

the reception of officials and travellers, and halls for holding local celebrations and religious festivals.

As a thematic focus, this book concentrates on “non-mosque” public foundations in Yemen and most of the examples are related to the public water supply. Water supply serves as a typical example of the non-mosque related services that the institution of *waqf* was a vehicle for. Water supply is also a type of service, or public infrastructure central to both Yemeni and western development discourses and thus it is a shared, common focus that transcends the secular/religious divide or the divide between Islamic studies, history, and development studies. This book provides a legally oriented ethnographic description of a truly local mode of management of public resources—a local mode that should not be overlooked in the ongoing quest to find locally accepted legal and political vehicles for managing public, common good.

1 *Waqf* as Public Infrastructure and Welfare in Muslim Societies

In the study of Yemen, anthropologists and social historians have been reluctant to look into how local economic and legal institutions were integrated into and related to broader and regional structures of Islamic law. The importance of *waqf* or public foundations in local economic and legal life in Yemen is one such field that has been relatively under-represented, with a few exceptions;⁴ this is largely because *waqf* as a phenomenon is situated between the usual foci of historical-ethnographic and Islamic disciplines. I discuss this further in chapter 2.

The institution of foundations (*waqf*; *awqāf*) in Islamic law has been central to everyday life in the Middle East for centuries, especially in the cities. It is easy to forget how important infrastructure is for a society: What would one do without public wells, schools, scholarships, and stipends for the poor, etc.? And what does it mean that these services are public? What role does “the public” have in taking care of the weak and those in need? What types of discourses of “public affairs” existed? Was there a notion of “welfare society”? Did this overlap with religious values only? Premodern concepts from the Middle East seem to centre around different combinations of customary, local and tribal law, and of course, Islamic law (*sharīʿa*). Islamic law was undoubtedly the most “universal” and formal of those mentioned. It was also more situated in writing and written texts than customary or local law.

⁴ An example of such an exception is the work of Brinkley Messick, who I refer to in several places in this book.

1.1 *A Non-State Yet Public Legal Institution*

In premodern Islamic law there were mainly two categories for public management and the redistribution of resources: public or charitable foundations (*awqāf ʿamma*, *khayriyya*) and the common property of Muslims (*bayt al-māl*). The latter, *bayt al-māl*, was usually managed by the ruler (in Zaydī Yemen; the imam) and held as state property. One could say that state property was a type of public sphere in which there was a good deal of money in circulation, but most of this served to support the state itself. Clearly, *zakāt* and the *bayt al-māl* were important political tools for the state rulers.

The public foundations, in contrast to the public treasury (*bayt al-māl*), were only partly controlled by the state. The state often ascribed to itself the responsibility of inspectorship (*naẓāra*) and legal guardianship (*wilāya*) over *waqf* that had no private guardian (*mutawallī*). However, according to most interpretations of Islamic law, foundations could be made and managed completely without interference from the state. From this perspective, public foundations are “non-governmental.” At the same time, Islamic law provides the state, or the supreme Islamic legitimate authority, with the right to interfere in the management of the public foundations if they are misused or in need of protection from usurpers. Thus *waqf* is not entirely non-governmental.

Waqf could be made for both private (*waqf ahli*, *dhurri*) and public (*ʿamm*, *khayri*) purposes; this book focuses mainly on the latter. It must be noted, however, that the distinction between the two categories is often deliberately blurred, as I demonstrate in detail here.

From a legal perspective, *waqf* consists of a transfer of a property or a right from a private owner to a beneficiary, such that God theoretically becomes the new owner and the beneficiary has the right to its use or benefit (usufruct, *manfaʿa*). In the case of a public building, a school, a water stand or a house for the poor, the right of use would be to gain access to these services and physical structures. Those holding the right of use were called “beneficiaries” (*al-mawqūf alayhim*, *maṣrif*) and in a public *waqf* this right was open to anyone and not restricted, sold or inherited. In a private *waqf* these rights could be transferred to new generations according to specific rules, but not through inheritance proper or sale.⁵ This type of *waqf* is usually called “family *waqf*” (*waqf dhurri*, —*ahli*, or—*khāṣṣ*).

From a religious and theological perspective, *waqf* was seen as an excellent form of charity, a so-called “continuous charity” (*sadaqa jāriya*): The one who gives something as a foundation (the founder) has performed an act that

⁵ There are complicated jurisprudential rules related to the prohibition of inheriting or selling a *waqf*; to a great extent these can be circumvented, as I demonstrate in chapters 6 and 7.