

The Financing of Madrasas and English Universities

Education, Endowments, and Law

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The Fatimid Shia dynasty founded the first Islamic college, Al-Azhar, in Cairo in 975 AD. About two centuries later, the first college of the University of Oxford was founded in Oxfordshire, England. Although the Islamic college came first, the structure of the English university allowed for evolution of the curriculum while the Islamic curriculum remained largely unchanged. Since education is intricately linked with the ebb and flow of an economy, scholars postulate that this difference contributed to the decline of the Middle Eastern economy as the European economy flourished during medieval times. Thus, the question remains, why did the English curriculum evolve while the Islamic curriculum did not? Key differences lie in the financial support of the institutions and the legal systems that defined the terms of financial support. Additionally, while the incentives to found and support institutions of higher learning in the Middle East and medieval England were similar outwardly, the religious and secular requirements of both financial and legal systems may have created ulterior motives that were instrumental in the adaptation of the two societies' different curriculums.

Islamic Madrasas and Al-Azhar

Madrasa¹ is Arabic for an Islamic school or college. In the Encyclopedia of Islam, Pederson suggests that the madrasa emerged in three stages; first came teaching circles (*hatgas*) in mosques, then “mosque-inn colleges” that combined a place of worship with a place of learning and residence, and finally the madrasa developed as “...an institution based on a single deed of endowment,” (Amir Arjomand 263). The single deed of endowment Amir Arjomand references is the waqf, “An unincorporated trust established under Islamic law by a living man or woman for the provision of a

¹ Also spelled madrasah, madrassa, or medrese due to transliteration.

designated social service in perpetuity,” which was the primary means of financial support for madrasas (SEE **FINANCIAL SUPPORT**) (Kuran 842). The significant difference between a mosque and a madrasa is the madrasa’s conception as an organized, formal, residential, educational institution (Kadi and Billeh 316).

Al-Azhar is the world’s second oldest continuously operating university (Azhar, Al-). After Al-Jawhar al-Siqilli conquered Egypt for the Fatimid caliph in 969, he declared Cairo the new capital, and began the construction of al-Azhar in 970 (Azhar, Al-). Al-Azhar became the best known madrasa in the Muslim world, due in part to Cairo's location; many Muslims traveled through on a pilgrimage to Mecca or traded via the Nile River (Azhar, Al-).

Originally at Al-Azhar, religious scholars would read and comment on a text to a small circle of students, who would then memorize the recitation and add their own commentary (Gesink 326-327). Each student chose which scholars to follow, and each scholar decided whether to issue an *ijaza*, or an authorization for the student to recite the text to other students, for his students (326). Winter explains, “The institution itself did not have any admission requirements, prescribed courses of study, examinations, and the like before the late nineteenth century... [Students] obtained the *ijaza*, a license to teach a certain text studied under their shaykh, from him, not from al-Azhar as an institution,” (119). This method of personal certification differed significantly from the European university system.

English Universities and Oxford

European universities began as educational guilds established to further common interests; Tierney says, “The word *universitas* meant basically ‘all’ in a collective sense

and could be used for any group of people cooperating for a common end,” (404). The first European universities were in Bologna, Paris, and Oxford, and although establishment dates are approximate, they emerged respectively between the late twelfth and mid-thirteenth centuries (404). In contrast to Al-Azhar, students who wished to study at Oxford had to demonstrate an ability to read and write Latin, and once admitted, begin studying a curriculum including rhetoric, grammar, and logic (408). Additionally, instead of accumulating individual certifications from scholars, after a number of professors in a variety of subjects confirmed that the student had “heard and read the required works,” the University of Oxford granted the student a degree (408).

Although the European colleges had an organized certification system, the evolution from scholastic guilds did not naturally include a residential component, as did madrasas. Byrd expounds, “At first, medieval universities were more groups of scholars than places. The institution with the most sought after professors prospered and the city with the greatest attraction to the students secured the university,” (2). The establishment of residential colleges augmented the permanence of the universities. The three colleges of Oxford- University College, Balliol College, and Merton College- were established with bequests between 1249 and 1266 to support poor students with lodging, meals, and sometimes an allowance (Makdisi The Rise of Colleges 227-228; Tierney and Painter 409). The system of trusts used to fund the colleges was similar to the waqfs funding Al-Azhar, but the rigidity of the law of waqf was in sharp contrast to the adaptability of the law of the trust.

Financial Support of Al-Azhar and Oxford

At the inception of both Al-Azhar and Oxford, financial support was entirely private. Al-Azhar, like every madrasa, was founded with the endowment of a charitable trust, or waqf (Azhar, Al-). Although the University of Oxford began as a community of scholars and students, Walter de Merton wrote the 1264 Statutes of the House of the Scholars of Merton as an endowment for his college following the same guidelines as a waqf.

The Islamic law of waqf has three basic principles that defined the charitable trust: it must be irrevocable, perpetual, and inalienable (Gaudiosi 1234). In addition, the ultimate purpose of the waqf must be pleasing to God to qualify as charitable (1233). Makdisi explains, “The fact that property was classified as waqf for the advancement of education, which in classical Islam was synonymous with the advancement of religion, was proof enough that its purpose was charitable,” (Makdisi The Rise of Colleges 38). Since the property’s charitable role was automatically accepted if serving an educational purpose, each of the three remaining principles merits further analysis regarding the process of curriculum change.

Gaudiosi notes striking similarities between the waqf and de Merton’s endowment. She quotes a scholar:

Under both concepts, property is reserved, and its usufruct appropriated, for the benefit of specific individuals, or for a general charitable purpose; the corpus becomes inalienable; estates for life in favor of successive beneficiaries can be created... without regard to the law of inheritance or the rights of the heirs; and continuity is secured by the successive appointment of trustees or mutawallis. (1246)

Further, the participants in the waqf and the trust were very similar; the waqf requires the founder, or *waqif*, the trustee, or *mutawalli*, the judge, or *kadi*, and the beneficiaries, while the English trust requires the settler, the trustee, and the beneficiaries (1237, 1246).

In de Merton's Statutes of 1264, the three principles of the waqf were prominent, but the revised Statutes of 1274 incorporated the college and provided additional flexibility that shaped the evolution of Oxford's curriculum. However, the three main principles play an important role in explaining both the founding of Merton College and why the curriculum of madrasas, and specifically Al-Azhar, stagnated.

Irrevocable

Once a waqif relinquished ownership of the waqf property, the mission he declared for the property's use was permanently settled. The waqif had to establish the conditions irrevocably, but he could provide a wide variety of detailed terms that dictated the operation of the trust. Gaudiosi writes,

These terms could include, but were not limited to, stipulations governing the appointment of the mutawalli, the selection of beneficiaries, and the distribution of waqf income. The founder could appoint himself trustee of the waqf, or reserve to himself the power to appoint and/or dismiss the mutawalli. (1236-1237)

In addition to regulating the appointment of powerful positions, the waqif could define conditions regarding the day-to-day functioning of the waqf, which was particularly common for madrasas. Leiser expounds, "The regulations of endowments were frequently very detailed—describing the salaries for teachers, stipends for students, expenses for maintenance, paper and ink, bread and water, and even sleeping mats," (19). Finally, the waqif could also restrict who could teach and what subjects could be taught (19). The opportunity to write such stipulations was powerful motivation for many waqifs to endow madrasas, but the rigid nature and religious conditions of the waqf's mission prevented much formal change to the curriculum, regardless of the waqif or mutawalli's wishes.

The principle of irrevocability was also relevant for the beneficiaries of the waqf, since their stipends and the conditions of their education were permanently established. Kadi and Billeh note, "...the students received more than a free education: they were also given stipends from the madrasa's endowment. Because this money was provided for the sake of their education, attendance of classes and Qur'an recitation sessions were required of all students," (316-317). Although the students at Al-Azhar certainly benefited from the clear and permanent conditions of their stipends, the limited curriculum was not necessarily in the best interest of intellectually curious students.

The Statutes of Merton do not specify the principle of irrevocability, but de Merton did obtain an *ordinatio* ("prescription, ordaining (of what should be done)," (Gaudiosi 1249, footnote 157) in 1262 that allowed him to "...vest certain properties for the support of university students," while maintaining the right to modify the terms of his endowment (1249). This *ordinatio*, similar to a waqf endowing a madrasa, included conditions for the appointment of the warden (trustee of the House of the Scholars of Merton) and student beneficiaries, as well as specifications denoting the students' stipends and appropriate behaviors (1252-1253). The condition of irrevocability was beneficial for both de Merton and the beneficiaries of the trust; de Merton's land could not be confiscated after he established the trust, and the students had set allowances and conditions for studying at his college (1255),

Perpetual

While the corpus of the waqf itself did not have to be permanent, the law dictates that any earnings of the waqf would interminably contribute to the charitable purpose specified by the waqif (Kuran 856). Gaudiosi extrapolates on the significance of this

clause, “As the only form of perpetuity in Islam... founders used the law of waqf for a variety of undeclared, nonreligious purposes. These included avoidance of confiscation of property by rulers, tax avoidance, control over an heir’s excesses, and currying favor with the religious leadership and, through them, with the masses,” (1237). Therefore, an unintended consequence of the perpetuity clause was less virtuous incentives for wealthy individuals to endow educational waqfs.

Often, a powerful waqif would endow a madrasa with a set of specifications to prevent scholars from spreading potentially inflammatory ideas, and thus furthering the propagation of the waqif’s ideologies (Kuran 854). Amir Arjomand elaborates on the restrictions established by one founder:

Rational theology and especially history, of which Rashid al-Din himself was a learned practitioner, were given prominence in the curricula of the madrasas under his control... More strikingly, he forbade the study of philosophy in his madrasa and even barred the admission of those whom the previous study of philosophy had made impertinent. (273)

The various roles of the waqf participants created checks and balances that limited the power of the mutawalli to effect any real change, since the kadi had ultimate jurisdiction over the waqf, even if the waqif authorized the mutawalli to use his discretion to address certain areas.

The mutawalli’s role as an agent of the waqif limited his power to change anything in the waqf, since even if the waqif authorized areas to be addressed with the mutawalli’s discretion, the kadi still had ultimate jurisdiction over the waqf.

At Al-Azhar, the principle of perpetuity had both positive and negative implications; Dodge explicates, “One reason [to organized advanced study at Al-Azhar] was to teach the legal authorities how to introduce the Fatimid system of jurisprudence,

to take the place of the Sunnite codes. The other reason was to train propaganda agents to win proselytes for the Fatimid cause,” (13). Although this permanent curriculum would not advance education in the long-term, the clause was positive for the beneficiaries in some regards. Dodge further explains, “These endowments, awaqf, were in the form of building and shops in Old Cairo and other quarters of the city. As the investments were in perpetuity, the properties could not be sold or transferred and the buildings on them could not be torn down,” (21). The structural permanence Al-Azhar established with a residential community, as well as the defined stipends, allowed any Muslim to receive a higher education, regardless of their background or economic status (Leiser 22). These key components as defined in the waqf ensured the madrasa’s role as a ladder of social mobility (Amir Arjomand 288).

In the 1264 Statutes, de Merton specified “This House was to be established ‘for the support in perpetuity’ of students at the University of Oxford,” (Gaudiosi 1251). The permanence of the trust was beneficial for both de Merton and his intended beneficiaries; de Merton guaranteed education for his kin as long as the trust had adequate funds (1251). This perpetuity would have caused the same stagnation in the curriculum that occurred at Al-Azhar, but the incorporation of the College of Merton in 1274 empowered the trustee and board to make pragmatic decisions (SEE **LEGAL SYSTEMS**) (1231).

Inalienable

The tenet of inalienability required that the property endowed by a waqif could not be sold, mortgaged, or leased (Cattan 208-209). This principle was not particularly significant for Al-Azhar because as the institution became more famous, “...high officials vied with one another in improving the living quarters for the students, beautifying the

building, enlarging the collection of manuscripts and strengthening the courses,” (Dodge 21). As the value of the properties increased with additional gifts and endowments, sale or mortgage became less appealing to the mutawalli overseeing the waqf.

In contrast, the absolute requirement of waqf was especially important for medieval universities, since universities did not have any buildings until the endowment of the colleges (Georgedes 89). According to Georgedes, “Once buildings made the university more of a permanent entity, so to speak, it was much more difficult for the masters to strike and move to another town to set up shop,” (90). If de Merton’s endowment of the House of Scholars in 1264 was not inalienable, the trustees could have sold or mortgaged the property for another use, and the purpose of providing education for his kin would not have been fulfilled.

Legal Systems Framing Financial Support

The key difference between the financial support of Al-Azhar and Oxford is in the laws governing the charitable trusts; while Islamic law could not recognize the concept of a corporation, and the law of waqf required perpetuity, the incorporation of Merton College in 1274 allowed the structure and curriculum of Oxford to evolve (Gaudiosi 1231). The university as a corporation lacked the permanence afforded by the waqf, but in combination with the trusts endowed to the colleges, Oxford could provide stable financial support for students without limiting the curriculum (Huff 179). The privileges of self-governance and legal autonomy that accompanied Merton College’s incorporation in 1274 signified a divergence in the legal systems as Oxford began to evolve while the three principles of waqf continued to hinder Al-Azhar (179).

The Law of Waqf

The endowment of Al-Azhar was legally bound as a waqf, but Islamic law did not regulate de Merton's statutes since he voluntarily included the principles of waqf.

Fundamentally, as Schoenblum says, "The waqf derives from religious authority and furthers what are perceived to be religious, pious, and charitable goals," (1198). The nature of the religious law, and the supposed "closing of the gates of *ijtihad*"² formally prevented Islamic scholars from exploring any new philosophies or novel ideas (*Ijtihad*).

In addition, according to the Islamic legal framework, the purpose of education was "to encourage the study of Islamic law and to preserve Islamic tradition," so the study of any subjects considered hostile to the principles of Islam was formally forbidden and would void the legality of the waqf (Huff 151). Makdisi clarifies that the structure of the waqf did prevent the formal study of philosophy and science, but did not succeed in preventing the private study of "foreign sciences". He claims, "...there was nothing to stop the subsidized student from studying the foreign sciences unaided, or learning in secret from masters teaching in the privacy of their homes, or in the waqf institutions, outside of the regular curriculum," (Makdisi The Rise of Colleges 78). However, as Kuran explains, the conservatism that prevented open debate and study of these subjects also prompted madrasas to maintain continuity in the curriculum instead of adopting changes that would increase their efficacy as centers of learning (866).

Huff describes one of the most substantial obstacles facing madrasas and scholars attempting to modernize the curriculum. He writes:

² *Ijtihad* is the Arabic word referring to "independent reasoning, a scholar's careful and complete use of mental abilities to find a solution to a legal problem," (Ijtihad, (Oxford, UK: Oxford University Press). By the early tenth century, adhering to accepted legal precedents was more significant than practicing *ijtihad* (Ijtihad).

...Anyone who gained a reputation for excellence in the Greek sciences became an easy target of the traditionalists who could simply issue a fatwa- a legal ruling- condemning the person and his studies... The charge that a scholar in one of the madrasas was teaching the ancient sciences would be taken very seriously as a religious and legal matter, since it directly violated the founding assumptions of the madrasa under the law of waqf. (154)

The judiciary branch of the state had the power of supervision over all awaqf, so if the officials wanted to encourage modernization, it would have been possible to overlook some of these charges; however, the same officials benefited from madrasas that propagated their ideologies and therefore saw no need for change (Amir Arjomand 281). Additionally, two major legal restrictions prevented the recognition of a juristic person or the development of a corporation; this anti-corporatism prevented madrasas and Al-Azhar from becoming self-governing institutions while the incorporation of the trust and scholastic guild in England provided for changing circumstances (Kuran 875)

The Law of the English Trust

Although the 1264 Statutes of the College of Merton followed the three main principles of waqf, the endowment had the legal protection of a trust; concurrently, the University of Oxford originated as a scholastic guild, which gave the institution recognition as a legal entity (Georges 78). Makdisi describes the fusion of these institutions: “The Christian West preserved and perpetuated the scholastic structure for posterity by adopting the Islamic scholastic guild and the Islamic charitable trust, by incorporating them both, and by fusing the college and the university into one institution,” (Makdisi “Religion and Culture in Classical Islam and the Christian West” 9). In essence, English law allowed Oxford to take the best features of both guilds and

trusts, resulting in the stability and corporate status that evaded Muslim institutions until the 19th century (Kuran 843).

While the law of waqf was explicit and rigid, Schoenblum describes the ability of the vague trust law to adapt to changing circumstances in order to best serve both the individual and the broader society (1201). Furthermore, the legal status obtained by scholastic guilds, and eventually incorporated universities, allowed the members to determine their own standards, laws, and penalties, as well as seek privileges from both secular and religious authorities to obtain relative independence from their oversight (Georges 78). The independence afforded to the incorporated university through these legal mechanisms, in both the secular and sacred realms, gave the scholars the freedom to adapt the curriculum and their studies to include any philosophies or subjects.

In contrast to his description of the obstacles facing Islamic scholars, Huff explains that European scholars were encouraged to integrate any studies into their curriculum. He asserts:

...There is every indication that in the twelfth and thirteenth centuries Europeans enthusiastically embraced the fundamental works on science that came to them from Greek and Arabic sources. Most important, however, they *institutionalized* the study of these materials by making them the central core of the university curriculum. (183)

Not only did the scholars proliferate the study of natural sciences, they also analyzed their own legal system using logic learned from other societies in order to adapt and better the laws that governed them. “This resulted in the elimination of contradictions among legal sources—that is, the Bible, church fathers, and Roman law—and the establishment of new legal standards,” (156). Without corporate status, the scholars of Oxford and European universities could not have chosen which fields of study merited

analysis, and in combination with the flexibility of the law of the trust, European universities were able to put Aristotelian philosophies at the forefront of their curriculum, while madrasas did not embrace these ideas until the twentieth century (185).

Conclusions and Implications

The rigid and pious law of waqf obliged scholars to focus their formal education exclusively on law and religion to fulfill the given requirement of bettering the community in the eyes of Allah. Financially, the three main principles of the waqf were advantageous to both the waqif and the beneficiaries at the time of the endowment of Al-Azhar, but the conditions did not best serve the societal changes that warranted an evolving curriculum. Alternately, the flexibility of trust law in combination with the legal status of a corporation enabled the beneficiaries and trustees of Oxford to evaluate the most efficient and favorable use of the funds, based on contemporary philosophies and needs. The vague legal definition of a trust allowed for pragmatic evolution of the institution's program, whereas Islamic scholars were persecuted for exploring studies that lay outside the stipulations of their institution's waqf.

Finally, the physical structure of the madrasa, a residential building with tuition and living expenses funded by the waqf, allowed a student to receive ijaza from several scholars at a micro level, but the community of education and knowledge at European universities fostered an openness and creativity that encouraged the integration of ideas at a macro level. Clearly, a flexible curriculum and corporate status was economically beneficial for Europe, while the Islamic legal system defining the financial support of madrasas prevented the evolution of Islamic studies and contributed to the languishing economy of the Middle East.

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