

INFORMAL NETWORKS, ECONOMIC LIVELIHOODS AND THE POLITICS OF SOCIAL WELFARE: UNDERSTANDING THE POLITICAL AND HUMANITARIAN CONSEQUENCES OF THE WAR ON TERRORIST FINANCE

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INTRODUCTION

Since the terrorist attacks of September 11, 2001, there has been considerable debate with respect to the utility and the consequences of the global campaign against terrorist financing. While some analysts have downplayed the potential efficacy of trying to dry up terrorist funds as a method of curbing further operations,¹ in the aftermath of September 11, the Bush administration stepped up action on the second front of the war on terrorism. The USA PATRIOT Act and the International Emergency Economic Powers Act ("IEEPA")² provided federal officials with new legislative powers to freeze

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¹ The 9/11 Commission, for example, cautioned early on against expecting too much from trying to cut off money from terrorists. The Commission argued for a policy aimed at first understanding how terrorist networks operate as a chief tool to "disrupt their operations." "Executive Summary," *Final Report of the National Commission on Terrorist Attacks Upon the United States* 18-19 (July 2004), available at http://www.9-11commission.gov/report/911Report_Exec.pdf.

² International Emergency Economic Powers Act, Pub. L. No. 95-223, Title II (1977) (codified at 50 U.S.C. 1701 et seq.). Under the IEEPA, the President has broad powers pursuant to a declaration of a national emergency that include the ability to seize foreign assets under US jurisdiction, to prohibit transactions in foreign exchange, to prohibit payments between financial institutions involving foreign currency, and to prohibit the import/export of foreign cur-

assets of entities and individuals identified as financing terrorist organizations. Launched on October 25, 2001 Operation Green Quest froze more than ten billion dollars in global assets in the United States linked to alleged terrorist organizations and individuals. In addition, according to the Department of the Treasury's Terrorist Assets Report, of the \$1.6 billion in assets of state sponsors of terrorism located in the United States, \$1.5 billion were frozen by US economic sanctions.³ At the time about 142 nations came on board and blocked seventy million dollars worth of assets within their borders, and most continue to express open support for the American led effort aimed at "starving the terrorists of funding."⁴

This campaign has essentially criminalized Islamic welfare associations and a host of informal social institutions in the Muslim world. The largely unregulated money transfer agencies, known in Somalia as *sharikat hawwalat*, are included on the US Treasury Department's list of entities that support terrorism. In November of 2001, the United States government ordered Somalia's then-largest money transfer agency, al-Barakaat, to close its US and international offices, and seized the entirety of its thirty-four million dollars in assets. They also closed the Somali International Relief Organization, and Bank al-Taqwa in the Bahamas.⁵

Despite protests from Somali nationals and United Nations officials, the US administration insisted there was a clear connection between these Somali-owned *hawwalat* and the al-Qa'ida network. Eventually, however, American and European officials acknowledged that evidence of al-Barakaat's financial backing for terrorism has not materialized. In the years since, no criminal prosecutions of al-Barakaat officials have been filed. US Embassy officials in Nairobi, who have been investigating these linkages since the terrorist bombings of the US Embassies in Kenya and Tanzania in

rency. On September 23, 2001 President Bush, relying on the powers granted in IEEPA, issued Executive Order 13224. This order authorized the Department of the Treasury to designate individuals and entities as terrorist financiers, who are then denied access to the U.S. financial system. Exec. Order No. 13,224, 66 Fed. Reg. 186 (Sept. 25, 2001).

³ DEP'T OF THE TREASURY, OFAC, TERRORIST ASSETS REPORT 1 (2004), available at <http://www.treasury.gov/resource-center/sanctions/Documents/tar2004.pdf>.

⁴ Statement of Secretary Paul O'Neil on Signing of Executive Order Authorizing the Treasury Department to Block Funds of Terrorists and their Associates, Sept. 24, 2001, quoted in MARTIN A. WEISS, CONG. RESEARCH SERV., RL 33020, TERRORIST FINANCING: U.S. AGENCY EFFORTS AND INTER-AGENCY COORDINATION 1 (2005).

⁵ See NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, MONOGRAPH ON TERRORIST FINANCING, SEC. 5: AL-BARAKAAT CASE STUDY, available at http://govinfo.library.unt.edu/911/staff_statements/index.htm. U.S. law enforcement officials also shut down al-Barakaat headquarters in Dubai, and its offices in Boston, Minneapolis, Columbus and Seattle, as well as in Mogadishu and Bossaso, in southern and northeast Somalia respectively.

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1996, also stated at the time that they "know of no evidence" that al-Qa'ida is linked to militant groups in Somalia.⁶ Moreover, the FBI agent who led the US delegation, which raided the offices of al-Barakaat, said that diligent investigation revealed no "smoking gun" evidence—either testimonial or documentary—showing that al-Barakaat was funding al-Qa'ida or any other terrorist organization.⁷ In August 2006, over five years after al-Barakaat was designated as a likely financier of terrorism, US authorities finally removed the *hawwalat* from its terror list.⁸

In addition, in its attempts to set "global standards" for preventing money laundering and counter-terror financing regimes, US policymakers have also targeted Islamic charities and businesses as part of Operation Green Quest. As late as 2008, the Financial Action Task Force ("FATF") warned that, "the misuse of nonprofit organizations for the financing of terrorism . . . is a crucial weak point in the global struggle to stop such funding at its source."⁹ The global nature of the campaign has had significant impact in Muslim majority countries. Governments worldwide have regulated Islamic charities, and designated many as financiers of terrorism; additionally, governments have used the "war against terrorism" strategically with the result that the campaign has undermined the livelihoods of those most in need of social protection.¹⁰ In countries such as Egypt, Islamic charities do not only serve the religious obligations of Muslims; they provide essential goods and services for Islamists and non-Islamists alike.¹¹ They have filled the

⁶ *US probing Bin Laden's Somali link*, THE PENINSULA, Dec. 6, 2001, available at <http://archive.thepeninsulaqatar.com/looks-&-more/117695.html>.

⁷ See AL-BARAKAAT CASE STUDY, *supra* note 5. The National Commission Report also stated that, according to US investigators, the two major claims against al-Barakaat, that Osama bin Ladin was an investor in al-Barakaat and that al-Barakaat diverted monies through its *hawwalat* to al-Qa'ida or the Somali al-Ittihad organization, could not be verified.

⁸ *US Ends Somali Banking Blacklist*, BBC NEWS, Aug. 28, 2006, available at <http://news.bbc.co.uk/2/hi/5292750.stm>.

⁹ ORG. FOR ECON. COOPERATION & DEV., FINANCIAL ACTION TASK FORCE, TERRORIST FINANCING (2008), available at www.fatf-gafi.org/dataoecd/28/43/40285899.pdf. See also the initial report on the subject, OECD, FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING: COMBATING THE ABUSE OF NON-PROFIT ORGANISATIONS I (2002).

¹⁰ This is misconception is no doubt due to the fact that most legal measures in the West have targeted Western-based Islamic charities. This Article addresses the "demand" side of Islamic Welfare Associations (IWAs) institutions, most particularly in Egypt. For a comprehensive analysis of the affect of the War on Terrorist Finance in the U.S., see ACLU, BLOCKING FAITH, FREEZING CHARITY: CHILLING MUSLIM CHARITABLE GIVING IN THE "WAR ON TERRORIST FINANCING" (2009).

¹¹ The term "Islamist" in this Article denotes activists in civil society intent on changing the political regime and imposing Islamic laws and values society. The key difference between conservative and militant Islamists is that the former seek to achieve this objective via peace-



social welfare gap in important ways at the very time that states have reduced their role in the provision of social welfare.¹²

THE POLITICAL AND HUMANITARIAN CONSEQUENCES OF THE WAR ON TERRORIST FINANCE

Based on research conducted in Egypt and Somalia, I highlight a number of reasons why the war on terrorist financing has been counter-productive with respect to objective of undercutting the potential of both Islamist militancy and terrorism. In addition, I highlight why the campaign to cut off funds to terrorists has had the unintended consequence of undermining economic livelihoods in the case of Somalia, and the informal networks and institutions offering scores of Egyptians social protection¹³ in the context of economic austerity.

In the case of Somalia, I argue that the war on terrorist financing has targeted the victims of state collapse rather than Islamist militants of the type that engage in transnational terrorism. I demonstrate that the informal banking systems (i.e. *hawwalat*) that are commonly used by Somalis to send monies back home to family and kin relations operate largely on the basis of clan networks and do not promote or finance militant Islamist groups. I do, however, make the point, based on extensive interviews with *hawwalat* operators, that many of the staff and managers do harbor a conservative Islamist ideology that is similar to other mainstream Islamist groups in other Muslim countries. However, I argue here that these Islamists are first and foremost Islamist businessmen and capitalists who informed me repeatedly that they

ful means, while the latter advocate the use of violence at both the level of the state and society. In this respect, Islamist activists can be distinguished from the more broadly shared religious ethos which has developed in contemporary Muslim societies, and which underpins the voluntarism underpinning Islamic Welfare Associations. For more on the development of contemporary Muslim pious activism, see SABA MAHMOOD, *POLITICS OF PIETY: THE ISLAMIC REVIVAL AND THE FEMINIST SUBJECT* 3 (2005).

¹² See JANE R. HARRIGAN & HAMID EL-SAID, *ECONOMIC LIBERALISATION, SOCIAL CAPITAL AND ISLAMIC WELFARE* (2009).

¹³ Following the work of Holzman, this Article defines social protection as the formal and informal mechanisms designed to reduce or alleviate a population's vulnerability to harm caused by economic insecurity. This includes the poor, but it also includes those who have sufficient resources, but for whatever reason (insufficient planning, sudden economic slowdown, adverse political change) are uniquely exposed to the risk of pauperization. Social protection, of the type provided by the *hawwalat* in Somalia, and Islamic Welfare Associations (*jamiyaat*) in Egypt, is a means of managing that risk, either by reducing its likelihood or lessening its potential costs. Robert Holzman, *Risk and Vulnerability: The Forward Looking Role of Social Protection in a Globalizing World* (World Bank, Social Protection Discussion Paper, 2001).

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perceive militancy and terrorism as bad for business. In this regard, these Islamist *hawwalat* managers are not only non-violent in their social and political goals, like similar Islamist capitalists elsewhere, they represent a moderate trend of Islamist capitalism that should be brought in to help international efforts to curb militancy in Somalia. Rather than criminalizing these *hawwalat* networks, policy makers should engage these individuals as groups in the war against terrorism.¹⁴ Indeed, as I show empirically below, the main reason that the war on terrorist financing has proven counter-productive in the context of Somalia is that the criminalization of *hawwalat* and some of their managers has resulted in undermining the economic livelihoods and social protection of millions of Somalis. Moreover, in some quarters, this has resulted in resentment among local populations. As a consequence, some militant organizations, namely al-Shabaab, have begun to exploit this resentment to recruit younger, less educated and poorer segments of Somali men into their decidedly militant Islamist group.¹⁵ In my analysis of the impact of the war on terrorist financing in Somalia, I show in detail that the mode of operation and political nature of the *hawwalat* has encouraged inter-clan conflict rather than Islamist militancy of the kind that threatens US and global security. Naturally, ethnic conflict can also pose a threat to regional security, but this requires policy tools distinct from those that are applied within the context of the war on terrorist financing.

If the case of Somalia demonstrates some of the political and humanitarian consequences of the war on terrorist financing, my discussion of the criminalization of Islamic Welfare Associations ("IWAs") also highlights the counter-productive impact of attempts at stemming the tide of Islamist militant activism in Egypt. Based on research conducted among former militants of the Islamic Group in the poorer quarters of Cairo, I demonstrate that militancy and violence in Egypt is neither funded nor caused by the expansion of IWAs in Egypt—a phenomenon that took off in earnest in the 1990s. Rather, I argue that the roots of militancy in the 1990s in Cairo was largely due to how militant Islamist activists exploited unregulated mosques (*Ahali*) and the poverty of young men in the poor neighborhoods of Cairo. In other words, some of the assumptions underpinning the war against terrorism have actually proved counterproductive in that they have targeted the victims rather than perpetrators of radical political organizations and individuals. However,

¹⁴ For a fuller discussion of why Islamic capitalists can (and should) be utilized by policy makers to curb militancy see VALI NASR, *THE RISE OF ISLAMIC CAPITALISM: WHY THE NEW MUSLIM MIDDLE CLASS IS THE KEY TO DEFEATING EXTREMISM* (2010).

¹⁵ See Roland Marchal, *A Tentative Assessment of the Somali Harakat Al-Shabaab*, 3 J. E. AFRICAN STUDIES 381 (2009).

if state repression is at least a contributing factor to political violence (including Islamist radicalism),¹⁶ than the criminalization of IWAs and the increasing authoritarian policies of the Egyptian state—largely justified under the rubric of a war on terrorism—may prove counter-productive to effective measures against militancy in the future. Specifically, I argue below that the global war against terrorism has been deftly exploited by the Mubarak regime to further enact legislation to criminalize non-governmental organizations, restrict charitable giving by tightening its supervisory role over IWAs, and further stifling peaceful pro-democratic opposition forces in civil society, a large proportion of which is comprised of the moderate Islamist Muslim Brotherhood organization. But, contrary to some analysis of the status of IWAs in Egypt, I show below that the result of government restrictions and unbridled executive authority is the dampening of charitable giving in Egypt and, as a consequence, a reduction of social protection and welfare provisioning to some of the most needy.

GLOBALIZATION AND THE WAR ON ISLAMIST FINANCE

Many arguments advanced to support anti-terrorism policy since 9/11 invoked the economic underdevelopment of the Muslim world to explain why Islamic militancy has emerged as a transnational political phenomenon. According to Richards and Waterbury, for example, Islamism has provided "the main resistance to Western hegemony, and globalization [has] provided Islamists with important tools for this opposition."¹⁷ Similarly, Olivier Roy contends that the increasing permeability of state borders resulting from globalization has transformed some economic grievances in the Muslim world into mistrust of Westernization and modern capitalism.¹⁸ Other scholars have extended this argument further, arguing that this hostility is consistent with the emergence of Islamic banking, the expansion of Islamic Welfare Associations, and the use of informal banking systems (*hawwalat*) by Islamists not only to finance their terrorist operations, but also to pursue a strict campaign of economic and moral separatism against the challenge of capitalism.¹⁹ In contrast, this Article presents an empirical analysis of what is commonly referred to as the "threat of Islamic militancy" by examining the

¹⁶ See Mohammed M. Hafez & Quintan Wiktorowicz, *Violence as Contention in the Egyptian Islamist Movement*, in ISLAMIC ACTIVISM: A SOCIAL MOVEMENT THEORY APPROACH 61-88 (Quintan Wiktorowicz ed., 2003).

¹⁷ ALAN RICHARDS & JOHN WATERBURY, *A POLITICAL ECONOMY OF THE MIDDLE EAST* 366 (3d Ed. 2008).

¹⁸ See OLIVER ROY, *GLOBALIZED ISLAM: THE SEARCH FOR A NEW UMMAH* (2004).

¹⁹ See generally MILLARD J. BURR & ROBERT O. COLLINS, *ALMS FOR JIHAD* (2006); CHARLES TRIPP, *ISLAM AND THE MORAL ECONOMY: THE CHALLENGE OF CAPITALISM* (2006).

empirical record and operation of *hawwalat* and IWAs in Somalia and Egypt. At a general level, I contend that, by and large, most Muslims are supportive of global markets, technological innovation, and capitalism.²⁰ More specifically, I demonstrate that the war on terrorism financing that has targeted informal banks and IWAs obscures the realities of the origins, nature and consequences of these informal networks. More specifically, the perception among many in Muslim majority countries that they have been treated unfairly has fueled increasing hostility towards the West. In Somalia, for example, many Somalis informed me that the closure of the al-Barakaat *hawwalat* led to an increase in anti-western sentiment that, in turn, has been exploited by a minority of extremist activists to recruit more militant followers. Indeed, the criminalization of these informal networks by US policy-makers in the aftermath of 9/11 has had both a political as well as an economic implications in many Muslim countries that must be taken seriously in terms of crafting appropriate policies to curb the popularity of militancy and the potential of terrorism.

RECRUITING EXTREMISTS: MODERATE ISLAMISTS OR KIN? UNDERSTANDING HOW SOCIAL NETWORKS WORK

Many noted scholars studying the rise of Islamist political activism have persuasively pointed out the crucial role Islamic informal networks play in promoting alternatives to formal political institutions.²¹ However, within Muslim societies the great bulk of the population is more likely to identify with non-violent forms of Islam that are characterized by the pursuit of an Islamic ethical model concerned with the re-Islamicization of each individual. This form of religiosity gives precedence to personal ethics and individual piety over political activism. It is, therefore, distinct from the decidedly extremist political aims of Islamist militants who advocate violence to impose their own extremist understanding of Islamic values following a revolution from above.

Moreover, given the politicization of ethnic ties in many Muslim countries, it is by no means evident that individuals and social groups in Muslim societies such as Somalia perceive religion as the most significant form of

²⁰ John Esposito and Timur Kuran have made a similar argument. See JOHN ESPOSITO, *UNHOLY WAR: TERROR IN THE NAME OF ISLAM* (2003), and TIMUR KURAN, *ISLAM AND MAMMON: THE ECONOMIC PREDICAMENTS OF ISLAMISM* (2004).

²¹ See, e.g., DIANE SINGERMAN, *AVENUES OF PARTICIPATION: FAMILY, POLITICS, AND NETWORKS IN URBAN QUARTERS OF CAIRO* (1996); CARRIE ROSEVSKY WICKHAM, *MOBILIZING ISLAM: RELIGION, ACTIVISM AND POLITICAL CHANGE IN EGYPT* (2002); and QUINTAN WIKTOROWICZ, *THE MANAGEMENT OF ISLAMIC ACTIVISM: SALIFS, THE MUSLIM BROTHERHOOD, AND STATE POWER IN JORDAN* (2001).



political identification over that of family, clan, or ethnic group. In fact, contrary to conventional analysis, my research findings in Somalia and Egypt suggest that the link between informal institutions and the politicization of Islamist identity remains an open empirical question, since in the context of state failure and repression local actors tend to diversify their social networks to include both kinship and religious networks in order to consolidate efforts at income generation. Moreover, in cases where Islamism does indeed profit from the expansion of informal institutions such as Islamic Welfare Associations, the conflation of Islamist mobilization and even militancy with terrorism is one of the most serious misconceptions in the war against terrorism financing. To be sure, the expansion of IWAs in Muslim countries in recent decades has played an important role in the mobilization of Islamist discourse to bolster popular support for political goals in countries like Egypt. However, the general consequence of this development has been to promote Islamist social movements whose primary objective is to spread the Islamic call (*da'wa*) at the level of civil society, and gradually achieve a political transformation through peaceful means from below.²²

There is little doubt that, under the exigencies of globalization and economic reforms in the Muslim world, informal institutions embedded in social networks have come to promote a shared sense of cultural cohesion that can produce economic efficiency. This is why many scholars have highlighted the "downside" of social networks.²³ Clearly, while social networks can provide an informal framework for greater economic efficiency and the provision of social services in lieu of the state, as in the case of Egypt,²⁴ they can also operate as mechanisms of corruption, and even promote "clandestine networks," and "protection rackets."²⁵ Indeed, as Marc Sageman has shown,

²² See generally ASEF BAYAT, *MAKING ISLAM DEMOCRATIC: SOCIAL MOVEMENTS AND THE POST-ISLAMIST TURN* (2007).

²³ See, e.g., Alejandro Portes & Peter Landolt, *The Downside of Social Capital*, 26 AM. PROSPECT 18 (1996); Sydney Tarrow, *Making Social Science Across Time and Space: A Critical Reflection on Robert Putnam's Making Democracy Work*, 90 AM. POL. SCI. REV. 389 (1996).

²⁴ It is important to note that in the case of Egypt, the government continues to maintain a supervisory and regulatory role over IWAs. However, as Singerman has noted, in the context of cuts in social welfare expenditure over the last two decades government support became "inconsistent and oversubscribed." Consequently, by the mid-1990s, private cash donations became an essential source of revenue for most IWAs. SINGERMAN, *supra* note 21, at 247.

²⁵ See FRANK VARESE, *THE RUSSIAN MAFIA: PRIVATE PROTECTION IN A NEW MARKET ECONOMY* (2001).

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informal networks can be enlisted to support clandestine and militant activities.²⁶

Since informal networks are designed to further the material and ideological interests of individuals and groups, many who participate in an informal network know and trust each other, and these networks can be easily exploited for the purposes of more violent resistance to the state and its institutions. Nevertheless the war against these informal networks (i.e. the *hawwalat* trade) and informal institutions (i.e. Islamic Welfare Associations) has proven counterproductive precisely because law and policy makers have been unable, and often unwilling, to examine the empirical side of the equation. This failure particularly reflects the lack of appreciation, on the part of authorities and policy-makers, for the broader social, cultural and economic context in which *hawwalat* and Islamic Welfare Institutions operate addressed in this Article.

Therefore, rather than simply assuming that social networks are an automatic arena that breeds militancy and terrorist recruitment, this Article contributes to this debate by advancing an empirically researched comparative approach that distinguishes between various forms of informal institutions, and examines the ways in which they can operate. More specifically, in the case of Somalia, I argue that informal networks promote kinship networks as the most important avenue of economic and social protection. In the case of Egypt, I show that IWAs have indeed promoted a conservative re-articulation of Islamic norms and practice. However, in contrast to the literature on the subject, I make the point below that, in Egypt, it is not only the middle class that benefit from these institutions.²⁷ Indeed, in relative terms, they play an important role in livelihoods for the scores of poor in Egypt. Consequently, to the extent that the state in Egypt impinges on these institutions in poor, squatter settlements in urban Cairo, the war on terrorist financing readily has had the unintended consequence of criminalizing and pauperizing the most vulnerable segments of Egyptian civil society.

²⁶ See MARC SAGEMAN, *LEADERLESS JIHAD: TERROR NETWORKS IN THE TWENTY FIRST CENTURY* (2008); MARC SAGEMAN, *UNDERSTANDING TERROR NETWORKS* (2004).

²⁷ See, e.g., ASEF BAYAT, *MAKING ISLAMIC DEMOCRATIC: SOCIAL MOVEMENTS AND THE POST-ISLAMIST TURN* (2007); JANINE CLARK, *ISLAM, SOCIAL WELFARE AND THE MIDDLE CLASS: NETWORKS, ACTIVISM AND CHARITY IN EGYPT, YEMEN AND JORDAN* (2003); DENNIS J. SULLIVAN, *PRIVATE VOLUNTARY ORGANIZATIONS IN EGYPT: ISLAMIC DEVELOPMENT, PRIVATE INITIATIVE, AND STATE CONTROL* (1994).

TARGETING WEAK AND FAILED STATES: BLAMING THE VICTIMS?

Since the 9/11 attacks, a key focus of anti-terrorist finance programs in policy circles appears to be societies like Somalia and Afghanistan that have suffered state disintegration, rather than the formal financial banks and wealthy citizens in the Gulf who have a long history of supporting Islamist groups.²⁸ As one British parliamentarian put it, "the focus of the campaign should be on states that have very little control within their borders, and where a degree of an invasive military response may be appropriate."²⁹ In reality, however, the wholesale closure of these informal banks proved counterproductive to the long-term US objective of putting an end to global terrorism. Indeed, rather than "interrupt[ing] the murderers' work,"³⁰ as George W. Bush put it at the time, shutting down money transfer agencies led to further impoverishment and possible radicalization of average Somalis who rely on these services for their daily survival.

The US campaign against the *hawwalat* and those who operate them proved overly broad as to defy justification. In addition to shutting down al-Barakaat, the administration froze the US assets of 189 individuals and organizations suspected of supporting terror groups.³¹ AT&T and British Telecom's joint venture cut off international services to Somalia's principal

²⁸ A number of policymakers have increasingly highlighted the link between failed states and international terrorism. *See, most notably*, Stephen D. Krasner & Carlos Pascual, *Addressing State Failure*, 84 FOREIGN AFFAIRS 153 (2002); Sebastian Mallay, *The Reluctant Imperialist: Terrorism, Failed States, and the Case for American Empire*, 81 FOREIGN AFFAIRS 2 (2002). While US authorities have acknowledged that the financing for the 9/11 attacks originated from banks in the Arab Gulf, prior to September 11, Treasury Secretary Paul O'Neil blocked an Organization of Economic Cooperation and Development (OECD) investigation aimed at limiting the secrecy prerogatives of tax haven jurisdictions such as the United Arab Emirates, where some of the September 11 hijackers' funds actually originated. Secrecy laws prevent governments from tracing capital outflows. At the time, O'Neill argued that the OECD had no right to tell sovereign countries what to do about their tax laws and systems. *See* Sidney Weintraub, *Disrupting the Financing of Terrorism*, 25 WASH. QUARTERLY 53 (2002).

²⁹ Lorna Martin, *Hoon Hints at Strikes on Other Countries*, THE HERALD (GLASGOW), NOV. 29, 2001.

³⁰ In a visit to a Treasury Department investigation center in Northern Virginia, Bush said: "Today, we are taking another step in our fight against evil. By shutting these [financial] networks down, we interrupt the murderers' work." Kathleen Day, *Hawala Cash Outlets Investigated as Source for Terror Funds*, WASH. POST, NOV. 7, 2001, available at <http://www.unitedstatesaction.com/islam-money-changing.htm>.

³¹ On September 24, 2001, the U.S. government announced its efforts in conjunction with other nations, to freeze assets in brokerage and bank accounts around the world which were believed to be sustaining terrorist groups and operations. *See* Joshua D. Zelman, *Recent Developments in International Law: Anti-Terrorism Legislation—Part one: An Overview*, 11 J. TRANSNATIONAL L. & POLICY 183, 192-99 (2001).

telecommunication provider, a subsidiary of al-Barakaat, after the US claimed that it too was suspected of financing terrorism.³² One of the most vital communication links between Somalia and the outside world—which made it possible for millions of Somalis to receive remittances from relatives abroad—was effectively shut down. Since al-Barakaat was also the largest telecommunications provider, its closure affected thousands of subscribers who relied on al-Barakaat's services to send and receive remittances from relatives.³³ In addition to exacerbating the humanitarian crisis, this led to the closure of Somalia's larger economy, which has been heavily dependent on the inflow of remittances for almost four decades. It also threatened to upset the fragile state-building efforts that brought peace and stability to the northern parts of Somalia after two decades of internecine clan warfare.³⁴

CRIMINALIZING THE STRUGGLE FOR ECONOMIC LIVELIHOODS

Following the attacks of September 11, many perpetuated the troubling misconception that most *hawwalat* were operations that existed as a sideline within unrelated businesses, such as a grocery store or a jewelry store.³⁵ In reality, as in other labor-exporting countries, in the case of Somalia the *hawwalat* are anything but a sideshow. Not only have these agencies and the cash they send secured countless livelihoods, they have played a major role in political and economic developments for decades. Labor has long been Somalia's principle export, and remittances from Somalis working abroad are the most important source of foreign exchange. Estimates of the total volume of remittances received in Somalia range from a low of \$1 billion to a high of \$1.6 billion annually.³⁶ As in the 1980s, when remittances, most of which escaped state control, equaled two fifths of the country's national product, remittances remain a crucial part of people's livelihoods. In my own survey in 2000, for example, over forty percent of households in northern Somalia relied on remittances as a supplementary source of income.³⁷ A

³² *US shuts down Somalia's Internet*, BBC NEWS, Nov. 23, 2001, available at <http://news.bbc.co.uk/2/hi/africa/1672220.stm>.

³³ *Id.*

³⁴ See Khalid M. Medani, *Financing Terrorism or Survival? Informal Finance and State Collapse in Somalia, and the US War on Terrorism*, 32 MIDDLE E. REP. 2 (2002).

³⁵ See Douglas Frantz, *A Nation Challenged: The Financing; Ancient Secret System Moves Money Globally*, N.Y. TIMES, Oct. 3, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=9C06EFDF113DF930A35753C1A9679C8B63>.

³⁶ UNITED NATIONS DEVELOPMENT PROGRAM, *SOMALIA'S MISSING MILLION: THE SOMALI DIASPORA AND ITS ROLE IN DEVELOPMENT* 8-9 (2009).

³⁷ Khalid Medani, *Report on Labor Remittances and Internal Displacement in Northwest and Northeast Somalia* (United Nations Coordination Unit, 2000).

more recent study found that remittances to families averaged \$200 per month, compared to the average annual income of \$491 per annum.³⁸ In other words, the average monthly remittance was more than sufficient to lift people out of poverty in the context of Somalia's economic and social crisis.

The criminalization of these transfers kept over one billion dollars out of Somalia's economy.³⁹ Moreover, according to the UN, the closures came at a time when Somalia's second income earner, the livestock sector, was losing an estimated \$300 million to \$400 million as a result of a ban by its major importer, Saudi Arabia.⁴⁰ Coupled with intermittent droughts, the decision to freeze funds in Somalia's network of remittances led to a wide-scale humanitarian disaster. The UN representative for humanitarian affairs for Somalia warned at the time that "Somalia [was] on the precipice of total collapse."⁴¹ What is noteworthy, however, is that in recent years a number of remittance companies have filled the vacuum left open by the closure of al-Barakaat. Despite compliance with an array of new regulations, Somalia's remittance companies have continued to multiply, providing an array of financial services: regular monthly transfers to families to meet livelihood needs, larger-scale transfers for investment in property and commercial enterprises, and remittances linked to international trade.⁴² The question remains, however, as to whether these remittance companies finance Islamic militancy and terrorism as Anti-Terrorist Finance and Anti-Money Laundering legislations assume? Moreover, what specific role do IWAs play in these developments, since these Islamic Welfare Associations have also been major targets of anti-terrorist finance programs on the part of both global and national level authorities?

HAWWALAT: FINANCING TERRORISM OR A LEGITIMATE ASPECT OF GLOBALIZATION?

It is important to note that there is definitely a connection between the "hidden" economy of remittance inflows and the ascendancy of Islamist groups in labor-exporting countries such as Sudan and Egypt. Since the

³⁸ Anna Lindley, *Migrant Remittances in the Context of Crisis in Somali Society: A Case Study of Hargeisa* 16 (Overseas Development Institute, Humanitarian Policy Group Background Paper, 2006), available at www.odi.org.uk/resources/download/299.pdf; see also MARK BRADBURY, *BECOMING SOMALILAND* (2008).

³⁹ *Somalia Fund Freeze Killing Economy*, REUTERS, Dec. 4, 2001, available at <http://tvnz.co.nz/content/69689/425822/article.html?affairs=false>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Interview with the managing director of Amal Hawwalat Agency, in Nairobi, Kenya (July 14, 2010).

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1970s, institutions such as the Faisal Islamic Bank, based in Saudi Arabia but with foreign branches, have been instrumental in promoting the financial profile of Islamist capitalists throughout the Muslim world. Branches of the Faisal Islamic Bank and Baraka have been an important source of financing for Islamists in the Sudan for decades. In Egypt, Islamic Management Companies, which attracted large deposits from Egyptian workers abroad in the 1980s, helped raise the political profile of a middle class network of moderate, albeit conservative and non-violent, Islamic groups by funding a host of commercial enterprises.⁴³ Doubtless, this is one of the main reasons that *hawwalat* and Islamic charities became a target in the "war against terrorism financing."

However, in Somalia, the *hawwalat* have assumed a different role. As I have argued elsewhere based on survey research,⁴⁴ rather than facilitating the rise of an Islamist coalition encouraged by state elites in Sudan, remittance flows have played a large part in the civil conflict in Somalia, and reinforced clan divisions rather than reinforcing Islamic ties. Remittance patterns vary depending on the socio-economic position of migrants in their host country. The poor education of many Somali migrants means that they are often living on the margins in those host societies and it can take time for families to settle, find incomes and begin to remit significant amounts of money. Somaliland's (i.e. northwest Somalia) past, its proximity to the Gulf, the flight from war and repression in the 1980s, and easier immigrant conditions have all been factors that helped to promote the Isaaq clan in political terms. Isaaq families benefited from remittances before other clans and contributed to inter-clan divisions.⁴⁵ A large proportion of these remittances went to supply arms not to Islamic militants, but clan-based guerrillas that helped overthrow the Barre regime. In fact, delegates of the Isaaq-led Somali National Movement ("SNM") received millions in remittances in the late 1980s.⁴⁶ As with other insurgent groups worldwide, the remittance funded factions in Somalia harbored no specific ideology and depended on the control of domestic territory and local civilian populations to mobilize political support. In this respect Somalia's rebel groups differ markedly from Islamist militants who rarely rely on domestic support alone, justify their acts of political violence with religious rhetoric, and advocate and implement terrorist operations

⁴³ Khalid Medani, *Funding Fundamentalism: Sudan, in* POLITICAL ISLAM: ESSAYS FROM MIDDLE EAST REPORT (Joe Stork & Joel Beinin eds., 1997).

⁴⁴ See Medani, *supra* note 34.

⁴⁵ Mark Bradbury also makes this important point. See BRADBURY, *supra* note 38, at 150.

⁴⁶ See William Reno, *Somalia and Survival in the Shadow of the Global Economy*, SOMALILAND TIMES, Apr. 14, 2003, available at <http://www.somalilandtimes.net/2003/64/6401.htm>.

across the borders of Somalia.⁴⁷ In other words, curbing clan-based militias of this type in Somalia requires a combination of diplomatic interventions on the part of regional and international authorities aimed at arriving at political reconciliation of the differing factions. In this respect, understanding that these are insurgents rather than "terrorists" is a distinction that would enable US policy makers and their allies to achieve a binding, and hopefully durable peace agreement between Somalia's warring factions.

Moreover, in practice, the *hawwalat* system in Somalia is not a peculiarly Islamic phenomenon and owes very little to the legal or normative principles of *zakat* or *riba*.⁴⁸ It is above all a modern institution resulting from the disintegration of the state and formal financial institutions, and the impact of globalization on Somalia's economy. The first Somali agency, Dahabshil, was formed in the late 1970s, prior to the civil war. It developed first in the refugee camps in Ethiopia and was quickly extended to the interior of northwest Somalia. Initially, Dahabshil was established to meet the demand of Somali laborers who had migrated to the Gulf and sought to circumvent foreign exchange controls. But with the collapse of the state in the early 1990s, the *hawwalat* system expanded and has come to represent the only avenue for Somali expatriates to send money to their families. Nor is the *hawwalat* system synonymous with money laundering, as the anti-terrorist finance legislation implies.⁴⁹ Indeed, as a number of scholars have noted, market liberalization has substantially loosened state controls on legal economic flows in recent decades. Indeed, much of this scholarship, particularly in the criminology literature, has tended to assume all unregulated cross-border flows as necessarily part of market criminalization, or transnational organized crime, including terrorist financial markets.⁵⁰ In Somalia, informal

⁴⁷ For a comprehensive analysis of the distinctive nature and political objectives of insurgent militia organizations see JEREMY M. WEINSTEIN, *INSIDE REBELLION: THE POLITICS OF INSURGENT VIOLENCE* 163 (2007).

⁴⁸ While Somali remittance companies do reduce their commissions during the holy month of Ramadan and Islamic holidays, this is not a standardized part of their operations. Nor do they feel compelled to do so. At present, they do not offer Islamic services as such as non-interest bearing accounts (i.e. *Qard al Hassan*) or other Islamic financial facilities stipulated by Islamic law (*Sharia*). Interview with managing director of Amal Hawwalat Agency, Nairobi, Kenya (July 14, 2010).

⁴⁹ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001). The Patriot Act, which amends the Bank Secrecy Act, was adopted in response to the September 11, 2001 terrorist attacks. It is intended to strengthen U.S. measures to prevent, detect and prosecute international money laundering and the financing of terrorism. These efforts include anti-money laundering tools that impact the banking, financial, and investment communities.

⁵⁰ For a good review of this literature, see Peter Andreas, *Illicit International Political Economy: the clandestine side of globalization*, 11 REV. INT'L POL. ECON. 641 (2005).

transfers are considered legitimate and above board, and do not require secrecy, and capital flows are generally accepted as an inherent part of globalization. The *hawwalat* system finances the bulk of imports into the country, provides legitimate profits for those engaged in transferring these funds and makes resources available for investments throughout the country.

CAPTURING THE WAGES OF LABOR: CLAN OVER ISLAMIST NETWORKS

Although formal institutions don't regulate *hawwalat* transfers and there is no legal oversight, they are regulated by specific local norms of reciprocity embedded in clan loyalties, not Islamist extremist ideology. The Islamist al-Ittihad organization and the extremists of al-Ittihad, the main targets of the anti-terrorist policies, have not been able to monopolize these financial transfers precisely because of the manner in which Somalia's clan networks regulate their distribution.

The *hawwalat* operate very simply. A customer brings money (cash or cashier's check) to a remittance agent in the United States and asks that it be sent to a certain person in Somalia. The remittance agent charges a fee, typically between five to ten percent depending on whether the location of the recipient is within Somalia or in North America or Europe. Costs may go up to twelve or fifteen percent for larger amounts. The remittance agent then contacts a local agent in Mogadishu via radio, satellite phone or fax, and instructs him to give the appropriate amount to the person in question. The remittance agent in the US does not send any money. Instead, both dealers record the transaction and the relative in Somalia receives the money in two or three days. Thus the *hawwalat* are not as hidden or secret as US officials have suggested.⁵¹ Remittance companies must maintain detailed digitized accounting records; federal investigators can easily examine them without shutting down the entire operation or imposing exorbitant regulatory fees.⁵² As one Somali head of a collection of small *hawwalat* dealers put it succinctly, "governments have the right to monitor, and to regulate [the *hawwalat*], but we don't see anything that they could see as suspicious. The sender and the receiver's families are very similar . . . so really our mechanism is simple and transparent."⁵³

⁵¹ Despite the fact that federal investigators were able to trace the money used in the 9/11 attacks to al-Qa'ida operatives transferring funds through the traditional banking system, following the terrorist attacks, federal officials continued to suspect that these "hard to trace" *hawwalat* networks of funding the al-Qa'ida and al-Ittihad organizations. Day, *supra* note 30.

⁵² See Zelman, *supra* note 31.

⁵³ *Fears over US hawala crackdown*, BBC News, Feb. 6, 2004, available at http://news.bbc.co.uk/2/hi/middle_east/3463683.stm

Indeed, one of the factors that make the Somali *hawwalat* system different from similar operations elsewhere is that the "address" of the recipient is usually determined by his/her clan or sub-clan affiliation. The *hawwalat* company must be able to pay cash, usually in hard currency, and make sure to resupply the appropriate bank account in due time.⁵⁴ For this reason the brokers involved must trust each other absolutely. As a result, recruitment for decisive positions follows clan lines, with few exceptions. In conventional terms, in Somalia, clan networks, far more than religious ties, serve the purpose of building trust. In conventional economic terms, informal clan based networks reduce the costs of contract enforcement in the absence of formal regulatory institutions. The customer too must have confidence that the broker charged with sending the funds do not disappear with the cash. Not surprisingly, the customer's choice of transfer agency is largely dependent on which clan operates the company. Based on this author's survey, in the Isaaq-dominated northwest, the Isaaq-run Dahabshil Company enjoys sixty percent of the market.⁵⁵ As one competitor from the Amal Hawwalat, which is dominated by the Darod clan, put it: "Dahabshil is a family owned company."⁵⁶ Al-Barakaat, which was also primarily operated by the Darod clan, possessed only fifteen percent of the market in northwest Somalia, but it did control the lion's share of the business, an estimated ninety percent, in southern and central Somalia.⁵⁷ Following the closure of Al-Barakaat, Amal Hawwalat took over its market share as the Darod ran both operations.⁵⁸

In contrast to conventional wisdom, in my research on the *hawwalat* in Somalia, I observed that Islamist extremists are not the prime beneficiaries of this informal currency trade. Many *hawwalat* agents can be described as religious, and are sympathetic to conservative Islamic ideologies espoused by groups such as al-Ittihad but reject the latter's promotion of violence. Indeed, they represent a trend of *da'wa* Islamist activism that is engaged primarily in social welfare provision. In this respect, al-Ittihad continues to advocate an

⁵⁴ Interview with staff members of the Dahabshil brokers, Hargeisa, Somalia (Apr. 3, 2000); Interview with staff members of Amal Hawwalat Agencies, Boosaso, Somalia (Apr. 3, 2000); Interview with the managing director of Amal Hawwalat Agency, Nairobi, Kenya (July 14, 2010).

⁵⁵ See Medani, *supra* note 37.

⁵⁶ Interview with managing director of Amal Hawwalat Agency, Nairobi, Kenya (July 14, 2010).

⁵⁷ To date (as of the summer of 2010) no household survey on the *hawwalat* trade has been conducted in south and central Somalia. This is due to the unstable conditions in that part of the country. The above figure is derived from the author's interviews with al-Barakaat and Dahabshil representatives in northwest and northeast Somalia conducted in 1999 and 2000.

⁵⁸ Interview with the managing director of Amal Hawwalat Agency, Nairobi, Kenya (July 14, 2010),

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Islamist conservative ideology but it no longer harbors a revolutionary approach to establishing an Islamist state in Somalia utilizing violence. Moreover, in political terms this "Islamist" influence is more apparent in the Mogadishu where decades of anarchy has resulted in weakening solidarity along clan lines allowing a small but militant group of Islamists to fill the governance vacuum. In the north, al-Ittihad forces generally do not enjoy the support of the local population. Most importantly, since the onset of the civil war, al-Ittihad has chosen to finance the movement not through the *hawwalat*, but by attempting to control the port economy of Bossaso.⁵⁹ In the early 1990s, al-Ittihad forces did not manage to monopolize the lucrative import-export trade of Bossaso. Consequently, al-Ittihad (which draws members across clan lines) attempted to impose a new form of Islamic rule, but this was short-lived.⁶⁰ In the early 1990s, the militia of the nascent Puntland state wrenched control from al-Ittihad forces and has administered the port of Bossaso ever since.⁶¹ Since this defeat, I observed in my research in northeast Somalia in 1999 and 2000 that al-Ittihad has abandoned the few towns and rural outposts it once controlled. Its activists have since integrated into local communities as teachers, health workers and businessmen. Many Muslims I spoke to in northern Somalia and in Nairobi expressed the fact that al-Ittihad now represents a mainstream form of conservative Islamist-moderate activism, and in recent years they have been primarily interested in providing social services, operating local newspapers and attaining employment, not Islamic revolution. While the managers of some remittance companies share a conservative Islamic agenda, like Islamic capitalists throughout the Muslim world, they perceive any form of extremism such as that promoted by the recently formed al-Shabaab organization as not only "un-Islamic" but "bad for business."⁶²

⁵⁹ Andre Le Sage, *Prospects for al Itihad and Islamist Radicalism in Somalia*, 27 REV. AFRICAN POL. ECON. 472, 474 (2001).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Personal interviews with Nairobi office manager and staff of the Muttawakil Hawwalat Agency, Nairobi, Kenya (July 20, 2010). Remittance brokers informed this author that, in their opinion and experience, young Somalis join the militant Al-Shabaab for two reasons: a decidedly low level of education, and poor employment prospects. It is worth noting that Al-Shabaab enjoyed unprecedented success in its recruitment drives following the Ethiopian invasion and the US air strikes of central Somalia in the summer of 2006. Thus, in this regard, regional geo-political factors played a far greater role than *hawwalat* generated funds in increasing the success of al-Shabaab's recruitment of young militants.

**THE BACKLASH IN THE WAR ON TERRORIST FINANCE: UNDERMINING
STATE BUILDING AND FUELING EXTREMISM**

It is a central irony in the war on terrorist financing that it has proved counter-productive in the context of Somalia. A key assumption in counter-terrorism policy is that weak and collapsed states serve as a breeding ground for terrorist recruitment and a refuge for global terrorist cells. Yet, the criminalization of informal financial transfers has had the unintended consequence of potentially undermining state building efforts in the very region of the world which is in most need of building and strengthening formal institutions. Somalia represents an important example in this regard. The *hawwalat* system continues to represent the most important conduit of capital accumulation.⁶³ Moreover, in addition to ensuring the survival of millions of Somalis, the *hawwalat* have the potential to play a key role in ongoing state building efforts. A key determinant of state formation is the ability to both encourage and tax private economic activity, in order to consolidate political control and expand the infrastructural reach and power of the state. The case of northern Somalia has clearly illustrated that achieving success in this sphere reduces both clan-based conflicts and stems the tide of extremism and terrorism.

In the more stable regions of Somalia (i.e. northwest and northeast) where I conducted my research, political leaders have managed to gain the trust and cooperation of the Somali businessmen operating the *hawwalat* companies, who have earned windfalls from the lucrative trade in remittances and foreign currency. As a result, state builders, most notably in Somaliland (i.e. northeast Somalia), have established a high level of peace and stability, and revived governance institutions.⁶⁴ In the summer of 2010, Somaliland witnessed an unprecedented third round of democratic elections with no violent incidence of extremism reported in any parts of the territory.⁶⁵ With the financial assistance of the Dahabshil *hawwalat* and the cooperation of the business community, in northern Somalia, government employees collect revenue, salaried and uniformed police keep law and order, courts administer justice, and line ministers dispense public services. In this respect, the war against terrorism financing threatens the fragile peace that has been achieved

⁶³ For a more recent survey on the role of remittances in Somalia's economy see Lindley, *supra* note 38.

⁶⁴ See BRADBURY, *supra* note 38.

⁶⁵ See Mark Bradbury, Adan Yusuf Abokor & Haroon Ahmed Yusuf, *Somaliland: Choosing Politics over Violence*, 97 REV. AFRICAN POL. ECON. 455 (2003); see also *Voters defy Islamist threats in Somaliland*, BBC NEWS, June 26, 2001, available at <http://www.bbc.co.uk/news/10423992>

in some parts of Somalia. In Somalia, and other weak states, the *hawwalat* represent the entrepreneurial ingenuity of millions of people laboring under the exigencies of globalization in the context of labor migration and its attendant remittance inflows. The vast majority of those who use the services of these informal banks have no links terrorism.

ISLAMIC WELFARE AND ISLAMIST POLITICS: DISTINGUISHING 'ISLAMISM' FROM 'TERRORISM'

One of the key problems in the war on terrorism in general, and terrorist finance in particular, is the lack of distinction that is often made between terrorism and Islamist forms of collective actions. The conflation of Islamist politics with terrorism in popular discourse and policy circles, in particular, is a major reason why anti-terrorist policies targeting terrorist groups espousing Islamic ideology have often proven counterproductive. As Martha Crenshaw has persuasively demonstrated, violent organizations must be analyzed in the same terms as other political or economic organizations and, in this regard, terrorist groups are neither anomalous nor unique.⁶⁶ In fact, some of the most recent work on terrorism increasingly focuses on internal dynamics and structures that are common to all terrorist organizations regardless of ideology or religious beliefs.⁶⁷ In terms of the linkage between social provisions and terrorism, this line of inquiry is particularly useful in that it asks why certain types of groups are more able to demand sacrifice from their members than others.⁶⁸ They suggest that providing social services or public goods makes it possible for a terrorist or extremist group to ask more of its followers.

However, a key problematic in this influential work is the lack of distinction made between radical political groups that utilize violence as part of their strategies and tactics, and Islamist forms of collective action that are conservative and often oppositional to domestic states, but are, in all other ways, distinct from radical political organizations such as al-Qa'ida. Indeed, Islamist political mobilization takes a number of forms and requires some analytical refinement. The most prominent include providing social welfare, contesting elections, and a much smaller minority advocate engaging in

⁶⁶ See Martha Crenshaw, *Theories of Terrorism: Instrumental and Organizational Approaches*, 10 J. STRATEGIC STUD. 13 (1987); and Martha Crenshaw, 'New' vs. 'Old' Terrorism: A Critical Appraisal in JIHAD TERRORISM AND RADICALIZATION AND THE RADICALIZATION CHALLENGE IN EUROPE (Rick Coolsaet ed., 2008).

⁶⁷ See Eli Berman & David D. Laitin, Religion, Terrorism and Public Goods: Testing the Club Model, 92 J. PUB. ECON. 1942 (2008).

⁶⁸ See Jacob N. Shapiro & David A. Siegel, *Underfunding in Terrorist Organizations*, 51 INT'L STUD. QUARTERLY 415 (2008).

armed violence. The mix of these activities varies; some Islamists engage in only one type of activity, while others pursue two or all three of these activities. Some of the *da'wa* Islamists limit themselves to social welfare provision; the Egyptian Muslim Brotherhood confines itself to social welfare and electoral contestation, while the Egyptian Islamic Group and al-Qa'ida engage in armed violence and terrorism. What is important to note, however, is that the major trend of Islamism is non-violent; it is best understood as an ideology that promotes an active engagement with and cultivation of Islamic beliefs and practices, both in the public sphere and in those activities traditionally considered private. Islamism, therefore, undeniably possesses a "political" component in that it seeks to transform public life in more Islamic directions. In reality, the rise of IWAs over the last three decades is due in great part to globally induced economic change. More specifically, it is a result of the retreat of state-led social protection policies in the 1980s.⁶⁹ The inability of many Muslim countries to fulfill their economic promises following a period of economic prosperity resulting from the oil boom in the Arab Gulf has inadvertently led to the expansion of informal networks and Islamic welfare institutions.⁷⁰ In a pattern similar to the majority of less developed economies, the resulting gap between expectations and reality in Muslim societies fostered among many a sense of disillusionment with both the ideologies and institutions of the secular state.⁷¹ To be sure, in the context of the diminished economic role of the state, there has been a rise of Islamist conservative social movements in many Muslim majority countries. But it would be a mistake to view all Islamists as fundamentally oriented towards overthrowing the political status quo or capturing the state. Such groups do exist, but they represent only a very small minority of a much larger social movement that espouses peaceful and non-violent social and political change.⁷²

By taking seriously the popularity of Islamism as representing larger social movement rather than a militant fringe, it becomes possible to understand why moderate (i.e. *da'wa*) Islamists have become increasingly concerned with supplying social protection to the region's economically and socially vulnerable. Indeed, a major misconception in the anti-terrorism finance campaign pertaining to Islamic charities is the assumption that the latter function only to fulfill the religious obligation of Muslims and thus

⁶⁹ See Hamed El-Said & Jane Harrigan, *Globalization, International Finance, and Political Islam in the Arab World*, 60 *MID. E. J.* 444, (2008).

⁷⁰ See Ethan B. Kapstein & B. Milanovic, *Welfare State Policies in the MENA*, in *WHEN MARKETS FAIL: SOCIAL POLICY AND ECONOMIC REFORM* (Ethan B. Kapstein et al. eds., 2002).

⁷¹ See *id.*

⁷² See DALE EICKELMAN & JAMES PISCATORI, *MUSLIM POLITICS* (2004).

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represent a small part of local economies. Policy makers would be mistaken to perceive these institutions as peripheral to the economic livelihoods of local communities. In reality, for the last forty years, IWAs have played an important role in social protection and economic security for thousands in all Muslim countries. Whether by providing health care, education, job training and locating services, loans, or direct payments, IWAs have stepped in to fill many of the gaps created by a retreating welfare state. In addition, many Muslims view these activities as part of a moderate Islamist project of social transformation. In this respect, helping those vulnerable to poverty serves two purposes: it allows pious Muslims to meet their moral duty to aid those less fortunate, and it provides the venues through which they can employ the Islamist *da'wa* (Call to God) to spread their ideology and increase their membership.

While Islamic Welfare Associations are an important part of "Islamic" forms of social protection in Muslim countries, they must be placed within the context of *zakat*, with which they have a mutually beneficial relationship. The *zakat*, or religious tithing, remains the single largest source of religious social protection among Muslims.⁷³ In some countries, the government enforces *zakat*; in others it remains legally voluntary, though morally obligatory, act for all Muslims wealthy enough to do so. Many regimes have nationalized *zakat* collection and distribution, but direct tithing to mosques and other religious institutions remains extremely commonplace in all Muslim countries, especially during the holy month of Ramadan. *Zakat* plays an important role in supplying social protection in at least two ways: first, it serves as direct payments to the poor, who then often use these payments to pay back loans; and, second, it covers the costs of expensive Islamic Welfare

⁷³ *Zakat* is an obligatory distribution of disposable income available after one's basic needs have been fulfilled. As one of the five pillars of faith, all Muslims are expected to give *zakat*. There are a wide range of systems utilized across Muslim countries for calculating how much is owed and how *zakat* is distributed. In Egypt, it is traditionally set at the equivalent of eighty-five grams of gold. In reality, *zakat* is most commonly distributed in the form of food during Ramadan, clothing, medicines for the poor and orphans, and other consumable commodities. The other important religious source of social protection and welfare is the *waqf*, a religious endowment whereby property or other assets are withdrawn from commercial circulation and dedicated to the support of public welfare such as the establishment and maintenance of hospitals, schools, orphanages and other public institutions, is a system of religious endowment that is no longer relevant in Egypt. In contrast to Turkey or Indonesia where the *waqf* system remains an important tool used in social welfare provisioning, in Egypt the practice has largely disappeared. This is largely due to state interference, and also the lack of support among the public of this form of endowed giving. See UNDP, 2008 EGYPT HUMAN DEVELOPMENT REPORT 91 (2008), available at http://planipolis.iiep.unesco.org/upload/Egypt/Egypt_nhdr_en2008.pdf.

Institutions that provide valuable services to the poor at little or no cost (e.g. health clinics). In other words, IWAs are social institutions rooted in the indigenous societies of the Muslim world and offer a model of socioeconomic development based on authentic, non-Western models. While the operations of these institutions are decidedly "Islamic" in nature, this is due to their comparative advantage among local communities. Indeed, most Islamic institutions adopt an Islamic tenor primarily because it is an effective mechanism to support charitable activities, and attract donations. In other words, not all Islamic Welfare Associations are equally "Islamic" and most serve a broad spectrum of the population regardless of religious or sectarian affiliation.

NEO-LIBERAL REFORM, ISLAMIST ACTIVISM AND THE RISE OF ISLAMIC WELFARE ASSOCIATIONS IN EGYPT

Egypt provides a useful example of how the retreat of the welfare state in the context of economic reform, the rise of Islamism, and the growth of a socially frustrated middle-class, gave birth to a vibrant network of informal Islamic institutions. By the late 1970s, it is possible to discern the coalescence of a broad network of Islamic organizations that together formed what one scholar has termed a "parallel Islamic sector."⁷⁴ These are social organizations—many of them charitable in purpose—that operated on the peripheries of the state and fulfilled many of its traditional social welfare functions. As Wickham has noted, as the state continued to shrink in scope under the weight of neo-liberal economic reforms, the periphery grew larger and the parallel Islamic sector began taking on increasing responsibility for servicing the needs of Egypt's citizens.⁷⁵ Moreover, in his early years, Sadat courted Egypt's Muslim Brotherhood by allowing Islamists to participate in student associations, permitting the Brotherhood limited political participation, releasing many from prison, and loosening press laws that had, till then, hindered the ability of Islamic groups to advertise their ideologies.⁷⁶

Meanwhile, economic liberalization and the oil boom created vast reserves of private wealth capable of being directed toward charitable organizations. Islamic banking institutions appealed to many in the growing middle-class eager and particularly expatriate Egyptians who sought to invest their wealth generated in the Arab Gulf in their home country. However, while some analysts have assumed this was due to the latter's interest in in-

⁷⁴ WICKHAM, *supra* note 21, at 95.

⁷⁵ *Id.*

⁷⁶ See MAYE KASSEM, EGYPTIAN POLITICS: THE DYNAMICS OF AUTHORITARIAN RULE 140-141 (2004).

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vesting funds in ways that are compatible with Islamic values, according to Abd al-Fadil, the majority of depositors simply sought to secure a higher return on their investments than they could enjoy from the heavily regulated state-owned banks at the time.⁷⁷ Consequently, much of the money sent back to Egypt in the form of foreign remittances found its way the Islamic parallel economy. According to some estimates, as much as one million Egyptians invested in Islamic banking institutions between 1974 and 1984.⁷⁸ The resulting wealth supplied Egypt's many IWAs with the vast pool of financial resources necessary to provide an alternative to Nasser's welfare state.⁷⁹

When Sadat was assassinated in 1981 and Hosni Mubarak became president, all the pieces were in place for the ascension of the parallel Islamic sector. The collapse of oil prices seriously undermined the economic security of a broad swath of the Egyptian middle- and lower-strata of society.⁸⁰ Meanwhile, the Islamic charitable organizations—which emerged in the 1970s as a social and economic alternative to the secular state—became an essential means of avoiding or alleviating the effects of poverty in the 1980s and 1990s.⁸¹ Though they had their origins in times of relative economic plenty, by the late 1980s Islamic charities and voluntary organizations were providing social protection to millions of Egyptians who were suddenly made vulnerable. That is, just as the *hawwalat* in Somalia came to represent an integral part of globalization, Islamic institutions in Egypt are very much a result of global economic processes. This was the main reason for their spectacular growth; it was not due to a rise of anti-Western, militant forms of Islamist activism.

It is impossible to accurately estimate the number of Islamic charitable organizations active in Egypt in the 1980s and 1990s, since so many had overlapping purposes, namely receiving charitable contributions as well as generating user fees to expand their welfare provisioning to local communities. Citing a variety of sources, Wickham has pegged the number of Islamic Welfare Associations in Egypt in the early 1990s at anywhere from twenty-five percent to sixty percent of the 15,000 or so registered private voluntary

⁷⁷ See MAHMOUD 'ABD AL-FADIL, AL-KHALDI'A AL-MALIYYA AL-KUBRA. AL-IQTISAD AL-SIYASI LI-SHARIKAT TAWZIF AL-AMWAL [The Great Financial Deception: The Political Economy of the Investment Companies] (1989).

⁷⁸ See *id.*

⁷⁹ See SINGERMAN, *supra* note 21, at 252.

⁸⁰ See generally RAGUI ASSAAD & SIMON COMMANDER, EGYPT: THE LABOUR MARKET THROUGH BOOM AND RECESSION (1990).

⁸¹ See generally DENIS SULLIVAN, PRIVATE VOLUNTARY ORGANIZATIONS IN EGYPT: ISLAMIC DEVELOPMENT, PRIVATE INITIATIVE, AND STATE CONTROL (1994).

organizations ("PVOs").⁸² Another study has gauged their number to be about twenty percent at end of the 1990s.⁸³ This wide differentiation in statistics can be explained by noting the difficulty scholars such as Singerman⁸⁴ and Clark⁸⁵ face in distinguishing an "Islamic" organization from, for instance, a secular organization that occasionally makes reference to religion. There is little that is exclusively "Islamic" about the majority of IWAs. Indeed, as Clark's pioneering research has shown, the personnel operating these institutions are rarely given specific guidelines concerning Islamic modes of conduct and behavior, and the majority of patients simply expect some level of sex segregation, and they usually simply state that they expect a higher level of honesty from Islamic Welfare Institutions.⁸⁶ Moreover, many self-consciously Islamic voluntary organizations provide services that would not fit into commonly accepted definitions of social protection: Qur'anic study groups, for instance.

Moreover, while in the context of the global war on terrorism financing, the state has exerted much energy into taking legislative and administrative control over these institutions many have an interest in avoiding governmental regulation. The concern over state regulation on the part of the IWA staff is twofold: they are concerned over having to pay taxes and are understandably anxious that the state seeks to curtail any form of peaceful Islamist opposition.⁸⁷ Their concern over state regulation and taxation is warranted. After all, many of Egypt's Islamic voluntary organizations that provide services like low-interest loans, job training, or health care do so only intermittently or on an *ad hoc* basis. The actual number of Islamic organizations in Egypt—or any Muslim country—that provides services that meet classical definitions of social protection, therefore, is difficult to estimate with any degree of accuracy. All of the empirical and anecdotal evidence suggests, however, that they have played an enormous role in meeting the needs of Egypt's citizens from the 1980s to the present.⁸⁸ This clearly highlights the

⁸² WICKHAM, *supra* note 21, at 99.

⁸³ JANINE A. CLARK, ISLAM, CHARITY, AND ACTIVISM 28 (2004).

⁸⁴ SINGERMAN, *supra* note 21, at 247.

⁸⁵ CLARK, *supra* note 83, at 69.

⁸⁶ *Id.* at 70.

⁸⁷ Interview with general manager and staff of Islamic Welfare Association, Al-Mattariyya, Cairo (Dec. 14, 2008).

⁸⁸ The continued importance of Islamic Welfare Associations in providing social protection to the poor in Egypt was recently highlighted by the United Nations Development Program in 2005. See *Choosing Our Future: Towards a New Social Contract*, in UNDP, EGYPT HUMAN DEVELOPMENT REPORT 2005 (2005).

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dangers of the broad criminalization of these institutions under the campaign against terrorist financing.

Moreover, despite the collapse of oil prices in the 1980s, in the 1990s some of Egypt's IWAs received a great deal of financial support from private and governmental benefactors in the Persian Gulf.⁸⁹ Islamic banks and other religious financial institutions represent another important source of income. Much of the money necessary to carry out day-to-day operations, however, derives from their association with mosques and various profit-making businesses. By being formally associated with a particular mosque, many IWAs receive a portion of the *zakat* made there. Many IWAs I observed in the neighborhoods of Imbaba in 2000 and al-Mattariyya in 2008 also charge for their services (usually a nominal fee applicable only to those who can afford it) or run ancillary businesses (e.g. religious bookstores) that supply them with a modest income. This combination of local charity, tax exemption, and profit, when combined with support from Gulf benefactors and Islamic banks, has allowed Islamic social institutions to provide some form of social protection for millions of Egypt's poorest. These developments have certainly promoted the financial and political clout of the conservative middle-class based movement in Egypt and worldwide. However, there is no evidence that these informal institutions as a whole have engaged in financing terrorist operations. Moreover, while in some cases they have indeed funded the Muslim Brotherhood organization, the conflation of this moderate Islamist organization and terrorism calls into question the efficacy of the war on terrorism in the first place, since there are a host of similar Islamist movements across the Muslim world.⁹⁰

While the poor certainly receive many benefits from Islamic charitable organizations, recent scholarship has suggested that they are not the primary clientele of these organizations. Clark has shown that in Egypt, Jordan, and Yemen, IWAs are predominantly run by and for the middle-class.⁹¹ However, this important study suffers from "selection bias" in that it does not take account of poorer populations. In my research in the poorer quarters in Cairo, I observed a dense network of IWAs that do indeed provide significant welfare services to some of the poorest residents in Cairo. While few studies

⁸⁹ Interviews with the general manager and staff of the Islamic Welfare Association al-Mattariyya, Cairo (Dec. 14, 2008).

⁹⁰ Mathew Levitt, an analyst with the Washington Institute of Near East Policy, makes a similar argument. As Levitt stated: "charities—Islamist or otherwise—should not be financing extremist ideologies in the first place. But the real debate is over a completely different threshold: violence." Mathew Levitt, *The Price of Fear: the Truth Behind the Financial War on Terror*, 15 MID. E. QUARTERLY 2 (2008) (book review).

⁹¹ CLARK, *supra* note 83, at 56.



have addressed the role of the poor in receiving and operating Islamic Welfare Associations, this does not obviate the conclusion that Islamic welfare associations and Muslim charitable giving are an important part of the fabric of social protection in Egypt. While it would be a mistake to assume that every IWA caters to the poor, in my research in the informal squatter settlements of Cairo I observed that they do in fact provide much needed services to a very poor community.⁹² That is, while the best equipped and funded IWAs are in wealthier sections of Cairo, and large proportion of these resources are directed to the middle-class, what does reach the poor represents an important safety net for those facing economic insecurity.

THE ROLE OF ISLAMIC CHARITY, THE PRIVATE MOSQUE (*AHALI*) AND KINSHIP NETWORKS

The question remains however: what is the precise relationship between the expansion of Islamic Welfare Associations and Islamic extremism? Is there truth to the assumption made by policymakers that Islamic Welfare Institutions contribute to the funding of Islamist extremism and terrorism?

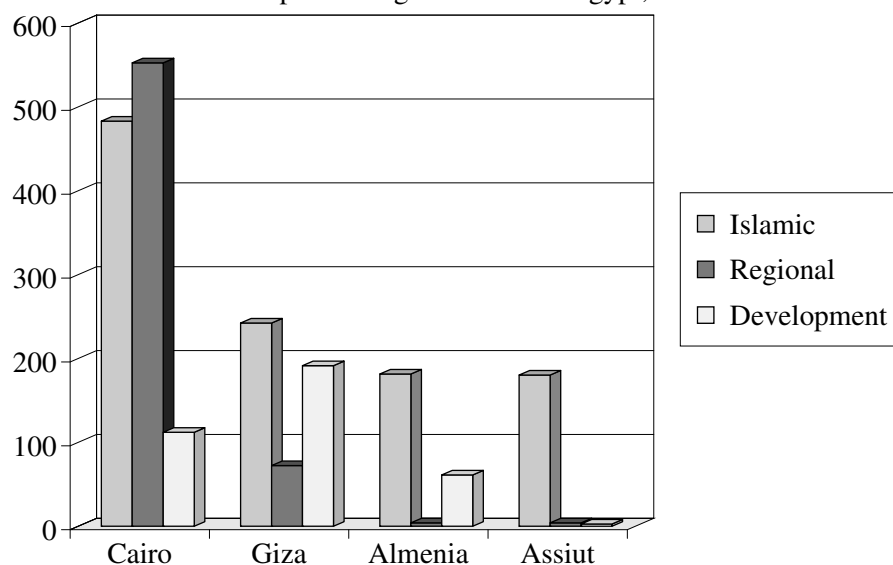
Any understanding of the link between Islamic informal institutions in Egypt and the Muslim world must take seriously the sectarian and ethnic diversity of Muslim communities. Indeed, while Egypt is routinely considered homogenous in religious and ethnic terms, this is simply not the case empirically. My own research on Islamist militants in Cairo's informal housing settlement of Imbaba is evidence of this important fact. As I have argued above, my research confirms theoretical findings that suggest that the link between informal networks and Islamist forms of collective action remains an open, empirical question. In the poorer sections of greater Cairo the retreat of the state from social provisioning has resulted in local actors diversifying their social networks to include both kinship⁹³ and religious networks in order to consolidate efforts at income generation and social protection. In my research in Imbaba, I observed, that in the poorer quarters of this neigh-

⁹² This observation is based on my research, which included personal interviews with the staff and patients in the poorest sections of Imbaba, namely the quarters of Ezbat al-Mufti and Bestheel. I further corroborated these findings through additional personal interviews with the staff and general manager of the Islamic Welfare Association located al-Mattariyya, Cairo in 2008.

⁹³ My definition of kinship networks here is a term expansive enough to include families, clans, tribes and any other group whose membership is defined by common ancestry and (or) common regional origin. While they are often considered pre-modern artifacts in more advanced (i.e. semi-industrialized) Muslim countries such as Egypt, in the context of economic reforms, they have assumed an important role in the provision of social welfare since the 1980s.

borhood kinship networks organized around regional associations (*Rawabit Iqlimiyyah*) continue to play an important role in social provision. While they are not as expansive as Islamist informal networks, they have proven to be a relatively successful alternative to the shrinking welfare state. In the informal settlements of Cairo these *Rawabit Iqlimiyyah* play an important role in supplying employment contacts, loans, and even child-care. However, in recent years Islamic institutions, in terms of providing social provisions, have overtaken the latter. As Figure I illustrates, Islamic Welfare Associations, sometimes termed Private Voluntary Organizations ("PVOs") by state officials, are generally more successful in assisting a broader segment of the poor than either kinship based associations as well as state-run "development" associations (*Jamiyyat al-Tanmiyaa*). In the rural regions of Egypt, arguably the poorest regions of the country, Islamic PVOs shoulder the larger burden of assisting local communities.

FIGURE I: The Number of Islamic PVOs, Regional Associations and Development Organizations in Egypt, 1996.



Source: Ministry of Planning (Cairo: Report on Private Voluntary Organizations), March 1996

By the late 1990s, the response of the Egyptian state to this expansion of largely unregulated IWAs throughout the country presaged the campaign against "terrorism" a decade later. These efforts were clearly borne out in the early 1990s. When the existence of these institutions in the informal settlements was "discovered" by the state, the overcrowded slums of Imbaba took center stage. The "criminality" and "militancy" of residents was explained

not so much by the pressures of an absence in affordable housing and regular employment in Egypt, but by rhetoric of extremism and terrorism in the heart of urban middle classes to inculcate the principles of self-help to the poor.⁹⁴

While there were some militants among the poor in Cairo, by most accounts Islamist activists were primarily engaged with providing a wide range of social services.⁹⁵ When members of the extremist Islamic Group criticized the state as unable and unwilling to instill the "virtues of Islamic values" the state responded by pursuing a military strategy that targeted these Islamic institutions.⁹⁶ Ultimately, both the state and the Islamist activists sought to apply force in resolving problems having to do with local consequences of the economic crisis. The primary objective of the Mubarak regime's policy was to eliminate any Islamist opposition, particularly among the poorer segments of the population. By the middle of the 1990s, the state's war on terrorism resulted in the Egyptian military invading the informal slums of Cairo. The Egyptian military arrested many Islamist militants, and shut down a number of storefront mosques that were used by militants in their recruitment campaigns. But the regime also shut down a wide array of Islamic Welfare Associations, which did in fact provide important services to the poor. The result, of course, has been that in the context of continued state neglect, for a neighborhood of more than six million denizens the most important institutions providing welfare, social protection, and a sense of community were irrevocably disrupted.

To be sure, leaders of the militant Islamic Group did exploit the unregulated Ahali mosques in the slums of Imbaba to disseminate militant, anti-government rhetoric but in my observations in the area the Islamic Welfare Associations not only did not support this militant preachers they opposed these extremists and often told me that they were "outsiders" to the community. However, just as in the campaign against *hawwalat*, the wholesale closure of these Islamic Welfare Institutions by the Egyptian state was too broad

⁹⁴ See *The Crisis Continues in Imbaba: Expect more Clashes* AL-SHAAB, Dec. 15, 1992; *Egyptian Cities under Siege*, AL-SHAAB, Jan. 8, 1993.

⁹⁵ As Singerman has documented, most Islamic Welfare Associations provide many *sha'bi* (i.e. popular) communities with a wide range of services including pharmacies, private tutoring, and vocational training for youth. Moreover, the bulk of financial resources for these services are derived from the local communities themselves and not from external sources. That is, they are mostly generated by a *lajnit al-zakaah*, a committee established by the affiliated mosque to distribute the Islamic alms tax. SINGERMAN, *supra* note 21, at 252-253.

⁹⁶ At the time militant Islamists were responsible for an estimated 221 episodes of violence in Cairo in the 1990s, up from nineteen (or 1163%) from the 1970s. Nema't Guenena & Saad Eddin Ibrahim, *The Changing Face of Egypt's Islamic Activism* 13 (Sept. 1995) (unpublished manuscript, on file with Ibn Khaldun Center for Development Studies, Cairo).

as to be justified, and represented a clear lack of understanding of the true importance and operation of these Islamic Welfare Associations.

At the level of civil society, in Egypt, IWAs have bridged the gap between government services and fully privatized and cost prohibitive social services. Far from representing a "clandestine" or "underground" part of globalization, they present a "third way" that has proved highly successful among middle and lower class Egyptians. In Cairo's Imbaba neighborhood, for example, the sheer density of IWAs, and the fact that the majority of the private mosques I observed in the area have some form of health care unit or clinic indicates the important role these institutions play in terms of providing key social services. These are the reasons that IWAs enjoyed stupendous success and expansion in the 1990s (Figure II). Moreover, while kinship associations continue to be well represented, they are not only under-resourced but also cannot compete with IWAs, which enjoy clientele across both religious and kinship loyalties.

**CRIMINALIZING WELFARE AND UNDERMINING SOCIAL PROTECTION:
THE WAR ON TERRORISM AND THE DECLINE OF ISLAMIC
CHARITABLE GIVING IN EGYPT**

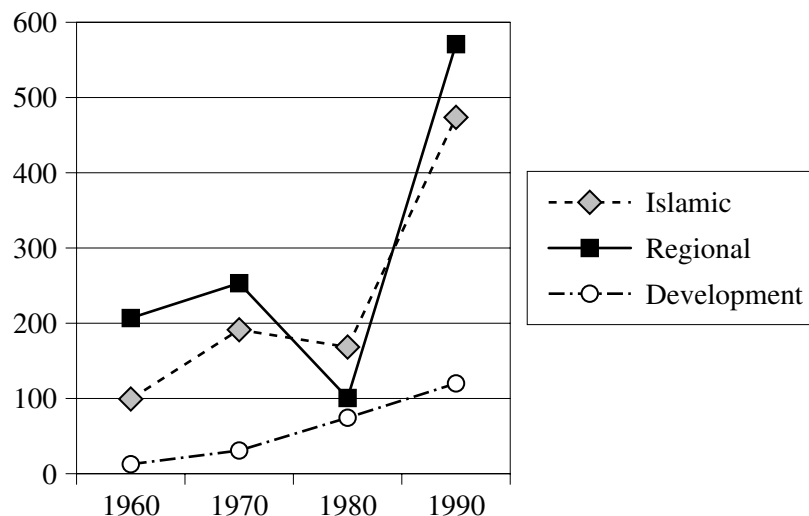
As the charts above demonstrate, Egypt witnessed a dramatic increase in the rise of IWAs in the 1990s. Most telling is that IWAs rose faster than either regional or government-run development associations throughout this period. This was primarily due to the fact that they proved far more effective in reaching a broader segment of clients than the kinship oriented regional associations, and proved far more efficient than the over-regulated and under-resourced developmental organizations.⁹⁷ Clearly, Egyptians found IWAs far more effective in collecting and distributing the obligatory Islamic tithes (i.e. *zakat*) than the other welfare type associations, and IWAs became one of the most trusted social welfare institutions in the country.

However, by the early 2000s Egypt witnessed a marked decline in charitable giving primarily due to global and domestic imperatives associated with the war against Islamist militancy and terrorism. Specifically, following the rise of extremist violence in the 1990s, the Egyptian state implemented a wide range of stricter bureaucratic and regulatory measures with respect to both non-governmental organizations and IWAs in an attempt to limit funding to the country's Islamist opposition. Initially, the primary legal tool was Law Thirty-Eight of 1999. Following the attacks of 9/11, Law Eighty-Four was issued on October 23, 2002, which gives broader executive powers to

⁹⁷ See AMANY QANDIL, *CIVIL SOCIETY AND SOCIAL CHANGE* (1998).



**FIGURE II: EXPANSION OF ISLAMIC, REGIONAL AND DEVELOPMENT
NGOs IN CAIRO**



Source: Amani Qandil and Sara Ben-Nafissa, *The Non-Governmental Organizations in Egypt* [Arabic]. Al-Ahram Center for Political and Strategic Studies, 1994.

the Egyptian regime.⁹⁸ Arguing that the new legislation "balances freedom and social peace," both houses of the Egyptian parliament passed Law Eighty-Four and it has generated a great deal of opposition by a wide range of civil society groups in Egypt. Law Eighty-Four gives the state regulatory authority, and broad powers to grant or deny registration, interfere in the operations and fundraising of an organization, and order its dissolution.⁹⁹ The major objection to the law is that it requires all civil society organizations to register with the Ministry of Social Solidarity ("MOSS") and allows the Ministry to criminalize any organization based on a vaguely worded provision that allows MOSS to dissolve, fine and/or imprison members of any civil society organization, or group who "call for obstructing the provisions of the Constitution" or who "participate in any political activity restricted by

⁹⁸ Law no. 84 is similar to Law no. 153 governing non-governmental organizations (NGOs) enacted by the Egyptian government in 1999. In contrast to Law no. 153, however, Law 84 was passed by both houses of Parliament without consultation with civil society groups and is widely seen as a means for the government to control civil society and restrict any political dissent. For a fuller discussion of the historical context and analysis of Law 84 see Mohamed Agati, *Undermining Standards of Good Governance: Egypt's NGO Law and its Impact on the Transparency and Accountability of CSOs*, 9 INT'L J. NOT-FOR-PROFIT L. 56 (2007).

⁹⁹ See Farid Zahran, *New Civil Associations Law and the Current Political Times*, AL-AHRAM, July 23, 2002.

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law." Furthermore, Article Seventeen of the legislation is designed to track and prevent funding to extremists and terrorists in that associations have the right to receive donations only following approval of the MOSS. In addition, permission from the Ministry is required for all funding from foreign sources, and any monies obtained without the authorization of the proper governmental agency gives the state (under Article Forty-Two), the right to dissolve any organization or remove its board of directors.¹⁰⁰ The extra-judicial and authoritarian nature of the law is evident in that while the 2002 law officially designates MOSS as the executive authority. The regime's Office of State Security ("OSS") retains oversight and often denies or delays approval over the establishment of an association or appointment of its directors and staff.¹⁰¹ As Mohamed Agati has noted, rather than explicitly issuing orders, the OSS influences MOSS most often by delaying or denying approval resulting in these tactics often "slowly starving an organization out of existence" via procedural and bureaucratic matters.¹⁰² Moreover, in May 2010, Egyptian lawmakers extended an emergency law, in force since 1981, for two more years, citing the government's warning of "persistent terrorist threats." This action drew a strong criticism from the U.S. administration.¹⁰³ Specifically, the Obama administration criticized the law's curtailment of civil liberties in Egypt and called for the law to be replaced with new anti-terrorism and money-laundering legislation¹⁰⁴ that would actually target ter-

¹⁰⁰ Law 84/2002 also allows for the exclusion of individuals from the creation of or membership in associations, or even nomination to the associations' boards administrative agency disapproves. Article 8/2, Article 33/2, and Article 34/2.

¹⁰¹ See HUMAN RIGHTS WATCH, EGYPT, MARGINS OF REPRESSION: STATE LIMITS ON NON-GOVERNMENTAL ORGANIZATION ACTIVISM (2005), available at <http://hrw.org/reports/2005/egypt0705>.

¹⁰² See Agati, *supra* note 98, at 14. As Agati notes, the role of the Office of State Security (OSS) is not authorized in the law or the constitution. Nevertheless, while Law 84 designates the executive authority as the Ministry of Social Solidarity, the OSS has directly issued denials of registration and exerts great political influence on the decisions of the Ministry of Social Solidarity, particularly on issues having to do with 'activities' banned by Article 11 of the law.

¹⁰³ See Daniel Williams & Alaa Shahin, *Egypt Extends Emergency Law, U.S. Call for New Anti-Terror Law*, BUSINESSWEEK, May 11, 2010, at 1-2. The emergency legislation allows police to detain terrorism and narcotics suspects indefinitely and civilians can be referred to military tribunals.

¹⁰⁴ The Laws governing anti-money laundering (AML) in Egypt are the AML Law (No. 80, 2002), and the Central Bank Law (No. 88, 2003). However, Egypt has not to date established a new counterterrorism law containing "specific and comprehensive measures" against terrorist financing as recommended by the U.S. Financial Action Task Force (FATF). See FINANCIAL STANDARDS FOUNDATION, EGYPT: ANTI-MONEY LAUNDERING/COMBATING TERRORIST FINANCING STANDARD, 1-5, available at <http://www.estandardsforum.org/egypt/standards/anti-money-laundering-combating-terrorist-financing-standard>.

ror suspects without infringing on rights of those not engaged in terrorism. Indeed, since 1997, Egyptian courts presided over only three trials related to militancy.¹⁰⁵

The combination of regulations on civil associations, and the continued implementation of the emergency law has led to a great decline in charitable giving in Egypt after decades wherein Islamic Welfare Associations played a key role in social protection and welfare provisioning to the poor and middle class alike. Interestingly, in Egypt charities, unlike non-governmental associations, are legally allowed to accept donations without prior approval from the Ministry of Social Solidarity. Indeed, as the government appointed Chairman of the Islamic Charity Association put it: "The new civil associations law has no impact on charity's activities as it is meant only for human rights organizations . . . our charity receives about 30,000 EGP monthly in donations, and we are not obliged to obtain approval from administrative bodies."¹⁰⁶ Not surprisingly, state authorities have been reluctant to acknowledge the chilling effect the general constriction of civil society activity has had in Islamic forms of charitable giving. Nevertheless there is clear evidence that it has, and this is borne out by both survey data and my own ethnographic research in Cairo.

In 2004 a study conducted by the Center for Development Services ("CDS"), reported that as many as sixty-two percent of adult Egyptians contributed some amount of money or gifts primarily to social causes, mostly as part of their *zakat* obligations. Indeed, according to the CDS, over forty percent of Muslim Egyptians who engage in charitable giving say that they pay this in the form of *zakat*. However, what is notable is that this type of charitable giving in Egypt is of short-term benefit and it does not actually represent any sustained program of social protection and it does not play a role in developmental improvements in society. As with Muslim societies elsewhere, *zakat* distribution in Egypt is increasingly composed of the immediate distribution of consumable goods and, as such, it does not have the potential to improve or develop wide reaching medical or social benefits to local communities. Why this is the case has to do with the state intervention, which in its efforts to restrict funding to militancy, has actually limited the expansion of social protection to the population. Indeed, in the CDS survey, Muslims in Egypt expressed a "lack of trust" in the transparency of the government bodies like the Ministry of Religious Endowments (*Awqaf*), responsible for overseeing

¹⁰⁵ Williams & Shahin, *supra* note 103, at 1.

¹⁰⁶ This is a statement made by Dr. Mohammad al-Fangary, Chairman of the Islamic Charity Association, in *Al-Ahrrar*, June 13, 2002. Quoted in Agati, *supra* note 98, at 6.

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waqf property, and distributing *zakat* left in the Mosques.¹⁰⁷ In fact, by 2004 only eight percent of Egyptian Muslims surveyed said they preferred to make their donations through a philanthropic institution such as an Islamic Welfare Association, mostly because the government is now perceived to exercise excessive control on most IWAs (*jamayyat*).¹⁰⁸

Another strong indication of the demise of Islamic charitable giving is evidenced by the fact that, according the United Nations, Egyptians are increasingly engaged in non-religious charitable giving channeled through non-Islamic non-governmental foundations (*muasassat*). This new trend is primarily due to the fact that an increasing number of Egyptians are reluctant to give to IWAs, which by law have to be registered with the Ministry of Social Solidarity.¹⁰⁹

While studies on the Islamic Welfare Sector continue to be sparse, there is little doubt that within the context of the campaign against terrorist finance, IWAs in Egypt have witnessed a decline in term of their reach, political profile, and the level of social protection offered to local citizens. While there are no up to data large-N surveys of the status of IWAs, my ethnographic research on IWAs in the neighborhood of al-Mattariyya in Cairo in 2008 also discerned an increasing decline in the scope, and financial profile of the IWAs that partially corroborates the fact that an increasingly smaller number of Egyptians give to these institutions. In my observations and interviews I found this was due to three main factors. First, respondents stated that in recent years, and particularly following 9/11, the state has implemented stricture bureaucratic regulation and monitoring of Egypt's IWAs. Second, as a result of reduced budgets, the definition of who is "poor" and worthy of welfare services is increasingly narrowly defined with the result that the scope and reach of the IWAs is limited. More specifically, in the context of increasing state regulation and financial crises, many staff members of IWAs acknowledge that they are no longer able to expand their welfare provisions at the level of their communities. Finally, the staff of the IWAs informed me that the monitoring and regulation of IWAs by the state has disproportionately hampered the quality of services of IWAs that serve poorer communities as opposed to those located in wealthier neighborhoods. This is because with stricter state surveillance by the MOSS and the OSS, IWAs have increasingly come to rely on locally generated fees rather than

¹⁰⁷ UNDP, *supra* note 73, at 91.

¹⁰⁸ *Id.*

¹⁰⁹ According to the United Nations, from less than 10 in 1990 there are now 400 foundations as opposed to Islamic Welfare Associations registered with the Ministry of Social Solidarity. *Id.* at 91.



external donations. In other words, IWAs in wealthier areas are able to collect larger funds to fund a wider array of health, social and religious services to their respective communities. Moreover, the staff, medical and even religious personnel of the IWAs now demand higher levels of financial compensation in return for their work with the IWA. Consequently, the nature of volunteerism, that nurtured the growth of IWAs in previous decades, has declined sharply in recent years with the result that one of the most important institutions of social protection in the country has been undermined. In my research on the IWAs in al-Mattariyya, doctors now take up fifty percent of the overall budget of the IWA, Imams demand upwards of fifty pounds for delivering the *khutbah* (sermon), and bureaucratic road blocks have meant that an increasingly smaller percentage of local residents make use of the IWAs services on a regular basis. In practice, this has meant that the IWAs now increasingly must run on a profit rather than voluntary donations. While graduated user fees have long been important in funding IWAs, in recent years many IWAs report that they find themselves struggling to meet even their basic operating budgets. In addition, IWA staff report that they now find themselves competing with other associations for medical personnel who have become adept at playing the market by moonlighting across a number of IWAs to expand their household incomes.

Consequently, as a result of increasing state monitoring and regulation, and within the context of limitations on external funds and donations, the social divide between IWAs has widened further dependent on the economic status of local residents. Thus, residents in the upper class neighborhood of Mohandaisin continue to enjoy sophisticated medical and social services since local residents are able to contribute higher user fees on a more regular basis, and expatriate Arabs and upper class Egyptians living in these areas provide generous donations, particularly during Ramadan and the Eid holidays. In contrast, IWAs in poorer neighborhoods such as al-Mattariyya where social services are most needed are witnessing a decline in the scope of their welfare provisions to local residents. Within the context of more stringent, bureaucratic regulation and state monitoring¹¹⁰ in what the regime has termed the "war against terrorism," many IWAs find themselves with increasingly meager operating budgets and unable to provide services even to the most needy of local residents.

¹¹⁰ Officials from the Ministry of Social Solidarity (MOSS) pay regular, albeit unscheduled visits to IWAs, to audit the associations' accounts and even monitor the sermons (*khutbas*) delivered at the IWAs Mosque. Interview, general director and staff of the IWA in al-Mattariyya, Cairo (Dec. 14, 2008).

CONCLUSION

Somalia and Egypt provide important lessons having to do with some of the misconceptions and long-term repercussions associated with the global war on terrorism. The case of Somalia helps us to tackle two important questions: the first has to do with the linkage between informal *hawwalat* financial systems and Islamist extremism; the second is the question of whether failed states actually serve as an effective haven for militants and terrorists, as many scholars have assumed. Building on my previous analysis, and contrary to conventional wisdom in the months following 9/11, I have shown empirically that rather than facilitating the rise of Islamist extremist groups (or financing terrorist organizations), the financial flows sent via these informal banks by Somali migrants have actually reinforced kinship networks as the most important political and social institution in Somalia. This is because these transfers are regulated by norms of reciprocity and trust embedded in clan and familial relations. Moreover, it is for this reason that militant Islamist groups in Somalia have not been able to monopolize these *hawwalat* transfers to fund their organizations. This is clearly evident by the fact that since the collapse of the Somali state, Islamist militants have attempted to generate financing, not through the *hawwalat*, but by attempting to control the port economies of the country. Based on interviews with *hawwalat* operators, I have argued that the latter do indeed harbor an Islamist form of political identification. However, I have also shown that this is a form of moderate Islamism that is similar to other Islamist capitalists which represents a moderate rather than a militant form of Islamist activism. Indeed, rather than focusing on informal banks as an arena of terrorist finance and risking a more militant version of anti-western sentiment, policy makers should engage more moderate Islamists in Somalia to undermine the efforts of extremists to exploit an increasingly poor, uneducated and young population in the country.

In addition, I have argued above that the absence of state institutions in much of Somalia does not necessarily provide a safe haven for terrorists. This is because the popularity of militants among local populations is dependent on their own capacity to provide public goods and contract enforcement more effectively than state authorities. In this regard, it is important to note that what made Afghanistan so useful to al-Qa'ida in the mid-1990s was not the failure of the state, but rather the fact that they relied on the state to protect its members from attack and to provide its leadership with important benefits.

Similarly, the collapsed state of Somalia does not afford global terrorists networks such benefits. This is due to four challenges that confront militant



organizations. The first challenge is the lack of government-enforced order that is needed to provide security against local authorities. Second is the unreliability of local allies. As I have shown, clan ties are still the most important source of identification for Somalis and terrorists cannot depend on the commitment of Somalis for Islamist extremist causes over their strong adherence and loyalty to their clan or sub-clan. The third challenge is that the better an area is for training terrorists, the more remote and sparsely populated it is and the harder it is to meet basic sustenance needs. Finally, on the question of terrorism financing, it is important to note that terrorists face the challenge of getting fiscal resources in place. And, as I have shown above, financial services in Somalia continue to be weak. Most importantly, Islamic militants have not been able to effectively use the *hawalaat* to provide key financial services to terrorists in weakly governed areas. This is the reason why Somalia, with its collapsed state, has not served as a fertile breeding ground for global terrorism (i.e. al-Qa'ida), despite popular arguments to the contrary. The al-Shabaab organization is indeed a militant organization, but the roots of its extremism are rooted in local and regional factors¹¹¹ and not due to the expansion of *hawwalat* agencies in the country.

If the case of Somalia demonstrates the pitfalls of locating the roots of terrorism in the absence of state institutions and informal financial markets, the case of Egypt highlights the misconceptions associated with the criminalization of Islamic Welfare Associations. The most important misconception here has been the persistent conflation of Islamic Welfare Associations with Islamist militancy, with little analysis as to the socio-economic roots of extremism. As I have argued, what is crucial is for policy makers to distinguish clearly between the causes underpinning the rise of the moderate Islamist movement and extremism. On the one hand, I have shown that that the rise in popularity of Egypt's Islamist social movement was due to two linked developments. The first is associated with the retreat of the state from its provision of welfare services, and the related "absence" of viable formal state institutions in both the middle class as well as the poor neighborhoods of urban Cairo. The second related trend is the expansion of a host of Islamist Welfare Associations that have essentially filled the gap of welfare and social protection in the context of the diminished economic role of the state.

However, whereas a major assumption in the scholarship of terrorism assumes financial incentives to be primarily responsible for militant or terrorist recruitment, I have argued that Islamist extremism is contingent on locally specific economic, social and political transformations that are exploited by a minority of militant activists. In other words, to say that the moderate Is-

¹¹¹ See Roland Marchal, *supra* note 15.

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Islamist trend in Egypt has been largely invigorated by the spread of Islamic Welfare Associations does not necessarily implicate them in the support and financing of extremist groups. Based on my research, far more significant has been the role of the density of small private mosques in the neighborhood. It is here that militant preachers deliver persuasive sermons to the community and where young children and youth have are recruited via both material as well as social incentives and the promise of both upward mobility and an elevated social and political status. To be sure, over the last three decades, socio-economic changes have altered the demography and job prospects of local residents in urban Cairo important ways. But I have argued that Islamists militants were able to capitalize on these developments in very specific ways that had little do with the role of Islamic charitable giving financing these groups. Specifically, the militant Islamic Group found it possible to diffuse a particular form of family-based Islamic norms through the establishment of a dense network of unregulated private mosques that provided a wide range of social services. Presently, many of the social services in the poorest sections of Cairo are underwritten by Islamist activists, rather than by state institutions such as the local councils (*Majalis Mahliyya*) and Governmental Developmental Associations (*Munazamat Tanmiyya*). As a consequence, Islamists have largely supplemented both the state and the more traditional Regional Community Associations (*Rawbit Iqlimiyya*). This is not a state of affairs that is likely to change with the closure or regulation of this Islamic Welfare Associations. However, policy makers and local authorities can easily focus on the unregulated nature of the store-front Mosques rather than the Islamic Welfare Associations which by offering social protection to the poor can actually curb any potential of another rise in militant or terrorist recruitment.

Furthermore, Islamist militants must be distinguished from more moderate Islamists in terms of the specifics of their ideology and normative practice. Specifically, militants in Cairo used their newfound institutions to legitimize very stringent codes of social control. They routinely imposed a strictly enforced code of behavior and discipline legitimized via the espousal of norms of social justice (*al-'adl al-ijtimayi*) and presented local residents an "alternative lifestyle" in the context of very poor and squalid conditions.¹¹² In my observations, I found that, far more than financial incentives, these norms resonated strongly in the local community since they stood in marked contrast to the neglect of the state; that is, they approximated the normative outlook and "lived experience" of a large segment of the Cairo's urban poor.

¹¹² Interviews with members of *al-Jama'at al-Islamiyya*, Imbaba, Cairo (January 12-14, 1999).



In this respect, the absence of significant state funded social programs particularly in poor areas is a contributing (albeit not the only) factor in breeding extremism. Following the 1992 siege, the Egyptian state did intervene to underwrite some basic services in terms of basic infrastructural development. Yet, to date the rehabilitation of Cairo's poorest areas is only partial and has so far failed to bolster the legitimacy of the state in the view of local residents. The minimal social services that were provided following the state's self-proclaimed "anti-terrorist campaign" were largely financed by foreign aid, rather than domestic sources. This continues to be the case. The bulk of these funds were allocated toward extending electricity and paving roads out of security considerations, rather than out of a sincere effort to improve the social and economic conditions of the local community. Even members of the Local Council (*Majlis al-Mahli*), the local branch of the ruling National Party remain apprehensive about the potential of extremism in their neighborhood. They express great frustration with the government's less than sufficient assistance and are well aware that residents hold them in low regard in comparison to the Islamist. Clearly, government policy that promotes domestic sources of economic development and social protection would play an important role in addressing some of the root causes of extremism among some of the most socially vulnerable. This is a category that has, in the past, represented an important source of rank and file recruitment.

The case of Egypt (as well as Somalia), illustrates clearly the dangers of criminalizing informal networks without taking seriously the impact of economic changes in altering local social realities that impinge adversely on the livelihoods of millions. Moreover, in an ironic development, blaming any facet of terrorism on Islamic Welfare Associations obscures the role (and responsibility) of domestic governments, which have in many ways abdicated their role in social protection and welfare vis-à-vis local communities. Taken together with the failure to liberalize the political system, extremism finds a more fruitful breeding ground. In the case of Egypt, the government appointed "leadership" of the local councils clearly represents the interests of the state. Moreover, these leaders cater almost exclusively to the more affluent members of the local community rather than the most vulnerable constituency. As a consequence, in the eyes of most poor residents, local government stands as a poor substitute to the weakened role of the traditional authority. The shallow reach of informal councils (*Majalis Orfiyya*), and reconciliation committee (*Lejan Sulh*) exemplifies this. These kinship-based institutions, which had traditionally arbitrated disputes, now reflect the erosion of formerly legitimate institutions of social cohesion and control.

What the erosion of traditional authority has meant among the poor is that Islamic Welfare Associations, private Mosques and *zakat* Committees

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will continue to be more popular and relevant to the lives of impoverished communities. This is most certainly the case in many parts of the Muslim world. It is to these social and economic developments that we must look if we are to understand both the social roots of militancy, and the attraction of terrorism to a small minority. It is a grave mistake to transform these complicated social and economic conditions into psychological traits and "criminalize" the most vulnerable, as so much analysis in the War on Terror has been prone to do.

