

is interesting. However, without assessing these interpretations, he briefly refers to Talat Asad's framework on this issue: "Islamism can be argued as part of Islamic discursive tradition." I assume that this is not far from Dr. Ahmed's own interpretation. Not knowing the inner debates among scholars of Late Ottoman history, I do not understand how he brought the issue of Islamism before getting into the specific topic of the political roles of the Ulema. I would like to know the implications of addressing these interpretations on Islamism in this section of the paper, Dr. Ahmed's own interpretation, and the relationship of Islamism with the political roles of the Ulema in the late Ottoman period.

Next is the notion of *Din-u-Devlet*. It seems that this is a central notion for understanding the nature of the political role of the Ottoman Ulema. I would like Dr. Ahmed to explain its precise meaning and the background against which it arose. I also would like to know whether this notion had been self-evident and unquestionable in the minds of the Ottoman Ulema, regardless of their hierarchical positions and geographical locations. If the answer is yes, how were they educated to acquire it? If the answer is no, how did their perceptions of the notion differ among themselves?

### Session 3: Justice and Society

#### Changes of the Judicial System and the Law in the Modern Egypt: Through the Codification Process of the Waqf Law

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In the late 19th century Egypt, enactment of law and reform of the judicial system were enforced under the growing European political and financial pressure. Civil laws that were based on the Code of Napoléon, commercial laws and the others had been established. The judicial system was divided into five organizations: the Mixed Courts which tried civil cases involving foreign nationals protected by the Capitulations, the National Courts which tried civil and criminal cases involving Egyptian nationals, the Consular Courts which tried criminal cases involving foreign nationals, the Sharī'a Courts or the Islamic Courts which heard cases involving marriage, divorce, child custody, waqf, and other matters most apt to affect the Egyptian Muslims, and the Millet Courts which heard cases in matters of personal status involving Jews, Orthodox Christians, Armenians living in Egypt.

According to the Treaty of Montreux (1937) that would provide for the abolition of the Capitulations in Egypt, foreigners were made subject to Egyptian law in all matters. Explicit provision was made, however, for the maintenance of the Mixed Courts until 1949, and during that period (twelve years) their organization and jurisdiction was to be governed by an Egyptian law annexed to the treaty. In addition, the jurisdiction of the Consular Courts was abolished, except that in certain cases the signatory powers could, if they so desired, maintain existing Consular Courts to hear matters of personal status only. That is to say, jurisdiction over civil cases and criminal cases had been transferred to the Egyptian Civil Courts. These were reconstituted as the National Courts under a new law on judicial organization.

As for the Sharī'a Courts, being based on the Islamic law which had not been codified, statutes containing rules of marriage, divorce, and some related matters were passed by the parliament that was established under the Constitution in 1923 and their organization and rules of procedure were reformed. It was not until 1943, however, that any comprehensive legislation was passed governing entire segments of the law of personal status, such as inheritance, waqf and so on.

The legal system was changed drastically in the Modern Egypt, as stated above. I am especially interested in waqf issues during the structural change because waqf is one of the most important institutions in Muslim society: it is

mixture of traditional religious spirit and economic activities. In this presentation, I will show an aspect of the change through the reform of the Sharī'a Courts and the codification process of the Waqf Law.

Let us begin with a brief review of the change of the Sharī'a Courts. The competence of the Sharī'a Courts was all-inclusive in theory but customary law had survived and at times the Sharī'a Courts' decision had been superseded by the edicts and administrative orders of the rulers in practice. In Egypt, the Mixed Courts (1873) and the National Courts (1883) were instituted. Some competence of the Sharī'a Courts was consequently absorbed to these Courts. Their competence was limited to matters of personal status including succession, waqf and gifts etc. by the Code of Procedure for the Sharī'a Courts (1897). In the same time the Sharī'a Courts were reorganized: the Courts of Summary Justice, the Courts of First Instance and the Supreme Courts. Trial by multiple judges and the right to appeal were introduced for the first time. In addition to these reforms, rules of procedure such as confession, testimony, truthfulness of witnesses, admissibility of evidence, and periods of prescription etc. had been modernized until 1930.

As pointed out previously, waqf had been an essential system in Islamic world and flourished for more than thousand years. In spite of this, public criticism of the waqf's ill-effects on economy and society had increased through modernization because the properties had been immobilized and these had been managed inefficiently. Many Islamic countries had tried to reform its system since 19th century voluntarily in a sense and family waqfs were abolished and charitable waqfs were nationalized as a result. In Egypt it was felt by many that the need for reform the rules of waqf was much pressing and some people pointed that it was necessary to examine the rules and compile them properly. As a result, a committee in the judicial authority began to consider the codification of the Waqf law but the challenge was frustrated because its chairman died in 1905. Although it had stagnated to attempt to codify the Waqf law since then, it began to activate in the parliament in late 1920s.

The Committee of Waqf in the Chamber of Deputies in 1926, in presenting its report on the budget of the Ministry of Awqāf, made some pungent criticisms of the waqf system and remarked: "These and other considerations make it incumbent on parliament and those who watch over the country's economic and social affairs to consider whether the system ought, or ought not, to continue." From that date the controversy was bitterly waged. Efforts to end it began in the Ministry of Justice in 1932: but in 1936 the Committee of Waqf in the Chamber recommenced the introduction of legislation to forbid family waqfs altogether and to limit the scope of public waqfs, while in 1937 it expressed the view that any attempt to reform the system was useless—it must go. Meanwhile, however, the Committee of Personal Status had been set up, in December 1936, to draw up draft legislation covering all matters of personal status like waqf, wills and inheritance on the basis of the two books of Qadrī Pasha but with freedom to select from the views of any reputable Muslim jurist, those principles best suited to the public interests in the circumstances of modern life. The initial draft of the Waqf Law was completed by March 1942: but number of amendments were introduced by the various Parliamentary Committees through which it had to pass and by two Chambers themselves. So it was not until 1946 that it became law.

It took a long time to legislate the Waqf Law because the law was an important part of the Land Law and such had a direct effect upon the economy and so, there were intense conflicts of interest among people. Nonetheless its challenge had been overcome. It seems that the democratic system, established on the basis of the Constitution, led to the success. Unfortunately, not more than six years later this law was superseded by much more radical reforms of the waqf system. These were the direct result of the establishment of the military régime whose agrarian reform was one of the main pillars of socio-economic policy. An aspect of attempts to integrate, however, the tradition (Islam and custom) with modernism from the West for the public interests in Egypt could be indicated by studying changes of the

judicial system and the law through the legislative process of the Waqf Law.



Al-Azhar Mosque in Cairo, Egypt.

Most of mosques have been managed through the use of waqf system. ©hakuna\_jina

### Middle Class: The Weak Socio-Political Actor in Post-Revolution Iran

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As revolutions and liberal or democratic movements are socio-political transitions, the role of social groups and classes must not be underestimated. Obviously, these movements are basically caused by discontent with the status quo in society, and hence, social groups take serious steps to change the situation. However, the result of the movements and revolutions is not always desirable. During the past century, Iran experienced great democratic movements such as the Constitutional Revolution (1905–1911), Oil Nationalization Movement (1951), and the Iranian Revolution of 1979. Needless to say that in all these movements, social groups and prominent political actors such as the intellectuals, ulama, middle class and lower middle class played significant roles. These movements, even though not completely successful in the pursuit of their ideals, definitely brought about structural changes along with them. For instance, one of the greatest achievements of the Constitutional Revolution was bringing law into Iran for the first time.

It goes without saying that in the post-revolution era, the progress of democratization in Iran has faced some hindrances such as power centralization, based on the so-called *velayat-e faqih* (Guardianship of the Islamic Jurist), lack of growth of political parties, and lack of social groups' active participation, particularly middle class and lower middle class. Since one of the most essential elements in democratization is the rise of middle class, their withdrawal as prominent political actors in the development of democracy in Iran has had a tremendous impact on slowing down the democratization. Among social groups, the significance of middle class is remarkable, for it is the only class that