state official in court, the case is sufficiently strong to withstand any pro-state judicial bias.[41]

Finally, we turn our attention to the substance of the cases that involve a state official. Table 14 shows the topics of trials whose litigants included at least one state official. Tax, inheritance, and debt disputes involve officials more frequently relative to the baseline case in which no official is involved. Tax disputes typically entailed disagreements between tax collectors and subjects over tax obligations; in some of the cases, a subject complained of harassment by an official when he had already paid his tax to another official. Inheritance disputes stemmed from the Ottoman law that allowed the state to appropriate the estates of heirless

[40] Earlier, we inferred sample selection bias when two conditions were met: in an ordered litigant pairing, one side won more frequently, and the side that won more often also sued less frequently. In the present case, the settlement rate appears sufficiently high that although the first condition is satisfied, the second is not. In cases that pit state officials against subjects, the litigant pairings are symmetric.

[41] In principle, the types of cases that state officials were able to bring against subjects could differ from those brought by subjects. Yet we find no topic for which officials sue subjects but not the other way around.

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Table 14
Trial Topics according to Involvement of State Officials

	Litigants		
Topic	Only Subjects	At Least One Official	*t*-Test of Equivalency
Guild	2.9	6.8	2.77
Debt	58.3	38.0	5.06
Waqf	15.6	12.9	.91
Property	20.2	16.0	1.31
Tax	2.8	31.3	17.41
Sales	27.3	22.1	1.44
Partnership	19.7	23.3	1.11
Inheritance	28.1	55.8	7.51

Note. Columns sum to more than 100 percent because many trials involved two or more topics.

individuals. The state's confiscation of an estate would be challenged by a person claiming to be a rightful heir. Similarly, debt disputes could involve an official because unpaid taxes were considered a debt to the state.

8. Documented Contracts as Insurance against Judicial Bias

We already know that Ottoman courts did more than adjudicate lawsuits. Of the 10,080 records in our 15 court registers, 6,494 comprised the registration of a contract or settlement. Ottoman subjects registered agreements in court to have a record in writing as insurance against misunderstandings. When an agreement was entered into a court register, each litigant received a copy. A litigant's copy, or the record in the register itself, could be consulted in the event of a dispute.

Could the institutionalized biases of the Islamic courts be mitigated through documentation of agreements? One might expect non-Muslim Ottoman subjects to have alleviated the risks of pro-Muslim litigation by documenting their commercial interactions with Muslims. Likewise, subjects of all faiths might have

Table 15
Relationship between Document Use and Trial Outcome

	No Document	Document from Plaintiff	Document from Defendant	Documents from Both Sides	All Trials
N	1,935	217	111	19	2,282
Plaintiff win rate	60.3	83.9	7.2	21.1	59.6

By themselves, these figures do not establish the commonness of documenting commercial transactions. A potential plaintiff's decision to seek a judicial ruling would have been influenced by whether he had supportive documentation. By the same token, he would be motivated to avoid court fees by settling out of court insofar as the document would convince the defendant that he would lose. A better proxy for the extent of document use is the rate at which defendants introduced documents, because it was not they who sought adjudication. But defendants, too, could settle, and they could deter lawsuits simply by showing potential plaintiffs their relevant documents. Nevertheless, potential defendants probably ended up in court at a higher rate if they had documentary evidence likely to exonerate them. Thus, the share of trials involving documents probably overstates the level of commercial documentation in seventeenth-century Istanbul.

We are still left with the question of why documentation use was so low. One reason is that the courts charged for documents. The judges of our two courts collected a 2 percent ad valorem fee for registering an estate settlement and between 8 and 30 *aspers* for a document certifying a court registration or verdict (*hüccet*); lesser fees were collected by their assistants (Uzunçarşılı 1965, pp. 85–86). All in all, the cost of registering a debt or sale contract corresponded to what a skilled worker made in 1–3 days.[43] For small transactions, these fees alone would have discouraged registration. Low literacy rates—no greater than 10 percent for any group—would also have limited the demand for documentation. Yet another reason to forgo documentation was that in Islamic jurisprudence, documents per se lacked evidentiary value in the absence of corroboration by witnesses to their preparation. Witnesses could charge for their services.

In a modern economy, a signed and notarized contract signals that the parties accept its contents and that the terms of a transaction were set in advance. In a lawsuit, it serves as evidence that the parties understood their duties associated with the transaction. In an Islamic court, the document includes a list of witnesses to its creation and indicates that they could resolve any conflict as to what was agreed. If parties to a court-registered contract end up in court, and one side introduces the contract, it serves notice that witnesses are available to speak to

[43] Özmucur and Pamuk (2002) estimate that in Istanbul a skilled worker made around 22.5 *aspers* per day at the start of the seventeenth century and about 36.9 *aspers* at the end. The courts may have competed with one another partly by varying the magnitudes and forms of their charges. Such competition would have kept fees within bounds.

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its validity and testify to its particulars. The other side might concede the case at that point.[44] In the absence of a concession, witnesses are called, and it is their testimony that clinches the case for the document presenter.[45] Hence, witnesses in an Islamic court play the same role as the documented contract in a modern legal system. In principle, then, any effect of document use on the judicial outcomes might have worked solely through witnesses. This possibility is explored statistically through the multivariate analysis of the next section.

Any contract between a Muslim and a non-Muslim posed a special challenge in terms of the identity of the witnesses. Given the ban on non-Muslim testimony against a Muslim, the witnesses had to be Muslim for the contract to have value for the non-Muslim side. The need was met partly through witnesses for hire—individuals prepared to witness contracts for a fee. Although the compensations were not recorded, we know that the practice of hiring witnesses was common, and its abu.2(abu70.2(abu.2(ctsy)]tute2(its)-2a2(value)maj5.4(a6e)-285.me2(its)-24.9(tts)-2ac

Table 16
Relationship between Document Use and Trial Outcome in Trials between Subjects and Officials

	No Document	Document from Subject	Document from Official	Documents from Both Sides	All Subject/Official Cases
N	104	26	14	4	148
Subject win rate	78.9	96.2	43.0	75.0	78.4

with whom one has interacted repeatedly, the expected benefit of documentation is limited. In fact, it may damage the relationship by signaling mistrust.

Nevertheless, document use should be more prevalent in the court records when the risk of losing is greater. That risk should peak on matters involving a state official, since the courts are predisposed to rule in favor of the state. Table 16 shows that document use is indeed greater in cases between a subject and an official, relative to the full sample of cases.[48]

Table 16 shows that in 44 of the 148 (29.7 percent) cases between a subject and an official, documentary evidence is presented to the court. As in the full sample, the side presenting a document is much more likely to win. Moreover, the extreme sample selection bias conjectured in Section 7 still results in the subject winning the majority of cases involving a state official. But the value of a document remains high. When a subject submits documentary evidence, he wins 96.2 percent of the time, as opposed to 78.9 percent when no documentary evidence is submitted. Similarly, when the state official submits documentary evidence, he is much more likely to win.[49]

9. Multivariate Analysis of Judicial Decision Making

Having examined the institutional biases in the Ottoman judicial system, noted the apparent asymmetries in court participation among Istanbul's religious communities, and explored the role of documents as insurance against pro-plaintiff and pro-state bias, we are left to question whether the differing plaintiff victory rates between religious communities—specifically the asymmetries involving Muslim/Christian trials—were driven by intergroup differences concerning the substance of the disputes. Muslims and Christians might have appeared in debt or *waqf* cases at disproportionate rates, and any judicial bias may have varied by topic. A related factor that could sway a judge is the presence of an official among the litigants.

[48] Documentary evidence appears in 29.7 percent of all trials between a state official and a subject. In those that do not involve an official, documentary evidence is submitted in only 14.0 percent of all cases. The difference is statistically significant at the 99.9 percent level ($t = 5.20$).

[49] The two differences (96.2 percent versus 78.9 percent and 43.0 percent versus 78.9 percent) are statistically significant at the 95 percent level and the 99 percent level, respectively ($t = 2.08$ and $t = 2.98$).

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The relative weights of such influences can be disaggregated through a logistic regression framework. This exercise will enable us to separate the impact of the litigants' religion, their status in relation to the state, dispute topic, document use, and witness testimony. To facilitate interpretation, we provide the results through odds ratios.

9.1. Model

[illegible] logistic regression estimates the equation

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Table 17

Logistic Regression of Plaintiff Victory under Six Specifications: Odds Ratios

	All Cases				No Documents	Documents	All Cases	
	(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)
Plaintiff Muslim	.94	1.00	1.03	1.05	1.07	1.02	1.03	1.07
Defendant Muslim	1.98**	1.78**	1.68*	1.53	1.61	2.3	1.88**	1.72*
Plaintiff Muslim × Defendant Muslim	.52**	.52*	.53*	.52*	.48*	.62	.48**	.48**
Plaintiff is state official		.35***	.34***	.30***	.29***	.46	.35***	.33***
Defendant is state official		4.51***	4.75***	4.51***	3.53***	12.08***	3.24***	3.23***
Waqf			.80	.78	.69*	1.40	.74*	.74*
Sale			1.12	1.10	1.02	1.66	1.17	1.15
Property			1.40**	1.64***	1.58***	.63	1.50**	1.59***
Tax			.99	1.27	1.38	.49	.93	1.22
Guild			2.31**	2.09*	1.79	4.13***	2.28**	2.00*
Plaintiff document				3.45***				2.34***
Defendant document				.05***				.07***
All documents				.15**				.21*
Plaintiff calls witnesses							13.88***	11.11***
Defendant calls witnesses							.02***	.04***
N	2,282	2,282	2,282	2,282	1,935	341	2,280	2,280
Pseudo-R^2	.04	.05	.06	.13	.06	.14	.15	.18

Note. All specifications include year-specific fixed effects. Specification (4c) drops six observations that perfectly identify the dependent variable. Specifications (5) and (6) drop two observations for the same reason.

* $p < .05$.

** $p < .01$.

*** $p < .001$.

dant Muslim indicates the change in the relative probability of the judge ruling for the plaintiff when the defendant is Muslim rather than non-Muslim. The specifications determine whether the above-discussed plaintiff victory rate differences in Muslim/Christian trials are robust to controls for factors that might have influenced judicial decisions.

9.3. Religion of Litigants

In no specification does the plaintiff's religion affect the judge's decision-making process. Consistently, this variable turns out to be statistically insignificant. Furthermore, the defendant's religion is significant at the 99 percent level in specifications (1) and (2) and at the 95 percent level in specification (3). Hence, without controls for documentary evidence, a judge is more likely to rule in favor of the plaintiff when a Christian sues a Muslim than in the reverse case. This result matches the findings in Table 5. In specification (4a), which controls for document use, the coefficient for the religion of the defendant loses significance.

To interpret the last result, we estimate specification (3) twice more while limiting our data set first to cases without documentary evidence and then to those with documentary evidence. The estimated results of specification (4b) indicate that the litigants' religious pairings weakly predict judicial outcomes. By contrast, for specification (4c), the coefficient for the sample selection bias indicative of prejudicial bias is no longer significant. Evidently, non-Muslim apprehensions about encountering a prejudiced judge are alleviated when documentary evidence is present. Although documentation cannot change the judge's attitudes toward non-Muslims, it keeps him from disregarding persuasive evidence, thus limiting the impact of his in-group bias. That is why, in specification (4a), which controls for documentary evidence, the previously observed effect of non-Muslims suing Muslims only when highly confident of a win is diminished.[52]

The statistical significance of the interaction variable Plaintiff Muslim × Defendant Muslim helps to interpret the odds ratio of Defendant Muslim. In each specification, it indicates that when a Muslim sues another Muslim, the probability of a plaintiff victory returns to the baseline specification of adjudication among non-Muslims. Evidently, judges are equally likely to rule in favor of the plaintiff in intra-Muslim cases and cases among non-Muslims.[53]

[52] The goodness of fit of different specifications should not be compared directly against one another, as the number of observations and degrees of freedom vary considerably. However, it is reasonable to compare individual odds ratios' statistical significance, for *t*-statistics are already weighted by sample size and degrees of freedom to arrive at a common scale of significance.

[53] When both litigants are Muslim, the Plaintiff Muslim, Defendant Muslim, and Plaintiff Muslim × Defendant Muslim indicators are all equal to one. In this case, the statistically negligible coefficient of Plaintiff Muslim plays no role, but the coefficient on Plaintiff Muslim × Defendant Muslim is statistically the negative of that of Defendant Muslim. Thus, in each specification the product of the two coefficients is equal to one ($\chi^2 = .06$ for specification [1]; $\chi^2 = .23$ for specification [2]; $\chi^2 = .83$ for specification [3]; $\chi^2 = 2.78$ for specification [4]; $\chi^2 = .70$ for specification [5]; and $\chi^2 = 2.47$ for specification [6], all with 1 degree of freedom).

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9.4. *Presence of a State Official*

Specifications (2)–(4c) all control for the presence of state officials among the litigants. The controls reflect the expectation that judges would have avoided putting themselves in conflict with state authority. Each specification points to a strong anti-state bias. Specifications (2)–(4a) indicate that judges are about 4 times more likely to rule in favor of the plaintiff when the defendant is a state official. Moreover, the plaintiff is about 3 times more likely to lose a case if he is a state official, all else being equal.

As with the high plaintiff victory rate for minorities, these results probably reflect a sample selection bias. A potential defendant threatened with a lawsuit by a state official would have opted to settle out of court unless very confident of prevailing at trial. Similarly, a potential plaintiff would have refrained from suing an official before a state-appointed judge unless the case was very strong.[54] In brief, the observed lawsuits involving a state official represent the disputes in which the official's case was particularly weak.

In specification (4c), the results for trials involving state officials differ from those of the preceding specifications. For cases in which documentary evidence is presented, a plaintiff who is an official has the same probability of winning as a typical subject, irrespective of religion.[55] In other words, when a judge is presented with either an official's supporting document or a nonstate defendant's exonerating document, any advantage that the judge would confer to the state official is statistically nullified. Revealingly, these results are not repeated when the defendant is an official. Since state officials are more likely than subjects to possess documentary evidence, when we limit the sample to trials in which documents are submitted as evidence, the plaintiff must be extremely certain of victory to challenge an official; in itself documentary evidence does not provide a high likelihood of winning since the defendant may be able to submit documents as well. Thus, in specification (4c), plaintiffs suing an official are 11 times more likely to win, relative to our baseline specification.

9.5. *Topic of Dispute*

When we control for the dispute topic, the estimates of the regressions remain statistically significant and constant (specifications [3]–[4c]). Evidently, the qualitative nature of the dispute, though undoubtedly germane to the adjudication process, does not make the judge weigh the religion of the litigants differently. The last four specifications suggest also that judges are more likely to rule for the plaintiff when adjudicating disputes over guild business and property transactions.

[54] To test these hypotheses directly, we would need data on settlement rates. Unfortunately, they are unavailable.

[55] This finding holds both when the document is submitted by the defendant and when it is submitted by the plaintiff ($t = .86$ and $t = .87$, respectively).

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9.6. *Documentary Evidence*

The odds ratios for specification (4a) of Table 17 offer overwhelming support to our earlier observation that documents carry significant weight in trials. If the plaintiff introduces documentary evidence to the court, his odds of winning increase almost fourfold. More dramatically, when a defendant challenges the plaintiff's account through documentary evidence, the judge is about 20 times less likely to rule in favor of the plaintiff. As we proposed earlier, putting contracts in writing provides substantial insurance against breach of contract. Whatever the biases of the Ottoman judicial system, people could boost their chances of winning a commercial lawsuit merely by having a written document to support their case.

Yet given that in Islamic jurisprudence a document signals the presence of witnesses willing to testify in court in support of its content, the predictive capacity of a document could stem merely from the power of witness testimony. This possibility is addressed next.

9.7. *Witness Testimony*

The final two regressions reported in Table 17 indicate that witness testimony has a strongly significant impact on judicial outcomes. Specification (5) adds to specification (3) variables that indicate whether a litigant calls witnesses to bolster his or her testimony. The results show that witness testimony very significantly increases the win probability of the supported litigant. In particular, a plaintiff who calls witnesses to testify on his or her behalf is nearly 14 times more likely to win than one without witnesses; and the support of witnesses boosts a defendant's probability of winning by 50 times.

Specification (6) regresses trial outcome with controls for all the variables

defendant, the relative weights cannot be identified in that context. However, with regard to testimony on behalf of a plaintiff, there is no statistically significant difference between the relative weights of Muslim and Christian witnesses.[57]

This lack of a statistical difference may stem from a sample selection bias rooted in earlier identified institutionalized judicial biases against non-Muslims. Regardless of his or her own religion, a litigant would have called a Christian witness to court only if the latter were particularly credible. Thus, only the most credible potential Christian witnesses would enter the judicial records, which accounts simultaneously for the low numbers of observed Christian witnesses and the efficacy of their testimony.

10. Conclusions and Implications for the Present

Since no existing country has a fully functioning Islamic legal system, its past applications can provide the necessary clues as to whether it satisfies basic conditions of the rule of law. Through an examination of seventeenth-century Ottoman court data, this article shows that lack of judicial independence from the government and discrimination against non-Muslims may be among the consequences of instituting a legal system modeled on past applications of Islamic law.

in campaigning for secular commercial courts. They viewed traditional Islamic courts as contributors to the region's deepening economic problems. By the 1850s, they had managed to establish secular commercial courts in Istanbul, Cairo, and Alexandria. Insofar as their justifications were grounded in fact and the secular courts did adjudicate more impartially, the new courts would have contributed to jump-starting the Middle East's catch-up process. Native Christians and Jews were becoming increasingly important economic players, and leveling the playing field would have stimulated trade, especially internal trade involving Muslims.[58] Studying the records of the commercial courts should enable the testing of whether, in fact, the biases identified here diminished.

One might object that conditions in the twenty-first century are different enough that the foregoing findings are irrelevant to the reimposition of Islamic law. Another possible objection is that the Ottoman courts of the seventeenth century are unrepresentative of genuinely Islamic courts that existed only in the early centuries of Islam in the religion's Arab heartland. Both of these objections involve empirical matters. Did the courts of early Islam not discriminate against non-Muslims? Did their judges avoid favoritism toward state officials? If one or both of these questions has a negative answer, one would want, of course, to know why practices differed. With respect to the first objection, one must identify exactly what differs now. Is it that judges are insulated from political pressures? Have the proponents of Islamization agreed to abrogate the long-standing practice of treating Muslim testimony as inherently superior to non-Muslim testimony?

The proponents of reinstituting Islamic law have tended to avoid such questions by focusing on ideal conditions that are unlikely ever to be attained. In the Islamic society of their imagination, all public officials have infused an Islamic morality, which makes them averse to corruption and favoritism. Accordingly, no judge rules in favor of a state official merely for fear of state reprisals, and no state official expects him to do so anyway.[59] Yet there is no evidence that morality alone can eliminate the biases in question. In no known society are public officials immune to material incentives. Moreover, according to Muslim accounts widely accepted among Islamists, no known Muslim society after the year 661, the end of Sunni Islam's canonical golden age, has been free of corruption. These accounts leave us to ask how the biases identified in this article would be eliminated. There is an additional reason that today's proponents of Islamic law avoid addressing the possibility of injustices toward non-Muslims:

[58] On the role of trade expansion in economic development, see North (1981), Platteau (2000), Dixit (2003), and Greif (2006). Kuran (2011) identifies mechanisms through which Islamic law limited commercial expansion in the Middle East in particular.

[59] For examples of social designs that treat Islamic morality as an antidote to corruption, see Afzal-ur-Rahman (1980, chap. 7), Chapra (1992, esp. chaps. 7, 9), and Naqvi (2003, chaps. 4–5). See also Bulaç (1993, pp. 63–79, 123–88), who holds that in polities governed under Islamic law, non-Muslims have enjoyed exemplary justice and received equal treatment from courts.

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the presumption, discredited here through econometric techniques, that historically Islamic courts ruled impartially on cases involving non-Muslims.

There is a difference in conditions that would mitigate the biases identified in this article, were courts similar to those of seventeenth-century Istanbul to go into operation. The use of documentation is much more widespread in the modern Middle East than in the period covered in our empirical work. In seventeenth-century Istanbul, documentary evidence mitigated the biases inherent in Islamic justice. Simply by documenting their transactions, subjects could protect themselves against pro-state biases, and non-Muslims against pro-Muslim biases. It is impossible, however, to write a complete contract that accounts for every possible contingency. Conflicts on matters that could not have been anticipated are inevitable, as are disagreements over contract interpretation. Hence, documentation alone would not eliminate the biases.

Economic globalization has raised the importance of judicial independence. As one of the determinants of investment risk, it affects capital flows. In particular, capital generally flows toward countries where courts are relatively independent of the executive branch of government. Sooner or later, therefore, the supporters of an Islamic legal system must come to terms with the potential costs of judicial subordination to the executive. They will need to deal with the structure of courts staffed by corruptible judges who are responsive to material incentives.

Insofar as globalization promotes economic interactions across national and religious boundaries, it also raises the potential costs of pro-Muslim judicial biases. The adoption of a legal system that weights witness testimony by the religion of witnesses would pose an impediment to commerce and thus economic growth. Companies setting up shop in a country under Islamic law would expect compensation for the risks incurred by their employees. In countries with a substantial non-Muslim population, such as Egypt, where estimates of the Christian Coptic population range between 10 and 20 percent, pro-Muslim judicial biases would take an economic toll both by weakening minorities and by impeding cross-religious commercial interactions. In predominantly Muslim countries without a substantial non-Muslim minority, such as Saudi Arabia, similar costs could arise from judicial biases against socially unpopular or officially disfavored Islamic sects. The very logic of disregarding non-Muslim testimony could be used to justify the discounting of, say, Shii testimony. There are precedents in Islamic history for denying to adherents of certain rival Islamic sects the right to testify against Muslims considered part of the pius mainstream (Peters 1997, p. 207).

The demand for reinstituting Islamic law receives a sympathetic hearing from some intellectuals and policy makers committed to preserving or reviving local cultures. Insofar as multiculturalism is itself desirable, a case can be made for using Islam's rich legal heritage as a basis for certain legal reforms. Nevertheless, there are trade-offs that merit recognition and consideration. Imposing Islamic

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law could harm Muslims economically by restricting their participation in the global economy.

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

by Timur Kuran*

11 December 2013

Abstract.
In the pre-modern Middle East the closest thing to an autonomous private organization was the Islamic waqf. Paradoxically, this non

1. Introduction

Even after the Arab uprisings of 2011, the Middle East[1] remains the 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 and where, under the increasingly Islamist Justice and Development Party (AKP) government, fundamental freedoms are eroding.[2] 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.[3] Likewise, trust in institutions is very limited.[4] Corruption is common as perceived by both local residents and foreigners; so is nepotism, the tendency to favor relatives.[5] Insofar as they exist, institutional checks and balances are unreliable, which is why secularists and Islamists, and also Shiis and Sunnis, object

For all their insights, the literatures on these patterns raise puzzles.[6] Certain important findings relate to only part of the region. For example, the observation that oil revenues allow rentier states to buy off their critics leaves unexplained the persistence of autocratic rule in oil-importing states.[7] Other popular arguments are inconsistent with evidence from outside the Middle East. Consider the treatment of the s low political performance as a legacy of colonialism.[8] It begs the question of why many former colonies outside the region, including India and Brazil, have better political records A common trait of inquiries into the chronic political failures is a focus on proximate factors.[9] Since the end of foreign rule, it is commonly observed, monarchs and presidents have emasculated the news media, suppressed intellectual inquiry, restricted artistic expression, banned political parties, and co-opted regional, ethnic and religious organizations. Authoritarian governments have thus suppressed collective empowerment on the part of politically oriented non-governmental organizations. Sustained collective action

[10] To make matters worse, the private organizations that manage to engage in advocacy tend to be unaccountable to the constituencies that they ostensibly represent. All this is true, with variations among countries. But why have the oppressive policies of Arab rulers worked so well and for years on end? And why have non-governmental organizations (NGOs) lacked accountability? Might the identified patterns, including the persistence of authoritarianism and the political passivity of the masses, be rooted in historical processes that predate European colonialism?

With a few shining exceptions, researchers have left unexplored how the Middle East institutional heritage may have constrained its political possibilities. Both colonial and post-colonial political institutions were superimposed on a deeply rooted institutional complex that was

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For present Turkey.

[2] 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.

[3] Evidence in sect. 12 below.

[4]

unsuited to basic human rights and the rule of law.

has barely been examined from the perspective of its consonance with democratization.[11] This article shows how one particular pre-modern Islamic institution, which played an important economic role for a millennium, hindered democratization. This institution is the Islamic waqf, which is called habous in parts of North Africa and bonyad in Iran.[12] It is distinct from the modern waqf, which has come on the scene in Turkey and, in a different form, in Iran.[13] The Islamic waqf is a foundation established and maintained under pre-modern Islamic law. Within the pre-modern Islamic legal system, it is the closest thing to an autonomous private organization. As such, it might have promoted political participation, collective action by the masses, and political accountability, among other indicators of democratization. It might have generated a vibrant civil society capable of constraining rulers and majorities.

Civil society refers to the arena, outside the family, the state, and the market where people [14] Although political checks and balances can be built into the state itself, as with the tri-partite government of the United States, no known democracy relies solely on a division of powers. As generations of thinkers have recognized, civil society is essential to democratic life. To be sure, the concept has proven difficult to quantify. Observers characterizing Middle Eastern civil society as weak have struggled to establish this claim independently of its purported effect, authoritarian rule. But it is easier to identify and measure certain manifestations of civil society, such as political participation and collective action. Hence, in exploring the political effects, it makes sense to ask how it may have shaped social factors with which civil society is typically associated, rather than civil society per se.

There is another analytical justification for this strategy.
attained their present political characteristics through multiple paths. Beginning their transformations at different times, they also experienced different social cleavages. Their features characteristic of democracy—enforced human rights, broad political participation through parties and lobbies, autonomous legislatures and judiciaries, universal suffrage—did not develop in lockstep.[15] Hence, focusing on the manifestations of civil society allows one to look at the experiences of other regions for hints concerning the Middle East , and to do so without treating Britain, or France, or the United States as the only model of success. The multiplicity of Western paths suggests that the Middle East could have followed a distinct path, even several paths unique to sub-regions.

For all their differences, the European paths to democracy also share some family resemblances. First, they all involved protracted struggles involving perpetual private associations, with setbacks along the way, as impoverished, dominated, and relatively poor groups learned to get organized effectively. Second, all of the paths produced checks and balances of some sort. Thus, investigating
counterpart of European private organizations achieved less political power. A fine-grained

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The elements of this complex varied across time and space. But from around the tenth century to the reforms of the nineteenth century their core elements remained stable.

In English it is sometimes called a pious foundation or an Islamic trust

See sect. 11 below.

Heinrich 2010, 12-34.

The roles of peasants, cities, and merchants in reining in the monarch all differed across contexts. Although (1688) and the French Revolution (1789) both instituted democratic checks and bala

identification of the waqf offers two further advantages. It may suggest where a Middle Eastern democratization process might have started. It also helps to identify critical obstacles to democratization in the present.

In what follows I argue that the waqf limited democratization through several mutually supportive mechanisms. First of all, by design its use of resources was essentially set by its founder, which limited its capacity to meet new political challenges. Second, in disregarding the preferences of its beneficiaries, it limited political participation. Third, it could not pool resources with other entities, which kept it from joining durable political coalitions. Fourth, it limited political participation further by denying its beneficiaries a say in the selection of officers. A fifth problem is that circumventing stringent waqf rules required permission; together with the lack of transparency in its activities, this requirement fueled corruption. Finally, the process of appointing successive officials promoted and legitimized nepotism.

Thus, for all the resources it controlled, the waqf remained a minor player in Middle Eastern politics. Through the corruption it invited, it hindered rule of law. It contributed, on the one hand, to keeping the Middle Eastern peoples politically docile, ignorant, and quiescent, and, on the other, to routinizing practices lacking legitimacy. As a key component of the institutional complex that kept the state unmonitored and unchecked by civil society, the waqf set the stage for the corrupt authoritarian regimes of the twentieth and twenty-first centuries. Unrestrained power usually breeds bad governance. Indeed, the legitimacy deficit of incumbent Middle Eastern regimes is a legacy of political patterns rooted in the traditional waqf.

In the modern Middle East, the corporation, which is a self-governing organization conducive to politics, has taken over many social functions long performed by the Islamic waqf. Notwithstanding its name that harkens to early Islam, even the modern waqf is a non-profit or charitable corporation. Islamic charities tend to be organized as modern waqfs, rather than as Islamic waqfs. This makes it especially useful, in identifying the Islamic political consequences, to keep an eye on corresponding developments in Western Europe, the region where the corporation first contributed to democratization.

2. The Islamic waqf and its economic significance

Under classical Islamic law, which took shape between the seventh and tenth centuries, a waqf was a foundation that a Muslim individual established by turning privately held real estate into a revenue-producing endowment. The endowment was to provide a designated service in perpetuity. Ordinarily a judge (*kadi*) ratified purpose. Along with the assets placed in the endowment, he recorded
income.[16] The resulting deed (*waqfiyya*) was To ensure its survival and minimize disputes over the founde , a major waqf might have its deed carved into the façade of an imposing building.[17] It became customary to set a legal

demonstrate the permanence of his stipulations.

The service could be anything legitimate under Islamic law. Thus, waqfs were commonly established to support mosques, schools, fountains, hospitals, soup kitchens, bathhouses, inns, parks, and funerary complexes. Whatever the particular service, the endowment would be expected

There existed waqfs founded by an oral declaration before witnesses (Beldiceanu 1965, p. 29).

For general accounts of waqf rules and practices, see Barnes 1987, Schoenblum 1999, and Kuran 2001.

to support operational expenses, including repairs and staff salaries.[18] Sometimes the deed explicitly named the beneficiaries: a particular family, or the indigents of a particular town, or some neighborhood . When no beneficiaries were specified, the locational choice might privilege certain communities. The patients of a Damascus hospital would consist disproportionately of Damascenes. pt from taxation, as were its payments to employees and its services.[19]

implementing its deed fell to a caretaker (*mutawalli*). The caretaker rented out properties, authorized repairs, hired and supervised employees, and delivered services. He performed

adhere to the deed, he was supposed to implement the wishes it expressed. The initial caretaker of a waqf was selected by the founder, who could specify how his successors would C

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

Table 1. Waqf assets or revenues: Estimates

Precisely for this reason, vast resources poured into waqfs. Although no comprehensive data set exists, various indicators testify to their economic significance. First of all, practically every monograph on the socio-economic life of a pre-modern Middle Eastern city or region devotes at least a chapter to local waqfs, invariably establishing that they carried great weight in the local economy. Second, the available estimates of waqf assets and income involve huge figures (Table 1). The three studies using statistical sampling show that the share of tax revenue accruing to Anatolian waqfs was 27 percent in the 1530s, 26.8 percent in the seventeenth century, and 15.8 percent in the nineteenth century.[23] The Ottoman treasury received about half of its tax revenue from real estate; poll taxes and opportunistic taxes ( ) formed the other major categories. Hence, at least until the nineteenth century, which marked the start of fundamental reforms, waqfs received at least half of all revenues from land and buildings. The dip in the nineteenth century (last row) accords with the nationalizations that accompanied the reforms; they are discussed below. A third indicator is that waqf-related cases appear very frequently in court records. Of 9,074 commercial cases in a judicial data base of seventeenth-century Istanbul, 17 percent concerned a waqf matter. By contrast, a state official was involved in just 7.6 percent of the cases.[24] Finally, a

[23] Barkan and Ayverdi 1970, 17; 26; Öztürk 1995, 54.

[24] Kuran 2010-13. Pro-state biases of the judges, documented in Kuran and Lustig 2012, may have limited the latter number.

large majority of all surviving Middle Eastern buildings from before the nineteenth century were financed through waqfs. The main exceptions are palaces, fortresses, and harbors.

Whatever the spatial variations, waqfs held abundant assets in both cities and the countryside, which made them potentially powerful political players. They might have used their resources to constrain the state on behalf of the beneficiaries they were supposed to serve. In the process, the nucleus of a civil society capable of advancing political objectives might have emerged. The resulting decentralization of power could have placed the Middle East on the road to democratization.

To see how, remember that a waqf caretaker authority was grounded in the deed. Whatever the circumstances of his appointment, he controlled and its staff, who served at his discretion. These factors alone made him a respected person.[25] In charge of an organization commanding income-producing assets, a waqf caretaker was also the natural leader of the constituency that his waqf served the teachers and students of a school, the poor who depended on a soup kitchen, or the community living near a particular fountain. With each such constituency, the caretaker provided a focal point for coordinating individual demands. Hence, every waqf constituency formed a community potentially capable of collective action. Insofar as waqf beneficiaries undertook collective action to advance their joint interests, they might have developed the organizational, communicational, and strategic skills to pursue collective action in other contexts and through different groups. Waqfs could have turned the Middle East into a region hospitable to initiatives requiring social organization . [26] Such initiatives could have included campaigns to influence state policies. The political passivity of waqfs is the puzzle at hand.

3. Origins of the waqf's political features

The Quran does not mention it, which suggests that it played no significant role in the Arabian society that counted Muhammad among its members.[27] Although subsequently recorded remembrances about early Islam (*had th*) mention that formed waqfs, these accounts were probably concocted to legitimize an addition to the Islamic institutional complex.[28]

Institutions resembling the waqf were present in pre-Islamic civilizations. In the Sassanid and Byzantine empires temples had long been financed through some form of trust.[29] In all likelihood, the idea of endowing assets to provide a permanent service was appropriated from these expansion into Syria and Iraq. At the death of the caliph Ali in 661 about half of the Byzantine Empire and most Sassanid territories were within the Islamic fold. With conquests continuing, Muslims gained familiarity with Byzantine and Sassanid practices. Their

[25] A common theme in historical accounts of Middle Eastern cities involves the esteem enjoyed by waqf caretakers (Behar 2003, 65-83; Leeuwen 1999, ch. 4). In court records waqf caretakers almost always carry an honorific title, which points to the institutionalization of their elevated social status.

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

Oberauer 2013.

Hâtemî 1969, 29-38. During leading scholars dismissed hundreds of thousands of such recollections as apochryphal, and modern investigators consider most of the remainder fabricated (Brown 2011).

Thomas 1987.

administrations started to draw on the talents of bureaucrats who had served other states.[30] The year 661 marks also the start of the first Muslim dynasty, the Umayyads, and the shift of the Islamic seat of power from Medina to Damascus. The ensuing decades involved many adaptations and innovations. The Umayyads ruled until 750, when they were overthrown everywhere but in Spain. Power passed to a new dynasty, the Abbasids.[31]

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

The resulting insecurity would have fueled a quest for institutions capable of alleviating the risks in question. The debated alternatives are evident in the earliest work aimed at developing a coherent set of waqf rules, al- , published in the ninth century.[32] This treatise indicates that the waqf entered the Islamic institutional complex during the Umayyad and early Abbasid eras. We learn also that the principle of freezing the use of waqf assets in perpetuity drew clerical opposition. The rules that emerged from the negotiations were legitimized through late-appearing recollections of life. Collectively they gave powerful constituencies a stake in the waqf. State officials obtained material security through the right to shelter wealth from unpredictable rulers. Religious officials ( ) gained access to substantial rents through their supervisory authority over waqfs. As for rulers, they benefited in various ways. First, officials would serve them more willingly. Second, they themselves would obtain insurance against a palace coup through the ability to shelter wealth for their own families and descendants. Finally, waqf-supplied social services would reflect well on their regimes. The achieved agreement allowed state officials, including the ruler himself, to establish socially beneficial waqfs in return for secure control over their income-producing assets and the right to receive some of the income themselves.

From the eighth century onward, some of the largest waqfs were established by members of the ruling family. Known as imperial waqfs, they include the Complex of Sultan Barquq in Cairo (1384) and the Süleymaniye Complex in Istanbul (1557).[33] Relatives of a sultan found it advantageous to form imperial waqfs as insurance against loss of intra-dynastic power. The mother of the crown-prince could want an autonomous financial base in case her son died prematurely or was outmaneuvered by a rival claimant. An imperial waqf also provided security against changes in state priorities. By virtue of the sacredness of its assets, a waqf built in the name of Sultan Süleyman II could endure even if his descendants spurned its objectives. No matter how strong or popular, every ruler had to worry about predation by future rulers.

Two waqf characteristics, both already mentioned, betray that the benefits of forming a waqf were expected to accrue primarily to high officials and their families. The immovability requirement favored state officials, who were rewarded with land grants for their services. This restriction discriminated against merchants, whose wealth typically consisted of movable goods.

Köprülü 1931. Providing a more nuanced inte

[31] Ruling initially from Kufa, the Abbasids then shifted their capital to Baghdad. olitical evolution during this period, see Lapidus 1988, ch. 3-8. Crone 2004, ch. 17-22 surveys the associated evolution of political thought.

For an English translation, see Verbit 2008.

[33] A waqf complex provided multiple services. Typically it included a mosque, along with several charities.

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q m m m q q m m b b b q

	Islamic waqf	Islamic partnership
Faith of founder	Must be Muslim	Unrestricted
Type of investment	Real estate	Currency

Table 2. Restrictions on the two main investment instruments of Islamic law

This interpretation is consistent with recorded correlations between the democratic deficit of the modern Middle East and the diffusion of the Islamic institutional complex. Highlighting the reliance of Muslim sultans on slave armies, Lisa Blaydes and Eric Chaney (2013) find that this pattern of military recruitment caused Middle Eastern rulers to lag behind west European rulers in legitimacy. Extending this argument, Chaney (2012) identifies a positive relationship between and its democratic deficit in the early twenty-first century.[38] Insofar as pre-modern military recruitment affected modern politics, the influences would have operated through the entire institutional complex associated with slave armies. As both works underscore, foreign-born slave soldiers had difficulty forming coalitions with disgruntled local groups. However, slave soldiers and their

ing500430051005A>-5<00550048>756<0044>4<005200<00550047005500470055<017D>4<00550048>703>-50<0047>-98>

waqf, mentioned above. Its endowment could consist of imperial real estate granted to the founder with the understanding that it would become the corpus of a waqf.

Ready to address how the waqf hampered democratization, we will consider, in turn, several characteristics that shaped political patterns. For each, we will draw attention to historical continuities between the past and the present, pointing to protracted precedents.

	Family waqf	**Charitable waqf**	**Imperial waqf**
Source of endowment	Muslim individual outside ruling family	Muslim individual outside ruling family	Member of ruling Muslim dynasty
Recorded beneficiaries	Found and descendants	Constituency much broader than	Large constituency outside of ruling dynasty
Size of endowment	Typically very small	Highly variable	Usually large

Table 3. Three categories of waqfs: Main properties

4. Limits on self-management

By design the waqf was a rigid organization. In its canonical form, its assets were inalienable; never sold, bequeathed, pawned, or transferred, they were to finance its activities forever through steady rental income. The services were to be delivered, again in perpetuity, according to instructions i Thus, a waqf-financed school was to teach designated subjects through an indicated number of teachers. T , but also student stipends, books, and furnishings. It would also identify real estate whose income would , including staff remuneration and expected repairs.[42]

This operational ideal presumed a static world with fixed relative prices, technologies, and preferences. Everything else relevant to efficiency also stayed fixed. For instance, land values never changed in ways that might preMithat TETyBT(e)4(,)-71(e2i3/F383.3 72.023 Tmg)10-259(a72.0k8( )] TJ

specific modifications. Accordingly, a school could permit the caretaker to swap one asset for a better asset. It could also allow the construction of new classrooms in case of need. But legitimate changes were limited to those explicitly allowed. If the deed permitted one asset swap, once that option was exercised, t properties became strictly inalienable regardless of further variation in conditions. Although managerial discretion given to caretakers amounted to a degree of self-management, the discretion was exhaustible. Sooner or later, every waqf obeying classical law would become frozen.[43]

As significant as the operational restrictions on the caretaker is what he was *not* expected to deliver. He was not obligated to achieve any particular level of efficiency. For instance, if he was in charge of a school, he was not expected to reach some threshold of educational performance, such as reading proficiency by a particular age. He did not have to please the students or their parents. He was accountable to the founder alone, and the courts, not the beneficiaries, judged whether he was meeting wishes. Regardless of the type of waqf, the preferences of the founder trumped those of the end users.

The intended beneficiaries were not expected to participate in governance. They had no right to demand resource reallocations, or changes in the services delivered. They were to consume services passively, with gratitude toward waqf founders for their generosity. This expectation is consistent with the patterns of establishing waqfs. If the immediate beneficiaries of new waqfs were not consulted about their priorities, why would later beneficiaries be asked whether existing infrastructure should be modified, or expenditure patterns changed?

Actual waqfs enjoyed greater managerial discretion than the canonical waqf. Because a waqf deed, however long, could not cover every possible contingency, it unavoidably gave the caretaker some discretion. Through creative interpretations, he could make adjustments that the founder could not have even contemplated.[44] An adjustment might well accord with the spirit of y the same token, the caretaker could use his discretion to make choices that the founder would have ruled out, had he been able to imagine future circumstances and options.

5. Curbs on political participation

The many varieties of democracy have in common an emphasis on broad political participation, which is achieved through such means as chat groups, town meetings, referenda, recall drives, lobbies, protests, opinion polls, and elections. The masses participate in governance through choices at the ballot box, but also by voicing preferences, concerns, and ideas in between elections, and by linking their future votes to the preference of their elected officials. In the process, they shape public discourse and ensure that governance reflects 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, many government decisions, including government budgets, are debated in public. Whether the typical citizen becomes knowledgeable about the intricacies of

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Some judges ratified waqf deeds that authorized the founder to make unlimited changes. But this flexibility ended with his death. Eventually, then, even such waqfs became frozen. For examples, see Istanbul court register 4 (1619) 31b/3; 23 (1696), 51 b/2; Galata court register 224 (1713), 82a/1, all recorded in Kuran 2010-13. Leeuwen 1999, 145, gives an example from Syria.

If the founder had not appointed functionaries for the preservation, a caretaker might appoint supplementary personnel under the pretext that relevant decisions were left to the caretaker.

public policies is beside the point.[45] For the system to serve the electorate better than any practical alternative it may suffice to have a representative subset of the citizenry follow any given issue.[46] A common problem in any political system is that political players distort information self-servingly, confusing even citizens intent on staying informed. Democracies try to limit information pollution by standardizing disclosure requirements.

The rules of the Islamic waqf promoted neither broad political participation nor transparency in governance. Authority to execute the waqf deed belonged to a single person, though he might have had employees to whom he could delegate responsibilities. Apart from the courts, no one, not even his staff, was entitled to information about assets, income, expenses, or beneficiaries. He was not obligated to prove his managerial effectiveness. This facilitated modifications that he wanted; it also hindered those that he opposed.[47]

Ordinarily, the deed itself was public knowledge, which generated expectations concerning services. People living in in the vicinity of a fountain expected it to flow, because typically it displayed a plaque publicizing its endowment. If the fountain dried up, the residents could have the court investigate; and if the court found the caretaker negligent, it might replace him. But no mechanism existed for optimizing the use of waqf resources. By spending excessively on maintenance, a caretaker might keep the water running during his own tenure, but at the expense -term viability. Though he himself would escape criticism, his successor would inherit an endowment so diminished as to preclude further maintenance.

In theory, the beneficiaries of a waqf could play a supervisory role themselves. They could carry complaints of mismanagement to a judge in the hope that his scrutiny would improve the its brought by displeased beneficiaries against an ostensibly misbehaving caretaker.[48] Hence, the caretaker took a risk whenever he ignored the expectations of beneficiaries. A lawsuit could result in a verdict of mismanagement, leading to his dismissal.[49] But to make a convincing case it was insufficient to show that the intended beneficiaries were frustrated. The aggrieved parties had to prove that the deed was being violated. knowledge, beneficiary-launched lawsuits against caretakers were rare. Out of 1544 waqf-related lawsuits in a seventeenth-century Istanbul sample, only six entailed an accusation of caretaker mismanagement or fraud. None of these involved a plaintiff who was also a beneficiary. In each of the six, the plaintiff was an active or former waqf official privy to inside information.[50]

In any case, the right to complain was no substitute for formal accountability to beneficiaries through periodic disclosures. An honorable judge could dismiss a complaint as baseless. Besides, not every judge was committed to enforcement of the deed. Some judges were prepared to overlook improprieties in return for what amounted to a bribe. Court fees could deter the filing of a formal complaint. In cases where the judge was in collusion with the caretaker, yet another option was to report both to higher authorities. That carried the risk of alienating privileged local officials capable of retaliation. There is evidence that for fear of retaliation people refrained

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[45] A large literature points to widespread voter ignorance even on fundamental policies (Caplan 2007, Zaller 1992).

[46] Hirschman 1970, ch. 7; Dahl 1989, ch. 16.

[47] A tradeoff between governance quality and decision-making costs exists whenever there are multiple stake holders (Buchanan and Tullock 1962, ch. 8).

Marcus 1989, 303-04; Hoexter 1998, ch. 5; Gerber 1988, 166-69; Leeuwen 1999, 159.

See the following adjudications in Kuran 2010-13: Istanbul 3 (1618), 84a/1; Istanbul 9 (1662), 250b/2; Galata 130 (1683), 55a/5; Istanbul 22 (1695), 80b/2; Istanbul 3 (1696), 32b/1.

These 1544 cases are in Kuran 2010-13.

from suing state officials unless their case was exceptionally strong.[51]
beneficiaries
egregious mismanagement, they could not ensure his good will, let alone his competence.

Because of their powerlessness, beneficiaries would have been discouraged from trying to influence policies relevant to their welfare. They would also have refrained from seeking information about possible alternatives. Accepting what came their way, and withholding feedback to the suppliers of social services, they would have become accustomed to passive consumption.

A pre-modern Middle Easterner consumed waqf services from cradle to grave. None of these providers were accountable to him. So generally he did not participate in the determination of how resources assigned to his benefit would be spent. He had no say over the selection of the officials empowered to use these resources. He could not have resources shifted from, say, mosques to schools. No formal mechanism existed for aggregating the sentiments of any designated constituency. No one could gauge whether his own level of satisfaction with any given service was representative. The system excluded the masses from the decision making processes that determined most

Islamic waqf served, then, as an instrument of authoritarian governance. Making its caretaker accountable to end users might have induced expectations of official accountability in other domains. Requiring caretakers to issue reports would have set precedents for inclusive governance generally. Besides, facilitating the acquisition of information about waqf resources would have undermined the objective of keeping the masses politically passive.

The pace of innovations is correlated with the number of ideas in circulation. That is why metropolises, which bring together diverse people, contribute to knowledge advancement far beyond their share of the world population.[55] Insofar as they contributed to excluding the masses from politics, the rules of the waqf would thus have reduced institutional creativity broadly, across the system. Awareness of shared problems would also have diminished. For both reasons, long-term political development would have suffered, along with economic development.

Students of participatory politics distinguish between tame and rebellious organizations.[56] In barring waqfs from political advocacy, Islamic law ruled out the latter type. But it limited participation even further by denying even the beneficiaries of tame waqfs a hand in management. In impoverishing public discourse on social services, this constriction would have diminished the efficiency of waqfs.[57] The masses would also have failed to develop the habits and skills needed to communicate thoughts, expectations, and grievances concerning social services. The latter service provider.

6. The waqf vs. its European counterparts

The identified properties of the waqf may be contrasted with those of the corporation, whose use was spreading in western Europe as the waqf gained popularity in the Middle East. A corporation is an association of individuals established by law or under some law; claiming collective authority in a particular domain, it has legal personhood and a perpetual existence independent of its membership. Although its decisions may be based on the preferences of the entire membership, ordinarily certain officials hold the reins. With regard to the selection of officials, various options exist. The officials themselves may appoint their successors. Alternatively, the general membership may take part in the selection. Precisely because a corporation is self-governing, its own members may modify the pertinent rules.

Figure 1 depicts several organizational forms established to provide a service, for instance, education. The horizontal axis represents the orga discretion regarding the management of its income-producing assets and the delivery of education. The vertical axis represents the share of the and officials who participate in its decisions. At one extreme, decisions are made by a single person; at the other, every official and beneficiary participates. Of the four organizations depicted, W^I represents a canonical Islamic waqf: required to follow the s limited discretion is exercised by two people, the caretaker and a judge. C represents a corporation, which differs by design along both dimensions. It has relatively greater managerial flexibility, and its decision-making powers are dispersed among more individuals. The default for a corporation is self-management; as shown in figure 1, it amounts to complete autonomy. In practice, a corporation has a charter that defines a mission. If its purpose is education, its resources are unavailable for poor relief. Its mission and the management of its assets may be

[55] Glaeser 2011, ch. 1, 9; Simon 2001, ch. 3.

[56] Fung 2003, 534-36.

This is consistent with slower urban growth in the Middle East than in western Europe between 800 and 1800 (Bosker, Buringh, and van Zanden 2013).

constrained also through its founding charter. State-imposed covenants may add to the restrictions.[58]

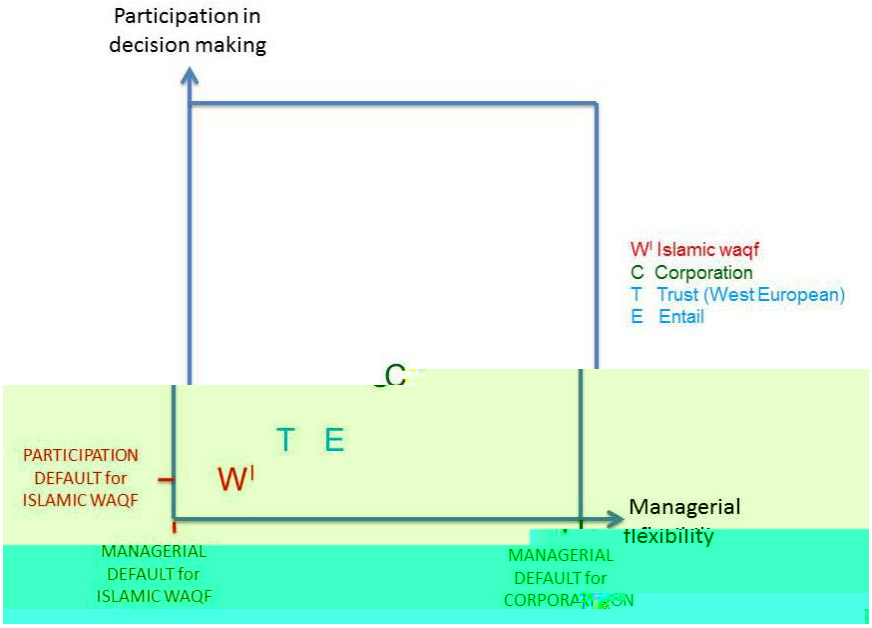

Figure 1. Managerial flexibility and participation in decision making: Islamic waqf vs. corporation, trust, and entail

A medieval European university established as a corporation had greater managerial flexibility than a waqf-supported madrasa.[59] The figure captures the relationship, in that C lies to the right of W^I. Some European corporations, including guilds, dispersed decision-making authority among a broad membership. Others assigned authority to the professionals delivering services. At a university, for instance, curricular decisions would be made by professors and professional administrators; students would not even be consulted. At a waqf-maintained school even fewer people would be involved: the caretaker and perhaps also a judge. The vertical coordinates of C and W^I capture the fact that more people would participate in decisions than in those of a madrasa.

The difference between the managerial default conditions would not necessarily have mattered at the outset. That is because the respective founders could have made decisions perfectly suitable to conditions of the time. The difference in question would have mattered as evolving conditions presented situations unimaginable earlier.[60] The corporation could have exercised options that might have been closed if foreseen. By contrast, the waqf could not even exercise options that the founder might have granted happily, had they been imaginable.

Whereas in the Middle East the waqf was the only organizational form available for the private provision of public goods, in Europe alternatives existed to the corporation. From the early Middle Ages onward, social services could be supplied through organizational forms similar to the waqf. Indeed, charitable services such as hospitals and soup kitchens were often established as a trust, known also as a foundation. Like a waqf, a trust was designed as an inflexible organization

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Hansmann 1981.

Makdisi 1981.

Zanden 2009, ch. 2; Moor 2008; and Greif 2006, chs. 3, 10 explain how this organizational adaptability contributed

that was expected to follow rules set at its establishment. The uses of its assets were pre-determined, usually to prevent their expropriation or diversion to unintended uses. For all their similarities to waqfs, European trusts were relatively more pliable. They were not as committed to upholding the wishes of the founder.[61] Provided cumbersome procedures were followed, their assets could be directed to new uses, even liquidated. In 1526, the officials of a Dutch hospital established as a trust travelled to Rome for permission .[62]
European trusts also made decisions more democratically. This is because they could be administered by boards of trustees rather than a single caretaker, as Islamic law required. In Figure 1, the location of T, our prototypical trust, reflects the observation that trusts were generally more flexible and more democratic than waqfs. T lies below C because ordinarily trust beneficiaries were excluded from governance.[63]

Yet another European vehicle for providing public goods was the entail. Like the Middle Eastern family waqf, the entail sheltered wealth for a family and its descendants. Creditors could not touch entailed assets; in principle, neither could the state. This made it particularly popular in times of weak property rights. An entail , as with that of a waqf, could direct expenditures from his grave. He could also bar his descendants from alienating specific assets. Once again, it operated under provisions that made it less rigid than the waqf. Depending on the region, the law limited therefore, his descendants acquired the freedom to use the assets as they pleased. Also, an entail could be canceled through an agreement of its living beneficiaries. Decision making within an entail was also more democratic than in a waqf.[64] More than one beneficiary was involved in its management. Thus, in Figure 1 E lies above W^I and to its right.

In sum, pre-modern Europe had a broader menu of organizational forms conducive to the private provision of public goods. Two of these, the trust and the entail, had waqf-like features, but they were relatively less rigid. In any case, there was a third option, which differed fundamentally from the waqf. Whereas the waqf bestowed governance privileges primarily on the founder, who exercised his powers through successive caretakers required to execute his stipulations, the corporation allowed self-governance by living beneficiaries. The critical implication is that Europe provided public goods through organizations that were more adaptable as well as more democratic. The difference in legal infrastructure contributed to the political divergence between the Middle East and western Europe. This theme will reappear as we continue to explore the political effects.

7. Obstacles to coalition formation

Waqfs need not have pursued political activities in mutual isolation. They could have supported one another and formed coalitions with an eye toward maximizing their joint influence. Just as industrial workers formed labor movements, so waqfs could have mobilized to advance their common interests, preserve their privileges, and address their shared grievances. And just as labor movements produced ideologies ostensibly favorable to workers, waqf-based coalitions might

Rijpma 2012 ch. 2, especially 54.

[62] Regional archive of Leiden 503, no. 212 (based on communication with Auke Rijpma). The hospital was itself established by a religious order.

[63] At least in the Middle Ages, no sharp distinction existed between the trust and the corporation. Because their characteristics could be combined, their practical differences were of degree rather than kind, and for hybrid organizations the terminology was somewhat arbitrary (Rijpma 2012, 30-33).

Zuijderduijn 2011.

have generated ideologies partial to their beneficiaries. In democracies, cities worked together to constrain monarchs, as did other corporate entities, such as universities and guilds.[65]

However, for all the wealth in their control, and all the status that their caretakers enjoyed, waqfs did not participate in politics. Their rigid managerial rules kept them from using resources for political purposes. In any case, they were designed as apolitical organizations. Thus, whereas an incorporated European church was free to participate in politics by its very nature, a waqf-based mosque was not. And whereas European cities could form coalitions against a royal tax, the waqfs within a city did not cooperate among themselves, to say nothing of forming a political bloc across cities. Indeed, there emerged no federation of waqfs representing scattered madrasas, or one representing mosques, or a confederation of diverse waqfs. Hence, in the pre-modern Middle East suppliers of social services, though well-funded, did not constrain sultans seriously. Unlike politically vocal universities, municipalities, and professional associations, they did not contribute to democratization.

The political potential of waqfs was limited by their inability to pool resources at will. If a founder had not explicitly allowed it to work with other organizations, technically achievable economies of scale or scope would remain unexploited. Hence, services that a single large waqf could deliver most efficiently road maintenance, piped water might be provided at high cost by multiple small waqfs. Founders were free to authorize income transfers to a large waqf. But such resource pooling required an unlikely coincidence of goals between the feeder waqf and the receiving waqf.[66]

One must distinguish between waqfs endowed by a group and mergers of waqfs established separately. Neither kind of pooling was common.[67] Mergers of established waqfs were discouraged because one could not ascertain that the founders would have agreed to the terms. Consider two schools nearby. Merging their waqfs could economize on administrative overhead. But would the founders have agreed to combine the classes in one building and rent the other for income? If the schools were kept separate and administrative overhead shared, what would happen if one needed more repairs? Would the founder of the better constructed school have endorsed the merger had he foreseen Because such questions were unanswerable, many potentially beneficial mergers were not even considered. Even if new technologies generated previously unimaginable economies of scale, pre-existing waqfs continued to operate independently.

The foregoing logic would not apply to waqfs established by a well-defined group. Six co-founders could all agree to allow future mergers under certain conditions. Nevertheless, group-established waqfs were rare because Islamic law required the founder to be an individual property owner. The rationale for this requirement probably lay in —the very consideration that excluded the corporation from Islamic law in the first place. In any event, restricting the number of founders set a pattern that lasted a millennium. Rifaah al-Tahtawi, an Egyptian thinker of the nineteenth century, wrote ssociations for joint philanthropy are few in [Egypt], in contrast to individual charitable donations and family endowments, which are[68]

[65] Berman 1983, ch. 12; Reynolds 1997, ch. 2, 9.

Çizakça 2000, 48. Vanity must also have limited resource pooling. A founder eager to be remembered as a ets from being swallowed up by a larger waqf.

[67] On resource pooling within families, see Doumani 1998, 38.

[68] As quoted by Cole 2003, 229.

The near-absence of resource pooling opportunities kept waqfs with common needs from campaigning jointly for external resources. Consider the caretaker of an educational waqf who are being pilfered. Although he could petition state officials for protection, he could not initiate an association to advocate better protection for all schools. Waqf regulations did not allow him to combine forces with the caretakers of other waqfs suffering from theft. Each caretaker faced the state alone.

Nothing in Islamic law keeps the individual beneficiaries of waqfs from working together to prevent theft. Parents from multiple neighborhoods could jointly appoint a delegation to ask the Sultan for better policing. However, this was unlikely in the absence of leadership from caretakers. The problems that bedevil collective action in large groups would generally block it here, too. Isolated constituencies do not easily gain consciousness of potential gains from cooperation. Nor do they develop a common political identity. Moreover, beneficiaries who somehow notice the advantages of a political movement will be unmotivated, as individuals, to incur the costs of launching one.[69] For all these reasons, waqf-related petitions to sultans rarely came from groups composed of people representing multiple waqfs, except for caretakers with an appointment at more than one waqf. Actions were initiated either by lone individuals or by groups concerned about a single waqf.[70]

Just as cooperation was lacking within sectors, it was absent for the waqfs of any given locality. Imagine a school, hospital, and a water fountain, all serving the same neighborhood through separate waqfs. The caretakers and beneficiaries of these waqfs have a common interest ould not combine their resources to campaign for better roads. They must convey their demands independently.

Like the caretaker , his political judgment was considered irrelevant to was not free to pursue opportunities for advancing his beneficiaries interests through cooperation with others. Waqf law thus treated 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.[71] were incomplete and his intentions unknown, the caretaker lacked certainty as to how the founder would have wanted him to act. Nevertheless, he was not supposed to substitute his own political judgment for that of the founder. Absent evidence to the contrary, he had to assume that the founder separated the w affairs from those of other entities.

8. Political consequences of inflexibility

Although broad political participation opens political possibilities, it can have drawbacks. Adding more participants to a decision can slow down the process and cause gridlock. Such costs can swamp the benefits of fine tuning services to beneficiary preferences. In principle, then, a single caretaker might provide a given waqf service more efficiently than a committee. That is the logic underlying the separation of beneficiaries and management in modern charitable corporations. Consider Doctors without Borders, which cares for the victims of disasters and wars. Its managerial team forms a tiny fraction of its benefactors and beneficiaries around the globe.

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[69] Olson 1971, chs. 1-3, 5.

[70] Such cases were rare in any case. Out of 1544 waqf-related cases in Kuran 2010-13, 26 involve charges of mismanagement on the part of the mutawalli. In most, the plaintiff is a subsequent mutawalli or a beneficiary named in the deed. In only one case (Istanbul 9 (1662), 274b/2) does the plaintiff consist of a group of beneficiaries.

[71] Agency problems receive attention in many contexts. Presuming the world is rife with opportunism and informational asymmetries, the relevant literature focuses on finding second-best contracts that incentivized the agent ves (Mirrlees 1976, 105-31; Platteau 2000, 10-17).

But there is a critical difference between Doctors without Borders and a hospital established as an Islamic waqf. The former can shift its operations easily between regions; it can also adapt its surgical teams and procedures to new technologies. Although its board of directors may have trouble agreeing on details, generally favored modifications 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 limits his discretion. For one thing, the founder will have situated the hospital, precluding its relocation. For another, the caretaker cannot adjust expenses just because technological developments make it expedient, even with support from the intended beneficiaries.

The economic consequences of the inflexibilities have been explored elsewhere.[72] To identify the political effects, it will help to distinguish between ex ante and ex post restrictions. Ex ante inflexibilities entail restrictions on the founding of waqfs. Although the only formal restriction was the mission Islamic law, in practice elites were expected to serve strategic constituencies. This policy is evident in the abundance of major endowed structures on key trade routes and in imperial capitals. No hard rule existed as to the discretion that caretakers could be given. The contingencies under which a caretaker might reallocate resources were not legally specified. They were restricted by custom, with zero discretion being the default.

To turn to ex post inflexibilities, they could involve the mission or the management. Mission inflexibilities concerned modifications to the intended purpose. Imagine a school established in 1400 with an endowment to support five teachers. Each will be responsible for a different subject, one being geography. The deed specifies the textbooks to be used. With the global explorations, the geography textbook becomes obsolete. Presumably the founder had aimed .

Had he come alive in the Age of Explorations, he might have favored a new geography text. But under Islamic law not even he was authorized to revoke or alter the deed, unless he had explicitly granted himself that right. Hence, a waqf-financed could become an anachronism. In the meantime, courts could block

than if, all else equal, the same services were obtainable only at market prices. That is why Middle Eastern rulers prodded their relatives and high officials to establish waqfs in strategic places.

affecting their services. As prospect theory holds, losses hurt more than identical gains feel good.[74] Hence, people object to the withdrawal of services that they might not have bothered to secure. Grabbing the assets of a functioning school would upset its beneficiaries, making them less loyal to the ruler. Conscious of the potential resistance, rulers would have avoided harming popular waqfs. options, waqf beneficiaries could thus have functioned as barriers to despotism. The assets supporting the waqfs in question would have been immune to confiscation not only because of their perceived sacredness but also because of their social benefits. By the same logic, when a waqf became dysfunctional, its political support would have fallen, thus weakening resistance to hostile state policies. Over the long run, then, waqf inflexibilities would have undermined whatever checks and balances they created through vested interests.

The inflexibilities in question would certainly have e perceived usefulness in the era of modern economic growth, which began around 1750. This is when technological and associated institutional innovations took a quantum leap, driving humanity to make adaptations that then fed on themselves.[75] As the new economic era unfolded, waqfs faced growing demands to reallocate their resources and modernize their services. Middle Easterners should have been drawn to other organizational forms for delivering public goods. Shortly 1t5 Tm[( )] TJET E[89g push.7 5 if,9(

A second form of shady adaptation exploited the authorization to conduct asset swaps beneficial to the waqf ( ). Even if the deed was silent on swaps, a judge could make exceptions in extenuating circumstances, on efficiency grounds alone.[78] Conditions arose that For example, relinquishing a farm

could facilitate monitoring the farm and collecting payments, thereby enhancing t Notwithstanding such obvious benefits, transactions involving waqf properties were subject to abuse. Many were undertaken to enrich officials at the Under one such variant, a waqf asset would be swapped with a less productive asset whose value was inflated on paper; the caretaker and the judge would share the disguised difference. Another variant involved -market prices. The -in-law at unusually low rates; with the connivance of judicial authorities, the caretaker had avoided seeking other bids.[79]

A third form of adaptation involved repairs to waqf properties. Because the requisite expenses could exceed the deed allowance, caretakers often had tenants perform maintenance themselves, for subsequent reimbursement. The eligible expenses were determined not by actual

process presented embezzlement opportunities to all parties, including the overseeing judge. In seventeenth century Istanbul, one out of every 20 waqf-related legal case involved a reimbursement for repairs.[80] Although the share of reimbursements that entered private pockets is unknown, the stigma attached to the process suggests that it must have been substantial.

Lengthening lease periods beyond the permissible was a fourth form of adaptation. To ensure that the caretaker maintained control over waqf properties, classical Islamic law capped the lease period at one year, except for land, for which the maximum was three years. This provision -term investments; it even discouraged maintenance. A common ruse to circumvent the restriction was to sign a long-term contract scheduled to lapse periodically for a few days and then get revalidated. Although the practice obeyed the letter of the law, everyone understood that it extended effective agreements beyond the legal cap.[81] The lengthening of actual leasing periods improved asset productivity by inducing investments. But it also led to the privatization of waqf assets, often without compensation for the waqf. Leases became inheritable. Also, caretakers effectively lost the ability to adjust the terms, even to reclaim waqf property. The descendants of a lessee would assert outright ownership by virtue of long hereditary tenure.[82] If in the meantime waqf documents disappeared, privatization was inevitable ch often they did not.

The privatizations in question were not necessarily harmful socially. Insofar as they freed misallocated assets, the benefits to individuals would have swamped the losses of waqfs. The privatizations would also have increased the resources available for private political pursuits. But

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[78] For examples of property sales and exchanges, see Hoexter 1998, ch. 5; Jennings 1990, 279-80, 286; Marcus 1989, 311. All involved judicial approval. See also, in Kuran 2010-13: Galata 42 (1617) 76b/1; Istanbul 9 (1661) 32b/1, 37a/1, 54a/1, 114b/1, 147a/2; Istanbul 22 (1695) A18b/1; Istanbul 23 (1696-97) 69b/1, EK-13b/1.

[79] Behar 2003, 74-75.

Kuran 2010-13, vol. 5, 26.

[81] Gerber 1988, 170-78; Gerber 1994, 108- -18.

[82] Gibb and Bowen 1957, pt. 2, 177; Behrens-Abouseif 2002, 67; Behar 2003, 78-83. The extent of the privatization due to illegitimate leasing is a matter of controversy (Gerber 1988, 174). Measurement is complicated because the properties in question were often reconverted into waqf property.

the latter effect must have been trivial, because before the twentieth century the lack of incorporation opportunities hindered sustained collective action by non-state actors.

The political consequences of corruption would have been weightier. Corruption would have y. The collective reputations of judges and caretakers would have suffered, reducing their trustworthiness. In turn, these effects Most important, the methods used to adapt waqfs to changing circumstances, reallocate waqf resources, and privatize waqf assets would have contributed to a culture of corruption. Indeed, buying off judges, exploiting ambiguities in wording, and making authorities look the other way became not only common but acceptable all across the Middle East. Since even respected people engaged in such practices, they acquired practical legitimacy even as they remained deplorable in principle.

Tolerated law breaking is of course a universal practice. In the United States jaywalking is illegal, yet it is common, and people do not necessarily frown at it. However, in the pre-modern Middle East circumvention of the law took place in far more contexts than it does in advanced economies; and a greater share of resources was involved. Remember that waqfs controlled abundant real estate and that they fulfilled functions that west Europeans generally met through more flexible organizational forms. As the Middle East fell behind the West in the course of economic modernization, the divergence was reflected in the extent of corruption. The Transparency International finding that in the Middle East business is considered relatively corrupt is among the recent manifestations of the culture of corruption just identified.

Waqf services were not necessarily inefficient at their founding. They lost efficiency through time, which created incentives to circumvent their deeds. The illegitimate modifications included ones that would have been considered legitimate had the services been delivered through a corporation rather than a waqf. The point is illustrated in Figure 2, where W^I and C represent the prototypical organizations shown earlier in Figure 1. The dotted rectangles delineate the spaces within which they *actually* operate; these rectangles subsume all the actions that they are authorized to take. Suppose that W^I was founded to provide health services. Centuries later, because of medical advances, it becomes inefficient to spend resources as the founder stipulated. It now makes sense to use different cures within different structures. Without adaptations, there will be deadweight losses. Avoiding them requires the caretaker to exercise more discretion than the founder authorized. These adaptations will appear as corruption. Yet the same flexibility would have been fully legitimate for corporation C. The waqf might appear as more corrupt than the corporation for making adjustments that the latter could make without raising eyebrows. An unintended adjustments considered illegitimate.

q m m m q q m m b b b q

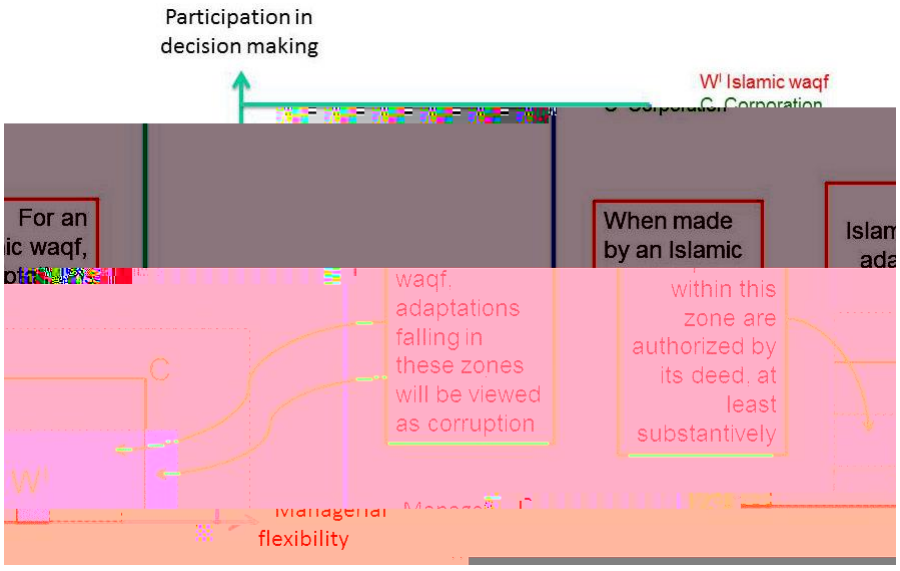

Figure 2. Illegitimate adaptations by a waqf.

Adaptations that are illegitimate for W^I but not C

Adaptations that are illegitimate for both W^I and C

In the historical literature, evasions of waqf rules are often treated as substitutes for legally granted flexibility.[83] Although they certainly did make waqfs less rigid than if the was interpreted strictly, 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. In societies accustomed to obeying the law, new laws are obeyed quickly, simply because lawfulness comes naturally. By contrast, in those accustomed to circumventing rules, new laws are not taken seriously. People socialized to consider rule breaking essential to survival expect others to maintain their behaviors. They also avoid inconveniencing themselves. Free riding remains common and tolerated, hindering widely desired cooperation.

We come at last to whether the mechanisms through which the Islamic waqf undermined the rule of law and limited political participation illuminate present political patterns. The answer is not obvious, because role in daily life has dwindled.

10. The twilight of the Islamic waqf

In the nineteenth century, as the emerging global industrial economy accentuated the inefficiencies of the Islamic waqf, Egyptian and Ottoman reformers started to build new state institutions to provide social services long supplied privately, in a decentralized manner. The required resources came largely from the nationalization of waqfs on a large scale. In waves, nationalizations continued in the twentieth century, throughout the region.

[83] Gerber 1999, especially 85-86, 102-3.

The formation of new waqfs had already fallen precipitously. One reason lies in the strengthening of property rights in response to pressures from European powers with local business interests and from the predominantly non-Muslim beneficiaries of expanding trade with the West.[84] As arbitrary expropriations fell, so did the demand for wealth shelters.[85] Another reason for the abatement of waqf formation is that new means emerged for securing wealth, including ones conducive to accumulation. The shares of publicly traded companies and interest-bearing bank accounts began to absorb investments that had flowed into family waqfs.[86]

The appeal of waqfs suffered also from the emergence of new instruments for funding charity. In the mid-nineteenth century it became possible to establish, under special laws, corporations to provide social services such as education, water supply, and healthcare. Thus, municipalities took on the functions of urban waqfs; and semi-official agencies, such as the Red Crescent, assumed responsibility for emergency aid and poor relief. Monarchs themselves started forming social and charitable organizations outside the purview of waqf law. By the early twentieth century, legal transplants made it possible to form non-profit corporations through simple procedures. As individuals and groups, private parties took to establishing perpetual NGOs to deliver social services more flexibly than through waqfs.[87]

Nationalization drives were launched on the pretext that waqfs were hopelessly corrupted and that public bureaucracies could meet more reliably. To this end, states established waqf agencies to take over the duties of
established in Istanbul in 1826, and in Cairo shortly thereafter.[88] These new agencies were supposed to keep separate accounts for the thousands of waqfs under their control. But growing shares of the assets became part of a fungible resource base.[89] In effect, huge mergers occurred through means antithetical to the spirit of the Islamic waqf. The nationalization of waqf assets was accompanied by a transfer of its functions to service providers modeled after western archetypes, such as municipalities. Meanwhile in Iran, where waqf nationalization followed a distinct trajectory, the end result was the same. By the twentieth century the state had taken over key social functions of the waqf, and many waqf assets had passed to the state or individuals.[90]

Centralization was fueled by a growing percepti
for providing urban amenities were outdated. Reformers commonly included the Islamic waqf among the institutions responsible for economic backwardness. Ziya Gökalp (1876-1924), the chief ideologist of Turkish nationalism, expressed this view t
is a stanza that identifies inflexibility as the key flaw:

Kuran 2011, chs. 10-12.

[85] In the Ottoman Empire, the practice of arbitrary expropriation was formally abolished in 1838 (Findley 1980, 145-46). Thereafter property rights strengthened steadily. In Egypt, the process was relatively more rapid (Baer 1962, 1-70; 1969, 62-74).

Kuran 2011, 161-64, 251-53.

Focusing on 1876-1914, Özbek 2002 documents the institutional transformation of charity in Turkey. On Egypt, see Ener 2003, 1-25; Baron 2003; Sullivan 1994; Abdelrahman 2004, chs. 4-6.

[88] 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 efforts to drive Islam out of public life. The fungibility of waqf assets advanced further in 2012 with the transfer to the Treasury of the (*Radikal*, 15 October 2012, http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1104047&CategoryID=80).

[89] On the Ottoman transformation, see Öztürk 1995, 63-107, 379-471; on the Egyptian reforms, including sweeping legal changes of the 1950s through which the state acquired the right to modify the expenditures of surviving waqfs, see Baer 1969, 79-92.

Çizakça 2000, 141-57.

q m m m q q m m b b b q

Control the reins of the living.
Why a nation fond of running
Has been ordered to stand still.[91]

organize conferences, issue publications, give awards, and make grants, all to influence political views outcomes. It can pursue such endeavors in cooperation with other entities, including other waqfs.[95]

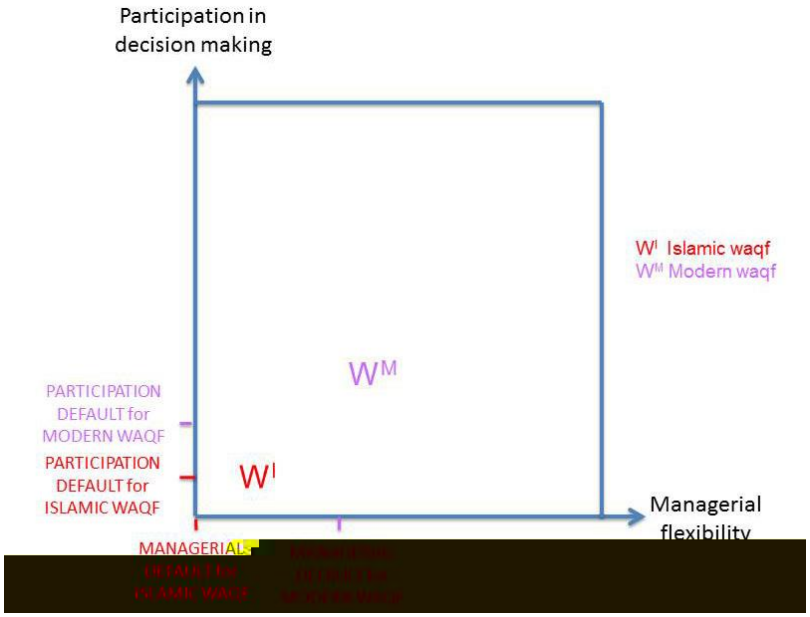

Figure 3. Managerial flexibility and participation in decision making: Islamic waqf vs. modern waqf.

Just as the caretaker of an Islamic waqf had to follow the stipulations, so a must abide by directives of their founders. But there is no longer a presumption that the waqf deed constitutes a complete blueprint, or that the board need only follow fixed orders. is authorized to change services, procedures, and goals without outside interference. It 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. The board may judge that requires the trimming of its payroll in order to finance repairs or the replacement of a farm left by the founder with equity in a manufacturing company. Another innovation is that the board is expected to play an integral role in determining are served. To preserve an obsolete hospital preferences would be considered irresponsible. All these observations hold irrespective of the political and religious preferences of the founders. They apply to essentially secular modern waqfs such as activities include Turkish film festivals for the Physically Handicapped (FEV).[96] The observations apply in Istanbul, which promotes Islamic education.[97]

Even in Egypt, where successive autocratic regimes from 1952 to 2011 made a point of nationalizing nonreligious waqfs and placing religious waqfs under tight state supervision, management is much more flexible than in premodern times. Whether inherited from before the nineteenth century or established in the twenty-first century, waqf is administered in

[95] For surveys of various reforms, see Çizakça 2000, ch. 4, and Pioppi 2007.

https://www.facebook.com: AKSAV; http://www.fev.org.tr/.

http://fgv.org.tr/

subordination to the wishes of bureaucrats. For that reason, surviving Egyptian waqfs have metamorphosed into organizations distinct from their former selves. No longer worthy of the overnment waqfs. Because their loss of autonomy is well understood, no more than ten new Egyptian waqfs are formed each year, mostly to support mosques and burial services.

If Egypt lacks modern waqfs of the Turkish variety, it is not for lack of interest in forming them. Due to tight supervision, Egyptians who want to supply nongovernmental social services in areas such as healthcare or education generally opt to establish foundations ( ), which are charitable corporations governed under an NGO law adopted in 2002.[98] Although foundations are also subject to political pressures, at least they are able to use resources more efficiently, move resources around, and raise funds continuously from multiple sources, including both natural and legal persons. Only a single modern non-
name has been founded in Egypt. This is the Waqfeyat Al-Maadi Community Foundation, which funds local development in poor Cairo neighborhoods and lobbies for better public education.[99] It was established in 2007 with the purpose of reviving a tradition of social solidarity (*tak ful*) through waqfs, under modernized rules. T
its name.[100]
use the term waqf informally, even as they operate under modern legislation. Examples include seven Cairo foundations of Mohamed Al Fangary, most of which provide scholarships and medical care to students at religious schools.[101]

In countries where the modern waqf exists, it carries much less importance in daily life than the Islamic waqf once did. No longer are social services provided primarily by waqfs. As in other regions, in the Middle East most are supplied largely by corporations that have no connection, to the waqf. The consumers of these services help to determine their characteristics and longevity. With services supplied through private corporations, market choices favor certain suppliers over others. For instance, parents choose among private schools depending on the education they expect their children to receive. In the case of public corporations, at least in places with some form of local democracy, consumers can punish poor performance at the ballot box. For example, they can vote a mediocre mayor out of office. The availability of alternatives to the modern waqf motivates its officers to keep it flexible. It makes them conscious of the consumer needs, if only to stay relevant.

To be sure, there are reasons why consumers may fail to punish poorly performing waqf officials. Free riding may leave them insufficiently informed. Vested interests may render officials unresponsive to the expressed wishes of beneficiaries. In autocratic regimes a more basic factor is that the threat of persecution may silence potential critics. Nevertheless, there is a fundamental difference in accountability between the caretakers of Islamic waqfs and the officials of modern service providers, including modern waqfs. In the modern Middle East suppliers are essentially expected to serve the end consumer. In the premodern Middle East, the end consumer was expected to be a passive recipient of goods provided in perpetuity by elites.

12. Persistence of historical political patterns

The profound differences between the now largely extinct Islamic waqf and the modern waqf beg the question of whether the former matters to current political trends. Could it be that the Islamic waqf, however relevant up to the nineteenth century, no longer affects Middle Eastern politics? pre-modern political patterns got reproduced in its modern organizations. Traits such as rampant corruption and nepotism, low political participation, and limited organizational autonomy have endured even as the nation-states acquired the trappings of modern political life, such as political parties, elections, and constitutions embodying basic human rights.

This persistence is obvious from the prevalence in the descriptive literature on modern Middle Eastern civil society of observations that mirror the historical accounts in sections 4-9 above. It will suffice to give few quotes from a 2002 article by Asef Bayat on activism in the region at the start of the twenty-first century.[102]

perceive their beneficiaries more as recipients of assistance than as participants in development.

[103] What makes these impressions all the more significant is that article makes no reference to waqfs of either the Islamic or the modern variety.[104]

Starting with corruption, we now turn to the mechanisms by which historical patterns got reproduced in the modern era. In the course of the nationalizations that transferred the functions of Islamic waqfs to state agencies, bribing patterns associated with waqf management reemerged in transactions between state officials and the recipients of their services. One reason is that in an effort to forestall resistance modernizing statesmen provided jobs in nascent state agencies to the constituencies dependent on rents from Islamic waqfs. Thus, some of the officials assumed the responsibilities of delivering and monitoring social services through new agencies were already accustomed to supplementing their incomes through illicit transactions. They included the caretakers of dismantled Islamic waqfs and also the judges who had been monitoring them. In their new positions, these veterans of the old order found it natural to get compensated for signing permits and fulfilling orders.

The bribes in question did not necessarily draw objections from the payees. For one thing, paying a bribe often obviated the need to pay mandated fees.[105] For another, the practice was considered understandable, if not also necessary, in view of the low salaries of government clerks. Just as a judge did not automatically get criticized for accepting compensation from waqf officials, so a state official was not necessarily considered abusive for expecting his services to be remunerated. To be sure, in the mid-nineteenth century Middle Easterners widely held corruption responsible for various social ills, as they did in prior centuries, and as they do now. Because of the vast inequalities that large-scale corruption creates and sustains, resentment toward corrupt high officials has been a persistent theme. Bribe requests in excess of norms tend to be viewed as theft as opposed to fair compensation for a special service.[106]

Bayat 2002 is a standard reference in writings focused on Arab civil society. As of December 10, 2013, its citation counts were 101 in Google Scholar and 23 in Web of Knowledge.

Bayat 2002, 17-18.

Neither waqf nor , its Arabic plural, appears in the text.

Shleifer and Vishny 1998, ch. 5.

Mumcu 1985 surveys views toward bribing in the Ottoman Empire. On the prevalence of and attidues toward bribing in the modern Arab world, see Cunningham and Sarayrah 1993, Tlaiss and Kauser 2011.

We saw earlier that rampant nepotism is a related pattern to which the waqf contributed. Caretakers tended to appoint relatives as their replacements. In the course of the nineteenth-century reforms employees who had been socialized to favor relatives and friends carried the pattern over to the organizations that supplanted Islamic waqfs. Today, nepotism remains both common and tolerated in professional life.[107] People in positions of power are expected to reward their relatives, provided the favors remain within bounds. Hosni Mubarak was widely resented for grooming his do not necessarily draw objections, whether in Egypt or elsewhere in the region.

The process that has kept civil society weak has also kept kinship ties strong. Obstacles to the development of autonomous organizations providing protection from the state induce people to seek security from kin. They keep alive primordial attachments based on ties of blood, race, language, region, or religion, and even strengthen them in times of social unrest.[108] They induce individuals to keep their wealth within the family by doing business through family-owned enterprises. Exchanges remain largely personal. Cousin marriages provide another vehicle for preserving family ties in the absence of reliable private organizations that transcend kinship. All such responses to weak civil society tend to fuel mistrust toward people outside of primordial network. In other words, they suppress generalized trust—the readiness to cooperate and engage in civic endeavors with fellow citizens.[109] Indicators of civil society have been changing in Middle East, which is consistent with the transformation of greater civic life. But the transformation still has a long way to go. The Middle East has the highest consanguineous marriage rates in the world. The rate is 20.5 percent in Turkey, 24.5 percent in Iran, and 35.0 percent in the Arab world, as compared with under 11 percent for the world as a whole.[110] It also has conspicuously low generalized trust. On a 0-200 scale, where 100 indicates that half of all people trust others, the generalized trust score for the Middle East is 37.3, as against 67.5 for OECD.[111]

The state agencies that assumed the functions of Islamic waqfs did not operate democratically. Organized hierarchically, they tended to execute orders issued from the top. Nor were these agencies responsive to the citizenry. Although the reformist leaders responsible for their creation understood that keeping the population content served political stability, they sought above all to overcome the institutional weaknesses responsible for Western domination.[112] Their defensive plans did not require the democratic governance of state agencies. In any case, the absence of a legacy of mass participation in the provision of social services tempered expectations. Low political participation, a key consequence of the Islamic waqf, thus got transplanted to its successor organizations.

Not all functions of the Islamic waqfs passed to state agencies. Under new laws of association that Middle Eastern countries began to institute before World War I, modern non-governmental organizations took on expanding roles. These organizations have included charitable associations, trade unions, chambers of commerce, and professional associations, generally

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Sidani and Thornberry 2013.

[108] Fukuyama 1995, chs. 7-12.

Stolle 2002, Fukuyama 1995, Putnam 1993.

[110] (http://ccg.murdoch.edu.au/consang/www.consang.net/global_prevalence/tables.html). See also Tadmouri et al. 2009 and Meriwether 1999, 132-40.

Turkey is 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).

Lewis 2001, chs. 3-4; Marsot 1984, chs. 7-8.

organized as some form of corporation.[113] Exercising autonomy to one degree or another, and empowered to change with the times, they began to instill in individuals the skills of self-governance that Islamic waqfs had failed to impart. The skills include strategic planning, public relations, consensus building, coalition formation, and collective negotiation. As such, the modern non-governmental organizations have contributed, from a very low base, to building civil society. The learning in question can be expected to overcome the Islamic waqf s legacies, but gradually. After all, in western Europe the same learning process has been under way for more than a millennium.

In any case, the earliest Middle Eastern charitable organizations established outside the Islamic waqf sector -governmental directed without government involvement. During the first decade of the Republic of Turkey (1923-33), the top three charitable organizations as measured by mass participation, fundraising, or number of , and the Turkish Aviation Society. Though formally autonomous, they were all officially protected and supported. Their founders and patrons included top statesmen. In terms of an acronym popular today, each was a GONGO—a *government-organized* non-governmental organization.[114] Working closely with the government, these organizations pursued national goals. They did not feel obligated to restrain the state in any way. Lack of accountability to the citizenry is another feature that these organizations shared. As such, they resembled Islamic waqfs more than the type of organization associated with civil society.

In Egypt, various NGOs were formed in the first quarter of the twentieth century in reaction to foreign cultural influences. Eschewing a political identity, many of them subordinated themselves to the government, going so far as to invite members of the royal family to serve as honorary presidents. Over subsequent decades, governments pursued policies of encouraging NGOs to form, provided they remained apolitical and allowed them to control the selection of leaders, members, and activities. Under the regime of Gamal Abdel-Nasser (1956-70), Egyptian NGOs were transformed into appendages of the state bureaucracy. No fewer than 60,000 NGO employees received their salary from a government ministry. A law of 1964 explicitly authorized the state to close down any NGO that refused to cooperate with the regime, and an even harsher NGO law was adopted in 1999.[115]

In the early twenty-first century states of the region continue to control NGOs. Of the organizations established privately without state guidance or support, those that might have developed political clout have been susceptible to state capture. Consider Egypt, where, by 2006 there existed about 31,000 officially registered non-governmental associations, along with a few dozens of advocacy organizations disguised as law offices to avoid state interference, and hundreds of unregistered private organizations, many of them with Islamist agendas.[116] Some of these assorted private organizations had been infiltrated by government agents; others were being persecuted. Under the circumstances, they were ineffective at exposing government corruption and mobilizing public outrage at the perpetrators. The vast majority of non-governmental organizations had agreed, if only implicitly, to superficially did they monitor and restrain the state.

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[113] Hatemî 1979, 58-318; Yener 1998, 9-49; El Daly 2007, 119. Çapa 2009, 52-59; 2011, 58-67; Baytal 2012, 6-69. Abdelrahman 2004, 120-50.

[116] Abdou, Atia, Hussein, Kharas, and Maaty 2011, 3. In 1991, the number of registered non-governmental associations stood at 12,832 (Al-Sayyid 1993, 231).

q m m m q q m m b b b q

	Participation in civic activities	Philanthropy	Policy dialogue	Political participation
Arab League	0.36	0.30	0.31	0.39
Iran	—	0.28	0.22	0.28
Turkey	0.55	0.20	0.67	0.39
OECD (except Turkey)	0.55	0.45	0.76	0.67

Table 4. Four indices of civic life, 2013: The Middle East and OECD

Source: CIVICUS Enabling Environment Index 2013 (http://civicus.org/eei). The Arab League and OECD indices are population-weighted averages Participation in civic activities" provides the percentage of people who say they "have done" or "might do" any of three suggested activities: signing petitions, joining boycotts, attending peaceful demonstrations. "Philanthropy" captures the propensity of people to get involved in "formal charitable activities." Finally, "policy dialogue" assesses the openness of institutional processes to civil society organization inputs. It is derived from variables such as the extent to which "there a network of cooperative associations or interest groups to mediate between society and the political system," and the degree to which "the political leadership enables the participation of civil society in the political process."

pre-modern institutional history. During the period when organized philanthropy was limited to Islamic waqfs, giving was necessarily individual-to-individual for the vast majority of the population. Corruption associated with waqfs, combined with the delayed transition to impersonal exchange, suppressed generalized trust. Under the circumstances, the individual skills needed for a vigorous civil society failed to develop.

The apparent persistence of the behavioral patterns characteristic of social service provision through Islamic waqfs will not surprise students of multiple games. They find that even when individuals are free to apply distinct strategies to each of many games that they play, they often behave identically. For an example, consider a public goods game paired with, or preceded by, a competitive auction game. Cooperation is less common in the public goods game in either paired scenario than when the game is played alone. Evidently strategies used in one game bleed into those used in others. A basic reason for the observed behavioral spillovers is cognitive limitations. These render people susceptible to framing and learning transfer effects.[122] The patterns found in laboratory experiments shed light on why, as Islamic waqfs were superseded by government agencies and modern private organizations, their employees, monitors, and beneficiaries transferred their habits and customs to the new settings. People accustomed to consuming social services passively will be inclined to do the same even under new providers who are not legally bound by a deed. Likewise, officials habituated to treating waqf endowments as sources of personal enrichment will be inclined to engage in corrupt practices as government bureaucrats.

Bednar, Chen, Liu, and Page 2012, Cason and Gangadharan 2013.

13. The Long Shadow of the Middle East's Civic Past

There is no shortage of theories about why the Middle East is the least democratized region. With a few notable exceptions, most invoke proximate factors. Common theories point the finger at coalitions among ruling families in control of critical resources, military officers who share in the spoils, and businesses sheltered from competition. Well-organized vested interests do indeed suppress basic freedoms. They also rig elections to protect their privileges. But none of these theories explains, at least not adequately, why the Middl oppressed and disadvantaged masses have endured dictatorship for so long. After all, every region of the world, including those now home to highly rated democracies, has featured coalitions designed to monopolize political power.[123] Why did enforceable and sustainable rules to prevent extreme concentrations of power not take hold in the Middle East?

Reflecting on this question leads inexorably to links between failures and the ineffectiveness of its civil society. What, then, does civil society lack in the Middle East that is present in advanced democracies? It is not that non-governmental associations and foundations are missing. In the past few decades the region has boasted tens of thousands of non-governmental organizations pursuing various causes. Nor is the problem that the prevailing legal systems keep private organizations too small or too rigid. For at least a century, the organizational forms that private groups use in advanced democracies have essentially been available in the

Thus, the proximate factors that have made authoritarianism the Middle Eastern political norm rest on historical patterns that that took root in the . In the modern era oppressive coalitions have been able to take shape and establish entrenched autocracies These capabilities depend on the organizational skills, civic concerns, and expressive capabilities that individuals acquire as part of their socialization. They depend also on precedents regarding civic engagement. In both these respects, the Middle East has faced deep-seated handicaps that have constrained, and still constrain, its political development. Patterns of political passivity were carried from pre-modern to modern organizations by people socialized in communities with political habits formed in an earlier age.

The vicious circle that long kept the Middle East politically authoritarian has mutated, then, but not disappeared. Before the modern reforms that enabled the formation of flexible non-governmental organizations, the lack of waqf autonomy kept civil society weak; in turn, the weakness of civil society hindered the generation of alternatives to founder-controlled, rigid organizations. Thus, politically effective private organizations could not be founded; absolutist rulers faced no challenges from below; ideologies supportive of structural reforms failed to emerge; and political checks and balances did not arise. Since the emergence of new organizational alternatives outside of government, these constraints have all weakened, but generally not enough to support transitions to self-sustaining democracies. The requisite organizational capabilities take time to develop, as do the social norms that support them.

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