

# The Gift of Law

## Greek Euergetism and Ottoman *Waqf*

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### Abstract

Modern social and political thought has approached the questions of politics, law, and citizenship from the vantage point of a fundamental divide between the occidental and oriental, or archaic and modern, institutions. This article creates a concept, the gift of law, by staging two gift-giving practices as two historical moments: Greek euergetism and Ottoman waqf. While it is indebted to Mauss, our articulation of the gift of law also owes to the critical interventions of Jacques Derrida and Pierre Bourdieu, who emphasized non-voluntaristic and non-calculative aspects of the gift. We argue that both euergetism and the waqf enabled and substantiated legal subjectivities that allocated rights and obligations. Those gift-giving practices establish relationships between various groups and legal authorities that were crucial in the formation of cities as spaces of government, for both citizens and non-citizens alike. With the concept 'gift of law', categories 'oriental' and 'occidental' become problematic.

### Key words

■ citizenship ■ gift ■ Greek munificence ■ law ■ Ottoman beneficence

This article develops two questions. Both concern the relations between gift-giving practices and fundamental legal problems of moral and political obligation, and of the constitution of the legal subject. The first question is: How does giving and receiving gifts produce obligation? The second is: How does obligation give birth to law?

To articulate these questions, this article explores two historical gift-giving practices. The first is the Greek (late Hellenic and Hellenistic) practice of euergetism whereby notables gave their cities gifts such as banquets, festivals and monuments, which legitimated their government of the city. The second practice is that of the waqf during the Ottoman Empire, an institution whereby wealth was immobilized for beneficence into new forms of legal relation, sanctity, and distribution in cities. Both euergetism and the waqf were significant practices of governing cities.<sup>1</sup> This article frames these institutions by developing a concept, *the gift of law*. By investigating two historical forms of prestation – euergetism

and the waqf – we want to demonstrate how *gift giving instantiates and organizes legal rights and obligations, legal subjectivity, and legal legitimation*. We argue that these gifts ground economies of political, moral, social, and spatial identifications through which subjectivities receive legal substantiation. We want to suggest that the gift gives birth to legal right and forms legal subjects. The law underpins exchanges between those who give, those who receive, and more significantly, those who reciprocate. Or, more concisely, *gift giving and legal subjectivity are mutually constitutive*.

It is important to emphasize that we are not attempting a comparative analysis between Hellenistic euergetism and the Ottoman waqf. We argue that it is imperative to avoid interpreting these institutions with analytic categories such as Christian or Islamic philanthropy or modern notions of legal autonomy and right. These categories would be not only anachronistic and inappropriate, but, in the case of the waqf, outright orientalism. Rather, we examine these institutions to provoke the creation of a new conceptual apparatus by which questions of politics, law and citizenship are approached differently. As Deleuze and Guattari might put it, the historical field is the potentiality for new concepts and new theoretical insights (Deleuze, 1990: 32; Deleuze and Guattari, 1991: 114). And in this article, the motivating concept is that gift giving constitutes legal subjects, and that the formalization of the giving of things constitutes legality between social and political subjects, or more accurately, between citizens. We emphasize here ‘citizens’, because, as we shall argue, gift-giving practices give birth to citizens (as legal subjects) not only by instituting relations of obligation between citizens but also between citizens and non-citizens of cities.

### Theorizing Obligation: To Give, to Receive, to Reciprocate

What social forces reside in that relation between one who gives and one who receives? While *The Gift* (Mauss, 1950) is ostensibly about the conditions that provoke an obligation to reciprocate, it becomes clear that Mauss seeks something deeper. By focusing on the rules of exchange and contract in societies ostensibly devoid of markets, Mauss argues that there is indeed no society without markets but only those with different principles of exchange and contract (p. 4). Throughout *The Gift* Mauss insists that archaic societies developed systems of exchange that were equally complex as those of modern societies and that even if these societies did not develop concepts of selling, borrowing and credit, they should not be interpreted as if lacking legal practices of exchange (p. 32). Thus both historic and contemporary archaic societies ‘exchange things of great value, under different forms and for reasons different from those with which we are familiar’ (p. 33).

This is significant for two reasons. First, as Carrier (1995) argued, ‘occidentalism’ has dominated studies of the gift since Mauss, which creates an image of the West as being an essentially pure market societies. Second, as Carrier (1995)

also argued, this occidentalism was accompanied by orientalism, which increasingly valorized gift-giving practices in well-studied groups such as Melanesia into theories of exchange in the Orient. As a result, gift-giving practices in the Occident (individualized, marketized, commodified) increasingly became contrasted with gift-giving practices in the Orient (collectivized, ritualized, servient) as two fundamentally distinct and pure models of exchange. In other words, archaic has been mapped onto oriental and modern onto occidental, interchanging geographic and temporal categories. We believe that Mauss was precisely struggling against such essentializing mapping of oriental-archaic and occidental-modern with respect to gift giving. Instead, he was attempting to demonstrate the coexistence of archaic and modern practices without reducing them to 'oriental' and 'occidental'.

For Mauss the central question was: How does giving and receiving gifts produce obligation? He considered this question from two reciprocal expressions: giving and receiving. Gift giving generates an obligation that arises from instituting a group or a collectivity as a subject of law. To invite, for example, a clan or tribe to a banquet is to declare that you as a group exist and are able to render services. It is an act of declaration. Yet, as Mauss observes, such an act is never original or initial but is always caught and subjectivized in acts of invitation, distribution, sharing, and obligation. To declare is simply to participate in this flow of obligations to give.

Similarly, receiving gifts realizes this flow of obligations, for there is no moment when one does not acknowledge the receipt of a gift. In many ways, reflecting Nietzsche's second essay from the *Genealogy of Morals*, Mauss renders the archaic practices of gift-giving as those that enable and produce a subject able to make promises. The gift remembers: those who have received orient themselves to the future to give, and those who gave anticipate the reciprocal promissory practice of both the gift and the law (Mauss, 1950: 42). *The gift of law produces the subject who can make promises and thus establishes a field of obligation.*

In many ways, however, Maussian analysis remains caught in an interpretation of gift giving acts as calculative and voluntaristic. The critical interventions by Derrida (1974, 1991) and Bourdieu (1980, 1997) provide the analytical means by which we deepen the concept of the gift of law to explore euergetism and waqf. Drawing upon Derrida and Bourdieu, we shall briefly discuss the role of the gift in producing *responsible* subjects who have the right to make promises.

Recently Derrida has attempted to rescue the gift from the contraction of giver and receiver by envisaging an exchange between subjects without calculation and yet still interpret gift giving as an act of obligation.<sup>2</sup> This type of examination first develops the subject positions enabled by gift giving and proceeds to explore the suggestion of a non-calculable or non-voluntaristic gift, beyond or before symbolic duties of contract and outside the anamnesis of recognition and the calculation of credit for gratitude.<sup>3</sup>

Derrida insists that the gift is an act that does not necessarily occur between conscious and intentional subjects. We agree. That is why our object is 'gift-giving

practices' rather than the gift as such. To focus on gift-giving practices means that subjects are implicated in these practices and do not pre-exist but are constituted through them. This is, in effect, the gift of law: the formation of legal subjectivities and obligations through the event and enactment of gift-giving practices. Thus, we interpret Derrida's conception of the gift as *the impossible* as a way to underscore this constitutive aspect of the gift as non-voluntaristic and non-calculative rather than as an intentional act between two conscious subjects. This does not mean that subjects are not active agents but, as we shall illustrate, the gift constitutes them.

Like Derrida, Bourdieu argues that what inaugurates gift giving is neither the conscious intention nor the calculating action of an isolated individual but the disposition and habitus oriented toward the other (Bourdieu, 1997: 233). Unlike Derrida, however, Bourdieu argues that while the gift implies gratuitous, unrequited reciprocity, it never excludes awareness of the logic of exchange and calculation (Bourdieu, 1997: 231). Notwithstanding this difference, for both the logic of the gift embodies a tension between a calculating disposition and generous disposition. If we see the logic of the gift in this tension, we can suggest, contra Nietzsche, that it is not only pain that constitutes memory but also pleasure.<sup>4</sup>

These aspects of the gift that Derrida and Bourdieu interrogate have enabled us to create the concept, the gift of law. In the following sections we will interpret euergetism and the waqf as gift-giving practices. We wish to highlight two central aspects of the gift as it informs the substantive treatment of the gift of law. First, the gift of law is the event of the thing exchanged rather than being the gift as such. What drives our analyses of euergetism and waqf is to interpret them as gift-giving practices that produce the legal subject. Second, the gift of law requires, or even better, institutes, non-calculative and non-voluntaristic legal subjects whose acts of giving are nonetheless responses to obligations.

### **Euergetism: From Munificence to Beneficence**

It was through an exceptional work of historical sociology by Paul Veyne that euergetism was brought to the attention of scholars. Originally published as *Le Pain et le Cirque: Sociologie historique d'un pluralisme politique* (1976), it was substantially abridged and translated into English as *Bread and Circuses* (1990). While remaining a rather obscure work, it was recognized as a major contribution to historical sociology of ancient societies, comparable to Max Weber's *The City* (1921), which influenced Veyne (1971). Most basically, euergetism is an institution whereby notables gave gifts (such as public entertainments, or public infrastructure) to the city in which they held citizenship, and in return these notables received from the city the right to govern (Springborg, 1986, 1987, 1992). Veyne analyzed three broad forms of euergetism: Greek, Republican Roman and Imperial Roman. We recognize the criticisms that have been made of Veyne's work on the applicability of this concept to all three epochs (see Lomas and

Cornell, 2003). We focus our discussion on Greek euergetism without implying its broader applicability. Both Greek and Roman public benefaction originated in cities. In Greek cities, euergetism mostly took the form of devotion of time and money to the city and dedication of buildings; in Rome the notables gave the inhabitants of cities spectacles and feasts. This created a tradition of permanent competition of ostentatious offerings and inhabitants began interpreting these gifts as due to them. To refuse to give had social and political consequences. For Veyne this is how an ostensibly 'individual' quality, munificence, became a public institution, beneficence (1971: 203).

We are interested in euergetism because, as Veyne argues, 'beneficence creates the benefactor, and not the opposite' (p. 204). In other words, rather than the benefactor preceding the act of gift giving, the subject of law who is the benefactor comes into being through the institution of beneficence as legitimate domination. Although it is not Veyne's pursuit to compare euergetism with other practices of gifting, he does proceed from Mauss, but critically. Mauss sees the gift as a fundamental form of exchange and a mechanism of redistribution throughout very diverse societies and periods. Veyne is critical of interpreting various practices of giving (potlatch, patronage, benefaction, charity, alms) as a variation of one species, redistribution (Veyne, 1990: 19). Instead, Veyne is interested in establishing the singularity of euergetism, as distinct from, and irreducible to, other forms of giving and other periods. For this reason, Veyne opposes comparative analysis. He asks:

Will the good way to discover the cause of public benefaction be to compare the details of Hellenistic civilization, where that institution exists, and of Florentine civilization, which is ignorant of it, so as to find, by subtraction, which of these details was the cause? (Veyne, 1971: 127)

His answer is that such a comparison 'is impossible or useless' (p. 127). By contrast, Veyne deploys a concept that did not exist for the Greeks and Romans but highlights the uniqueness of an institution.

Thus, Veyne creates a new concept. It was not used as such by either the Greeks or Romans but was created from the wording of the honorific decrees of the Hellenistic period by which cities honored persons who did good to the city. The general word for a benefaction was *euergesia* (Veyne, 1990: 10). Euergetism implies that associations (cities, *collegia*) expected the rich to contribute from their wealth to the public expenses and the rich spontaneously and willingly complied. This leads Veyne to ask: What impelled the rich to give so spontaneously and willingly? What makes euergetism interesting for us is that it is not contractual and yet still legal; it is not voluntaristic and yet obligatory. While magnificence as an ethico-political virtue may in fact explain why the rich cultivated a disposition to give, Veyne insists that euergetism is a specific form of gift giving that must be distinguished from patronage, ostentatious consumption, immortalization, charity, alms, investment in public offices, and, above all, liturgies. While euergetism shared a lineage with all these forms of gift giving and incorporated elements into its *modus operandi*, it is not reducible to any of them

(Veyne, 1990: 18–19). Veyne argues that euergetism was not a tax by any other name and that it was not a system of redistribution. It was not merely a response to debt, slavery and inequality; rather, it followed a logic that was irreducible to perennial problems of the Hellenistic city (pp. 94–5).

What was it then that distinguished euergetism from other forms of gift giving? Euergetism was a gift to the city, a civic gift that was meant for the entire city and its inhabitants, citizens as well as non-citizens. All other forms of gift giving were either oriented toward a narrower or nearer groups or between equals (Veyne, 1990: 72). Two fundamental elements of euergetism are the birth of notables as a dominant group differentiated from aristocracy, peasants or warriors, and, the city as an object of civic obligation. Neither alone would have produced euergetism but their peculiar combination in the Hellenic period produced a practice that became the crucible of the government of cities. The Hellenistic cities were governed by notables who saw it as their obligation rather than their profession to govern (p. 42). They could partake in the pleasure of governing the city as leisure because they were rich and respected. The birth of a regime of notables would have been inconceivable without the city as the foundation of social life even when empire or kingdom was the foundation of political life (p. 39).

Fundamentally, euergetism is based on unequal distribution of surplus and unequal power in deciding how the surplus was to be used. Therefore, insofar as political rule and legitimation are coordinated by means of this political gift, politics is considered as an absolute right of the notables who alone have the means to execute euergetism (p. 118). But herein lies an irony: for at the same time that notables empower themselves, *euergetism gives to the unity of the city* and not simply to the noble class. The most distinguishing aspect of euergetism is its simultaneous voluntary and forced character (p. 103). This combination made euergetism unique. If it were only a response to a constraint, it would have been closer to taxes or liturgies. If it was an expression of spontaneous freedom, it would have been closer to patronage and largesse (p. 104). Euergetism combined these into a pleasure and moral duty of giving.

The euergetic gift establishes the politically legitimate conditions under which notables distinguish themselves, while at the same time binding this immanent differentiation under a common civic space, that of the polis. Euergetism gives the notables the capacity to act as public characters; in fact, binding together with the name of the city itself could be the very constitution of public politics and public character and virtue. We can see how determining law is regarding gifting. Or, perhaps how determining gifting is for law. Moreover, not only does euergetism engage the exemplarity of Hellenistic democracy and obligation, but it also involves the identity of the Greek citizen and his double pole of unity, civic participation, and competitive recognition as these circulate gifts, law and politically legitimate order. As such, this is why Veyne writes that, 'pagan literature is full of civic or patrician pride; this harsh climate is the climate of euergetism, which gives edifices and pleasure to the citizens rather than alms to the poor' (1990: 20, 21). 'Charity' (and not euergetism) as a form of gifting would produce

different types of legitimation; it would and will have operated differently upon the legal and character formations of those societies, civilizations, and individuals who manifest charitable gifts. In short, we can observe many types of legal gifts, and receive various forces in any gift of law.

### Ottoman Waqf: Laws of Beneficence

The lineage of citizenship has always been traced to the Greek *polis*, claiming it as the progenitor of occidental forms of law, state and justice. Weber is the most prominent example of this tradition for he argued that occidental cities (beginning with the *polis*) enabled political associations of unity, which oriental cities were never able to achieve because of the persistence of tribal bonds (Gerber, 1994: 110–16; Isin, 2002; Weber, 1927). How do the orientalist interpretations of oriental law as a cluster of absences (of accountability, dynamism, rationality, predictability, and all other apparatuses of calculative justice and jurisprudence) address our concerns with the gift of law in the context of an ostensibly oriental institution? It was Springborg who obliquely suggested the possibilities of comparing euergetism and waqf (1986; 1987: 407, n. 31). First, we want to continue to demonstrate a relation between gift-giving practices and the foundations of law, and subjects of justice. Second, we want to develop some suggestions as to how Ottoman law formalized itself around the central institution for gift giving in the Ottoman Empire, the waqf. While the waqf has an illustrious and significant history under Islamic law, under Ottoman law it became a gift-giving practice in cities by which economic capital was transformed into symbolic and cultural capital.

It is first necessary to develop a basic notion of the operation of the waqf as a gift-giving practice. Although occasionally illuminating in his cross-cultural mention of gift-giving practices, Veyne is altogether unhelpful on the topic of an Islamic gift for he reproduces the classical schema of Weberian orientalism.<sup>5</sup> There was indeed imperial largesse, but rather than self-regarding benefaction, gift giving for the subjects (citizens and non-citizens alike) of the Ottoman Empire took the form of the waqf.

While our focus is on the Ottoman waqf, a broad definition of the Islamic waqf is needed. The waqf is a type of pious foundation for humankind and not reserved only to Muslims. The word waqf is often translated as to stop, prevent or restrain.<sup>6</sup> This essentially means that moveable or immovable property is withdrawn from market exchange and alienated for specific pious purposes under Islamic law. The waqf thus constituted an endowment, established by a donor, for the provision of designated social services in perpetuity financed by inalienable revenue-bearing assets. For the large part of its history, waqf endowment could consist only of immovable properties, i.e. property and the occupations dependent upon it. The goods provided must be non-rival and non-exclusive. In this sense, it is a decentralizing institution, gaining mandate and legal force by specification of its founder. It is a flexible practice to deal with conditions (such



as conquest, migration, or growth) where not everyone nor their needs are known; and not surprisingly its juridical history begins with the expansion of Islam though the actual date is debated (Kuran, 2001: 846).

The waqf claims several sets of legal antecedents. As Singer notes:

Though waqf-making has not explicit articulation in the Qur'an, there are verses that contain repeated admonitions to believers that they be charitable, that they give in addition to the alms (*zakat*) that were the specific obligation of all Muslims. (2002: 4)

Also, evidence of endowments exists from the early records of Islamic history, though they became more prevalent and more popular over time (Hathaway, 1998; Hoexter, 1998; McChesney, 1991; Powers, 1999). Various endowments existed throughout the Islamic world, serving as the agents of everything from small-scale beneficence to large public welfare projects, building anything from mosques and schools, to roads and bridges, to neighborhood water fountains. The beneficiaries of waqfs included, equally, scholars and students, Sufi dervishes, indigents and family members. Evidence can also be traced to either biblical (dating from the wealth and piety of Abraham) or Koranic (citing Muhammad's immobilization of gardens for his companions, and his disposition to charitable investments: 'Retain the thing itself and devote its fruits to pious purposes') references (Heffening, 2001; Singer, 2000). Another legal tradition that is speculated to have influenced waqf law is the Roman legal concept of the *res sacrae*, whereby certain objects participate in different legal jurisdiction (Barnes, 1986: 8). And of course, there is the *shari'a* jurisprudence surrounding the legitimate conditions under which a waqf may be established or altered (van Leeuwen, 1999: 95–117).

While these historical traces and fragments are important to understand the waqf, there is a danger of essentializing it as a transhistorical institution, having functioned in the same manner. Accordingly, this general description of waqf may already raise questions whether it can be considered as a gift-giving practice that produces legal subjects, the gift of law. First, Mauss considered the gift as a form of exchange and we have just suggested that the waqf involved withdrawing property from the market. As we shall argue, in Ottoman waqfs this withdrawal instituted other forms of exchange. Second, the waqf appears to be a centralized practice of instituting authority rather than a reciprocal relationship. As we shall also argue, in practice, waqfs constituted reciprocal legal obligations more enduring and more negotiated than mere endowments. We shall elaborate both these points by illustrating ways in which a giving or endowing institution mediated both religious and secular laws, and how this dialectic establishes corollary legal subjectivities.

We want to consider how the responsabilization of subjects gained expression through the waqf, and how, in turn, the waqf became critical for forming legal personalities and legal positions of responsible subjects. Second, we will argue that the waqf was critical in instituting the rule of the Ottoman Empire and its bureaucracy through legal mediation both secular and sacred. In other words, we are interested in interpreting waqfs as routinized gift-giving practices. It is important to emphasize that the primary focus of Ottoman waqfs was



beneficence whose beneficiaries often included not only people deemed deserving because of their spiritual, social or economic status, including the poor and the weak but also generated a whole range of agents involved in supervising, managing, and running waqfs (Crecelius, 1971; Gerber, 1983; Roded, 1988; Singer, 2002: 154). For this reason Singer (2002: 6) insists that the waqf should be distinguished from gifts exchanged between individuals, which are contractually binding acts of offer and acceptance. But she argues that the waqf can be considered as an act of gift giving that is socially constituted when it occurs between notables and a collective. As we argued as regards euergetism, this is precisely the relationship we want to analyze as socially constituted gift giving. As such, we are interested in, as in euergetism, gift giving as endowments that constituted ongoing institutions.

We begin with 'the observation that a waqf is a one-time gift whose beneficiaries continue for generations; inevitably, it lacks the quality of transaction between specific individuals' (Singer, 2002: 6).<sup>7</sup> As we argued earlier, following Mauss, we are interested in gift-giving practices that involve groups, rights and obligations, and both euergetism and waqf have these elements.

Like euergetism in Hellenistic *poleis* and Roman *civitas*, the proliferation and size of the waqf in Ottoman cities (including their rural regions) must not be understated (Çizakça, 2000; Crecelius, 1995; Shaham, 1991; Singer, 2000). Two examples indicate its extent: first, by 1923 three-quarters of all arable land in the new Republic of Turkey was waqf endowed, and, second, by the end of the eighteenth century it is estimated that the combined income of the 20,000 imperial waqfs in operation equaled one-third of Ottoman state revenue (Kuran, 2001: 849). It is not an exaggeration to say that both imperial authorities and its subjects practiced gift giving as a way of governing.

We proceed by considering four socio-legal aspects of the waqf as gift-giving practice. These are protection of property, safeguarding inheritance, capital accumulation and redistribution, and beneficence. While it is customary to classify waqfs in terms of purposes for which they are established, for our purposes a classification based upon their socio-legal operationalization is more important (Crecelius, 1995: 248). These four types are not intended to be comprehensive but provide brief treatments of a certain aspect of the waqf, and they should be considered together in the variegated ways where law, beneficence and gifting mutually constitute each other.

### *Protection of Property*

There were many reasons to establish a waqf such as piety or status, but one of the most often cited reasons in the literature is a concern to shelter one's property. As the story goes, because the Koran contains few specifications on taxation, and because there were few adequate safeguards against the expropriation of property, Ottoman notables were keen to seek a protective vehicle for their properties (Kuran, 2001: 854–5). By being codified by *shari'a* jurisprudence, the waqf provided a symbolic and legal guard against infringement of its endowment. For

notables, a fall from imperial favor or death would mean the confiscation of property. It appears that these fears were not unfounded. As Singer says, 'When various rulers did attempt to confiscate endowed properties from the waqfs, the ensuing outcry caused widespread discontent' (2002: 31). When expropriations and confiscations of waqfs occurred, they generated serious resistance (see, for example, the 1470s' expropriations by Mehmed II and the consequent succession struggle that attended his death for these reasons). A waqf created to benefit the founder was therefore a protective shield against imperial confiscation while obligating the founder for benefaction. Here we see the paradoxical aspect of the gift as a legal code: the founder protects wealth (calculation) by benefaction (gratitude). As Çizakça (2000: 24–5) argued, however, this motivation should be interpreted cautiously as it can be traced to French colonialist and orientalist arguments about the despotism of the Ottoman Empire. Gerber also concluded that at least in Edirne the waqf was hardly used for the purposes of protecting property against despotic confiscation (Gerber, 1983: 35).

Rather than interpreting this motive to establish the waqf as an act against a despot, we would consider it as a strategic move that enabled negotiation of rights and obligations. Ottoman waqf endowers became legal subjects in their negotiation with the state through religious law (sacred, ergo the inviolability of the waqf); religious law mediates secular law such as to be recognized by the latter.

By introducing the object into the sacred – and for this it must be turned into a gift, a waqf – the endowment enters into another legal order and the proprietor of this object gains the recognition and limitations of this law; hence, we can see in the conversion of profane wealth into sacred endowment a movement whereby a social gift produces legal subjects, sacrosanct and safe, and achieves a legal recognition otherwise unavailable. As Van Leeuwen puts it, 'By becoming a waqf, an object is subjected to a whole set of rules developed especially to protect its status and to enhance its exploitation to the general benefit to the community' (1999: 66). Therefore, rather than claiming that Islamic law has no notion of the juristic person (Kuran, 2001), it appears more reasonable to venture that Islamic law in its Ottoman appropriation (here, actualized through the performance of waqf as beneficence) grounds a juristic person with rights; or, more boldly, Islamic law, insofar as it pertains to guaranteed property rights by alienation into the sacred, endows the subject with qualities of citizenship, which is to say autonomy, right, and legal recourse.

### *Safeguarding Inheritance*

The waqf is relevant to the family and filiation, as one of the most popular forms of waqf was the 'family' waqf. The defining quality of the family waqf was that the endower could choose what individuals and what lines of descent could benefit from waqf resources. This enabled the circumvention of Islamic inheritance laws that are detailed and strict, allowing testamentary bequest to a maximum of one-third of the estate, and provided the automatic division among the rest of the female and male heirs in fixed proportions (Schoenblum, 1999:

1191). The benefits of establishing a family waqf were that assets were bestowed upon family: the salaried employees of the waqf were members of the family, family property was exempted or less heavily subject to taxes, and the revenue-bearing assets circulated immanently and indefinitely (Kuran, 2001: 856). This was not an untypical use of the waqf. For example, Bershara Doumani (1998) in her research on the family waqf in Tripoli and Nablus documents that between 1800 and 1860, 79 per cent of the 211 waqfs in Tripoli and 96 per cent of the 138 waqfs founded in Nablus were family waqfs.

What we want to underscore is that an institution belonging not only to religion, but also to political economy and gift giving, enabled determining powers of inclusion and exclusion in its direct influence on the resources and dynamics of current and future families. The family waqf structures not only current families, but orders interpersonal relations in anticipation (Doumani, 1998: 8). In other words, the family waqf institutes time. This is especially important in that Islamic inheritance laws provide quite substantially for female descendents (daughters and wives), often at the expense of the primary sons of the family. The family waqf allowed the circumvention of this by directly appointing males and sons as benefactors of the waqf.<sup>8</sup> Moreover, as we have noted in the previous section, the waqf was fundamental in negotiating with the state in recognition of inviolable property by placing it into a sacred legal code.

The remarkable quality of the family waqf as a gift-giving practice is that it manipulated and codified property not only to give legal autonomy of the family towards the state, but also legal autonomy to the family vis-à-vis Islamic inheritance law. Family waqfs give to their family a suspended foundation of law, folded between sacred and secular to give the endower legal decision over their families; moreover, in eliding the prescriptions of inheritance laws, the family waqf sanctions legal modalities to plan and protect particular ideas of family and descent. The objects of property are not desired for their own sake, but derivatively as a means to endow a vision of family; the gift in this case appears both intra- and extra-legal and provides legal determination to what is falsely perceived as the basic or given institution of society, families.

### *Accumulating or Redistributing Capital*

Traditionally, a waqf was removed from market exchange and any form of alienation – such as sale, pawning, and donation – was strictly prohibited. Considerable Islamic jurisprudence attempted to determine whether movables, particularly money, can be converted into waqf endowment (Çizakça, 1995: 315; 2000). There existed a series of precedents for this affair, such as the issue of *istibdal* where it was determined that under specific conditions waqf property may be alienated to be converted into a more profitable investment (see van Leeuwen, 1999: 48–52). As early as the fifteenth century these endowments were approved by Ottoman courts (Çizakça, 1995: 313). The condition for permitting the endowment of interest-bearing movables was that the return from the loan had to be applied toward charitable ends.

By the sixteenth century the practice of cash endowments was rife, comprising more than half of the new waqfs established (Kuran, 2001: 873). Cash waqfs were used for two reasons: first, loan periods were very short and could therefore be more flexible if unprofitable, and, second, because there was a generally high demand, especially in the eighteenth and nineteenth centuries, for capital loans. For example, in 1767, there were 6,500 borrowers from cash waqfs in Bursa which has 9 per cent of the population (Çizakça, 1995: 334). Since waqfs could not become corporate (i.e. combine with other waqfs) loans remained small, and therefore 'cash waqfs were foremost institutions of capital redistribution' (Çizakça, 1995: 315). As Crecelius (1995: 256) points out, contra Mandaville (1979), Çizakça's (1995) research illustrates a significant number of cash waqfs in Aleppo. Perhaps indicating that this technology was more widespread in the Arab provinces of the Ottoman Empire than previously thought. Mandaville (1979) originally argued that in Arab provinces Islamic law was much more resistant to cash waqfs because of the interest involved. The importance of this phenomenon is that waqfs can be seen as rather flexible gift-giving practices, which enabled the formation of legal subjectivities and forms of recognition unanticipated in their origins.

### *Beneficence*

Already mentioned are several aspects of beneficence and the waqf from the perspective of legal gifting and the gift of law. These include the motivation to protect property, safeguard of inheritance, genuine sentiment of piety, pious charity and truthfulness, and charity narrowly conceived as family. We want to focus on (partly to coordinate the discussion with euergetism) the waqf as it gave shape to civic space as munificence. Waqfs were founded in Ottoman cities as hospitals, shelters, public kitchens, orphanages, and most importantly, schools and mosques. In many ways, charitable civic endowments resembled euergetism. Consider Ibn Battuta (a suffist legal scholar of the thirteenth century) who describes the civic spirit of waqf endowment in Damascus:

The people of Damascus *vie with each other* in the building and endowment of mosques, religious houses, colleges, and sanctuaries. Every man who comes to the end of his recourse in any district of Damascus finds without exception some means of livelihood opened to him. (cited in van Leeuwen, 1999: 73; our emphasis)

The Ottoman notables provided municipal infrastructure such as aqueducts, fountains, defense, roads, schools, baths, mosques, lodgings, and markets as waqf endowment. In Damascus beginning in the thirteenth century under Ayyubid rule, waqfs were actively used to support the policies of the notables. For example, the waterwork reorganization and construction of *medreses* consolidated and centralized city building. As Van Leeuwen claims, 'the foundation of waqfs by the examples of the ruling family should be seen as a deliberate policy to enhance the grip of the ruling elite on the urban infrastructure of Damascus' (1999: 189). Moreover, for Ottoman imperial authorities, founding new waqfs became a

significant technology of the colonization and settlement of newly conquered areas. As Singer (2002: 28) suggests, maintaining the practices of the Selçuks and beys (the local notables), the Ottoman sultans recognized existing endowments and established many new ones to support a familiar roster of beneficent institutions and public works in conquered cities. Under Ottoman patronage, in many cases the individual buildings also gradually became integrated to larger, more ordered civic complexes. The most prominent of such complexes are scattered agglomerations of buildings endowed by Murad II (1421–51) in Bursa and the magnificent complex built by Süleyman I (1520–66) in Istanbul. In fact, under Ottoman imperial patronage, founding waqfs became nearly synonymous with city-building: not only imperial capitals such as Bursa (Çizakça, 1995), Edirne (Gerber, 1983) and, of course, Istanbul, but also provincial cities such as Aleppo (Roded, 1988), Jerusalem (Singer, 2002), Damascus (El-Zawahreh, 1995) and Cairo (Behrens-Abouseif, 1994) were endowed with magnificent complexes known as *külliyes*.

By founding waqfs, appointing supervisors, managers, and trustees to manage them, and perpetually maintaining them, we see the creation of an urban civic administration by imperial authorities, precisely the kind that socio-political criticism has charged the Ottoman Empire with lacking. In the occidental tradition from Montesquieu to Weber, the Ottoman Empire is interpreted as having inadequate mediation between imperial and provincial notables and authorities with the result that the development of a social and economic civic spirit was inhibited, which ‘diminished the likelihood of an indigenous movement to amend Islamic provisions inimical to self-governing’ (Kuran, 2001: 882; Mardin, 1969). Rather, we would argue that the state itself (alongside privately endowed waqfs) integrated civic space, and organized Ottoman cities. In doing so, the state instituted its own rule by proceeding through this sacred object and gift-giving practices. When government authorities or even sultans endow a waqf he or she proceeds in the same legality as the subjects of the Ottoman Empire; and we can therefore add another complexity to this gift of law because seen so, the waqf is not just a form of protection against the state, but legitimation for the secular authority and its policies; the waqf and the state were mutually consolidating.<sup>9</sup>

As Van Leeuwen convincingly demonstrates, waqfs were fundamentally an urban institution and formative of the civic space of Ottoman cities, acting as hinges between ‘*urbs*, the city in its material form, and *civitas*, the idea of an urban community’ (1999: 203).

An important part of this function was the service to which non-Muslim minorities put waqfs; waqfs at once integrated the city while at the same time provided institutions for minority groups within Ottoman cities. This is indeed a historic irony as waqfs were initially the means by which Ottomans appropriated conquered properties. However, Christian and Jewish minorities used the waqf to secure their property and gain tax exemptions once the waqf was extended to non-Muslim faiths in the nineteenth century (Singer, 2002: 20). Minority waqfs were established in *shari’a* courts, and these were always

established to benefit their own communities, i.e. a Jewish hospital or a Christian church (Shaham, 1991: 463). In granting minorities institutional rights we can see another way in which the waqf combines simultaneously a civic pluralization and civic integration with the accordance of legal right and legitimation in deep contrast to Weber's claims about the Ottoman Empire as strictly patrimonial.

Waqfs, therefore, articulate the possibility for legality for non-Muslim minorities. Minority waqfs, as founded by a community member or leader, achieved legal right in both secular and sacred codes. This is a fundamental moment in the legal history of citizenship for it demonstrates that legal equality in sacred law is not expressly limited to that religion's faithful but can be used as a strategy to protect against state law, seizure, and taxation. Therefore, although the 1869 Ottoman law of nationality produced 'for the first time a juridical definition of the Ottoman citizen without an overt or implied reference to religion' (Makdisi, 2002: 7), the waqf also constituted non-Muslims as citizens with certain rights that made legal subjects within a broader regime of citizenship.

Whether the protection of property, safeguarding of inheritance, beneficence or capital accumulation or redistribution, waqfs were essential institutions of the Ottoman Empire that enabled the provision of hospitals, kitchens, *medreses*, mosques, baths, shops, and numerous other small and large functions that shaped the physical and symbolic fabric of its cities. More significantly, however, waqfs as gift-giving practices also produced substantive legal subjectivities, not only donor, donee, and beneficiaries but also supervisors, trustees, managers, and workers as well as travelers, strangers, and outsiders who collectively governed themselves as subjects through waqfs. For Ottoman citizens and non-citizens alike, giving and receiving these institutions, gift-giving became a well understood act, spontaneous and forced, voluntary and constrained. As Singer says, in the context of public kitchens, 'giving and taking food symbolized and actualized the dense networks of patronage woven with implications of rights and obligations' (2002: 154). We hope to have shown that the gift of law, and the responsible subject who can make promises, can be used as a heuristic concept to investigate waqfs as much broader gift-giving practices than their ostensible functions and purposes.

## Conclusion

This article set itself two questions: How does giving and receiving gifts produce obligation?, and, How does obligation give birth to law? By examining euergetism and waqf as gift-giving practices, we suggested a fundamental relationship between legal subjectivity and political legitimation, and gift-giving practices that constitute benefactors and beneficiaries as collectivities or groups, citizens and non-citizens.

Both ancient Greek euergetism and the Ottoman waqf, while operating in very different spheres, illustrate that gift-giving practices constituted legal

subjects and relations, and enabled – by means of the objects given and received – a complex negotiation of legal positions and legal rights for both citizens and non-citizens. These negotiations produced a legal subject with a unique kind of obligation that is neither simply calculable nor spontaneous. Rather, gift giving gave birth to a relatively enduring disposition, a subject who can make promises, a subject who is answerable to his own future, a subject who can make another subject answerable to his own future. This subject is the gift of law as that thing which is passed on when given, received, and reciprocated.

Both gift-giving practices were fundamental aspects of constituting and governing cities, instituting forms of politically legitimate legal authority between citizens and non-citizens, rulers and the ruled. For example, we observed how waqfs guaranteed property rights for not only Muslim subjects but also for non-Muslim groups and can be seen as a form of recognition. Moreover, also economically, the waqf permitted loans and accumulation of different forms of capital, which, if it were not for the sanction of the waqf, would have been impermissible. In terms of family, the endower of a waqf could set Islamic jurisprudence over holy text itself, making possible the futurity of one's vision of the family rather than applying the formal letter of inheritance law. In all of these cases, the waqf was a practice of symbolic legal recognition, it is what allowed legal subjectivity to gain a substantive weight capable of bearing rights corollary to the duties of beneficence.

Euergetism, though ostensibly different from the waqf, also engaged a gift relation with political legitimation and political respectability. In an elegant way, the euergetic gift established the very qualities of legitimacy upon which to found a political order based on the city. The euergetic gift combined vainglory, magnificence, and liberality in political motive, synoecism and civitas, benefaction with expectation. Euergetism combined elements of politics, virtue, distinction, and legitimation into a single practice able to circulate and renew each of these terms. This coordination of political legitimation, civic unity and differentiation, public personae, and social gifts may leave us to think that this was the gift of citizenship itself, for the Greeks.

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## Notes

- 1 We use the phrases 'cities' or 'the city' throughout the article to draw attention to the fact that both ancient and Ottoman cities included rural hinterlands as integral



economies and politics. Euergetism, for example, could include what moderns would call 'rural' monuments, bridges, and other gifts, which were nonetheless considered part of the city. Similarly, Ottoman waqfs could include rural properties, while they were themselves located in cities as bathhouses, kitchens, mosques, and *medreses*.

- 2 Caputo articulates this notion of the gift without calculation but with obligation in the context of justice as the gift:

To think justice as the gift is, if you think about it, to propose an interesting theory of obligation, namely, an obligation without debt and the deadening weight of guilt and compulsion, yet still without simply canceling or annulling the obligation. (1996: 150)

- 3 For a treatment of the pure gift as deconstructive limit of symbolic exchange in historical or anthropological research, see (Bracken, 1997: 33–166).

- 4 It is not our intention to elaborate this further but it does help us to highlight the affinities between Nietzsche's account of legal obligation and that of Mauss. For Nietzsche, however, inflicting pain was the means by which legal obligation was constituted in humans (Nietzsche, 1887: 41–5). While Mauss did not respond directly to Nietzsche, we consider the pleasure of gift giving as a means by which humans were rendered as legal subjects. See Cowell (2002).

- 5 'In Greco-Roman antiquity, in the world of the polis, a sovereign did not express his majesty by having a palace built for himself: that would have been the conduct of an Oriental despot. Instead, he made largess to his fellow citizens' (Veyne, 1990: 251).

- 6 'The literal meaning of the terms for endowment, waqf (suspension), or *habs* (confinement), of property, explicitly indicates the immobilization of property and the assignment of its usufruct for a variety of purposes' (Arjomand, 1999: 276).

- 7 Singer (2002: 6) emphasizes that a social history of gift giving does not exist for Islamic or Middle Eastern history. Yet, she does not mention Paul Veyne's work as an example of a social history of gift giving that she is interested in.

- 8 See Doumani (1998: 20–31). What is remarkable about the gender patterns of endowment is how specific they were to various regions, although this is perhaps not surprising considering the historical specificities to patriarchy and the constitution of families. But, for example, endowments that included female progeny in Tripoli were an overwhelming 98 per cent whereas in Nablus the figure is a mere 12 per cent during the same period. As Doumani puts it, 'Clearly, the propertied classes of Tripoli and Nablus differed greatly in their social construction of property and gender. Consequently, they expressed different preferences as to where the boundaries defining the ideal family should be drawn' (1998: 20–1).

- 9 According to van Leeuwen:

On the one hand, the *kadi* is the representative of the sultan and has to abide by the sultanic decrees; on the other hand, the sultan is subjected to the same general rules that apply for everyone else, such as the procedures for establishing the validity of evidence, the sacrosanct nature of the stipulations of the founder and the rules for the validity of waqfs. (1999: 54)

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