

Istanbul Network for Liberty Lecture March 17, 2014

Benedikt Koehler: *Private Sector Provision of Welfare in Early Islam: the Waqf.*

Abstract:

Waqfs have been a distinctive feature of welfare provision in Islamic societies for many centuries. There is a common perception that *waqfs* were not conceived during the lifetime of Muhammad. A recent study of Islamic institutional history, for example, asserted *waqfs* were an “institutional choice, which appears to have been made about a century after Muhammad.”¹ From this perception derives an inference that *waqfs*, therefore, are not germane to Islamic conceptions of civil institutions. The following remarks take issue with this perception and inference.

I argue *waqfs* originated in provisions made by Muhammad, and that proceeding from these provisions there emerged in early Islam an innovative legal conception of property rights, namely fiduciary ownership. Placing the origins of *waqfs* in Muhammad’s lifetime, by implication, supports the assertion that early Islam was a catalyst for the self-sustaining evolution of formative institutions of civil society, in sectors such as education and health. A corollary of the assertion that *waqfs* originate in Muhammad’s policy measures, is that the view civil society in Islam was stagnant from the outset is mistaken.

My remarks will also show *waqfs* were forerunners of trusts in Common Law and point out the historical juncture from which onward jurisprudential thinking in Islam and Christendom diverged.

Contents:

- Welfare provision through *zakat* and *waqf*
- The difference in the way *zakat* and *waqf* are funded
- Legal framework of a *waqf*
- Hadiths describing *waqfs* in Muhammad’s lifetime
 - Muhammad and Hassan
 - The legacy of Muqairiq
 - The implication of the conquest of Khaybar
- Settlement of Muhammad’s estate; the dispute between Fatima and Abu Bakr
- Fiduciary ownership in Islamic law
 - Umar’s approach to state lands (*sawafi*)
 - Osman’s provision of public infrastructure
- Private endowments, for diverse purposes
 - Education (*madrasas*)
 - Other
- Religious motivation for endowing *waqfs*
- Crossover of *waqfs* into Europe
 - Emergence of trusts in Common Law
 - Foundation of Merton College, Oxford University
 - Forerunners of the corporation in Europe (the *universitas*)

¹ Kuran: *The Long Divergence*, 110

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