# Conditional Land Law, Property Rights, and “Sultanism:” Premodern English and Ottoman Land Regimes

## Introduction

All cases examined so far take one fundamental element for granted: the availability of the idea of representation. What would these cases have looked like absent this structuring ideational template? I argue that this is not a counterfactual; the Ottoman Empire provides an actual case that allows us to examine this question. This appears paradoxical, as the Ottoman Empire is typically considered as the archetypal contrast to the West. Historians have challenged this polarity and in this chapter I extend this revision by showing the many commonalities between the foundation of institutional patterns in the West (the land regime) and property rights in the Ottoman Empire. This permits a closer identification of the dimensions along which divergence can be observed.

A common thread of the previous chapters is that secure or absolute property rights are not what distinguished constitutional and economically efficient outcomes in the West; rather, conditional rights did, predicated on strong state capacity. But even conditional rights were not what distinguished the West from other regions; they are found, for instance, in the Ottoman Empire. We therefore cannot look to them for an explanation of regional institutional variation—this is the thesis of this chapter, where I show the remarkable similarities between English and Ottoman property rights. All land was held of the ruler in both cases, yet greatly different institutional outcomes ensued. In the next chapter I will show that the variation originated in the greater power of the state in the West to impose, throughout the polity, collective responsibility on communities politically organized on the representative principle, on the basis of such conditional rights to land.

The Ottoman Empire is the classic exemplar of a lack property rights in the social scientific literature, accounting for its “sultanic” regime, the extreme opposite of constitutional polities.[[1]](#footnote-1) According to sociologist Benedict Anderson, for instance, the “economic bedrock of the Osmanli despotism was the virtually complete absence of private property in land.”[[2]](#footnote-2) The Empire is thus most typically compared with European absolutist regimes, principally France.[[3]](#footnote-3) A more refined form of the thesis is that property rights were not absent but weak in the Ottoman case.[[4]](#footnote-4) Yet, as we will see, Ottoman property rights were neither lacking nor formally weak. The assessment that they were derives simply from the fact that the sultan is claimed to have “owned” all the land.[[5]](#footnote-5)

Proprietary rights over land and offices are assumed to undermine the character of the political regime. Sultanism is an extreme form of patrimonialism, in which the authority of the ruler is a personal right that may be exploited like any economic asset. It entails control over land that is considered personal patrimony, an inherited possession as of right. Offices are ascribed to subordinates on this basis. “*Sultanism* tend[s] to arise whenever traditional domination develops an administration and a military force which are purely instruments of the master... [and] operates primarily on the basis of discretion...,” thus leading to “fiscal arbitrariness.”[[6]](#footnote-6) In such regimes, “all individuals, groups and institutions are permanently subject to the unpredictable and despotic intervention of the sultan, and thus all pluralism is precarious.” With no rule of law and political power identified with the ruler’s person, no pluralism in politics can exist—pluralism exists only at the level of the economy and society, even though those areas are also subject to the despotic will of the ruler. The lack of rule of law and of political pluralism, further, entail low institutionalization.[[7]](#footnote-7)

But ruler ownership of land was the premise of the English constitutional system as well, as we have seen.[[8]](#footnote-8) Important differences exist, and I examine them below, but the distinctive land regime that prevailed in England after the Norman Conquest in 1066 was predicated on royal control of land distributed conditionally to subjects, who became tenants of the crown.[[9]](#footnote-9) English land-law was the “by-product of the tremendous authority of royal majesty” over the magnates, which Norman kings inherited from their Anglo-Saxon predecessors.”[[10]](#footnote-10) The great land survey of 1086, Domesday Book, may have been inspired from practices in Norman Sicily, themselves based on Muslim precedent.[[11]](#footnote-11) In some key ways, aspects of this regime continued to undergird English political and economic development, at least until the reforms of 1925.[[12]](#footnote-12)

Between the eleventh century and the late seventeenth, English land law was essentially feudal law with the crown at the apex of the feudal pyramid. As we have seen, English feudalism, as a system of land tenure, generated the Common Law.[[13]](#footnote-13) The Common Law consisted of the “real actions” on property granted conditionally by the crown; it was “common” because it could only be tried in royal courts.[[14]](#footnote-14) \*\*The concept of ownership, *dominium* and *proprietas*, may not have been entirely absent; indeed, for the twelfth and thirteenth century legal theorists Glanville and Bracton a tenant was understood to have both—but he did so “*because* he and his land owe services to the king or to some other lord.”[[15]](#footnote-15)

Land law was conditional (or feudal) therefore during the period in which England developed both the parliamentary and the economic institutions that underlie its political structure and enabled the Agricultural and Industrial Revolution. In ways established in this chapter, it was thus similar with the property rights regime in place in the Ottoman Empire, which had quite a different path in development.

This similarity thus illuminates broader issues. The old Aristotelian notion of property shaping political regimes is not uncontroversial; but it is worth asking why a tenurial land regime is associated with constitutional governance in England, whereas very similar property rights in the Ottoman case are associated with a regime typically pitted as the antithesis of constitutionalism. Moving beyond politics, are property rights the key to the divergent economic trajectory of the two cases, as neo-institutionalist economics would submit?[[16]](#footnote-16)

Conventional accounts suggest so, but the “sultanic” nature of the Ottoman regime is now widely jettisoned as a stereotype.[[17]](#footnote-17) The Ottoman Empire is increasingly placed, by a rich historiographical tradition, in the broader context of early modern European polities. Its government emerges as pluralist and responsive to social concerns, both by showing how theory and practice diverged and by reconsidering the theoretical foundations of the sultanate.[[18]](#footnote-18) Recently, similarities with England in its seventeenth century absolutist phase, have contextualized Ottoman government further.[[19]](#footnote-19) Despite the more nuanced views emerging from the historical record, however, the fact remains that the Ottoman Empire did not develop either representative institutions indigenously, nor a liberal, “open” economy.[[20]](#footnote-20) The analysis in this chapter eliminates property rights as a sufficient cause of this deviation.

In what follows, I first show how both the English and the Ottoman land laws involved similar conditional property rights to land, so this factor cannot be assumed to be sufficient to explain political outcomes. Then I argue that a type of property right in the Ottoman Empire typically seen as antithetical to western types, the *waqf*, is a close counterpart to the English uses: both were forms of tax evasion. Nor can we claim that in England property rights were more protected: in fact, I show how expropriation was far more extensive and more arbitrary than in the Ottoman Empire. The key to such divergence lay again in the superior capacity of the English crown to impose its will, not its weakness.

## Ottoman and English Property Rights: Conditionality and Power

### The Ottoman Land Laws

Three features of the Ottoman land regime have encouraged the assumption that property rights were either “absent” or weak. First, two competing legal traditions existed in Ottoman law, with differing approaches to property rights; yet the tradition with greater protections, Hanafi law, has been relatively ignored. Second, conclusions about private property are often derived by discussing a military office, the *timar*. As a result, the bureaucratic character of Ottoman office is misconceived as an “inadequate” property right; yet it was this character that ensured it did not become venal private property, an outcome that European governments on the Continent had to achieve as a result of reform or revolution. Finally, the tradition that prevailed, the customary Ottoman one, ascribed final rights to the state; but this was in a manner that resembled English Common Law, a similarity that has been missed.

#### Hanafi vs. Ottoman Land Law

Land law in the Ottoman Empire was a mixture of two traditions that provided both protection of private property rights and an affirmation of state powers respectively: Hanafi law and the customary land law adopted by the Ottomans. Hanafi is one of the four orthodox schools of law in Muslim jurisprudence that was dominant in the regions of the Ottoman Empire. Within this legal system, land could be private property. Hanafi law also had extensive stipulations on inheritance, dictating that land had to be divided at the death of the owner.[[21]](#footnote-21) As was common in many non-western regimes, the Hanafi legal tradition institutionalized partible inheritance. It was, in other words, more ‘egalitarian,’ and predicated on principles that Western legal traditions only established after conflict.

In Ottoman customary law, by contrast, most rural land was *de jure* state land, known as *miri*, which meant land “relating to the ruler.”[[22]](#footnote-22) Private holdings were mostly confined to plots of land within towns.[[23]](#footnote-23) Otherwise, private holdings typically required a special grant from the sultan. For instance, individuals could found land *vakıfs* (or *waqfs*), namely trusts over land and its usufruct that allowed the naming of heirs in perpetuity.[[24]](#footnote-24) Special grants from the sultan, in this case revocable, were also required for the *timars*. However, as grants and licenses were required for such holdings and expropriation of land did occur, the perception of “weakness” of property rights in the Ottoman case has become fixed.[[25]](#footnote-25) I will therefore discuss separately each of these topics (*timars*, *vakıfs*, and expropriations) to demonstrate the systematic similarities in the structure of property rights with England.

#### Feudalism, Fiefs, and *Timars*.

Ottoman property rights and their assumed “weakness” appear in an entirely different light when the similarities with English tenurial rights are explored. *Timars* were the smallest category of fiefs awarded to members of the Ottoman military class, the *sipahis*.[[26]](#footnote-26) They were conditional in the way that English military fiefs were, so on that dimension Ottoman fiefs differed little from Western practice. Where they differed, ironically, is in the stronger bureaucratic character of the Ottoman institution: service was rewarded with revenue from land, not with jurisdictional rights and obligations of possession over land, as occurred in England.

Jurisdiction over people and land as the reward for service was, instead, the essence of patrimonialism, the feature that Western states had to progressively eliminate over time.[[27]](#footnote-27) The personal element was very important in the English case and was sealed with the act of homage, which was absent in the Ottoman Empire.[[28]](#footnote-28) Yet the lack of property rights in *timars* has enabled the conclusion of a lack or weakness of property rights as a whole.

The question of property rights is, rather, more appropriately assessed at the level of the peasantry, which I pursue in the next section. There I show marginally greater freedoms in the Ottoman case. Here, I explore further the nature of fiefs in the two cases and show how rights were conditional on relations to the ruler in both.

Conditional relations of tenure structured all social relations in England, from the king at the top of the feudal hierarchy (the “tenants-in-chief”) to the peasantry—all ultimately holding land from the crown. These relations were contractual, as services and other obligations were due from the tenant in exchange for protection by the lord. This system is typically described as feudalism, which remains a contested term among medieval historians.[[29]](#footnote-29) However, applied to a system of military tenures for England, the term is not controversial for the period between the eleventh and the early fifteenth centuries. Feudal tenure constitutes in England the main structure of land law; the usual historical caveats thus do not affect the current comparison.

English feudalism has important parallels and differenceswith the Ottoman system of *timars*. The similarities demonstrate the common basis of legality in the two systems; the differences, however, demonstrate the far more bureaucratic, as opposed to patrimonial, character of the Ottoman one.

The Ottoman system, like the English one, was not arbitrary, but rule-governed: even when the sultan had the right to revoke a particular *timar*, he was bound by custom and imperial law to provide its holder with a replacement.[[30]](#footnote-30) The *timar* could be revoked if its holder violated regulations of the law and custom codes (the *kanunnames*) setting the obligations of the peasants. The Ottoman practice of *musadara*, the confiscation of land when officials, particularly slaves, fell from grace or after death when they were of the first rank,[[31]](#footnote-31) differs not much in substance from the English royal prerogative of escheats. Land was also forfeited in England when a tenant “commits theft, is a traitor to his lord, flees from him in an encounter with the enemy or on the battlefield, or is convicted of having committed felony.”[[32]](#footnote-32)

However, unlike English fiefs, *timars* only allocated revenue from land, out of which the *timar*-holder had to support himself and perform his military obligations to the Sultan.[[33]](#footnote-33) In addition, the *timar*-holder was only entrusted with parts of provincial administration and revenue collection.[[34]](#footnote-34) As such, the office did not convey ownership or possession rights over the attached land. In England, by contrast, the system ascribed rights of lordship to the major landholders.[[35]](#footnote-35) Such rights entailed jurisdiction over land and people, which were exercised through the system of seigniorial and manorial courts.[[36]](#footnote-36) Political and judicial power was originally fused, until local courts were slowly supplanted by royal courts altogether. Such a nexus, however, is definitive of patrimonialism. The Ottoman system, instead, applied a more Weberian rational, bureaucratic model. Interestingly, the English earl system was a corruption of a position that was originally meant, like the Ottoman one, to operate as an office: “The idea that an earldom was an office was still represented vestigially by the receipt of the third penny,” namely the earl originally retained a third of all revenue collected in his jurisdiction.[[37]](#footnote-37)

The other major difference, again indicating the more bureaucratic character of Ottoman administration, was that the inheritance of a specific *timar* was originally prohibited (until 1585) and *timar*-holders were rotated throughout the empire. The prohibition of inheritance was intended to prevent the formation of a local landed class, as was the purpose of office rotation.[[38]](#footnote-38) Further, strict rules governed the fierce competition for empty *timars*.[[39]](#footnote-39) These are all features of Weberian bureaucracy.[[40]](#footnote-40) Even after inheritance was permitted, however, what was granted was the right to *a* timar fief, not to any particular one. By contrast, heritability of fiefs was established by the thirteenth century in England.[[41]](#footnote-41) Although this is typically seen as a ‘victory’ of property rights over the power of the state or local power holders, “succession was no danger to the lord: it was an advantage…The real gauge of the strength of the feudal relationship is the lord’s disciplinary power: his ability to disinherit the tenant for disloyalty.”[[42]](#footnote-42) This ability, as we shall see, was stronger in the English case than elsewhere, especially in the Ottoman Empire, and especially so with respect to the king.

Moreover, *timars*, unlike fiefs, were not alienable. But that does not mean the Ottoman property rights regime was weaker or less flexible. Since the *timar* was an office, not a property right, any rights of alienation would imply instead greater patrimonialism and venality.[[43]](#footnote-43) No rights of alienation, therefore, were again a rational bureaucratic trait. As we will see in the next section, alienation rights for peasants and landholders lower down the social hierarchy were strong from the early Ottoman period; instead in England they were the result of a long process.

English feudal tenants did not in principle have alienation rights either, as the lord had an interest and a right to decide who would enter his fee. The right to alienate was the outcome of a long process.[[44]](#footnote-44) Alienation was commonly necessary however, so originally the lord would grant the right to *assign* the property, upon payment of a fee.[[45]](#footnote-45) The main practice before 1290 was subinfeudation, where an original tenant granted rights to another tenant, who was now tied to the original tenant—not the lord—with fiscal responsibilities. Subinfeudation undermined the revenue base of the crown and intermediary lords, so the practice was outlawed (through the statute of *Quia emptores* in 1290), except for unfree tenures. It was replaced by substitution,[[46]](#footnote-46) where the tenant placed a substitute in his place who assumed all duties attached to the land. Alienation, however, did not end the tenurial basis of property rights nor the tie of the tenant to the lord.

Critically, moreover, freedom of alienation was available to lower ranks of tenants, but constrained for major landlords. The tenants-in-chief, who held fiefs directly of the king, were subjected to increasing restrictions after 1256: they had to persuade the crown that it would not lose income and an ordinance mandated that no alienation should occur without royal assent and license.[[47]](#footnote-47) If a royal agent (escheator) discovered such an unauthorized transfer, the land was seized.[[48]](#footnote-48) Although the restrictions fluctuated over time, depending on royal power, they remained the premise for royal prerogative over land held by tenants-in-chief until 1660, when military tenures were abolished.[[49]](#footnote-49) The most powerful members of the English nobility still required a crown license to alienate their lands. Since the twelfth century, they had faced the greatest insecurity of tenure, with lower vassals by contrast surviving the fall of their lords.[[50]](#footnote-50) That English rulers were able “to disinherit their tenants-in-chief [was] a key element in their power.”[[51]](#footnote-51)

Yet it is Ottoman fiefs, with their lack of property rights over land, that are typically highlighted as evidence of a politically closed order—instead of interpreting the lack of land as evidence of stronger bureaucratic practice. The interpretative discrepancy is likely due to the Orientalist filter afflicting assessment of a non-Western context.

The distinctive “modernity” of the Ottoman system vis-à-vis the West on this dimension is even missed by Ottoman historians, who have identified other modern dimensions.[[52]](#footnote-52) Instead, some conclude that the Ottoman and Western versions of feudalism are not comparable.[[53]](#footnote-53) The reasons invoked resonate with the stereotypical polarity between a societally-strong West and societally-weak East, for instance when the difference is located in the decentralized character of European polities, contrasted with the “strong” Ottoman state.[[54]](#footnote-54) This, however, restricts the comparison with cases on the European mainland, such as France and Germany, where central authority was certainly weak. It omits the more relevant comparison with English feudalism, which was highly centralized and very effectively imposed, especially after the late twelfth century. As argued above, England was the “most perfectly feudal kingdom in the West,”[[55]](#footnote-55) certainly until the fifteenth century.[[56]](#footnote-56)

What is described, therefore, as a ‘failure’ of the Ottoman bureaucracy is a failure to engage in the patrimonial practices that the West took centuries to evolve out of: the granting of land, or office, that becomes heritable in exchange for service to the state and control of provinces.[[57]](#footnote-57) As Weber only passingly noted, patrimonialism was typical and was probably necessary for early *English* institutional development.[[58]](#footnote-58) The reason for this is that English institutional development was tied to conditional structures and practices, as discussed elsewhere in the book. Jurisdictional control accompanied rights to land granted by the Crown to English lords. This was the essence of common law feudalism in its origins and a form of property allocation in turn that was critical for the emergence of representative institutions—until the state gradually took over.

By contrast, the Ottoman case suggests that bureaucratic institutions employed prematurely, before socio-economic and political conditions are conducive, may undermine rather than support the growth of political institutions in a more constitutional direction. This is not an isolated phenomenon: A similar conclusion has emerged from a comparison of Russian and French early modern administration: Russian administration had more bureaucratic features, when Russian governors are compared to French intendants, who were patrimonial and venal.[[59]](#footnote-59) Yet the patrimonial French administration, in the context of other political, social and economic factors, was tied to the gradual progression of the French regime, whereas the more bureaucratic Russian administration was insufficient for a broader impact on the political organization of the regime.[[60]](#footnote-60)

\*

Fiefs, whether bureaucratic or not, however, were property rights of upper social groups. Property rights lower down the social scale need to be also considered. Here again, similarities with the English system are striking, although the Ottoman system showed marginally stronger rights on some critical dimensions. If weakness was observed, it was in the *enforcement* of rights (i.e. a weak state capacity), not in their definition or legal status.

#### Peasant Rights to Land.

Rights over land have traditionally involved a distinction between *dominium* (which most closely approximates common understandings of full ownership), possession, and use. These distinctions were codified as Roman legal categories, but their basic logic is encountered in legal systems far apart geographically, from Japan, Russia, and China to the Ottoman Empire and England.[[61]](#footnote-61) Although differences in detail abound, the similarity in patterns of divided, conditional rights to land is striking. From this perspective, peasant rights in the Ottoman Empire appear as less complicated, more clearly defined, and possibly more favorable to the farmer than the landlord. The actual, material conditions of the peasantry would vary sharply according to period and place, but the inefficient economic or political outcomes would be due to the application of the law, not its form. Key in such variation, I will argue, is the enforcing capacity of the state. First, however, I compare peasant rights, as they were juristically defined, in the Ottoman Empire and England.

According to Islamic law, ultimate authority over land, the *dominium eminens* of Roman law, was preserved by the state (and was called *raqaba* or *rikab*). Sometimes *dominium* was interpreted as the right of legal control (*valā’*). But the right was paramount and was established by conquest; it was also later extended to wasteland reclamation. The state still possessed full ownership (*mülk* *mahz*) over reclamations, which allowed full powers of disposition (*tsarruf*),[[62]](#footnote-62) although they required the authorization of the imam. The *use* of land, however, was widely granted to peasant farmers. The “ownership of the substance (*raqaba*)” was distinguished from “ownership of the usufruct (*tasarruf*)…The ruler in effect owns the substance of the land, while the occupants own the benefits. This was a fiction,” but it defined the law of tenure.[[63]](#footnote-63)

Peasant holdings in land were thus tenurial and conditional. They could be of two types. Land could be held by free peasants from the state through “freely concluded” arrangements, by leasing under a simple rental contract (the *mukataalu*); this involved only a lump sum rent, but no taxes.[[64]](#footnote-64) The other, and more prevalent, type of peasant land holding was *tapulu* land, land with a deed (*tapu*). The lease for this was predicated on status, on an original subjugation that entailed the obligation to pay tithes and other personal obligations of a monetary kind, as well as service to the state or the *sipahi*, the holders of *timars*. This basic peasant unit was the *çift*. Dependent peasants (*raiyyet*) on such lands were thus part of the *çift-hane* system.[[65]](#footnote-65)

Unlike English villein rights, the *tapu* was enforceable in state courts.[[66]](#footnote-66) *Tapulu* land was acquired through a sales contract, registered in court and certified by a *kadı* judge as in full accordance with the *Shari‘a*. The contract was between a state agent and the peasant, in exchange for cash. Title to land was gained by a tax payment first and three years of cultivation, after which the peasant had “security of tenure.”[[67]](#footnote-67) Title was *de jure* secure: “When the land of a peasant (*raiyyet*) is given into the peasant’s possession, no one can take it away from him under the *tapu* (title deed) law. And once possessed under *tapu*, a land cannot be subject to a new *tapu.*” Although few actual court records exist, as the court procedure was costly, “sultanic law recognized that if a peasant held the actual possession of land long enough, and no one disputed it, this constituted legal possession.”[[68]](#footnote-68) Possession, moreover, secured inheritance rights, as the *çift* could be inherited without payment of entry and could be divided according to custom or wish.[[69]](#footnote-69) This, as we will see, is less regulated and controlled than its English equivalent.

The rights accorded to free Ottoman peasant, the *raiyyet,* corresponded to those eventually granted to the highest rank of English tenant, the fee simple holder. Only the full freeholder could see his property pass on to his heirs. This did not mean the right to bequeath; inheritance was bound by Common Law strictures.[[70]](#footnote-70) These were more restrictive than Ottoman ones; only in some locations was manorial custom allowed to prevail.

By the thirteenth century, the inheritance mode in England for most free tenures was primogeniture. But primogeniture was a legal imposition: the freeholder could not allocate land to other relatives, arrange for marriages, or secure payment for his own debts, except by gift when alive (*inter vivos*).[[71]](#footnote-71) Primogeniture is easily assumed to be an efficient guarantee that estates remained intact over generations and thus in the self-interest of landlords. It constrained individual choice: together with the prohibition of wills, primogeniture blocked the devising of property according to individual wishes except by gift. To circumvent these restrictions, *uses* and trusts became widely used, as *vakıfs* did in the Ottoman Empire.[[72]](#footnote-72)

The inheritance restrictions generating the Ottoman *vakıfs* were opposite, however: Hanafi law imposed partible inheritance, forcing the break-up of landed units. This led to the disappearance of family estates and the fragmentation of land-holding, undermining family welfare. Yet again, however, the solution was the same as in England: a private legal arrangement that removed a tract of land from state jurisdiction, including taxation obligations, as I elaborate below. Property rules were so clearly defined and enforced in *both* cases that legal devices were necessary to sidestep them.

Property rights accorded to the *raiyyet*, the dependent peasantry, were thus equivalent to those granted to the *higher* ranks of farmers in the English system. The largest category of English peasants, by contrast, was that of villeins, comprising about half the population before the fourteenth century.[[73]](#footnote-73) Villeins were serfs,[[74]](#footnote-74) thus unfree, bonded to a lord, and restricted in movement. They were allotted land for cultivation in exchange for service to the lord; service to the lord was uncertain, unregulated, and only local protections.[[75]](#footnote-75)

Villein rights were more limited than those of the Ottoman peasant. Originally, villein tenure was essentially unprotected; unlike the Ottoman *raiyyet,* it was not eligible for protection from the state courts and so the real actions of the Common Law were unavailable. Villeins’ debased status resulted from the expansion of the Common Law, which only applied in royal courts.[[76]](#footnote-76) Villein disputes were settled in local courts, under the jurisdiction of the lord, not the king, according to manorial custom. The villein held land “at will” of the lord.[[77]](#footnote-77)

Conditions for English peasants improved after the demographic and socio-economic changes of the Black Death: villeinage gradually disappeared. [[78]](#footnote-78)Tenurial rights were increasingly recorded on a court roll, a copy of which was given to the tenant (hence, copyhold tenure). Though copyholders had more secure rights than villeins, they still did not enjoy the full rights of freeholders. They could not sue in a royal court for instance, so Common Law remedies remained unavailable to them, as they had been to villeins. However, if the lord violated the custom of the manor, copyholders could appeal to Chancery. Only gradually did their legal status change: a copyholder could recover title to land in case of trespass by using a real action (of ejectment), i.e. a remedy that could be tried in a royal court. But this did not occur until the after the 1570s.[[79]](#footnote-79) Property rights eventually became more secure for peasants, but through a circuitous and long route. By contrast, their Ottoman equivalents enjoyed such security from early on—subject to the strength of enforcing authorities.

A major indicator of secure and full property rights is the right of alienation. English and Ottoman law imposed similar restrictions. Alienation in Ottoman lands was formally barred: “In principle…*miri* land could not be bought and sold.”[[80]](#footnote-80) Only loans and leases were allowed.[[81]](#footnote-81) In practice, however, peasants did buy and sell land “as though they were its owners,” as affirmed by contemporary jurists in *fatwas*. Early sixteenth century legal texts referred to such transactions as sales of the right of residence (*hakk-i karar*).[[82]](#footnote-82) This required the permission of the *timar*-holder (the *sipahi*) and the payment of a tax to him.[[83]](#footnote-83)

Alienation was similarly restricted in the English system. Villeins could only alienate their tenement with their lord’s consent.[[84]](#footnote-84) But even their more secure successors, copyholders, initially had more limited freedom than their Ottoman counterparts, as they could not alienate their tenancy independently; they could only surrender it to their lord, who would promise to pass it on to the previous tenant’s replacement and who alone had the right to transfer. All copyhold land was conveyed thus until 1925, although the process became a formality.[[85]](#footnote-85) In any case, alienations in both cases required the intercession of the overlord. Only free-holders had effective free rights of alienation, although the “tenure between the alienor and his lord remained intact.”[[86]](#footnote-86) As we have seen, the uppermost tenants of the crown had the least secure rights.

The reasons for the legal restrictions in both cases are indicative of both the strength of property rights and of state concerns regarding the weakening of its control. First, sales with a court document in the Ottoman case made the land absolute private property and removed it from the jurisdiction of the state.[[87]](#footnote-87) Far from a weakness of private property rights, the prohibition demonstrates just how strong they could be expected to be once they escaped state jurisdiction. In England, the main concern was the loss of income to the lord, including the crown at the higher echelons, when the property was transferred to new owners.[[88]](#footnote-88)

Second, sales dispossessed legitimate heirs: lands could be sold to pay off the debts of the deceased, a practice that had become so common by the early seventeenth century that a law was passed making it illegal to sell *miri* land to pay off a debt.[[89]](#footnote-89) The conflict between alienability and inheritance was a long-standing one in England as well: the right of the current owner to alienate impinged upon the right of a descendent to inherit—a reminder that rights were not always defined in law on an individualist basis, but as pertaining to family groups over time instead.[[90]](#footnote-90) Nonetheless, sales did occur, through various devices and loopholes.[[91]](#footnote-91)

Similarities between the two systems are also seen in the differential status of property rights over items other than land. Ottoman law recognized *de jure* private property in one category of peasant property: all objects above land, such as houses, trees etc.[[92]](#footnote-92) Owners had full rights of sale, purchase, and rent over such objects. English Common Law made a similar distinction, but “chattels personal” primarily covered movable objects, such as animals, money or plate. Buildings were considered to be part of land in the English system, except if they stood on pattens (!).[[93]](#footnote-93) On this dimension, the Ottoman rules seem more inclusive.

In short, a comparison of the two systems of real property suggest that the common foundation of state “ownership” of land generated very similar patterns of legal rights. No basis exists for asserting that Ottoman rights to land, at any level of the social scale, were “weaker” or less secure than those of the English Common Law. If variation existed, it was at the level of enforcement, not legal theory, and this was a problem of infrastructural control. If anything, the Ottoman regime was less able to enforce its laws on its territory, rather than more “despotic” or arbitrary. This is suggested by other aspects of land relations, examined further down.

\*

State ownership, as the common foundation of both systems, also generated another parallel. “*Uses*” (later also trusts) and *vakıfs*, private endowments in land, were instruments that circumvented both inheritance restrictions and tax obligations normally burdening land tenures. The parallel between the two forms is widely noted, but has not been traced to the common legal status of land as state-controlled. I examine this in the next section.

## The Common Fiscal Effects of State Ownership of Land : Uses, Trusts and Vakıfs (Waqfs)

State capacity to control land did not remain invariant over time in England and the English crown was not immune to losing land control periodically, as we will see. A major development of land common law were *uses* and *trusts*, which conveyed rights to land to beneficiaries. These gradually resulted in an extensive privatization of English land.[[94]](#footnote-94) Although the causes and origins of this trend were manifold, the two legal instruments soon enabled landholders to avoid inheritance strictures and taxation.[[95]](#footnote-95)

The Ottoman equivalent to the English *use* and *trust* was the *vakıf* (*waqf*), which became even more widespread in the economic organization of society and remained so into the nineteenth century.[[96]](#footnote-96) The function and purposes of *vakıfs*, as will see, differs from that of *uses*, primarily in serving societal needs through charity; nonetheless, they also enabled the avoidance of taxation and thus became an important mechanism in the removal of land from direct state control. The same structural condition, therefore, state control of land, generated incentives for the development of similar legal mechanisms of privatization.[[97]](#footnote-97)

In both English and Ottoman law, thus, uses and *vakıfs* respectively served as “legal loopholes.”[[98]](#footnote-98) Both instruments avoided tax burdens. However, their emergence cannot be ascribed to any single factor: another concern was to escape inheritance strictures that, in both systems, prevented the free disposition of property.[[99]](#footnote-99)

The comparison between the *use* and the *vakıf* is long-standing in the historical (though not the social scientific) literature.[[100]](#footnote-100) Legal comparisons focus on their differences.[[101]](#footnote-101) But the two forms raise broader questions that relate to both regime type and economic development. For instance, in Timur Kuran’s work, the *vakıf* typifies the claimed “immobilization” (or “static perpetuity”) that has inhibited the Ottoman economy.[[102]](#footnote-102) Kuran contrasts the *vakıf* with the Western corporation, an association of persons that the law treats as if it were a person, which indeed did not emerge in the East.[[103]](#footnote-103) The western equivalents of *vakıfs,* however, were the *uses* and trusts. They both stemmed from similar limitations on land rights.

Both Hanafi and Common Law had firm rules of inheritance that restricted the freedom of individuals to dispose of their wealth *post obit*. The rules were substantively opposite, but elicited the same response. Hanafi law imposed partible inheritance, which fragmented property (whilst giving rights to daughters, as well), whereas Common Law imposed primogeniture, as discussed.[[104]](#footnote-104)

These inheritance limitations were consequential. For instance, an English landowner could not assign the income from his property to the repayment of debts, a restriction that seriously restricted access to loans. Moreover, owners could not designate heirs at will, but were obliged to obey primogeniture as well as other rules, sometimes local.[[105]](#footnote-105) Wills were invalid in Common Law until a Statute was passed in 1540, in response to overwhelming social pressure and accumulated practice.[[106]](#footnote-106) Islamic partible inheritance was somewhat more flexible, as the testator was allowed to allocate one third of his possessions according to his wishes, with the rest going to family.[[107]](#footnote-107) These restrictions on inheritance were critical in generating legal devices of wealth allocation, the *use* (later, the trust) and the *vakıf*.

In both cases, the legal device created to circumvent the law was also employed to institute public foundations. Usually, the Ottoman variant is considered to have had a much stronger social welfare mandate.[[108]](#footnote-108) *Vakıfs* were indeed central to the social fabric of Islamic communities, as they disbursed a wide range of public goods: hospitals, mosques, colleges, or simply water fountains were founded and maintained through *vakıfs*.

Whether the Ottoman institutional choice had detrimental economic effects[[109]](#footnote-109) cannot be assessed here. Instead, I examine whether this choice made the Ottoman case so different from England. *Uses* were widespread in England, as well, yet their public role is little noted because the related concept of corporations, bodies legally authorized to act as individuals that could also hold land “for the use of” others, have attracted most of the focus.[[110]](#footnote-110) Even if we accept that corporations were a more evolved mode of organization that enabled commercial growth, as Timur Kuran has argued, however, any assessment of the causes of variation between the English and Ottoman systems has to first account what enabled such an institutional shift.[[111]](#footnote-111) I argue that, yet again, state capacity is key: without it, incentives would have been absent to adopt corporations in the first place.

*Uses* were applied extensively by monastic houses, which were restricted from land-holding: estates were most commonly bequeathed to monasteries by leaving land to third parties “for the use of” (*ad opus*) of the monastery. Into the 1530s, *uses* in favor of *unincorporated* bodies were so common that a statute was passed to suppress them.[[112]](#footnote-112) Through *uses* and trusts, the monasteries took hold of between a fifth and a quarter of the land of England.[[113]](#footnote-113) Further, charitable trusts, related legal forms that were established in favor of a purpose, not a person, were extensively applied not only by the Church, but also by institutions such as university colleges[[114]](#footnote-114) or for the relief of poverty; they were protected and enforced by the royal Chancery[[115]](#footnote-115) and continued to exist after *uses* were restricted in 1536.[[116]](#footnote-116)

### The Decline of Inefficient Land Rights Endogenous to State Capacity

Uses were as extensive in England before the 1530s as *vakıfs* were in the Ottoman Empire: by “1502 it could be asserted that the greater part of the land of England was held in use.”[[117]](#footnote-117) Yet, unlike in the Ottoman Empire, they did not continue to dominate landed property, thus reducing their assumed negative effects on both economic efficiency and fiscal revenue to the state. But this happened because of a legal offensive by the Crown to eradicate them, through the *Statute of Uses* in 1536, which restricted the power to devise for the future—it was not a natural, endogenous development of more “efficient” property rights.

The 1536 statute met with such strong opposition that the *Statute of Wills* had to be conceded in 1540, though it enabled only the disposition of freeholds by will.[[118]](#footnote-118) But it made *uses* less appealing, as their tax advantages were eliminated: the crown collected a fine or death duty when land was transferred after a tenant died. So except for some types, such as ones where their administrators (the feoffees to *use*) had active duties, *uses* gradually decreased. In the Ottoman Empire, by contrast, *uses* remained dominant until the time of its dissolution in 1923, when about three-quarters of Ottoman land and buildings may have been under *vakıfs*.[[119]](#footnote-119)

That state action limited “inefficient” land arrangements in England is also evident in the trajectory of trusts, an outgrowth of *uses*, increasingly prevalent after 1536. Trusts were not simply instruments to avoid inheritance strictures or tax duties, but also to manage wealth when the legal ownership of land was better separated from its beneficial ownership, especially to secure succession to heirs over generations. However, these rules were devised by “royalist conveyancers”—i.e. they depended on state action.[[120]](#footnote-120)

State interests were also involved in the Rule against Perpetuities, which after 1682 limited how far into the future trust creators could devise land. This, however, did not prevent property holders from seeking alternative long-lasting arrangements of property: the combination of trusts with strict settlements after the seventeenth century and until the nineteenth ensured that the owner of a property would only have a life estate and would then be forced to pass it on, in tail, to his children in order of seniority and they in turn.[[121]](#footnote-121)

Yet, the prevalence of *vakıfs* is commonly seen to result from state ownership of land and hence “weak” property rights,[[122]](#footnote-122) a mechanism to escape state control and predation. Similarly, the continued prevalence of the *vakıf* in the Ottoman Empire was seen as a symptom of the “wealth transmission norms of Islamic society,” in contrast to “the Anglo-American norm…of distributional self-determination…[which] is entirely consistent with general cultural preferences and economic theory that accentuate individuality and relatively unregulated private property ownership.”[[123]](#footnote-123)

The record, instead, suggests a different explanation. Endogenous pressures towards expansion of uses in land existed in both states, for similar reasons: the fundamental law of the land, with its restrictions on inheritance, constrained individual determination of wealth. England was not distinguished by a greater sense of “individuality,” but by greater state capacity to intervene and to stem the proliferation of legal escapes from state jurisdiction and tax obligations. The Tudor state was not omnipotent, so each royal measure elicited a novel legal response with the same objectives, but it was certainly more effective than its Ottoman counterpart.

Emphasizing Ottoman state weakness contrasts again with stereotypical views of the Ottoman state as strong, and as prone to arbitrariness and expropriation, especially of *vakıfs*. The arbitrariness is typically ascribed to royal ownership of land and the “weakness” of private property that have been challenged in this account. Historical research has qualified the assessment of such state intervention in private property, but the analogies with similar English events, notably the Dissolution of the Monasteries, have not been explored. I address this comparison in the final section.

### Expropriation

That sultans expropriated *vakıfs* is typically taken as a symptom of economic “backwardness” or political arbitrariness. Expropriations are considered to inhibit both economic change and the political openness that is necessary to generate it, not only in economic analyses,[[124]](#footnote-124) but also in conventional Ottoman historiography. The ‘absolute’ power of the sultan is also emphasized by Halil İnalcık, drawing analogies to the Marxist concept of the “Asiatic mode of production.” That he also outlined the well-articulated Ottoman conception of property is something of a contradiction. But as an example of the arbitrary exercise of power, Inalcik mentioned the abolition of private property (*mülk*) and of religious foundations (*vakfs*). One such example was the “land reform” of Mehmed II, sultan from 1444 to 1446 and from 1451 to 1481, the conqueror of Constantinople.[[125]](#footnote-125)

However, more recent studies show that the reform did not involve land: Mehmed did not try to alter existing land arrangements, only those concerning the *revenues* from land. Further, the revenues that were appropriated by the state were, at least in some regions such as Amasya, only those for which owners could not be identified by the surveyors—and they were intended for further redistribution as *timars* to new holders.[[126]](#footnote-126) The ‘reform’ did not have any long-term consequences, as later sultans had to return to the status-quo ante. The policy was, however, reaffirmed under Selîm I and Süleymân I, who had pressing military needs—yet the basis was the legitimate claim of the state.[[127]](#footnote-127)

A similar application of legal principle underlay the abrogation of the trusts of Orthodox monasteries by Selim II in 1569, based on a fatwa of Ebu’s-su‘ud, the sixteenth century jurist. Two legal grounds were invoked: first, the trusts were formed on rural land, which, absent a sultanic grant, remained royal demesne and second, according to Hanafi law, it was forbidden to “create trusts directly for the benefit of churches and monasteries;” they could only be for the benefit of the poor. If the grant was not specified correctly, it was void. The aim was not to dispossess the monks, however: they retained possession over the monastic buildings. It aimed to bring the legal status of the trusts in line with Ottoman land law and raise cash for the sultan. After the monks bought back the buildings, flocks, vines etc. with money raised through a tax on the Orthodox, the land was returned to the Treasury. The monks retained the right of occupation, on condition of paying an entry fine.[[128]](#footnote-128)

Expropriations by “absolutist” rulers, thus, though easily seen as symptoms of unchecked power, were practically constrained.[[129]](#footnote-129) Expropriations in a more “constitutional” regime such as England, by contrast, show that their chief difference from apparently arbitrary regimes was a more comprehensive and effective capacity of the state to confiscate property on an extensive scale and reallocate property rights according to its preferences—with much thinner basis in law.

Ottoman expropriations cannot thus compare with the massive taking of land by Henry VIII in the 1530s, during which two-thirds of English monasteries were sold off to private buyers within ten years. This involved about a fifth to a quarter of the land of England:[[130]](#footnote-130) it was the most extensive reallocation of landed property since the Norman Conquest. The initial pretext, moreover, was not legal title but religious conformity, assiduously pursued by Cromwell’s “visitations” from 1535. Moreover, to avert the reversion to founders’ heirs, Parliament was enlisted to pass the “Suppression of Religious Houses Act” of 1535, which ensured that land reverted to the Crown, except on payment of a fine. Only the revenues of lay holders of monastic offices and pensions were preserved.[[131]](#footnote-131) The English state did not respect property rights more; it was far more effective in surgically suppressing them, according to need.

## Conclusion

To conclude, comparing legal regimes of property rights in England and the Ottoman Empire undermines some widely influential assumptions. First, it undercuts the still common association, at least within social science if not in Ottomanist studies, between a “sultanic,” non-constitutional regime and the lack of a property rights regime. The comparison establishes how similar the conditional character of property rights is in the two cases, stemming from the common foundation of state control of land. Manifold differences exist only some of which can be covered in the space of an overview such as this. However, the factors typically assumed to have causal effects, such as security and alienability, are very similar in the two cases, especially for the largest social group, the peasantry. Property rights at the top of the social hierarchy, by contrast, were even more conditional and dependent on the crown in England than they were in the Ottoman Empire.

Second, the comparison has implications for our understanding of the relation between legal outcomes and state power. It suggests that some of the key inefficiencies typically ascribed to “overstretched and authoritarian states”[[132]](#footnote-132) were the product of the underlying weakness in state capacity, especially in enforcing property rights. *Waqfs* prevailed in the Ottoman Empire because the state lacked the relative power to delimit them through legal measures, as the state was able to in England; if they did hamper economic development, such effects were endogenous to weak state capacity. By contrast, the English economic trajectory, though far from smooth, veered in a more efficient direction because state action, and especially regulation, prevented extensive loss of jurisdiction over productive assets in the economy and therefore preserved better its fiscal capacity.

References

Abbasi, Muhammad Zubair. 2012. "The Classical Islamic Law Of : A Concise Introduction." *Arab Law Quarterly* 26 (2):121-153.

Abou-El-Haj, Rifa'at Ali. 1991. *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries*. Albany: State University of New York Press.

Abu Zahra, Muhammad. 1955. "Family Law." In *Law in the Middle East*, ed. M. Khadduri and H. J. Liebesny, 132-178. Washington: Middle East Institute.

Acemoglu, Daron, and James A. Robinson. 2012. *Why Nations Fail: The Origins of Power, Prosperity and Poverty*. New York: Crown Business.

Ágoston, Gábor. 2005. *Guns for the Sultan: Military Power and the Weapons Industry in the Ottoman Empire*. New York: Cambridge University Press.

Anderson, Perry. 1979. *Lineages of the Absolutist State*. London: Verso.

Armstrong, John Alexander. 1972. "Old-Regime Governors: Bureaucratic and Patrimonial Attributes." *Comparative Studies in Society and History* 14 (1):2-29.

Bailey, Mark. 2014. *The Decline of Serfdom in Late Medieval England: From Bondage to Freedom*.

Baker, John H. 2002. *An Introduction to English Legal History*. 4th ed. London: Butterworths LexisNexis.

———. 2003. *Dissolution of the Monasteries*. Edited by R. H. Helmholz and J. H. Baker. Oxford: Oxford University Press.

Balla, Eliana, and Noel D. Johnson. 2009. "Fiscal Crisis and Institutional Change in the Ottoman Empire and France." *The Journal of Economic History* 69 (03):809-845.

Barkey, Karen. 1994. *Bandits and Bureaucrats: The Ottoman Route to State Centralization*. Ithaca: Cornell University Press.

———. 2005. "Islam and Toleration: Studying the Ottoman Imperial Model." *International Journal of Politics, Culture, and Society* 19 (1/2):5-19.

———. 2008. *Empire of Difference: The Ottomans in Comparative Perspective*. Cambridge: Cambridge University Press.

Bartlett, Robert. 2000. *England under the Norman and Angevin Kings, 1075-1225*. Oxford: Oxford University Press.

Barton, J. L. 1965. "The Medieval Use." *Law Quarterly Review* 81:562.

Barzel, Yoram, and Edgar Kiser. 2002. "Taxation and Voting Rights in Medieval England and France." *Rationality and Society* 14 (4):473-507.

Bean, J. M. W. 1968. *The Decline of English Feudalism: 1215-1540*. Manchester: Manchester University Press.

Bellamy, John G. 1989. *Bastard Feudalism and the Law*. London: Routledge.

Bloch, Marc. [1939-40] 1961. *Feudal Society*. Chicago: University of Chicago Press.

Blum, Jerome. 1961. *Lord and Peasant in Russia: From the Ninth to the Nineteenth Century*. Princeton, N.J.: Princeton University Press.

Brand, Paul. 1992. "The Origins of the English Land Law: Milsom and After." In *The Making of the Common Law* 203-25. London: Hambledon Press.

Brewer, John. 1989. *The Sinews of Power: War, Money, and the English State, 1688-1783*. 1st Am. ed. New York: Alfred A. Knopf.

Broadberry, Stephen, Bruce Campbell, Alexander Klein, Mark Overton, and Bas van Leeuwen. 2014. *British Economic Growth, 1270-1870*. Cambridge: Cambridge University Press.

Campbell, James. 1995. "The Late Anglo-Saxon State: A Maximum View." *Proceedings of the British Academy* 87:37-65.

Cattan, Henry. 1955. "The Law of the Waqf." In *Law in the Middle East*, ed. M. Khadduri and H. J. Liebesny, 203-222. Washington: Middle East Institute.

Chew, Helena Mary. 1943. "The Office of Escheator in the City of London During the Middle Ages." *The English Historical Review* 58 (231):319-330.

Çirakman, Asli. 2001. "From Tyranny to Despotism: The Enlightenment's Unenlightened Image of the Turks." *International Journal of Middle East Studies* 33 (1):49-68.

Clementi, Dione. 1961. "Notes on Norman Sicilian Surveys." In *The Making of Domesday Book*, ed. V. H. Galbraith, 55-8. Oxford: Clarendon Press.

Cohen, Morris Raphael. 1933. "Property and Sovereignty." In *Law and the Social Order: Essays in Legal Philosophy* 41-68. New York: Harcourt Brace and Company.

Cooke, Elizabeth. 2006. *Land Law*. Oxford: Oxford University Press.

Coulson, Noel J. 1971. *Succession in the Muslim Family*. Cambridge: Cambridge University Press.

Crouch, David, and David A. Carpenter. 1991. "Bastard Feudalism Revised." *Past and Present* (131):165-189.

Cuno, Kenneth M. 1995. "Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Hanafi School." *Studia Islamica* (81):121-152.

Darling, Linda T. 1996. *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1560-1660*. Leiden: E.J. Brill.

———. 2013. *A History of Social Justice and Political Power in the Middle East: The Circle of Justice from Mesopotamia to Globalization*. New York: Routledge.

Dawson, John Philip. 1960. *A History of Lay Judges*. Cambridge: Harvard University Press.

Doyle, William. 1996. *Venality: The Sale of Offices in Eighteenth-Century France*. Oxford: Clarendon Press.

Drelichman, Mauricio, and Hans-Joachim Voth. 2014. *Lending to the Borrower from Hell: Debt, Taxes, and Default in the Age of Philip II*. Princeton: Princeton University Press.

Duus, Peter. 1976. *Feudalism in Japan*. 2d ed. New York: Knopf.

Ertman, Thomas. 1997. *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe*. Cambridge: Cambridge University Press.

Fleischer, Cornell H. 1986. *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Ali (1541-1600)*. Princeton, N.J.: Princeton University Press.

Fortescue, John. [c. 1470] 1997. *On the Laws and Governance of England*. Cambridge: Cambridge University Press.

Ganshof, François Louis. 1964. *Feudalism*. 3d ed. New York: Harper.

Garnett, George. 2007. *Conquered England: Kingship, Succession, and Tenure, 1066-1166*. Oxford: Oxford University Press.

Gaudiosi, Monica M. 1988. "The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College." *University of Pennsylvania Law Review* 136 (4):1231-1261.

Gerber, Haïm. 1994. *The Social Origins of the Modern Middle East*. Boulder, Colo.: Lynne Rienner.

Giesey, Ralph E. 1983. "State-Building in Early Modern France: The Role of Royal Officialdom." *The Journal of Modern History* 55 (2):191-207.

Giordanengo, Gérard. 1990. "État et Droit Féodal En France (Xiie-Xive Siècles)." In *L'état Moderne: Le Droit, L'espace et Les Formes de L'état*, ed. N. Coulet and J.-P. Genêt, 61-83. Paris: Editions du CNRS.

Goffman, Daniel. 2002. *The Ottoman Empire and Early Modern Europe*. Cambridge: Cambridge University Press.

Gray, Kevin J., and Susan Francis Gray. 2009. *Elements of Land Law*. 5th ed. Oxford: Oxford University Press.

Hall, John A. 1986. "States and Economic Development." In *States in History* 154-176. Oxford: B. Blackwell.

Harding, Alan. 2002. *Medieval Law and the Foundations of the State*. Oxford: Oxford University Press.

Hatcher, John. 1981. "English Serfdom and Villeinage: Towards a Reassessment." *Past & Present* (90):3-39.

Hennigan, Peter C. 2004. *The Birth of a Legal Institution: The Formation of the Waqf in Third-Century A.H. Hanafi Legal Discourse*. Leiden: Brill.

Hicks, Michael. 1995. *Bastard Feudalism*. London: Longman.

Hicks, Michael A.s. 2000. "Bastard Feudalism, Overmighty Subjects and Idols of the Multitude During the Wars of the Roses." *History* 85 (279):386-403.

Holdsworth, William Searle. 1923. *A History of English Law*. 3rd ed. Vol. III. London: Methuen & Co.

Hollister, C. Warren. 1976. *The Making of England, 55 B.C. To 1399*. 3d ed. Lexington, Mass.: Heath.

Holt, James Clarke. 1972. "Politics and Property in Early Medieval England." *Past & Present* 57:3-52.

———. 1982. "Feudal Society and the Family in Early Medieval England: I. The Revolution of 1066." *Transactions of the Royal Historical Society, 5th ser.* 32.

———. 1983. "The Introduction of Knight Service into England." *Anglo-Norman Studies* 6:89-106.

Holton, R. J. 1985. *The Transition from Feudalism to Capitalism*. New York: St. Martin's Press.

Hudson, John. 1994. *Land, Law, and Lordship in Anglo-Norman England*. Oxford: Oxford University Press.

———. 2012. *The Oxford History of the Laws of England Volume 2: 900-1216*. Edited by R. H. Helmholz and J. H. Baker. Oxford: Oxford University Press.

Hyams, Paul R. 1980. *King, Lords and Peasants in Medieval England: The Common Law of Villeinage in the Twelfth and Thirteenth Centuries*. Oxford: Clarendon Press.

Imber, Colin. 1997. *Ebu's-Suùd: The Islamic Legal Tradition*. Edinburgh: Edinburgh University Press.

———. 2002. *The Ottoman Empire, 1300-1650: The Structure of Power*. New York: Palgrave Macmillan.

———. 2006. "Government, Administration and Law." In *The Ottoman Empire as a World Power, 1453-1603*, ed. S. Faroqhi, 205-240. New York: Cambridge University Press.

———. 2010. "The Ottoman Empire (Tenth/Sixteenth Century)." In *The New Cambridge History of Islam*, ed. M. Fierro, 332-365. Cambridge: Cambridge University Press.

Inalcik, Halil. 1973. *The Ottoman Empire; the Classical Age, 1300-1600*. London: Weidenfeld & Nicolson.

———. 1994. "The Ottoman State: Economy and Society, 1300-1600." In *An Economic and Social History of the Ottoman Empire, 1300-1916*, ed. H. Inalcik and D. Quataert, 9-409. New York: Cambridge University Press.

İnalcık, Halil. 1973. *The Ottoman Empire; the Classical Age, 1300-1600*. London: Weidenfeld & Nicolson.

Itzkowitz, Norman. 1980. *Ottoman Empire and Islamic Tradition*. Phoenix ed. Chicago: University of Chicago Press.

Johns, Jeremy. 2002. *Arabic Administration in Norman Sicily: The Royal Diwan.* Cambridge: Cambridge University Press.

Jon, E. Mandaville. 1979. "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire." *International Journal of Middle East Studies* 10 (3):289-308.

Kafadar, Cemal. 2008. "Janissaries and Other Riff-Raff of Ottoman Instabul: Rebels without a Cause?" In *Identity and Identity Formation in the Ottoman World: A Volume of Essays in Honor of Norman Itzkowitz*, ed. B. Tezcan and K. K. Barbir, 113-34: The University of Wisconsin Press.

Khoury, Dina Rizk. 1997. *State and Provincial Society in the Ottoman Empire: Mosul, 1540-1834*. Cambridge: Cambridge University Press.

Knowles, David, and David Knowles. 1976. *Bare Ruined Choirs: The Dissolution of the English Monasteries*. Cambridge: Cambridge University Press.

Kunt, İ Metin. 1983. *The Sultan's Servants: The Transformation of Ottoman Provincial Government, 1550-1650*. Vol. Modern Middle East series. New York: Columbia University Press.

Kunt, İ Metin, and Christine Woodhead. 1995. *Süleyman the Magnificent and His Age: The Ottoman Empire in the Early Modern World*. London: Longman.

Kuran, Timur. 2001. "The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System." *Law & Society Review* 35 (4):841-898.

———. 2005. "The Absence of the Corporation in Islamic Law: Origins and Persistence." *The American Journal of Comparative Law* 53 (4):785-834.

———. 2011. *The Long Divergence: How Islamic Law Held Back the Middle East*. Princeton: Princeton University Press.

———. 2014. "Institutional Roots of Authoritarian Rule in the Middle East: Civic Legacies of the Islamic Waqf." Unpublished Manuscript, Economic Research Initiatives at Duke (ERID) Working Paper No. 171, Available at SSRN: [http://ssrn.com/abstract=2449569](http://ssrn.com/abstract%3D2449569).

*Leges Henrici Primi*. 1972. Edited by L. J. Downer. Oxford: Clarendon Press.

Linz, Juan J., and Alfred C. Stepan. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press.

Mahmasani, Subhi. 1955. "Transactions in the Shari'a." In *Law in the Middle East*, ed. M. Khadduri and H. J. Liebesny, 179-202. Washington: Middle East Institute.

Makdisi, George. 1981. *The Rise of Colleges: Institutions of Learning in Islam and the West*. Edinburgh: Edinburgh University Press.

Marsh, Robert M. 1962. "The Venality of Provincial Office in China and in Comparative Perspective." *Comparative Studies in Society and History* 4 (4):454-466.

McFarlane, K. B. 1945. "Bastard Feudalism." *Bulletin of the Institute of Historical Research* 20:161-80.

Megarry, Robert, and William Wade. 1975. *The Law of Real Property*. 4th ed. London: Stevens.

Milsom, S. F. C. 1981. *Historical Foundations of the Common Law*. 2d ed. London: Butterworths.

North, Douglass C. 1990. *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge University Press.

Ostrowski, Donald. 2006. "The Growth of Muscovy (1462–1533)." In *The Cambridge History of Russia*, ed. M. Perrie, 213-239. Cambridge: Cambridge University Press.

Özel, Oktay. 1999. "Limits of the Almighty: Mehmed Ii's 'Land Reform' Revisited." *Journal of the Economic and Social History of the Orient* 42 (2):226-246.

Palmer, Robert C. 1980-1. "The Feudal Framework of English Law." *Michigan Law Review* 79:1130-64.

———. 1985. "The Origins of Property in England." *Law and History Review* 3 (1):1-50.

Pipes, Richard. 1974. *Russia under the Old Regime*. London: Weidenfeld and Nicolson.

Plucknett, T. F. T. 1948. *A Concise History of the Common Law*. 4th ed. London: Butterworth.

Pollock, Frederick, and Frederic William Maitland. 1898. *The History of English Law before the Time of Edward I*. 2d ed. Vol. I. Cambridge: The University press.

———. 1899. *The History of English Law before the Time of Edward I*. 2d ed. Vol. II. Cambridge: The University press.

Porter, James. 1771. *Observations on the Religion Law, Government, and Manners of the Turks. The Second Edition, Corrected and Enlarged by the Author. To Which Is Added, the State of the Turkey Trade, from Its Origin to the Present Time*. London: J. Nourse.

Powers, David S. 1999. "Islamic Family Endowment (Waqf)." *Vanderbilt Journal of Transnational Law* 32:1167-90.

Reischauer, E. O. 1965. "Japanese Feudalism." In *Feudalism in History*, ed. R. Coulborn. Hamden, Conn.: Archon Books.

Rudolph, Lloyd I., and Susanne Hoeber Rudolph. 1979. "Authority and Power in Bureaucratic and Patrimonial Administration: A Revisionist Interpretation of Weber on Bureaucracy." *World Politics* 31 (2):195-227.

Salmon, J. H. M. 1967. "Venality of Office and Popular Sedition in Seventeenth-Century France. A Review of a Controversy." *Past & Present* (37):21-43.

Schauer, Frederick. 2004. "The Failure of the Common Law” (the Willard Pedrick Lecture)." *Arizona State Law Review*:765-782.

Schoenblum, Jeffrey A. 1999. "The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with the Trust." *Vanderbilt Journal of Transnational Law* 32 (4):1191-1227.

Shatzmiller, Maya. 2001. "Islamic Institutions and Property Rights: The Case of the 'Public Good' Waqf." *Journal of the Economic and Social History of the Orient* 44 (1):44-74.

Simpson, A. W. B. 1986. *A History of the Land Law*. 2d ed. Oxford: Clarendon Press.

Spruyt, Hendrik. 1994. *The Sovereign State and Its Competitors: An Analysis of Systems Change*. Princeton: Princeton University Press.

Stephenson, Carl. 1941. "The Origin and Significance of Feudalism." *The American Historical Review* 46 (4):788-812.

Stevenson, E. R. 1940. "The Escheator." In *The English Government at Work, 1327-1336*, ed. W. A. Morris and J. R. Strayer, 109-67. Cambridge: The Medieval Academy of America.

Stocker, C. 1978. "Public and Private Enterprise in the Administration of a Renaissance Monarchy: The First Sales of Office in the Parlement of Paris (1512-24)." *Sixteenth Century Journal* 9:4-30.

Teschke, Benno. 2003. *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations*. London: Verso.

Tezcan, Baki. 2010. *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World*. Cambridge: Cambridge University Press.

Thorne, Samuel Edmund, ed. 1949. *Prerogativa Regis; Tertia Lectura Roberti Constable de Lyncolnis Inne Anno 11 H. 7*. New Haven: Yale University Press.

Twitchett, Denis Crispin. 1962. *Land Tenure and the Social Order in T'ang and Sung China*. London: School of Oriental and African Studies, Universtiy of London.

———. 1970. *Financial Administration under the T'ang Dynasty*. 2d ed. Cambridge: Cambridge University Press.

Vikør, Knut S. 2005. *Between God and the Sultan: A History of Islamic Law*. Oxford: Oxford University Press.

Vinogradoff, Paul. 1892. *Villainage in England; Essays in English Mediaeval History*. Oxford: Clarendon press.

Waugh, Scott L. 1985. "Non-Alienation Clauses in Thirteenth-Century English Charters." *Albion: A Quarterly Journal Concerned with British Studies* 17 (1):1-14.

Weber, Max. 1946. "Bureaucracy." In *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. W. Mills, 196-244. New York: Oxford University Press.

———. [1922] 1978. *Economy and Society*. Vol. I. Berkeley: University of California Press.

Woodward, G. W. O., and John McIlwain. 1995. *Dissolution of the Monasteries*. New ed. Andover: Pitkin.

Youings, Joyce A. 1971. *The Dissolution of the Monasteries*. London: Allen and Unwin.

1. Balla and Johnson (2009), Kuran (2011), Acemoglu and Robinson (2012, 120), Barkey (1994, 40), Anderson (1979, 365, 565). The actual weakness of Islamic states, especially to control the economy, is by contrast noted in Hall (1986, 160, 167). [↑](#footnote-ref-1)
2. Anderson (1979, 365). [↑](#footnote-ref-2)
3. Barkey (1994), Balla and Johnson (2009). [↑](#footnote-ref-3)
4. This is the view argued by Timur Kuran, although it is within an attempt to revise the narratives about Ottoman economic backwardness; Kuran (2011, 127), Kuran (2001, 860-1). [↑](#footnote-ref-4)
5. Shatzmiller (2001, 49). Elsewhere, it is the Islamic principle that all property belongs to God,” that authorized the Sultan to engage in arbitrary confiscation; Kuran (2001, 854). [↑](#footnote-ref-5)
6. Weber ([1922] 1978, 231-2, 238). [↑](#footnote-ref-6)
7. Linz and Stepan (1996, 52-3). [↑](#footnote-ref-7)
8. I use terms that may appear anachronistic for the medieval or premodern periods, such as “ownership,” “constitutionalism,” “the state,” and others. Such use does not imply the projection of modern notions into the past, but serves simply as shorthand. Moreover, anachronism distorts through unwanted inferences. However, these are not inevitable; often, a conceptual core captures the critical element in play. In Fortescue ([c. 1470] 1997, ch.13), “political government” denotes the law-bound rule and institutions that structure constitutionalism; and the word “constitution” has a meaning related to ordinances with respect to guild organization, for instance, already from the 1450s (OED, s.v. “constitution”). [↑](#footnote-ref-8)
9. Simpson (1986, 47). This regime was consolidated under Henry II, with 1135 set as the year “of legal memory,” from which rightful tenure was asserted Garnett (2007). [↑](#footnote-ref-9)
10. Campbell (1995, 87), Harding (2002, 132). [↑](#footnote-ref-10)
11. Clementi (1961), but cf. Johns (2002). [↑](#footnote-ref-11)
12. Legal textbooks begin by stating that the “basis of English land law is that all land is owned by the Crown. A small part is in the Crown’s actual occupation; the rest is occupied by tenants holding either directly or indirectly from the Crown;” Megarry and Wade (1975, 13), Gray and Gray (2009, 56), Cooke (2006, 13-17). See also Pollock and Maitland (1898, 210-11). The Common Law was modernized through the reforms of 1925, with many critical features of the law transformed and some narrowing of the distance from continental forms of law almost a century later; Cooke (2006, chapter 3), Cooke (2006, 203-221), Schauer (2004). [↑](#footnote-ref-12)
13. Baker (2002, 222ff), Pollock and Maitland (1898, 208-09). I discuss the complications with the term ‘feudal’ in footnotes 67 and 68. [↑](#footnote-ref-13)
14. Pollock and Maitland (1898), Holdsworth (1923, 3-87), Palmer (1980-1), Brand (1992). [↑](#footnote-ref-14)
15. Pollock and Maitland (1899, 5, italics added). For a careful distinction of common law from Roman concepts, see Hudson (2012, 670-2). [↑](#footnote-ref-15)
16. North (1990). [↑](#footnote-ref-16)
17. It was already in doubt from the eighteenth century. The British Ambassador to the Porte, Sir James Porter (1710–1776), for instance, questioned this prevalent, then and now, assumption: the Ottoman Empire was “much less despotic than the government of some Christian states,” he claimed, and it had thus been seriously misunderstood by Western observers. Porter saw Montesquieu’s account as “exaggerated and fictional:” “Montesquieu excluded the Turks from all the advantages of civil law, including the right to private property, and wrongfully assumed that the Grand Signior swallows up every right of the subject throughout the empire.” Abundant evidence existed for both a code of laws and a compact between the sultan and his people, “binding both and sealed in heaven.” Porter appealed to the Koran, especially the chapter on “Women,” to show that Islamic law had clear stipulations on inheritance along both the male and female lines, thus emphasizing “how far private property is secured by law beyond the reach, and out of the power, of the sultan;” Porter (1771, 49, 50). [↑](#footnote-ref-17)
18. The literature is substantial and only a few works can be referenced here: Fleischer (1986), Khoury (1997), Imber (1997), Darling (1996), Goffman (2002), Ágoston (2005), Kafadar (2008), Tezcan (2010), Darling (2013), Balla and Johnson (2009), Barkey (2005), Barkey (2008). [↑](#footnote-ref-18)
19. Tezcan (2010). [↑](#footnote-ref-19)
20. Kuran (2011). [↑](#footnote-ref-20)
21. Abu Zahra (1955, 160-1). [↑](#footnote-ref-21)
22. According to the shari‘a, there were many types of real property, but the main categories were state owned land (*miri* or *amiriyya*), land held in absolute ownership (*mamluka* or *milk* or *mülk*), common land (*matruka*) which was left to pasture, dead land (*mawat*), and *vakıfs* (*waqfs*); Mahmasani (1955, 181). The status of land remained in some cases unclear even at the level of entire provinces, such as Syria; Cuno (1995). [↑](#footnote-ref-22)
23. Imber (1997, 128, 156-162). [↑](#footnote-ref-23)
24. Imber (2006, 236). [↑](#footnote-ref-24)
25. Anderson (1979), Kuran (2011). [↑](#footnote-ref-25)
26. More specifically, the right to collect revenue in exchange for military service was the *dirlik*. The *dirlik*-holder was a *sipahi* and could be either a timariot, a *zaim*, or a *has-holder,* depending on size of fief revenue; see Kunt (1983, 9, 12-29). But none of these officials owned either the land or the peasants living on the land; Özel (1999, 230-231). On *timars* more general, see Imber (2010, 354-360). [↑](#footnote-ref-26)
27. Ertman (1997). [↑](#footnote-ref-27)
28. Some forms of land holding did not involve homage, however; Hudson (1994, 15-20). [↑](#footnote-ref-28)
29. The term can be applied to a system of land grants as rewards to military officials, a system of economic organization centered around the manor (manorialism; Holton (1985), Anderson (1979), Barzel and Kiser (2002)), or a system of political decentralization and fragmentation; Spruyt (1994). French historiography in particular has made the latter association constitutive of feudalism. However, political fragmentation only emerged when the apex of the feudal pyramid, the king, was too weak to enforce his claims on his subjects, as in France; Ganshof (1964). In England, the feudal system was more effectively applied by the ruler; Bartlett (2000, 202), Hollister (1976, 99-106). [↑](#footnote-ref-29)
30. Çirakman (2001, 55). Weber contrasts feudal contractualism with sultanic arbitrariness, but his assertions are unfounded; Weber ([1922] 1978, 1075). [↑](#footnote-ref-30)
31. Gerber (1994, 10). [↑](#footnote-ref-31)
32. Leges Henrici Primi (1972, 43 3-7), Pollock and Maitland (1898, 351-6), Leges Henrici Primi (1972) Chew (1943), Stevenson (1940), Baker (2002, 239), Plucknett (1948, 417-9). [↑](#footnote-ref-32)
33. They were thus closer to Church benefices in the West, which assigned ecclesiastical office with the right to draw on the revenues generated by the office. [↑](#footnote-ref-33)
34. Inalcik (1973, 111). [↑](#footnote-ref-34)
35. Pollock and Maitland (1898, 527-532). [↑](#footnote-ref-35)
36. Dawson (1960, 184-7, 192-228), Plucknett (1948, 93-98). [↑](#footnote-ref-36)
37. Holt (1972, 29). [↑](#footnote-ref-37)
38. Imber (2006, 229), Imber (2002, 194, 202), Itzkowitz (1980, 39-49). [↑](#footnote-ref-38)
39. Imber (2006, 229-30). [↑](#footnote-ref-39)
40. Weber (1946). [↑](#footnote-ref-40)
41. Plucknett (1948, 491-500), Baker (2002, 265-8). [↑](#footnote-ref-41)
42. Palmer (1985, 6). [↑](#footnote-ref-42)
43. The literature on venality of office is critical to accounts of absolutist regimes; Doyle (1996), Stocker (1978), Giesey (1983), Marsh (1962), Salmon (1967). [↑](#footnote-ref-43)
44. Bean (1968, 40-103), Milsom (1981, 110-8), Waugh (1985). [↑](#footnote-ref-44)
45. Baker (2002, 260). [↑](#footnote-ref-45)
46. Baker (2002, 261). [↑](#footnote-ref-46)
47. Plucknett (1948, 511-512). [↑](#footnote-ref-47)
48. Bean (1968, 67, 74). [↑](#footnote-ref-48)
49. Thorne (1949), Bean (1968, 197-220). [↑](#footnote-ref-49)
50. Holt (1972, 30-6), Holt (1982, 207-10), Holt (1983), Hudson (1994, 59). [↑](#footnote-ref-50)
51. Hudson (1994, 15). [↑](#footnote-ref-51)
52. For instance, the assassination of Sultans is habitually treated as a sign of a despotic, non-law-governed regime, when the same action during the English Civil War is considered a defense of liberty. Closer historical examination of the Ottoman cases, moreover, suggest that the Janissaries too, for instance, were acting in the name of the people and against sultanic arbitrariness; Tezcan (2010, 6-9). [↑](#footnote-ref-52)
53. Kunt and Woodhead (1995, 34). [↑](#footnote-ref-53)
54. Itzkowitz (1980, 48-9). These assumptions are common in Western scholarship too; Teschke (2003, 171), Bloch ([1939-40] 1961). Historians, however, no longer identify feudalism with decentralization even with respect to France; Giordanengo (1990, 65). [↑](#footnote-ref-54)
55. Ganshof (1964, 165). [↑](#footnote-ref-55)
56. On England as the “most perfectly feudal kingdom in the West,” see also Bartlett (2000, 202), Hollister (1976, 99-106), Stephenson (1941, 811). On how “bastard feudalism,” itself a contested term, began devolving public authority onto private retainers from the fourteenth century, see McFarlane (1945), Bellamy (1989), Crouch and Carpenter (1991), Hicks (1995), Hicks (2000). On its reconstitution after 1688, Brewer (1989). [↑](#footnote-ref-56)
57. *Timar*-holding was not the only means of provincial administration. Certain regions such as Easter Anatolia and Lebanon were ruled by local dynasties, and some states had formal vassal status, such as Transylvania. And *timars* were not employed in Egypt, Baghdad and some other regions; İnalcık 1973, 105-109. However, *timars* have shaped most social scientific accounts and were “the typical Ottoman province;” İnalcık 1973, 107. [↑](#footnote-ref-57)
58. This neglected point is insightfully highlighted in Rudolph and Rudolph (1979). [↑](#footnote-ref-58)
59. Armstrong (1972). [↑](#footnote-ref-59)
60. It may be the case that a more bureaucratic French administration would have eased the turbulent French political trajectory. Since we lack examples of such a successful combination on all dimensions, this has to remain hypothetical. What is clear is that English constitutionalism was not predicated on a more rational bureaucracy until at least the eighteenth century. [↑](#footnote-ref-60)
61. Ganshof (1964), Gray and Gray (2009, 56), Cohen (1933), Duus (1976), Reischauer (1965), Ostrowski (2006, 225), Pipes (1974, 43, 89), Blum (1961, 169), Twitchett (1962), Twitchett (1970). [↑](#footnote-ref-61)
62. Inalcik (1994, 104-6). [↑](#footnote-ref-62)
63. Imber (1997, 120). [↑](#footnote-ref-63)
64. The analysis in this section follows Inalcik (1994, 108-10). [↑](#footnote-ref-64)
65. On the dependent peasant being, however, free, see Inalcik (1994, 145-5). The *çift* was the land area ploughed by a pair of oxen Gerber (1994, 14). [↑](#footnote-ref-65)
66. Villein rights were only enforceable in manorial courts. [↑](#footnote-ref-66)
67. Imber (2006, 236). [↑](#footnote-ref-67)
68. Inalcik (1994, 110). [↑](#footnote-ref-68)
69. On death, land passed by default to the son. If more than one, the sons could share the *çift*, registered in the name of one, with the others registered under a different status (*bennak* or *caba bennak*). Tax obligations could be divided by agreement; Imber (2006, 236). [↑](#footnote-ref-69)
70. Baker (2002, 266-8). [↑](#footnote-ref-70)
71. Hudson (2012, 655-661). [↑](#footnote-ref-71)
72. Baker (2002, 249-50). [↑](#footnote-ref-72)
73. Bailey, 330). By 1400 villeins amounted to about one million in a population of at most 2.8m; Hatcher (1981, 4). Revised population estimates are at two million total; Broadberry*, et al.* (2014). For villeinage, see Pollock and Maitland (1898, 356-83), Vinogradoff (1892), Hatcher (1981) and Hudson (2012, 752-63). [↑](#footnote-ref-73)
74. Serfs also existed in the Ottoman Empire and were usually prisoners-of-war or purchased slaves, who were employed as agricultural laborers. [↑](#footnote-ref-74)
75. Megarry and Wade (1975, 23), Pollock and Maitland (1898, 356-83), Simpson (1986, 144-72). Hyams (1980) for a qualifying view. [↑](#footnote-ref-75)
76. Hatcher (1981, 4). [↑](#footnote-ref-76)
77. Baker (2002, 278). Cf. Hyams (1980). [↑](#footnote-ref-77)
78. Bailey (2014). [↑](#footnote-ref-78)
79. Simpson (1986, 144-51). [↑](#footnote-ref-79)
80. Imber (2006, 236). [↑](#footnote-ref-80)
81. Imber (1997, 121). [↑](#footnote-ref-81)
82. Imber (2006, 236), Vikør (2005, 337). [↑](#footnote-ref-82)
83. Imber (1997, 131). [↑](#footnote-ref-83)
84. Pollock and Maitland (1898, 382). [↑](#footnote-ref-84)
85. Baker (2002, 306). [↑](#footnote-ref-85)
86. Baker (2002, 261). [↑](#footnote-ref-86)
87. Inalcik (1994, 111). [↑](#footnote-ref-87)
88. Plucknett (1948, 510). [↑](#footnote-ref-88)
89. Inalcik (1994, 111). [↑](#footnote-ref-89)
90. Hudson (2012, 653), Plucknett (1948, 495-6, 508-9), Bean (1968, 40-103), Hudson (2012). See Pollock and Maitland (1899, 255) for reservations on this. [↑](#footnote-ref-90)
91. Baker (2002, 260-264). [↑](#footnote-ref-91)
92. Imber (2006, 236), Anderson (1979, 565). [↑](#footnote-ref-92)
93. Baker (2002, 380). [↑](#footnote-ref-93)
94. Baker (2002, 251) [↑](#footnote-ref-94)
95. Indeed, evidence suggests they may actually originate in contacts with the Islamic world, through the Crusades; Gaudiosi (1988). [↑](#footnote-ref-95)
96. “Waqf” is the Arab transliteration; Ottoman sources use *vakıf*. [↑](#footnote-ref-96)
97. It is highly possible that the Islamic *vakıf* was the source of the English use, as I mention below. [↑](#footnote-ref-97)
98. Abou-El-Haj (1991, 46), Baker (2002, 249). [↑](#footnote-ref-98)
99. Bean (1968, chapter 3), Darling (1996, 88). [↑](#footnote-ref-99)
100. The similarities raise the question of whether the English “use” was derived from the Islamic one. Treatments focus on the similarities of both with the Roman legal form of *fidei commissum;* Hennigan (2004), Gaudiosi (1988), Cattan (1955, 212-8). The topic has lost the salience it had and a variety of influences, Byzantine, Jewish, Persian and others, are now admitted; Hennigan (2004). [↑](#footnote-ref-100)
101. Cattan (1955, 212). [↑](#footnote-ref-101)
102. Kuran (2011, 110-15, 128), Kuran (2001). Also, Schoenblum (1999, 1201). [↑](#footnote-ref-102)
103. Kuran (2005), Kuran (2011). [↑](#footnote-ref-103)
104. The rule was not comprehensive in England, as local custom did apply in certain regions, but primogeniture certainly prevailed for royal succession and the upper social levels; Baker (2002, 265-8). [↑](#footnote-ref-104)
105. Holdsworth (1923, 101-37, 171-97), Simpson (1986, 47-80, 208-241). [↑](#footnote-ref-105)
106. Baker (2002, 256). [↑](#footnote-ref-106)
107. Coulson (1971, 213-4). [↑](#footnote-ref-107)
108. Two types of land *vakıf* existed, the religious or public service *waqf* (*waqf khair*) and the family endowment (*waqf ahli* or *dhurri*); Cattan (1955, 203), Powers (1999), Abbasi (2012), Schoenblum (1999). The cash *waqf*, by contrast, involved capital, not land, although the prohibition of usury created legal problems; Imber (1997, 143-6), Jon (1979). [↑](#footnote-ref-108)
109. Kuran (2005), Kuran (2011). [↑](#footnote-ref-109)
110. Kuran (2014, 18-19) briefly considers trusts and entails as alternatives, highlighting their more democratic decision-making mode and other traits of flexibility. [↑](#footnote-ref-110)
111. [↑](#footnote-ref-111)
112. Barton (1965, 576). [↑](#footnote-ref-112)
113. Baker (2003, 709). [↑](#footnote-ref-113)
114. Makdisi (1981, 227-9). [↑](#footnote-ref-114)
115. Baker (2002, 290). [↑](#footnote-ref-115)
116. Public foundations also increasingly used corporate status, as Kuran has noted (2011), but the reasons are not entirely clear. One implication, however, is that unlike *uses* which required the replacement of feoffees (trustees) to remain active, corporations did not die. [↑](#footnote-ref-116)
117. Baker 2002, 251. [↑](#footnote-ref-117)
118. Baker 2002, 255-6. [↑](#footnote-ref-118)
119. Fratcher 1973. [↑](#footnote-ref-119)
120. Baker 2002, 292. [↑](#footnote-ref-120)
121. Baker 2002, 293. [↑](#footnote-ref-121)
122. Kuran 2011, 127 [↑](#footnote-ref-122)
123. Schoenblum 1999, 1203. [↑](#footnote-ref-123)
124. Kuran (2011). [↑](#footnote-ref-124)
125. Inalcik (1994, 106-7). [↑](#footnote-ref-125)
126. Özel 1999, 242, 239. [↑](#footnote-ref-126)
127. İnalcık (1973, 109-10). [↑](#footnote-ref-127)
128. Imber (1997, 160). [↑](#footnote-ref-128)
129. Although expropriations are generally held to have negative impact on economic performance, a powerful challenge was made with a revision of the effects of debt default by the “borrower from hell,” Philip II; Drelichman and Voth (2014). [↑](#footnote-ref-129)
130. Baker (2003, 709). [↑](#footnote-ref-130)
131. Knowles and Knowles (1976), Woodward and McIlwain (1995), Youings (1971). [↑](#footnote-ref-131)
132. Kuran (2011, 844). [↑](#footnote-ref-132)