MODERNIZING CHARITY, REMAKING ISLAMIC LAW

by

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This manuscript has been read and accepted for the Graduate Faculty in Anthropology in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT

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Drawing on archival and ethnographic research in Lebanon and Turkey, this dissertation investigates changes in the conception and practice of Islamic charitable endowments – called *waqfs* – in Beirut since1826. In French Mandate Lebanon (1920-1943), a new question about charity emerged: how was one to distinguish when a charitable endowment was a truly religious act? I first trace how this question became imaginable starting in the nineteenth century Ottoman Empire, notably through the rise of the modern capitalist state, its monopoly on the production and administration of law, and the creation and separation of the spheres of religion and economy. I then argue that the selection of religious endowments hinged on new conceptions of the state and general benefit and upon a conception of charity as a practice confined to the public sphere. The answer to this question therefore subjected charitable endowments and their founders to new understandings of charity, property, and intent and redefined the very practice of charitable giving in the Islamic tradition afterwards and up to this day.

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TABLE OF CONTENTS

Acknowledgments ..……………………………………………………………………….. v

List of Tables …..………………………………………………………………………….. xvi

Note on Transliteration, Translation, and Datation………………………………………... xvii

Introduction ……………………………………………………………………………….. 1

Part I: State, Law, and Waqf
    Chapter 1: Waqf, a Non-Definition……………………………………………….. 55
    Chapter 2: The Judge, the Sultan, the Supervisor, and the Administrator:
    State and Law in Waqf Administration…………………………………………… 118

Part II: Modernizing Waqf
    Chapter 3: The Waqf's Interest and Public Utility………………………………... 187
    Chapter 4: Charity and the Family………………………………………………... 230

Conclusion……………………………………………………………………………….. 288

Bibliography……………………………………………………………………………... 297

LIST OF TABLES

Table 1: Expenditures of the ʿUmarī waqf ………..…………………………………………... 246

Table 2: ʿUmarī Mosque office holder chronology ……………………………………….. 251

NOTE ON TRANSLITERATION, TRANSLATION, AND DATATION

For transliteration from Arabic, Ottoman, and Turkish, I have used the International Journal of Middle East Studies' transcription system. All non-English words are italicized, except the words that IJMES includes on its list of exceptions and Arabic words that exist in common English use (ex: *sharīʿa* is rendered as shariʿa). For Ottoman, I have chosen to transliterate into modern Turkish.

I have used brackets to include any translation in the body of the text (for instance, depute [*nā'ib*]). Translations are my own, unless otherwise noted.

I have used the Gregorian calendar but when referring to a document dated in *hijri* years, I have included that date in bracket.
The Muslim months are abbreviated as shown below

Muḥarram	M
Ṣafar	S
Rabīʿ al-Awwal	Ra
Rabīʿ al-Thānī	R
Jumādā al-Awwal	Ca
Jumāda al-Thānī	C
Rajab	B
Shaabān	Sh
Ramaḍān	N
Shawwāl	L
Dhū al-Qiʿda	Za
Dhū al-Ḥijja	Z

INTRODUCTION

In 2005, two Muslim men came to the Sunni religious court in Beirut and earmarked $100 to start an Islamic charitable endowment [*waqf*] supporting human rights regardless of race, religion, and belief. This new waqf foundation was hand-written in the registers of the court, an oddity between the plethora of divorce and inheritance[1] deeds surrounding it. It was one of the new waqfs that started appearing in the registers in the 1990s after a near fifty-year lull in most waqf activity. It also stood out among the new foundations that I inventoried for this dissertation, the majority of which were lands whose ownership was surrendered for the building of mosques or Islamic centers. These new foundations coincided with the Islamic Revival efforts at instilling an Islamic way of life.[2] The human rights waqf, on the other hand, was a different matter, and provoked a new set of questions: what is "Islamic" about championing human rights and why did the founders make a "religious" endowment instead of creating an NGO [non-governmental organization]? These puzzles and particular forms of waqf cannot be simply explained as a revival of the "traditional" Islamic practice of waqf, a widespread and enormously varied form of charity in the Islamic world beginning with the Abbasid period (750 CE). In this dissertation, I will argue that they are the products of new conditions and debates within and around the Islamic

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[1] In Arabic, it is *ḥaṣr irth*. The register in which waqfs are noted down are the *ḥujaj* registers, for legal instruments that do not involve bilateral contracts. They are distinct from the litigations/ suits [*daʿāwā*], marriage, and orphan registers.

[2] The efforts of the Revival in Lebanon on the Sunni side have not been the object of sustained research unfortunately. They include groups as varied as the *Jamāʿa Islāmiyya*, the *Aḥbāsh*, the *Saḥariyya*, some of which are also involved in political activities. Their main effort has been in the *daʿwā*, the initiation to an Islamic way of life, through teaching, schools, etc..

tradition at a historical conjuncture starting with the nineteenth century Ottoman reforms[3] that shaped the modern state in what came to be Lebanon and introduced novel understandings and legislation on charity, family, and property. These transformations necessitated and produced new kinds of subjectivities and loyalties, new ways of being in society, and new ways of thinking of one's self and of acting towards family, community, and state.

Writing about the transformations of waqf practices under modern capitalist states necessitates "before-and-after snapshots taken on either side of the great divide during which one tradition is transformed into another" (Hacking 1986:29). Through an archeology of waqf practices in Beirut in the nineteenth century, the pre-modern snapshot, I first investigate the practices and conceptions of charity in the postclassical[4] Ottoman tradition as well as their conditions of possibility: the form of the state, its relation to the production of law, and the property regime. Initially one's charitable intent was not an object of scrutiny, the family constituted the ultimate object of charity, and the pre-modern "Islamic" state's duty was to uphold individual charitable practices. Expanding on Hacking's metaphor, I will then show how the 'after' snapshot becomes a series of snapshots of different moments in the modern tradition. Analyzing contemporary waqf practices in their "survival" and "revival" highlights how the modern capitalist state project, its property regime, and its ultimate control over the production and administration of law enabled a new notion of the subject that favored intent as the location of the true self, and a conception of charity as a practice confined to the public sphere. Such

[3] Hallaq (2005-06) objects to the use of the term reform because it assumes a teleological necessity. It "passes an un-appealable verdict on an entire history and legal culture that is perennially wanting and thus deserving of displacement" (153). I disagree because the call for reform has been a staple in the writings of Muslim scholars. In addition, in the case of the Ottoman Empire, the transformations were carried by their initiators as "progress" (see below section II. Modernization).

[4] The post-classical period in the Islamic tradition spans between 1200 and 1800 or 1900 depending on the historian (see for example Hodgson 1974 and Schacht 1964). In this dissertation, I use it to refer to the snapshot of the Ottoman canon in Beirut at the end of the 18th century and early in the nineteenth century.

transformations redefined the very practice of charitable giving in the Islamic tradition. They made imaginable new waqfs, like the human rights waqf I described above.

Prior to the reemergence of waqfs in the 1990s, waqfs had almost disappeared from the scene. Waqf practices as part of the Islamic tradition sustained ideals and understandings of human life[5] competing with those of modern capitalist states. They were therefore 'disciplined,' remade, restricted or even eliminated. Legislation prohibiting certain types of waqf and facilitating their conversion to private property, along with new notions of subject and charity, almost made waqf fall into oblivion. Between 1943, the year of Lebanon's independence from the French Mandate (that started after the fall of the Ottoman Empire in 1918) and the late 1980s, almost no new foundation appears in the registers. It is no wonder that, when they knew I was researching waqf, people often asked me "But what is waqf, exactly?" At the same time, however, these transformations did not completely obliterate this centuries-old practice. Waqfs still pervaded memory and the built environment. The same people who barely knew what waqf was also told me for example, "Our family had a waqf," or asked me: "Is it true that the land of the ABC mall is a waqf?" In addition, up to this day waqfs present recurrent objects of scandals that have the capacity to singularly stir up the community's deep outrage and outcry—they almost cost many a mufti his position as the official "representative" of the Muslim community and the ultimate guardian of the community's patrimony in the form of waqf.

It is in this context of continuities and ruptures, presence and oblivion, that Muslim men and women started founding new waqfs in the aftermath of the Lebanese Civil War of 1975-1990. These foundations overlap with and reflect efforts to create the conditions of living a virtuous life as Muslims, to use "Islamic" instruments and to perform acts of charity that bring them closer to God. Between 1990 and 2009, some seventy new waqfs were founded and

[5] These appear in "*maqāṣid al-shariʿa,*" the aims of the shariʿa, which the state is to safeguard.

recorded in the Beirut Sunni religious court. This is roughly equivalent to the yearly average of new foundations in Beirut in the nineteenth century. By comparison, only five waqfs were founded between 1945 and 1990. However, contrary to the nineteenth century, when waqfs were founded to support charitable aims as varied as families of founders, the poor, mosques, fountains, and shrines, the majority of new waqfs support the creation of mosques and Islamic centers. In addition, a new kind of waqf began appearing, like the human rights waqf, which closely resembles the many NGOs now working in Lebanon. Why does the utmost act of charity today take the form of mosques? How did waqfs come to be treated as NGOs?

While the questions animating this dissertation start from observations about contemporary waqf practices and discourses, approaching the topic solely based on "fieldwork" misses the complexities uncovered by historical anthropology. Many of the forces shaping the modern world are not directly "observable," and analyzing the way people understand and do waqf today necessitates understanding the various conjunctures that made these practices thinkable. Indeed, many of the practices we "observe" today in Beirut are the products of not only "global" processes, such as the global waqf revival that can be traced to Kuwait, but also of historical ones, like capitalist modernity. At heart, the question is how was the Islamic practice of waqf remade under the modern capitalist state, with its regimes of law and property? As waqf is a practice defined in "Islamic Law," the main subject of this dissertation is the Islamic tradition, and how it has sustained and remade itself—its arguments, logics, sensibilities and practices—through debates within and outside the tradition and under the conditions of capitalist modernity. But is it possible to write an historical anthropology of waqf and of the Islamic tradition—an historical anthropology of an "other?" I will first address this question, outlining the epistemological assumptions and aims of this work, then explain the necessity to focus on three

arenas—state, law, and economy—in order to understand the transformations in waqf that have occurred over the last century and a half.

I. HISTORY AND ANTHROPOLOGY

I start by asking "Is it possible to write an historical anthropology of an "other?" The most recent wave of historical anthropology, what I will refer to as anthrohistory, has moved away from the study of the other in and of itself in order to focus on its construction as an essentially different and hierarchically inferior entity, particularly through the colonial encounter, which becomes the major field of inquiry unifying Europe and its others, colonizer and colonized. I will flesh out how anthrohistory's particular constructionist focus came about and why the nature of my research necessitates moving beyond it. On the surface this appears to involve reverting to an "old" anthropology and reversing or even negating the advances of anthrohistory. But in the same way that the contemporary waqf revival cannot be understood as a re-enactment of pre-modern waqf practices, my direct focus on the Islamic tradition rather than on its construction by Orientalist knowledge is far removed from being a return to older types of anthropology analyzing "pristine natives" or "precolonial purity" (Axel 2002:7). The conditions of knowledge production have changed; moreover my positionality in both traditions coupled with the nature of the project on which I have been engaged, plainly call for a methodological stance different from that proposed by anthrohistory.

History in Early Historical Anthropology

In a volume projecting future directions in historical anthropology, Axel (2002) presents a paradigmatic shift in the practice and understanding of history in historical anthropology in the 1950s and the 1960s: history, he argues, was no longer seen as a process triggered by European contact and causing change to "pristine natives." Instead, it came to be seen as integral to and embedded in colonial forms of knowledge and power. Before this change, anthropologists used history, but their aims of use and their approaches to and understandings of history were very different. Reconstructing the relationship of history and anthropology falls outside of the scope of this study, but it is worth mentioning briefly the contours of the anthropologists' engagement with history in order to make apparent the shift that Axel describes. This will also help to recuperate some of the still significant contributions of earlier authors, whose works have too often been easily dismissed.

Before the wave of functionalism took over the discipline in the 1950s and made its focus the present and its method fieldwork, anthropologists had engaged history from three main perspectives: diffusionist, evolutionist (Axel 2002:3) and Boasian reconstructive anthropology (Goody 1997:283). Nineteenth-century evolutionists read in certain contemporary practices, like bride kidnapping, "survivals" of earlier practices when a not-so-developed male *homo sapiens* forcefully seized brides and dragged them to his den (Goody 1997:282). American "historical anthropology" attempted to reconstitute Native American "traditional" ways of life by engaging the few surviving members of these groups (Lowie 1912, Radin 1926). Rejecting these reconstructions for their speculative nature as "pseudo-history," functionalists focused on the observation of small-scale societies in the present. However, as the debate unfolded between Evans-Pritchard and Schapera on whether functionalists had effectively neglected history, some

functionalists did introduce aspects of change over time. They were aware of the changes happening to the structures of the societies they were describing, but still thought of these changes as external: history came from Europe (Axel 2002:7). In these earlier studies, anthropologists used history to reconstruct a pre-colonial pristine native culture that was imagined to be in a stable condition.[6] In that approach, change and history itself were "external" and came with colonialism, modernity, and Europe. As Axel (2002:9) and Goody (1997:283) describe that trend, history was "contact" or "cultural contact" or "acculturation" that polluted the purity of the natives and that "changed" their social structures.

Such assumptions can be read in the early work of an anthropologist whom Axel identifies as one of the major figures effecting the turn in historical anthropology, Bernard Cohn. I use a discussion of his work to show the type of analysis that these two approaches yielded, and to recuperate some of the insights of the old historical anthropology, but within a different epistemology and project. In his introduction to a collection of Cohn's essays, Ranajit Guha finds traces of this "old" approach in Cohn's earlier essays, like "Some Notes of Law and Change in North India" (1959). There, Cohn analyzed differences between the "indigenous" and "introduced" notions of law. I will elaborate a little on this text because it resonates with my work. "Old" Cohn argues that, contrary to British law's basic conception of equality of individuals before the law, "North Indian society" operates on the assumption that men are not born equal. Similar oppositions, like that between contract and status, are further cited. This picture assumes a pre-colonial Indian culture and society that was different in values from the British one—and which the anthropologist-historian could reconstruct.

[6] This critique is different from the one against anthropologists writing about the present in the 1940s and 1950s, who completely ignored colonialism as a force and a present that shaped how people lived, acted, and imagined their lives.

These observations uncannily echo the remarks of Wael Hallaq, whose project of decolonizing Islamic Law starts from very different epistemic assumptions. Hallaq points to the impossibility of representation, the "profoundly epistemic, and perhaps insoluble, problem of linguistic representation" as he attempts to write a history of shariʿa. He argues that, because we write in English, which stems from and echoes modern Western conceptions, "our language fails us in our endeavor to produce a representation of that history, which not only spoke different languages none of which was English (…), but also articulated itself conceptually, epistemically, morally, socially, culturally, and institutionally in manners and ways utterly different from the material and non-material cultures that produced modernity and its Western linguistic cultures" (Hallaq 2007:151). Nonetheless, when describing the shariʿa, Hallaq makes claims that resonate with Cohn's early remarks. Thus he writes, the law "did not apply equally to 'all,' for all individuals were not seen as equal to each other" (Hallaq 2007:168). Later on, Hallaq also makes the case that the idea of justice in the shariʿa favored decisions that did not apply a "consistent legal doctrine" that clearly delineates winners and losers, but rather attempted to reach a compromise. How could two diametrically opposed assumptions lead to the same types of analysis? What does this convergence between projects premised on very different epistemologies mean? Does Hallaq's term of analysis reproduce the very approach to writing history that he criticizes? Or are Cohn's earlier analyses not so easily dismissed?[7] I use these questions to engage with the "new" historical anthropology, its critiques of earlier works, and the types of knowledge it produces, in order to set the ground for the particular framework that I adopt in this study, and to indicate the points of convergence and divergence with my own work.

[7] Is Hallaq unwittingly caught in the paradigm in which he was schooled and in the terms of the secondary literature he uses, or is there something to "salvage" in Cohn's early approaches? Can the same analysis be reached from different assumptions?

The New Anthrohistory

I will first flesh out the new approach and types of analysis favored in anthrohistory. Contrary to Cohn's early efforts at delineating and describing "indigenous" understandings of the world and society, and its uncanny echoes in Hallaq, "what distinguishes historical anthropology is not its effort (in more conventional terms) to account for social and cultural formations in 'the past.' Rather than the study of a people in particular place and at a certain time, what is at stake in historical anthropology is explaining the production of a people, and the production of space and time" (Axel 2002: 3). The shift that the "new" historical anthropology realized was to point to the (colonial and modern) constructed-ness of this "indigenous" past. There was no pre-colonial past that was not tainted by the colonial present, and there was no West and Western modernity without the colonies. "Anthropological 'others' are part of the colonial world, they are constructs of it. In the historical situation of colonialism, both white rulers and indigenous peoples were constantly involved in representing to each other what they were doing" (Cohn in Guha 1987: xx). As Guha points out, one can contrast Cohn's analysis that I describe above with his later interpretations, which I quote at length below. The incentive to write a history and anthropology of Indian society came from colonialists. It was the necessities of colonial rule, particularly the creation of a judiciary where British were to administer Indian law' that

> led to the notion that Indian civilization was founded on particular Sanskrit texts. By the middle of the nineteenth century these *were conceived to be the very embodiment of an authentic India* (…). What had been fluid, complex, even unstructured, became fixed, objective, tangible (…).
> "Hastings was to encourage a group of younger servants of the Company to study the 'classical; languages of India (…), as part of a mixed scholarly and pragmatic project aimed at creating a body of knowledge which could be utilized in the effective control of Indian society. What Hastings [British governor of Bengal] was trying to do was to enable the British to define what was Indian and to create

> a system of rule which would be congruent with what was *thought to be indigenous institutions*" (Cohn in Guha 1987:xxii, my emphasis).

In this new interpretation, the idea of an "indigenous" is always-already qualified, it is what is constructed to be as such.

Cohn's problematization of the construction of an indigenous past carries echoes of Hobsbawm's arguments regarding the invention of tradition during the rise of nationalisms (1983), and this connection is further confirmed by the inclusion of one of Cohn's essays in Hobsbawm and Ranger's co-edited volume, *The Invention of Tradition*.[8] The sentences I have italicized reflect the erroneous and created histories of the centrality of Sanskrit texts in this case. Hobsbawm similarly emphasized the fictitiousness of invented traditions, "which appear or claim to be old are often quite recent in origin and sometimes invented. (…) The peculiarity of 'invented' traditions is that the continuity [with a historic past] is largely factitious" (1-2). This, I would propose, is in tension with the type of argument favored by the new historical anthropology. Indeed, focusing on invention and factitiousness promotes the scholarly "unveiling" of this apparent fiction. It contrasts this constructed and invented tradition with the "true" India/Orient. In contrast, the new anthrohistory emphasizes an analysis of the institutional sites and the (unequal) conditions of the production of knowledge, as is apparent in Axel's analysis[9] and the essays in the latest edited volume on *Anthrohistory* (2011). The latter essays "seek to develop perspectives that "transcend and unsettle the broader fields of power that constrain intellectual production" (4) while reflecting on "how shifting contexts and inequitable social formations shape scholarly work" (6).

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[8] There is also an echo of it in work by Dirks, which despite a very rich analysis from within the paradigm of Saidian and Foucauldian analysis of the authoritativeness of this knowledge and which goes much beyond the fact that it is "invented" (as I will describe below), still titles his first section "The 'invention' of Caste."

[9] In tracing the three moments that were crucial to the rise of the new historical anthropology, Axel always places them in their geo-political and institutional settings, as for instance, the Cold War and the study of "cultures at a distance" for Margaret Mead.

The focus on thinking about the production of knowledge and investigating its relation to power has led anthrohistorians to reconsider the very endeavor of writing such a history/anthropology as well as the categories of analysis used. Regarding the former, they have highlighted how the disciplines of history and anthropology are embedded in Western forms of knowledge and power—modern disciplines whose genesis is very much related to nationalisms and colonialism. One can see this at work on the above-quoted passage by Cohn: the work of Orientalists and historians was triggered by the General Commissioner. The creation of a history is an essential element in the toolkit of nation-building. "It is one of the fundamental attributes of national sentiment, like a president, a currency, a University, and an airline" (Goody 1997:284). "We have no history! We must have a history!" (Guha 1988 in Chatterjee 1993:76), exclaim the anti-colonial nationalists. Before the colonized claimed it, history was the particularity of Europe (Cohn 1987[1981]). "History constructed a glorious past for the nation in which the present was the inevitable teleological frame; anthropology assumed histories that necessitated colonial rule. History told the story of the nation; anthropology explained why a nation had not yet emerged—as for example is Risely's understanding of caste as an impediment to national mobilization" (Dirks 2002:57). For instance, in the social scientific and historical literature of South Asia, discussions of caste and land tenure stand for a pre-colonial past, "from which the Indian people must emerge" (Axel 2002:12). The construction of this "pre-modern" structure based on caste and land tenure creates a moment of anteriority, a liability that the colonized need to get rid of. Here is, historical anthropology shows, where anthropology shows its face as a tool of Western domination.

Studies in the new historical anthropology have emphasized how colonial anthropology and history created many of the categories[10] that nationalist historiography and common sense construe as particularities of pre-colonial pasts. "It was through the dynamics of the colonial world's united field that basic notions in anthropological and historical studies emerged: not just social change and modernization, but time, space, the people, region, the village, law, and land" (Axel 2002:12). Dirks' seminal *Castes of Mind* (2001) deconstructs the "natural" category of caste, represented as the essence of pre-modern Indian society, and analyzes its production as a colonial form of knowledge and power, which then comes to structure the present (and can even be "the vehicle for the mobilization of an oppositional politics" (Dirks 2001:314)). In the Lebanese context, Ussama Makdisi (2000) does similar work with the notion of sect and sectarianism.[11] Sectarianism, he argues, is not a "reality which can be traced to some precolonial past" (7). It is a particularly modern practice and discourse (6), produced at the intersection of Ottoman modernization and European hegemony and colonialism.[12]

The three characteristics of the analysis of anthrohistory I just described—the construction of a (cultural or past) "other," of its categories and characteristics, and of the place of the social sciences in the colonial endeavor—are very much premised on a common condition:

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[10] One can be tempted to claim that "categories" of analysis and thought have always been the subject of particular scrutiny for anthropologists, whether in their attempts at depicting "native" worlds or worldviews through "native" understandings of time, space, property, or in critically examining the social construction of Western analytical categories, like race and gender. However, these earlier anthropologists, particularly of the former kind, saw their work as a mere representation of concepts and worldviews that existed out there, without examining their position in relation to the production of this "authentic" other. Therefore, while this emphasis on concepts has been a contribution of anthropology, it has not necessarily avoided essentialism. The self-reflexivity and analysis of the institutional positionality of the anthrohistorian, brought through analysis of knowledge/power, remains therefore illuminating, and is one that I will engage below.

[11] Political sectarianism [*ṭā'ifiyya* or *al-ṭā'ifiyya al-siyāsiyya*] refers to the political régime in Lebanon whereby all government is based on allocations proportionate to sects (in Parliament 50% of MPs are Muslims vs. 50% Christians, the President is Maronite, Prime Minister Sunnite, and Speaker of the House Shiite). Sectarianism *tout court*, as Makdisi analyzes it, usually refers to a sociological analytic describing the Lebanese as identifying through sectarian affiliation rather than through national citizenship.

[12] This point has been made by Lebanese academic Waddah Sharara in 1974, and it tells a great deal about the effects of unequal power conditions of knowledge production on the circulation of knowledge from peripheries to centers (see Bardawīl 2010).

colonialism. In fact, if one were to summarize one of the main subjects of the new anthrohistory, it would be the colonial condition. As Cohn puts it, in an oft-cited passage,

> "Hence one of the primary subject matters of an historical anthropology or an anthropological history is, to use Balandier's term, the colonial situation. This is not to be viewed as 'impact,' nor as 'culture contact,' nor is it to be viewed through a methodology that seems to sort what is introduced from what is indigenous. It is rather to be viewed as a situation in which the European colonialist and the indigene are united in one analytic field" (Axel 2002: 9).

In anthrohistory's privileging of the "colonial situation," one can read an answer to the critique of Eurocentric modernity: both in its linear conception of time and its association with a certain place.

"Against the valorization of the diversity, or essentialized difference, of forgotten subaltern, or past peoples, historical anthropology shows up the ways that the supposed margins and metropoles, or peripheries and centers, fold into, constitute, or disrupt one another" (Axel 2002: 2). Many if not all constitutive elements of capitalist modernity were results of the colonial situation —methods of industrial organization in sugar plantations (Mintz 1985), the emergence of the population as the object of government in India (Chatterjee 2000), even the category of European in contexts of fear of mixity (Stoler 1995) (all cited in Mitchell (2000: 2-5)). These are considerable contributions that have brought out many complexities in the writing of anthrohistory, disrupting the time-space of modernity. They have been crucial in the "political-theoretical project" of the decolonization of "representations, the decolonization of the West's theory of the non-West, (…) enable[ing] a systematic reinterrogation of contemporary practices in terms of the extent to which (…) they reproduced forms of knowledge that emerged as part of colonial power" (Scott 1999:12).

Rethinking the New Anthrohistory

Because of this epistemological shift introduced by anthrohistory, earlier anthropological works have been mostly dismissed as naïve at best, but they have also been painted as complicit in the reproduction of Western hegemony. With its untenable assumptions, most of that literature has been relegated to the archive of the discipline. However, beyond the powerful critique that the new anthrohistory provides, I would like to propose that some of the claims of the old Cohn might actually be useful in writing a different kind of anthrohistory. I will take what I have outlined as the main concerns and interventions of the new anthrohistory, the construction of categories, the colonial situation, and propose a different way of approaching them, centered on a history of the other, on the concern and questions of this other tradition—explaining why Cohn's arguments (and their contemporary echoes in work like Hallaq's) need not be dismissed.

To start with the question of categories, a project of anthrohistory, I would suggest, can go beyond what Axel proposes: "How can these processes [of doing historical anthropology as he describes it] illuminate, or provide the basis for, a reevaluation of basic categories of analysis like time and space, violence and sexuality, or people and the individual?" (Axel 2002: 11-2). As can be gleaned from Cohn's long quotation, when he discusses "Indian civilization" the transformation affected "what had been fluid, complex, even unstructured, [which then] became fixed, objective, tangible." Dirks also proposes that the main methodological and epistemological problem is not that caste was "invented;" rather it lies in the conceptualization of the relation of this tradition to the lives of pre-modern Indians and to "Indian society and culture." "I do not mean that [caste] was simply invented by the too clever English (…). But I *am* suggesting that it was under the British that 'caste' became a single term capable of expressing, organizing, and above all 'systematizing' India's diverse forms of social identity, community, and organization"

(Dirks 2001: 5, emphasis in original). The problematic connection is making caste (or sect, or mode of production) the operating principles of these pre-modern societies. Although certain analytic concepts might be problematic in and of themselves, it is mostly in the mode of analysis that the categories become problematic. Indeed, caste as a category, like sect, existed in pre-modern India. However, as Dirks argues, while caste was relational and changed depending on context in pre-modern India, the understanding advanced by anthropologists and made solid through a census, was a "fixed identity." It is true that with the help of anthropological knowledge, the grammar of caste has changed.

Therefore, instead of a focus on the "creation" of categories, I would propose focusing on their grammar[13] and how their meaning in use has changed over time. What concepts have they been combined with, what did they mean in different contexts? Such work aims to highlight transformations rather than "invention." Shifting towards grammar will allow us to move beyond the binary of fluid past/rigid colonial present and to complicate this view, which unconsciously views the fluid past as normatively positive situation. It would be a tactic to highlight the conditions of possibility of its previous uses, the work and conditions that enabled their permanence, as well as the possibilities of more radical uses today. This is the work this dissertation attempts to do with regards to concepts like waqf, property, charity, religion, and public interest.

Reading what I am calling (following Guha) the "new Cohn" against the grain, against an emphasis on the "invention" of tradition, also allows us to identify certain processes and to reinterpret them through a different understanding of tradition. He mentions that the development of a legal system administered by Colonial Britain required the identification of

[13] I use grammar in the Wittgensteinian sense of all rules of explanation of meaning (see Baker and Hacker 1985). For some further elaboration on my approach, see the conclusion.

"Hindu Law," which "led to the notion that Indian civilization was founded on particular Sanskrit texts" (in Guha 1987). Cohn points out that such a notion is erroneous, and indeed it is. Does that mean however that we need to dismiss an attempt to understand the place of Sanskrit texts in pre-colonial India? After all, Hinduism as a tradition was certainly in dialogue with these foundational texts that Cohn mentions. Therefore speaking of Hindu tradition before the colonial encounter, what old Cohn terms "indigenous," would still be useful in order to "understand the politics of living the ongoing connections or disjunctures of futures and pasts in heterogeneous presents" (Axel 2002: 3). How can we then conceptualize tradition differently from the fixed invented past?

Crucial to the writing of an anthrohistory of the Islamic tradition, of an "other," without falling into essentialized depictions of pristine pre-modern Muslims is the concept of a discursive tradition. This approach does not use tradition in the sense forwarded by Hobsbawm but as elaborated by MacIntyre and theorized with regard to Islam by Asad and taken on by Hirschkind (1995), Bowen (1993), Mahmood (2005), and Zaman (2002), among others. An Islamic discursive tradition is "simply a tradition of Muslim discourse that addresses itself to conceptions of the Islamic past and future, with reference to a particular Islamic practice in the present" (Asad 1983:14). The practice in question in this dissertation is waqf. Such a debate involves power and authority, as it is a debate about the "correct" practice. Each party is arguing and providing arguments that its interpretation should be the authoritative one. That is why to speak about Islams in the plural is not enough and one should be attuned to the debates over orthodoxy. When we approach debate about the correct practice as an essential characteristic of a tradition, these debates cease to be symptoms of a "crisis" of modernity as they are the mode of operation of the tradition itself.

Asad has more recently re-centered tradition on embodiment rather than debate. “But tradition, of course, is not just a matter of argument—indeed argument is mostly peripheral to it. Tradition is primarily about practice, about learning the point of a practice and performing it properly and making it part of oneself, something that embraces Mauss’s concept of *habitus*” (Asad 2006:234). From the point of view of practitioners, this is definitely the case, and that is why I read waqf among processes of forming subjects and creating certain sensibilities. On a different level, however, I place emphasis on debate because I also engage the tradition from the point of view not of its practitioners, but of its authoritative structures and authorized speakers. Indeed, the modern condition triggered the renewal of certain debates, including the relation of scholars to the state, as well as new debates such as the place of reasons of modern scientific reasoning in the determination of legal rulings.

I seek to extend the arguments advanced by Hallaq and to push them to a different conclusion. As an Islamic legal historian, Hallaq has very convincingly elaborated on the pre-modern shariʿa as a discursive practice. “It cannot be overstated that the Shariʿa originally represented a complex set of social, economic, cultural, and moral relations that permeated the epistemic structures of the social and political orders.” (2005-2006: 155). However, he also argues that with the modern state, the shariʿa became entexted, reduced to the legal texts of jurisprudence [*fiqh*]. Indeed, like the shariʿa, the modern state laid claim to governing society, and was a legally producing mechanism that claimed ultimate legal sovereignty. From these competing claims and very different ways of governing, only one “winner” could come out, argued Hallaq, and it was the modern state. The shariʿa thus became entexted, univocal and simply reduced to family law. “In its present form, the Shariʿa distinguishes itself as an entexted entity, in that it was transformed (…) from a worldly institution and culture to a textuality that

not only represents the subtracted differential between the pre-modern organic structure and its entexted version, but also engages the very characteristic of being entexted in a politics that the pre-modern counterpart did not know. Which is to say that even the surviving residue, the entexted form, functions in such uniquely modern ways that renders the very residue foreign, in function and substance to any possible genealogical counterpart" (Hallaq 2005-2006: 155). For Hallaq, because of the modern state, and particularly with deleterious effects of the near eradication of the Islamic education system that allowed the perpetuation of the tradition, there was a break in the tradition, thus the new practitioners have a merely modern understanding of the shariʿa. In this project, I propose that this understanding of the iron-cage of modernity having permanently disfigured the "original" pre-modern shariʿa has an unfortunate effect. Hallaq portrays most contemporary scholars as "inauthentic," and as having misunderstood their own tradition (Hallaq 1997: 207-254). They are, in his view, unwittingly and unknowingly modern. I would like to propose that despite its entexting, the Islamic tradition remains a discursive tradition, and its practitioners are much more aware of their predicament and of the tensions generated by the modern condition than this would suggest. Analyzing Islam as a tradition, with its emphasis on debate, allows us to incorporate ideas and styles of argument within it, through drawing on its authoritative sources. These scholars and practitioners understand and place themselves within the Islamic tradition. I will therefore emphasize the arguments they make, as well as the different conditions under which they operate.

Anthrohistory's focus on the colonial condition can be seen as an answer to the refusal to take for granted self and other, by showing how they are produced and highlighting the effect of this dichotomy for modern power. Such attempts take modalities and rationalities of modern power as their primary object, and in the present work, I too am concerned with such objects. In

order to better comprehend the present, unsettle it, and imagine different futures, I am definitely engaged in an attempt to understand the modern condition, particularly the modern state, law, and economy. In addition, writing in English in Western academia and the very possibility of thinking and attempting to write an anthrohistory of the Islamic tradition is the product of Western epistemology. As many have argued for different contexts, the very idea of writing a *history* as chronology or genealogy or archeology or anthrohistory of waqf would have been impossible from within the pre-modern tradition. It is far from its common type of histories imagined and written before the 19th century: biographies [*sīra*], prosopographies [*ṭabaqāt*], and chronographies [*tārīkh*] (Robinson 2003). Indeed, history as chronology originates from a "European native theory of time" (Cohn 1981: 51), with its assumption of uniform linear time, moving from past to present to future (Koselleck 2004).

Despite a serious engagement with the modalities and rationalities of modern power, this work shifts the focus of analysis to the Islamic tradition itself. I take Asad's question "Are there histories of people without Europe" more literally than rhetorically. The reason this question interpellates me is related to my positionality as part of "these people."[14] Nonetheless, a different mode of knowledge in the Islamic tradition, as expressed in the famous dictum "knowledge is reception" [*al-ʿilm talaqqī*], emphasizes the transmission of knowledge via a chain of authorized scholars, and therefore places me outside of authorized speakers in the tradition. Despite, or perhaps because of this liminal position, I am concerned with contemporary debates in the Islamic tradition, which although modern still provide modes of engagement with the world and society, subject formation, and techniques of the self that cannot simply be reduced to modern liberal modes of governing. And it is a tradition that still shapes the lives of Muslims today—

[14] It is a question that most "native" writers struggle with, from Fanon, Césaire, to the members of the Indian Subaltern Group and to those in the Latin American context.

particularly the waqf-making subjects of this dissertation. Therefore, my engagement with modern power serves to understand the conditions under which Muslims enact and live their tradition and how these conditions allow certain arguments, opening some possibilities for restructuring authority in the tradition, and foreclosing others. "It is when we have anthropological accounts of what those constructions [of historical conditions] were, and how they have changed, that we may learn what the histories of people without Europe once were, and how they have changed, and why they cannot make those histories any longer" (Asad 1987: 607). The unveiling of modern epistemologies and conditions is not an end in itself, nor is it an attempt on my part to level a critique at various scholars or trends to show that they share modern or liberal assumptions, to "pitch critique at an epistemological level" (Bardawil 2010: 300). It is the intervention of someone that is interested in engaging these scholars about their arguments, their relation to the tradition, and what the consequences of new conditions are for the practices and ideals they propose.

In order to place the focus on the Islamic tradition, its pre-modern post-classical Ottoman iteration occupies much of my analysis. The desire to understand the postclassical waqf practice and the Islamic tradition at a certain time and in a certain place is not an attempt at capturing a "pristine" unpolluted primitive society, a "forgotten subaltern," or "fetishizing difference" because simply put anthrohistory has taught us there are no primitive societies that are self-contained. The Islamic tradition itself was borne out of a people who embodied other traditions, and later incorporated elements and logics from different traditions, like Greek philosophy. The main aim is to show how this tradition has remade itself under modern conditions.

Charting the contingencies and conditions that allowed for contemporary waqf practices requires a depiction of a certain "pre-modern" practice of waqf, a "snapshot" of this practice, to

return to Hacking's metaphor. Needless to say, what I term pre-modern constitutes but a moment in the long history and transformation of pre-modern waqf and the Islamic tradition. Indeed, Islamic legal historians periodize transformations in Islamic Law between the formative period, the classical period, and the post-classical period. Ottoman Beirut falls in the latter. I attempt to do an "archeology" of these waqf practices, to uncover the historical *a priori*, the "group of rules that characterize a discursive practice" (Foucault 1972:127), the condition of the existence of statements (not for their truth value), of the possibility of their utterance in a certain way. I bring together statements that might not necessarily belong together, in the same discourse, in order to highlight unspoken assumptions and the "episteme" of waqf practices and shariʿa. The term I tend to use is the logic, to imply a certain structuring element but without the solidity and coherence and totalitarian nature of an episteme.

Approaching Sources

The question that poses itself is then how can one "reconstruct" the Ottoman post-classical tradition, or actually what kind of construction do existing documents and archives allow? The question speaks to two separate debates, on one in anthrohistory and one in Islamic studies.[15] Studies of the Islamic tradition have echoed an Orientalist trope that opposes Islamic legal theory and its practice, and according to which a stagnating ideal theory unchanged since the 10th century was unable to adapt to a dynamic historical practice.[16] Joseph Schacht, whose *Introduction to Islamic Law* (1964) remains one of the most authoritative texts on the subject over forty years after its publication, exemplifies this view:

> The theory of the sacred Law did not fail to influence practice and custom considerably […], but it never succeeded in imposing itself on them completely.

[15] Messick (forthcoming) is one of the few authors that bring these two debates together.
[16] For a detailed description of this trope, see Johansen (1999) and Messick (forthcoming).

> This failure resulted chiefly from the fact that the ideal theory, being essentially retrospective, was from the early ʿAbbasid period onwards unable to keep pace with the ever-changing demands of society and commerce (77).

Scholars like Wael Hallaq and Baber Johanson have shown the production of such a dichotomy in colonial encounters. Nonetheless, and as Said has argued in *Orientalism*, the falsity of this discourse is not dispelled by its exposition. Its imbrication in structures of power, not the least of which the way it has informed and become engrained in the reformulation of Islamic Law in the era of nation-states, allows it to remain authoritative. Furthermore, the academic division of labor between Islamic legal historians who study "theory" through legal manuals and social historians who study "practice" through court records has further accentuated the distinction. Still, the work of scholars like Zouheir Ghazzal (2007), Brinkley Messick (1993), and Martha Mundy and Richard Smith-Saumaraz (2007) has started to cross this divide. This dissertation stands in this line of work, bringing together the two sources of Islamic Law just mentioned, what Messick terms the library and the archive.

The "archive" I use is housed between today's Beirut's Sunni religious court [*al-maḥkama a-sharʿiyya al-sunniyya*] and the drawers, coffers, and memories of Beiruti families. Not many family waqfs remain in Beirut, and many of those that do, exist because of long-lasting lawsuits between family members or with the Directorate General of Islamic Waqfs [DGIW]. It is because of such disputes that I was drawn into these families. Had I encountered documents pertaining to this waqf or that waqf in the archive? friends of family and friends of friends would ask.[17] "We are looking for this waqfiyya," and I was introduced to the case and the family, and eventually its archive. In this dissertation however, because of the type of analysis I favor, where cases are not read as "representatives of patterns and facts" but rather for their

[17] For some reason, it was always women of a certain age who were engaged in these odysseys of "recuperating" their family waqf. They were the living archive of the waqf, always incomplete, about to disappear.

"unspoken assumptions," I concentrate on one of those families—the Qabbānīs, which are connected to my own family in Beirut. I had not heard of the waqf before starting my research, or maybe I was hearing without listening. Nonetheless, after I did start my research, I attempted to collect the documents scattered in the family, due to war, family deaths, and family feuds. Of course, my archive of the family archive remains incomplete. I also had the opportunity to talk about the case with various members of the family, and hearing them quarrel in family reunions or our meetings, so the written family archive was countered by the oral archive that I collected.

Documents from state archives were also part of my archive, like those of the qadi [judge][18] court of the nineteenth century. Nineteenth century Beirut was an Ottoman city,[19] and the Ottoman official jurisprudence followed the *Ḥanafī madhhab*.[20] Beirut was a multi-confessional city, with a majority of Muslims Sunnis and Greek-Orthodox, but had a Jewish community as well. Its composition changed dramatically in the course of the nineteenth century with migration from the mountains surrounding it due to unfortunate events and the shifting of commerce towards Europe and the rise of Beirut as a port-city (Fawaz 1983). Muslims, like Damascus and the Syrian provinces, mostly followed the Shafi'i school. It was only towards the middle of the 19th century, as an 1857 [1273H] petition from Beirut noted, "that the *Ḥanafī*s had become numerous"[21] in the city, hence requiring an office, a paid position for a *Ḥanafī* professor

[18] I will use qadi not judge because the duties of the qadi went far beyond what we assign today to judges, adjudication. Qadis also served as public notaries, were consulted on administrative issues, etc. Qadis's sessions were not originally housed in a special location, but happened wherever qaadis were, usually in their own houses (Hallaq 1998). The nineteenth century saw the creation of "court locales" independent of the judges themselves. The courts where they adjudicated became the "shariʿa courts" of today. Some scholars of Ottoman courts have argued that they should not be referred to as "shariʿa courts" during the Ottoman period because they applied much more than the shariʿa, including Sultan issued "secular law," known as *qānun*.

[19] Outside a hiatus between 1832 and 1840 when it fell under the Egyptian rule of Mohammad Ali and his son Ibrahim Pasha. Despite the short period of Egyptian rule, nationalist historians place a tremendous weight to that period in the "modernization" and "development" of Lebanon. The Egyptian rule, even if as it is described as extortive and highly taxing, figures, in these narratives, as the beginning of the modern history of Lebanon.

[20] In Sunni Islam, there are four major schools or *madhhab*s: *Hanafī*, Shafi'i, *Mālikī,* and *Hanbalī.*

[21] BOA.I.MVL 371/16311, 13 N 1273 [May 8, 1857]

[*mudarris*] to teach lessons and deepen knowledge in religion [*dīn*].[22] Nonetheless, the (chief) qadi in Beirut, as on official Ottoman officer, followed the *Ḥanafī madhhab* and was usually in the 19th c. a non-local [*Rūmī*] Ottoman qadi[23] nominated by the *kazasker* [*ḳâḍî-i ʿaskar*] of Anatolia for a year.[24] The nomination of a non-local *Ḥanafī* qadu did not necessarily preclude the presence of local qadis representing the various *madhhab*s present in the city. In Damascus for instance, as Marino and Okawara (1999) note, in 1874-5, under the chief *Ḥanafī* qadi, there were seven tribunals presided over by local qadis from the various schools present in the city (mostly *Shāfiʿīs*). In Beirut, I have not found evidence of the presence of other (local, non-*Ḥanafī*) qadis working under the supervision of the chief-qadi. The small size of the city in the middle of the nineteenth century might be a plausible explanation. Beirut was indeed a town of just 10,000 around 1840,[25] while Damascus counted around 110,000 souls.[26] The existing records can corroborate the single qadi hypothesis. The registers from the 19th century, preserved in the current and only Sunni court of Beirut, are sequential: one ends where the other begins—with

[22] I analyze the changing meaning of *dīn* in Chapter 2.
[23] See Appendix 1 listing the Ottoman judges in Beirut.
[24] The judiciary from the 16th to the 18th century was organized in hierarchical manner. At the top of the pyramid, there was the the sheikh ül-Islam [the mufti of Istanbul and the highest of the learned hierarchy in the Ottoman Empire]. He was followed by the two the *kazasker* of Anatolia and Rumelia [the literal translation is military judge, but effectively, senior justice]. Underneath them, there were the judges of Istanbul, followed by those of Mecca and Medina. Bursa, Edirne, Damascus, and Cairo, then a few more like Jerusalem and Aleppo (Gibb and Bowen 1957 II: 89). These positions were known as *mevleviyet* and the judges appointed to them as *mollas* [senior judge (Akiba 2004:44)] as they came out of a “career line of professorship in Istanbul” (44), known as *tarik-i tedris* [the way of teaching], and could become *müderris*, or professors. Below these prestigious and learned judgeships, there were the more “plebeian” judgeships, known as *manṣib*, and whose holders were simply called *qadis* [judges]. Those appointed to these judgeships belonged to *tarik-i kaza* [the way of judgeship] and could never move up to the learned judgeships. In sum, as Akiba describes, there were two roads to becoming a judge before the nineteenth century. It should be noted that each religious community had its ecclesiastical courts, but could choose to use the state-instated courts (the shariʿa or qadi courts). While this dissertation deals only with Muslim waqfs, it is important to keep in mind that men and women from all various communities founded waqfs. These Christian and Jewish waqfs were nonetheless defined in the shariʿa. In terms of jurisdiction, shariʿa courts ruled over most cases, even if some areas needed the Sultan’s endorsement. It should also be noted that the Ottoman Sultans produced *kanun*s, bodies of legislation over administrative and penal matters usually left to the worldly rulers.
[25] Fawaz (1983) compiles a list of the various estimates with their sources, for 1840 they vary between ten and twelve thousand, but for the later period, like around 1850 the estimates can be utterly disparate (twenty to fifty thousand!).
[26] Arnaud 2001.

gaps, as one might expect from a court that has recently survived a fifteen-year-long civil war [1975-1990]. Another qadi working at the same time would have left his own registers, if he were keeping record.[27] However, if such a qadi existed, his records seem to have disappeared along with his memory.[28]

The court archive contains many "types" of registers: minutes of court proceedings, marriage registers, *wikālāt*, *ḥasr irth*. The most extensive collection, however, or the main collection, holds those registers spanning 1843 to the present and consisting of summaries and copies of original documents and hence tend to be short and very formulaic, being instantiations of legal instruments and requirements.[29] They contain a plethora of waqf cases: foundations, rentals, naming of administrators, exchanges, acquisition of property for waqfs, and modifications in stipulations. Under this pile of different yet similar cases emerge litigations,[30] particular and unique cases, usually around the choice of rightful administrators and beneficiaries. The characteristic of these cases that distinguishes them from the more formulaic instruments is that they usually tend to be longer and include legal opinions, which refer to the legal texts and manuals supporting the opinion they have favored.[31] In the archive, we can get a peek at the library.

When I refer to the library, I use that term to metonymically stand for the common library of scholars engaged in the tradition at a certain point. It does not constitute the library of a particular scholar, even if it certainly is partially. The "sources" noted in opinions represent the library of these scholars: the books they have studied, the tradition they have been schooled in,

[27] All judges are men, and the dominant view is that they need to be, hence the use of the masculine
[28] I will discuss below the significance of the presence of a court locale.
[29] The work of Messick (1993) is the inspiration and pioneering study for this approach.
[30] For instance MSB.S 3/7 [27 Sh 1265], MSB.S 1/140 14 Ca 1260].
[31] Muftis were required to cite the sources they were using to support their judgments as early as the 16th century (Heyd 1969:45). I don't' know whether this is a particularity of the Ottoman Empire and its attempt to create a canon (Burak 2012).

the dialogues they are engaged with, in a sense, the Ottoman post-classical tradition. Reading its books against the "cases" of the archive, this library allows me to sketch a picture of the Ottoman post-classical tradition. From these waqf litigation cases, one can deduce, for authoritative opinions to buttress judgments, three types of legal manuals. First are waqf treatises, like Al-Tarābulusī (d. 922H[1516]) "*al-Is'āf fī Aḥkām al-Awqāf* [The Rescue in Waqf Rules], a summary of Al-Khaṣṣāf's [d.261H [875]) "*Aḥkām al-Awqāf* [The Rules of Waqfs]" and Hilāl al-Baṣrī's (d.245[859]) "*Aḥkām al-Waqf* [The Rules of Waqf]." The original texts mostly take the form of dialogues around themes (the "*qāl/qultu"* dialectic),[32] but Al-Tarābulsī does not follow that format, summarizing instead the rules under headings. These manuals are part of the classical canon of waqf regulation.

The second type of manual in the library is the *shurūḥ*, or commentaries, explanations and elaborations on a core text known as *matn*. The original *matn* is physically inscribed and differentiated in the commentary by being put in parenthesis, so one could actually read the original text in the elaboration by reading only the text in parenthesis. As commentaries, and actually reinterpretations of an original text, these *shurūḥ* provide elaboration on waqf legislation, taking the original very short few sentences on waqf and expounding them with the various opinions held for each issue, based on previous explanation, the waqf manuals cited above, and the fatwas discussed below. The cited commentaries bring out "*Kanz al-Daqā'iq*" [The Treasure of Mysteries] of Abdullah bin Ahmad al-Nasafī (d.710 H [1310]) as the standard *matn*.[33] The most cited commentaries are Badr el-Dīn al-ʿAynī (d. 855 H [1451]) "*Ramz al-*

[32] As per Hennigan (2004), this dialectic is the major voice, supplemented by "an expository style, and the past authority
of early Muslims and Ḥanafī jurists" (20).
[33] Al-Ḥalabī's (d.1594) *Multaqā al-Abḥur* is barely mentioned, even if it is near canonical and in the course of the nineteenth century, its importance in the Ottoman canon was inscribed in the law: it is the text that is the basis of state-administered examinations for religious functionaries.

Ḥaqā'iq fī Sharḥ Kanz al-Daqā'iq" [The Sign of Truths in the Explanation of the Treasure of Mysteries], Zayn al-Dīn bin Ibrāhīm Ibn Nujaym (d.970 H [1563]) "*al-Baḥr al-Rā'iq fī Sharḥ Kanz al-Daqā'iq*" [The Clear/Pleasant Sea in the Explanation of the Treasure of Mysteries], and Omar bin Ibrāhīm Ibn Nujaym (d.1005 H [1596]) "*al-Nahr al-Fā'iq bi Sharḥ Kanz al-Daqā'iq*" [The Supreme River in the Explanation of the Treasure of Mysteries]. In addition, Ibn ʿĀbidīn's (d.1252H [1836]) "*Ḥāshiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār*" [The Answer to the Confused, notes on the commentary The Chosen Pearls], albeit being a commentary on a different *matn*, is very much present.

Finally, the last type of books in the library are fatwa collections, which constitute the most recent of the books cited in terms of opinions and developments in waqf regulations. Fatwas are legal opinions that can be answers to actual questions addressed to the jurist by any subject or not, but are usually written in the format of questions and answers [*su'āl/jawāb*], without any reference to particular people, time, and places. The most authoritative ones cited are Khair al-Dīn al-Ramlī (d.1081H[1670]) "a*l-Fatāwa al-Khayriyya*;" the fatwas of ʿAli Efendi, the mufti of the *Rūm* (the Ottomans) (d.1103H[1692]); Abd al-Raḥīm al-Maqdisī (d.1104H [1693]) "*Al-Fatāwa al-Raḥīymīyya;*"[34] a compilation of the most authoritative fatwas by various scholars in Moghal India appropriately named "*al-Fatāwa al-Hindiyya*;" Hāmed bin Ali al-ʿImādi's (d.1171H[1757-8])"*al-Fatāwa al-Hāmidiyya*;"[35] known through Ibn ʿĀbidīn's (d.1252H [1836]) commentary thereupon, known as "*Tanqīh al-Hāmidiyya.*"[36] Studies of Islamic legal theory ascribe a particular importance to fatwas as an interface between theory and

[34] Unfortunately, it only exists in manuscript form and I was not able to consult it.
[35] It was originally known as "*Mughnī al-Mustaftī ʿan Su'āl al-Muftī.*"
[36] The library I am using is incomplete, because I have relied mostly on the archive to derive it (along with lists of books of deceased scholars noted in the court records). The education of judges relies on other manuals that would have been useful to draw a better picture of waqf practices. Particularly missing here are *shurūṭ* manuals, which describe a "wide variety of prescribed model documents, for the purpose of providing jurists with legally-watertight formulae" (Hallaq, Wael B.; Netton, I.R.; Carter, M.G. "S̲H̲arṭ." *Encyclopaedia of Islam*). I was not able to identify the *shurūṭ* manuals common at that time and place.

practice, and the location where "change" in legal theory occurs (Hallaq 1984, Masud et. al 1996).[37]

In this work, I use the archive and the library I have described above to excavate the logic of waqf practices; however, I am attuned to the problematics of approaching such sources. Anthrohistory has brought a critical eye to the category of the "archive" and the ways historians have approached their "sources." It has emphasized an "ethnographic" approach to the archive, examining its production and relationship to [colonial] power. "We must be careful to regard archival documents not as repositories of facts of the past but as complexly constituted instances of discourse that produce their objects as *real*, that is, as existing prior and outside of discourse" (Axel 2002:13-14). I keep this proposition in mind when analyzing archival documents, attuned to the institutional setting that allowed their production and authorized them, their particular form and format, and their role in the production of a certain reality. Between legal fictions and falsified documents, the "facts" that the archival documents refer to might not go beyond the documents themselves.

Even so, recent interventions in archive studies problematize conceptions of the archive as totalitarian. In their emphasis on the production of the archive rather than upon scouring the archive for "facts," anthrohistorians have emphasized the enmeshing of archive with colonial power and the role of anthropologists in this production (Dirks 2002). Archival documents, even those pre-dating colonial rule, do not reflect the "pre-modern" and pre-colonial because they became embedded in the "new logics of colonial power and command" (53), by their mere

[37] A recent article by Hussein Agrama (2010) emphasizes a different way to understand *fatwas* as ethical practices. While the argument reflects a convincing analysis of the contemporary use of *fatwas* in Egypt, it might be worth investigating the historical conditions of the production and circulation of fatwas before the nineteenth century, in order to see if this argument can be extended back in history.

presence in a colonial archive. “The archive is a discursive formation in the totalizing sense that it reflects the categories and operations of the state itself” (Dirks 2002:59). In this understanding, colonial power and archives appear as cohesive unitary, totalitarian. Recently, Ann Stoler attempted to bring a different approach to the archive. Against seeing the “colonial archives [as] the bitter aftertaste of empire (…), iconic roadmaps to regimes of domination” (19), contrasting with the vibrancy of “real” life, of political life that the colonial regime attempted to grasp, she argues that archives are steeped with the anxieties and fears of colonial rule. She “looks to archives as condensed sites of epistemological and political anxiety rather than skewed and biased sources” (20). For Stoler, archives are much less totalitarian; they are piecemeal and reveal much more uncertainty, failed projects, utopias than traditional anthrohistory acknowledges.

The context of Ottoman Lebanon helps to support Stoler’s point about the complexity of the archive. One can find an echo of Stoler’s plea to read archival documents along the grain of the archive for all the small irregularities, counter-discourses, and doubts that disrupt the grand narrative of colonial dominance in Makdisi’s critique of studies of colonialism that treat colonialism and nationalism as “fully formed projects that seem to automatically produce all sorts of resistance” (2000: 7). He distances himself from the subaltern studies looking for “resistance” and giving voice to the oppressed. Instead, he proposes to show how this seemingly clear-cut colonial narrative is in fact much more complex and less solid than it appears. Writing in the context of Ottoman Mount Lebanon, he makes an argument for moving beyond the framework of colonialism. Sectarianism, he proposes, is a “modernist” knowledge and not simply a “form of colonial knowledge.” Despite that, his first chapter is still titled “Religion as the Site of the Colonial Encounter.” Does this inconsistency betray a bigger epistemological

problem, like the impossibility to speak of a modern that is not colonial? Because the "beginnings of modernization" in what came to be known as the Middle East, and in Beirut in particular, were undertaken under the auspices of the Ottoman Porte, I would like to pick up on his proposition

II. MODERNIZATION

Modern State and Colonial State

How can we think of the operation of colonialism and modern power in a context like Beirut where colonial rule, in the form of a French Mandate, officially started after the First World War? Can one think of the modern regime of power outside of the colonial? Much of the theorization of the relation of modern power and colonialism has been done in the context of South Asia (Subaltern Studies) and in the African continent, both of which have had a particularly long encounter with European colonialism. An often-cited discussion of the question is the following quotation by Partha Chatterjee:

> Does it serve any useful analytical purpose to make a distinction between the colonial state and the forms of the modern state? Or should we regard the colonial state as simply another specific form in which the modern state has generalized itself across the globe? If the latter is the case, then of course the specifically colonial form of the emergence of the institutions of the modern state would be of only incidental, or at best episodic, interest; it would not be a necessary part of the larger, and more important historical narrative of modernity (1993: 14).

Chatterjee argues for keeping a distinction between the modern state and the colonial state. In order to understand his argument, it is important to know against whom he is writing, or the space of argument he is intervening in. He is first writing against the argument that colonialism is over, and that since the colonial state ended with national states on the model of

the European liberal-democratic states, the colonial state is irrelevant to the study of the modern state. That would be marginalizing the colonies in the writing of the history of the modern state. We would be writing out the colonial from the history of modernity. Therefore, Chatterjee's argument is about the relevance of colonialism to the study of the present, and for the relevance of the colonial state in the understanding of the modern state.

Chatterjee shows that the peculiarity of the colonial state is the rule of colonial difference—that is "of representing the 'other' as inferior and radically different, and hence incorrigibly inferior" (1993: 33). His intervention is to highlight that this rule of difference is actually the mode of operation of modern power. If [as he argues] "a rule of colonial difference is part of a common strategy for the deployment of the modern forms of disciplinary power, then the history of the colonial state, far from being incidental, is of crucial interest to the study of the past, present, and future of the modern state" (18). In that model, the colonies become not an incident or an accident, but a particularly visible expression of a characteristic of modern power. In that intervention, Chatterjee "writes back the other" in the history of Europe, echoing arguments by Mintz (1985) and Rabinow (1989) that outline the importance of the colonies for the development of modern power and arguing that a history of modern power has to include the colonies.[38] Chatterjee's move therefore remains inscribed in the postcolonial critique as a process of "*writing back* at the West," with the main problematic being "the way colonialism as a practice of power works to include or exclude the colonized" (Scott 1999:25). Nonetheless, Chatterjee's "move," I would argue, blurs the analytic difference that he wants to keep between the colonial state and the modern state. In making the rule of colonial difference a common strategy and logic for deploying modern power, he inverts the paradigm of colonial rule as an episode in the history of modern power, and makes it its prototype. I would propose therefore

[38] That is where, they argue, Foucault's project remained Eurocentric.

that Chatterjee's argument for the crucial import of the colonial for the study of modern power needs to be taken historically, for there were other rationalities of colonial rule, and of modern power—and that is precisely the argument David Scott charts in his introduction to *Refashioning Futures*.

Scott proposes that we need to push Chatterjee's argument further, as it homogenizes the colonial. It does not allow us to see the "discontinuities within the colonial" and "preempts an inquiry that would allow us to sort out those political rationalists that constituted colonialism in its *historically varied configurations*, and therefore enable us to make the modernity of *a turn* in the career of colonial power" (27). The turn to a high modern regime of power occurs in the nineteenth century, based on changes in Europe's political rationalities, the move that Foucault describes as taking place between sovereignty and governmentality. Before the end of the eighteenth century, colonial power reflected the political rationality of sovereignty: it was an extractive tributary power still aimed at "the reservation and strengthening of the state, the enhancement of the prince's wealth and power" (38). With the rise of governmental power, the new "point of application" of the colonial became the population, or how to arrange people and "reorganize[e] the conducts or habits of subjects themselves" so that they "behave as they ought," on their own. For Scott then, the colonial has not always been [high] modern. But has the modern always been colonial? Can we talk of a moment of modernity before or outside of colonialism?

Ottoman Colonialism?

Ottomanist historians have attempted to inscribe Ottoman historiography, which remains very much in an empiricist mode, in the debates on colonial power and knowledge. Two notable

examples are Selim Deringil's "*They Live in a State of Nomadism and Savagery*" (2003) and Ussama Makdisi's *Ottoman Orientalism* (2002), the two of which are very much in dialogue and make similar arguments. In what follows, I will engage mostly with Deringil's argument, because I engaged Makdisi through his contribution to the study of sectarianism in Lebanon. Both authors propose that the Ottoman Empire was a colonial power.

It is Deringil's contention that Ottoman elite "conflated the ideas of modernity and colonialism" (312).[39] The Ottoman elite, continues Deringil, applied colonialism "as a means of survival against an increasingly hostile world: 'Within its remaining territories, the Ottoman state began imitating the western colonial empires. The state consolidated the homogeneity of the core region, i.e—the Anatolian peninsula and the eastern regions of Thrace…even as it pushed the periphery—principally the Arab provinces—into a colonial status'"[40] (Deringil 2003: 312). He nonetheless qualifies this colonialism as "borrowed," and therefore mixing elements from the Ottoman "practices of Islamic Ottoman empire building" and from Europe's "positivist, Enlightenment-inspired centralizing reforms" (316). While I would agree that such a project was one of "Ottoman modernity," the claim that it was colonial seems unwarranted. Deringil's argument for "Ottoman borrowed colonialism" misses the main characteristic of colonial rule, the "rule of difference."

Deringil's argument hinges on the Ottoman center's metaphor of the "savage nomad" as the equivalent of the savage natives of European colonialism, with its civilizing mission to illustrate the latent colonial attitude of the Ottomans. He uses the writings of "Ottoman Turkish" bureaucrats, "meaning that they were Anatolian or Rumelian Muslims whose mother tongue was

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[39] Given the *ampleur* of colonial enterprise of the time, that was even threatening the Empire itself, I do find this conflation less than surprising. In fact, as Chatterjee asks, can we talk of modernity without colonialism? I will come back to elaborate on this point later, for now however I would like to continue investigating whether one can speak of Ottoman colonialism.
[40] The nested quote is from Eldhem 1999:200.

Turkish" (2003: 333), who were reporting on their jobs in three areas of the Arab hinterland, constructed as the 'other' of the center: Libya, the Hijaz and Yemen, and the Eastern Mediterranean coast. Deringil argues that the paternalistic depiction of Bedouins as savages echoed very much European colonialist depictions of Orientals and Africans. In addition, he sees in the interventionist plan of civilizing the Bedouins an "inclination to a colonial policy where it was no longer sufficient to leave the Bedouin to their own devices" (322). The Ottomans had a much more "immediate presence that draws on European colonial experience" (339).

I would propose that none of these are colonial practices per se, but rather they are modern ones. The plans for civilizing the "savage nomads" were very much based on a "modern regime of power" as Foucault would call it, which included the formations of standing armies, standardized and universal education, the orientation of production to commodities that could be exchanged on markets, the production of the modern concepts of time, population, etc. It was a regime that the Ottomans directed both at their center and their peripheries, a modern technique of rule that was much more pervasive than their extractive earlier mode, which was based on what Deringil calls "polite fictions" (338). In addition, the construction of a "savage" other, stereotypes of barbarism, and the paternalism accompanying feelings of superiority are not the hallmark of colonialism. What characterizes the colonial at this moment is the power to mobilize these differences in an exclusionary and exploitative project. And that is, as Deringil himself shows, precisely where neither the Arabs nor the Bedouins were excluded from participation in the Ottoman state. The fact that both ruler and ruled were Muslims, that an Ottoman Turk of Tripoli would join the Sufi order there and that Arab elites could participate in the central government, is something that would have been unimaginable in India, as Deringil himself

acknowledges. “No matter how elite they were, it would have been inconceivable for a Raja Rammohan Roy or a Sir Syed Ahmad Khan to sit on the backbenches of Westminster” (336).

Deringil, nonetheless, argues that the participation of the ruled in government remained an “exception,” “limited” incursions, citing the fact that 34 of the 39 Grand Viziers of the Reform age were actually “Turkish;” yet this is hardly the exception that confirms the rule. Under a colonial regime, there is no “exception.” No “native” judge could ever rule over a European (Chatterjee 1993). Therefore, those Arabs and “Ottoman subjects” who joined the Ottoman state to be “part of the Civilizing Project as Civilizers” (338) could not be part of the colonized. And indeed, these lands were part and parcel of the Ottoman Empire—these Arabs were part of the Ottoman elite. One can see that in the discourse of Arab nationalists, who despite the pointing to Turkey for their so-called underdevelopment, portray it as “foreign imperial occupier” but not on a “colonial” power paradigm, because of the legitimacy that the Ottomans had as Caliphs (Haarman 1988)[41]. And indeed, Deringil compares Arabs to the “Scots” rather than the Indians, which would call for an argument within the paradigm of internal colonialism. However, because the operating distinction was religion, which was of a different order than race, I would hesitate to use that paradigm. This, of course, does not mean that the Ottoman power was not an Empire, one the center developed at the expense of its peripheries

Deringil concludes his argument by saying that the discourse on colonialism was very much “an art of the possible” (339), almost an empty discourse, aimed at affirming Ottoman state power. It was as if by occupying the position and discourse of the colonizer, the Ottoman center could acquire the power of the colonizer. The fact remains nonetheless that the Ottoman state did not have the power to actualize the discourse of difference, that it “was dependent on

[41] This despite the closing passage from Deringil: “Seen from the position of the subaltern, on the other hand, the ottomans and the British as imperial powers may well have looked rather similar” (2003: 342).

the goodwill and cooperation of the Sanusi sheikh, the local notable, and the Bedouin" (339). It is not because they reproduced essentialist representations of their peripheries that the Ottomans were colonizers. In the 19th century Ottoman Empire, power remains an essentially missing element of the colonial power/knowledge paradigm, thus the Ottoman center simply could not become a colonial power.

In addition, I would advance that the principle and legitimacy afforded to the Ottoman Empire as the seat of the Caliphate—even if one can cede to the claim that it was a discourse that was actively mobilized only in the 19th century (Deringil 1998) — could not easily be made to sit with a rule of colonial difference. One could argue that it was really after the rise of a Turkish nationalism based on ethnicity, and when the Young Turks took power, that the biggest clash with the "Arabs" happened and that the fear (and practice) of a colonial "Ottoman" arose, as with the infamous Governor of Beirut, Jamāl Bāsha al-Saffāḥ's "slaughtering" of Arab nationalists in 1916. The nineteenth century Ottoman "borrowed colonialism" could not be colonialism since its pre-modern "face" of techniques of rule precluded the most essential principle of colonial rule.

I have been arguing that an attempt to understand Ottoman rule under the paradigm of colonialism obscures the particularities of its operation, due to historical conjuncture and its own history. However, I am not suggesting to relegate colonialism to a mere episode in the history of modern power, but attempting to understand modernization under conditions that were not European colonialism—even if these would actually follow, and form a crucial moment that would structure the presents that we inhabit. Indeed, even if the period of the French Mandate only lasted 25 years, the colonial is very much with us today, through state institutions,

legislations, language preference, education systems, but also through desires, sensibilities, and imaginations. These will always bear the colonial marks of their "affectionate French mother."[42]

State, Law, Economy

While modern modalities of rules and political rationalities may have been developed in the colonial encounter many of their techniques of rule were adopted under different conditions. The Ottoman Empire was such a place. Most historians of the Ottoman Empire have interpreted the reforms of the late eighteenth and the nineteenth century as responses to European modernity and imperialism. They have been understood as exacted by European powers, or emulations of European models whose superiority was acknowledged (Shaw and Shaw 1977 II: 61), or a survival strategy, known as "defense modernization" (Findley 2005: 157). A counter-narrative has emphasized the Islamic roots of early reforms (Abu Manneh 1994). All these interpretations share a basic assumption, and the one that informs the narrative I am forwarding: these were modernizing reforms, independently of their causes, ultimate motives, or agents. In discussing Ottoman reforms, and why I see them as modernizing, I avoid a talk of "intent" behind them. I propose that they introduced three elements that were characteristic of modern states, and that they were therefore modernizing reforms. Whether these were adopted with an admitted superiority of the Western models, or whether they were adopted within an Islamic or Ottoman framework, the crucial matter is that they were seen as instituting "progress," a break with the past. Let me explain what I take to be the particularly modern aspects of these reforms.

[42] That is how France was referred by its Maronite allies, "*al-umm al-ḥanūna*"

The particularity of the modern state is articulated around the notion of the "nation's economy" as the center of the practices of the state, "related to concepts of increasing material wealth and social improvement ('progress')" (Asad 1992: 334). It does not lie, Asad argues, in bureaucracy (à la Weber), nor centralized government, nor bourgeois domination (à la Marx). The development of the modern state included the conception of a "separate legal and constitutional order, which the ruler has the duty to maintain."[43] The basis of government became "the power of the State" not that of the ruler, which allows for the modern conception of the state as the exclusive source of force and law (Skinner 1978: x in Asad 1992: 334). David Scott elaborates on Asad's insights on the importance of progress for modern power and traces it to Enlightenment reason, which stood in opposition to older forms of understanding and reason, superstition and prejudice, which ensured submission to kings and priests by hindering individual reasoning. Enlightenment progress did not see these as a few false beliefs that could be changed. "What was required instead was first, their fundamental uprooting by means of a broad attack on the *conditions* that were understood to produce them, and second, their systematic *replacement* by the inducement of new conditions based on clear, sound, rational principles" (Scott 1999: 33). Progress necessitated the whole remaking of society, a break with this past. The distinctively modern "point of application" of modern power is that it operates on the *conditions* that shape the lives and bodies of subjects.

In the Ottoman context, Shaw claims that what distinguished the reforms starting in the nineteenth century is particularly such a break with the past driven by an idea of progress. The "idea was that the old institutions and ways should be *entirely* destroyed as they were replaced" (2000 [1968]: 93, my emphasis). While this statement has been contested, and for instance some claim that the aim was to "restore Sultanic power" or to have a "virtuous" rule (Abu Manneh

[43] Can we say, through the government of the population, as Foucault had suggested in governmentality?

1994: 182) many of the reforms actually destroyed old conditions. One can cite here for instance the destruction of the Janissary corps in 1826, and the Sufi order that was affiliated with it. In addition, the many new schools[44] based on sound and rational principles and new laws created these new conditions. I will first discuss some aspects of the reforms that help create the effect of the state, focusing on waqf. I will then turn to the legal and constitutional order that the reforms instituted, this time without going too much into the particular waqf reforms as Chapter 2 tackles these at length. Finally, I will show how the reforms echo, here again taking the example of waqf, the mode of government as centered on the national economy for the welfare of the population.

The Ottoman reforms of the nineteenth century created the state as an entity outside of the ruler. With regards to waqf, this manifested itself in a move away from waqf administration by high dignitaries as a personal post to waqf administration by a State Ministry as an objective task. Waqf was among the first institutions to be hit by the modernizing impetus. Already in 1826, a newly founded Ministry of Imperial Waqfs [*Nezâret-i Evkâf-i Hümâyûn*] took over the supervision and administration of some of the major waqfs traditionally held by court high officers.[45] The Ministry, like other state bodies, was now hosted in a fixed location. The attempt at centralization and reform of the waqf administration is far from novel, whether in various parts of the Muslim world or in the Ottoman Empire itself.[46] The year 1826, however, marks a turning

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[44] One can cite here: the Naval Academy in 1773, a military engineering school in 1793, a medical school for the army in 1827, a new school for judges, and perhaps most importantly a new education system (one should also cite missionary schools).
[45] These include the Darüssaade Ağası [the chief Harem Eunuch], the Grand Vizier, and sheikh ül-Islam [the head of the scholarly establishment].
[46] These earlier attempts include the numerous attempts of Sultans from Selim III to create new waqf administration.

point because of the type and permanence of the changes it introduced.[47] One such change involves the notion of supervision. Supervision can be stipulated in the waqf foundation deed whereas the supervisor oversees the administrator's work, checking that the stipulations of the founder were followed. Supervision was very much a function carried out individually, and invested in named persons, or in certain posts, like the qadis and the various officials. This marks "the foundation of the *Evkaf* [waqfs in Ottoman Turkish] Ministry in its essential form as a separate administration incorporating the great vakıfs [waqfs in modern Turkish] of the empire under the direction of a leading member of the Imperial High Council" (Barnes 1986: 81). The 1826 novelty was the transformation of the supervision itself into a ministry, a state office responsible for all waqfs and one that exists independently of any particular waqf,[48] one that basically concurs in the creation of the state-effect.

Recently, the idea of the 'state' has been interrogated by scholars building on Foucault's notion of governmentality; while this is an interpretation whose utility I recognize, it is not one I share. Focusing on the modern state rather than modern power could appear to reverse the advances of investigations building on Foucault's "Governmentality" (1991). Far from being the source and ultimate location of power, or a "subject of history," the state, in these studies, was rather a "support for technologies" or only an "effect of governmental strategies" (Donzelot 1979: 78 in Rose et al. 2006: 88). Focusing on the state misses the range of governing technologies that discipline the bodies of subjects and allow them to self-discipline without necessitating the intervention of the state. "Instead of seeing any single body—such as the

[47] The year 1826 marks a crucial year in Ottoman history, because it is the date of the "Auspicious Event", the elimination of the Janissaries, the old corps of infantry, which represented the "old regime" and the force opposed to reform (Shaw and Shaw 1977:21)

[48] One needs to note that in the Abbasids had a similar office called "*ṣadr al-awqāf*," and so did Mamluk Egypt where it was known as "*dīwān al-aḥbās*" (See Muhammad Muhammad Amīn 1980). The difference, as I will argue in chapter 2, is the manner of administration and their relation to the state.

state—as responsible for managing the conduct of citizens, this perspective recognizes that a whole variety of authorities govern in different sites, in relation to different objectives" (Rose et al. 2006: 85). This shift of emphasis has yielded insightful and groundbreaking research on "how we are governed in the present, individually and collectively, in our homes, workplaces, schools, and hospitals, in our towns, regions, and nations, and by our national and transnational governing bodies" (2006:101). Studies of sexuality and vice, drinking and alcoholism (Valverde 1998), knowledge practices (Poovey 1998) such as statistics (Hacking 1990), human resources, accountancy, and management revealed a rich array of governmental sites that a focus on the state would have obscured.

Nonetheless, the question of the nature and form of the state had never dissipated. The resonance of governmentality in the Anglo-Saxon social sciences and its rise to prominence coincided with the neo-liberal moment, as it provided an answer on "how to make sense of the transformation in the arts of government that were under way in Britain, the United States, and to a lesser degree, other Western countries" (Rose et al. 2006: 91).[49] However, there are limits to an emphasis on governmentality in certain cases and parts of the world. Indeed, the question of the state, its shape and political regime, remains of critical importance, as for instance in Palestine. The popular uprisings in Tunisia, Bahrain, Egypt, Yemen, and Libya have given a political urgency to the questions of the possibility, form and meaning of an "Islamic state," the place of Islamic Law in the constitution and civil codes, and the "religion" of the state.

Such questions therefore beg for a better understanding of the state itself, not as the ultimate locus of power, but as a major field defining possibilities and rationalities—without abandoning the line of questioning and insights brought by the analysis of "political rationalities"

[49] An in-depth study of the theoretical field where Foucault intervened with the concept of governmentality, of the historical-political-personal conjuncture of this shift in his thinking, and of the conditions under which this concept traveled, would probably yield much needed perspective.

(Scott 1999), these "different styles of thought, their conditions of formation, the principles and knowledges that they borrow from and generate, the practices they consist of, how they are carried out, their contestations and alliances with other arts of governing" (Rose et al. 2006: 84). I approach the state with an awareness that government involves much more than the state and is much more diffuse. I also take the avenues that anthropological approaches to the state opened, as in the works of Gupta (2006), Trouillot (2001), and Mitchell (2006 [1999]).[50] Instead of taking the state as a "distinct, fixed, and unitary entity" (Gupta 2006: 8), these scholars approach such models of the state as a construction and analyze the mobilization of this model, the processes of distinguishing the state from other institutions, the "effects this construction has on the operation and diffusion of power throughout society (Gupta 2006: 8). In that way, I emphasize the constant work involved in the production of the state and particularly in the claims to legal sovereignty, a crucial discourse in the competition with the shariʿa and its restriction to the new category of religious law.

The centrality I accord to law in this dissertation, like the one I give to the state, appears to swim against the current of the dominant paradigm of contemporary studies of the law inspired by Foucault's governmentality. In his essay on Governmentality (1991), Foucault distinguishes among three different modes of operation of power: sovereignty (whose aim is the preservation of the sovereign's power), discipline, and governmentality (whose aim is the welfare of the population). Although these three modes occurred sequentially, each being the dominant mode at a certain moment, one did not replace the other. In this model, Foucault makes law the particularity of sovereign power. "[W]ith sovereignty the instrument that allowed it to achieve its aim—that is to say obedience to the laws—was the law itself; law and sovereignty were absolutely inseparable" (Foucault 1991:95). The sovereign power's instrument was the

[50] Mitchell is of course not an anthropologist but a political scientist.

juridical; with governmentality, "it is a question not of imposing law on men, but of disposing thing: that is to say, of employing tactic rather than laws, and even of using laws themselves as tactics" (95). One could read Foucault's remark in the strict sense as he himself sometimes does, and argue that, "within the perspective of government, law is not what is important" (Foucault 1991:95).

However, as many of Foucault's collaborators and elaborators have done, one can take Foucault's earlier remark of governmental power's use of "law as tactics." In that sense, law does not "disappear." Ewald makes a case for distinguishing "law (and its formal expression) from the juridical" (Ewald 1990:138). The juridical is the mode of governance of sovereignty, and is "characterized by forcible seizure, abduction, or repression and usually culminating in death" (Ewald 1990: 138). What disappears then is the use of law in a juridical mode. Instead, law is used as tactics, or as Ewald proposes, "law can function by formulating norms" (138). It can then be used in a different technique of power, governmentality and bio-politics. Instead of a juridical mode, we have a normative mode, where the power of law does not decrease and juridical institutions do not disappear. The normative mode, according to Ewald, "comes to the fore most typically in constitutions, legal codes, and the constant and clamorous activity of the legislature" (138). What Ewald's investigates is therefore a "theory or practice of law articulated around the norm" (139) and attempts to answer two questions that Foucault left unanswered: "if the juridical is an inappropriate category to use in interpreting bio-power, how do we make sense of all those 'instruments of law' (codes, institutions, laws, regulations) that have developed and expanded during the era of bio-power? Second, if the action of norms replaces the juridical system of law as the code and language of power, what role remains for law?" (159).

Some of the answers that Ewald hints at are that constitutions and laws helped generalize a "common standard" (160). For instance, he uses insurance to illustrate how insurance transformed legal judgments. Insurance is distinguished from earlier forms of mutual aid like those of confraternities because it justifies itself not in terms of mutual aid but on a rule, on statistics, the "natural distribution of luck and misfortune, i.e., chance, is fundamentally just." Therefore "insurance then offers a new *rule of justice* that refers no longer back to nature but rather to the existence of the group, a social rule of justice that the group is free to determine for itself, and on its own terms" (147). This is very different for instance from an idea of justice where one seeks to find the natural or not cause of damage, and making that person responsible for it. In these practices, a new way of deriving law becomes possible, embodied particularly in norms. Norms allow for a different kind of law, what Ewald calls "social law," which is not based on universal principles. This is for him the particularity of modern law. It entails that law does not emanate from a sovereign. "Norms are created by the collectivity without being willed by anyone in particular" (155). In addition, within a "normative order," under "social law," "law is no longer valid as an expression of the general will or the common interest. Rather it is valid by virtue of its normative quality" (155). Ewald gives the example of the UN's "resolutions" and "recommendations," which provide a normative framework against which to assess states' behavior, and which produces a reference point against which states self-comply because of their normativity, all without recourse to force.

While the normalization of law is certainly a crucial way that law operates in governmentalized states, law has another crucial role in modernizing states. "In a modern state, laws are enacted not simply to command obedience and to maintain justice, but to enable or disable its population (…). It is more than merely an instrument (…). In the modern state, law is

an element in political strategies—especially strategies for destroying old options and creating new ones" (Asad 1992:335). Because law provides the language through which claims are made, demands articulated, and the categories that classify individuals and articulate demands and claims, it becomes a powerful tool through which individuals start to think of themselves and the world around them in different ways. It is no wonder that the Ottoman reforms were so heavily characterized by the promulgation of new codes that were to take the place of older ones. They also created a new legal and constitutional order.

While a single body named the Imperial Council [the *Divan-i Hümayun*] decided on most policy matters be they legislative, administrative, or military, the new kind of "expert knowledge which no single council or official could possess" (Shaw 2000 [1968]: 96) created the need for new specialized agencies. Starting in 1838, a new body, the Supreme Council of Judicial Ordinances [*Meclis-i Vala-i Ahkam-i Adliyye*] took on the task of the legislation of reform, and eventually all legislation, worked as a high court for cases from different courts, and in 1851 adjudicated on matters of jurisdiction between the shariʿa courts and other courts (Rubin 2006). After a few changes, the Council of State [*Şura-i Devlet*] and the Council of Judicial Ordinances [Divan-*i Ahkam-i Adliyye*] took respectively the legislative and the judicial functions. In addition to the creation of a legal order that the state was to preserve, these new bodies had an effect on the "archive" I was using. With litigations over jurisdiction and the new avenues of appeal, waqf cases from Beirut and neighboring Mount Lebanon became more frequent in the Ottoman state archive. Many of the late nineteenth century litigations I discuss came from these Councils.[51]

These new legislative bodies helped create a new "constitutional order" outside of the Sultan. They were responsible for the promulgation of the two Tanzimat [orderings, reforms]

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[51] Because they are also legislative bodies, I was able to collect many of the debates happening in these councils regarding various aspects of waqf reform. Unfortunately, because of limitation of space, I have not been able to include them in this dissertation.

edicts of 1839 and 1856 and the Constitution of 1876.[52] The Gülhane Edict of 1839 described a decline in the strength of the Ottoman Empire and attributed it to arbitrary rule. The solution it proposed was the restoration of the shariʿa. It promised the security of life, honor, and property. It pronounced on a few particular issues: fair trial, no arbitrary confiscation, fair taxation, military service proportionate to the size of the provinces. It made the Supreme Council the only legislative body. The supposed novelty of the Edict is that it extended these guarantees to all the subjects, regardless of religion (Davison 1954:847, Shaw and Shaw 1977:61). Abu Manneh (1994) argues that apart from that, the guarantees that the code proposes are very much in line with shariʿa, and I would agree (as I discuss further in chapter 5). I would also propose that by emphasizing the necessity to create new codes,[53] it embodies the notion of progress, as well as the idea that laws are crucial to destroy the old conditions of despotism and the creation of new conditions of justice. Shaw and Shaw (1977) argue that the "decree of Gülhane was not, thus, in any way an Ottoman constitution that limited the powers of the sultan, because he issued it and could abrogate it at will. But he did promise to limit his authority by accepting any law produced by the legislative machinery he was creating" (Shaw and Shaw 1977:61). But the sovereign always has such a power to suspend the constitution (Agamben 1998), and one can thus argue that the Edict did indeed create a certain constitutional order.

The new legislative organs also created a new "legal order" by the promulgation of a massive amount of legislation: a penal code in 1840,[54] a commercial code in 1850, land code in

[52] The Tanzimat refers to the edict but also to the period of reform between 1839 and 1876.
[53] The text of the edict says: "It appears that putting and creating some new laws is necessary and important" [*bazı kavânîn-i cedîde vaz' ve tesisi lâzım ve mühim görünerek*]. The qualifier some [*bazı*] to new laws does seem to contradict my argument about new conditions, however, the novelty of proposing new laws rather than the reversion to true and original shariʿa as the solution constitutes enough of a novelty to warrant my argument.
[54] Shaw and Shaw give the date as 1843 (revised in 1851 and 1857)

1858, and a maritime code in 1863. Many of these were adapted from the Civil Law tradition[55] (Berkes 1964, Shaw and Shaw 1977,[56] Lewis 1961). The Ottoman Empire also initiated a process of codification of Islamic jurisprudence [*fiqh*] in 1868 in the *Mecelle-i Aḥkâm-i 'Adliyye* (*Mecelle* from now on) although this was not the first such attempt in Islamic history.[57] Codification enshrined the process of borrowing from various legal schools within the Sunni tradition. The reception[58] and creation of Western-style codes that were made *the* "law of the state" created a legal order that was outside of the will of the Sultan.

The new codes were the law of new courts, both commercial and penal. In the provinces, the provincial administrative council had jurisdiction over criminal, administrative, and civil cases. New statutory courts [*nizamiyye*] created in the middle of the 1860s and took over the council's jurisdiction. As Rubin has argued (2006), it would misleading to term these "secular" courts" and to oppose them to the shariʿa courts as "religious courts." Indeed, many of the shariʿa judges worked in the civil courts (Rubin 2006:69).In addition, between 1868 to the fall of the Empire, these courts used the codified shariʿa, the *Mecelle*, along procedural codes based on the French ones; the latter also inspired procedural codes for shariʿa courts (Rubin 2006:68). Finally, before the creation of a Ministry of Justice in 1878, all courts except the Commercial ones that the Ministry of Commerce supervised were under the sheikh ül-Islam. Crucial questions arose concerning the domains of jurisdiction of these two parallel systems (Berkes 1998 [1964]:169-

[55] Debates rage in the literature over whether European codes were adopted wholesale; revisionist historians started questioning the accuracy of such a categorization.

[56] Shaw and Shaw barely accord two pages to the legal reforms, which is puzzling for such an extensive monograph.

[57] One can cite here the attempts of the Abbasid secretary of state Ibn al-Muqaffa' (Jackson 1996) and the Mughal Emperor, Alamgir, in the late 17th early 18th century to compile a book with the most authoritative opinions for Hanafīs, *al-Fatāwa al-Alamgīriyyah* (Zaman 2002). The conditions that made such earlier attempts confined and contained while the more recent attempts have become the norm still need to be the object of sustained research. Some have argued that the 19th century attempt was the first time an Islamic state attempted to codify shariʿa and enact it "as a law of the state" (Schacht 1964:92). Another issue would be whether codification is the best term to define earlier attempts, since, as will be discussed further below, it is very much related to the logic of modern states.

[58] This is the legal term for "adoption."

172). In many of the states born out the piecing up of the Ottoman Empire, the shariʿa's domain came to be restricted to "personal status law" (mainly marriage, divorce, and inheritance),[59] while public law and the rest of private law were left to the new civil codes. Jurisdiction over waqf in particular was heavily debated during this period between courts across the Ottoman Empire, and would continue to be in French Mandate Lebanon.[60]

In short, I focus on the state and law, rather than government and rules, because, as Hallaq described at length, the modern state and its claim to legal sovereignty were crucial for the remaking of Islamic Law in particular and the shariʿa more broadly. As I will illustrate at length in the various chapters of the dissertation, the legislative changes it enacted eliminated old conditions and created new ones, particularly as it created a language and categories through which subjects had to define themselves. Finally, the state introduced radical changes to the understanding of waqf, as they became conceptualized as part of the nation's economy. The Ottoman state had always had a bureaucracy, carried out censuses, but its "point of application" (Scott 1999:32) was not the population and the nation's economy, conceived as having their own patterns outside of the individuals making them. The "scope of the state was largely limited to matters directly concerned with the expansion, exploitation, and defense of imperial revenues" (Shaw 2000 [1968]: 94). In the nineteenth century, reflecting this change in the point of application of modern power, waqfs start to exist as abstract objects of administration, part of the wealth of the nation, the nation's "economy" to be attended to and made to grow.[61]

[59] In the Ottoman Empire, each recognized religious community was given jurisdiction over matters of marriage, divorce, and inheritance of its congregation.
[60] See for example the heated debates between the Association of the ʿUlama' of Damascus and Rāmiz al-Malak of Tripoli, discussed in chapter 4.
[61] I will elaborate further on this in chapters 2 and 4, when I discuss the Ottoman reforms in accounting techniques required of waqfs and the new types of taxes imposed on land, as well as the discourses of the French colonial powers in arguments for the elimination of waqfs.

The concept of the economy has recently elicited a new round of debates. Mitchell (1998) argues that the usage of the term economy to mean "the structure or totality of relations of production, distribution, and consumption of goods and services within a given country or region" (84) dates only from the middle of the twentieth century. While in his early publications on the topic, he notes that this was not the time of the "*birth of the idea* of the economy but a shift from a static conception of economic processes to a dynamic one" (1998:85). In a later article, he seems to have however taken a further step arguing against both Polanyi (1949) and Foucault (1991 [1978]), that the modern idea of the economy as a free standing sphere did not arise in the eighteenth or nineteenth century. Before the mid-twentieth century, economy was usually not used with a definite article. It first implied the "art of governing one's family" or "frugality" (Foucault 1991), and when it became political economy, "it came to mean the knowledge and practice required for governing the state and managing its population and resources" (Mitchell 2008:1116). Mitchell ties the genealogy of "the economy" with the birth of the discipline of economics instead of the tradition of political economy.[62] It is with economics, and particularly econometrics, in the 1930s, that mathematical models claimed to represent the "entire economic process as a self-contained and dynamic mechanism" (Mitchell 1998:85). Mitchell's argument falls in a larger epistemological project that attempts to integrate technologies, representations, the environment, and non-human actors along political rationalities and practices in social explanation.

I would like to propose that his characterization of the twentieth century's "new ways of administering the welfare of populations, of developing the resources of colonies, organizing the circulation of money, compiling and using statistics, managing large businesses and workforces,

[62] For a critical sketch of the fragmentation of political economy into the various social sciences (economics, sociology, politics) one can consult the introduction of Wolf (1980).

branding and marketing products, and desiring and purchasing commodities, brought into being a world that for the first time could be measured as though it were a free-standing object, the economy" (Mitchell 2008:1116) can be traced further back. Harvey (2010) already cast some doubt on Mitchell's chronology. He points that elements of such a representation of the economy go back to the mercantilist period, citing William Petty's "statistical inquiry into Ireland's economy" at the end of the 17th century and "Thomas Mun's tract 'England's Treasure by Foreign Trade'" (265). Examining the Ottoman state's discourse and practices on waqf, followed by those of French Orientalists and colonial officers, shows that these already imagined and attempted to bring waqf into "the economy as a self-contained sphere, [and distinguish] (….) from the social, the cultural, and other spheres" (Mitchell 1998:91). My chronology therefore confirms that of Harvey rather than Mitchell.

III. NARRATING WAQF

I have thus far explored the theoretical underpinnings of this dissertation and introduced the conditions and analytical lenses I am using. It is now time to outline a narrative for the waqf transformation that I opened with. Before the long nineteenth century, waqfs were defined in the shariʿa and founded in an Ottoman empire where the state's duty was to protect and enforce the divine law elaborated by jurists who often operated outside the government. The state was expected to promote and ensure the fulfillment of the shariʿa's purposes: the preservation of religion, life, mind, offspring, and property. Waqfs embodied many of these purposes and allowed for the cultivation of ethical selves according to the shariʿa's ideal of life. When establishing waqfs, founders surrendered the ownership of (mostly real-estate) objects to God and dedicated their revenues forever to charitable purposes. As soon as they became waqfs, these

objects could not be sold, gifted, used as collateral, or foreclosed. Waqfs were both devotional acts that brought their founders closer to God and economic endeavors that produced revenues to support schools, mosques, families, bridges, Sufi lodges, water fountains, and ultimately the poor. They were also the backbone of urban life, providing services for communities when such services were not yet thought of as rights that citizens should expect from their states.

Enter the modern capitalist state. The welfare of the population and the national economy, ever-increasing wealth and "progress" replace the preservation of the shariʿa's purposes as the main concern of the state. Reforms of the Ottoman state, which drew legitimacy from its commitment to Islam, harnessed Islamic legal terminology to allow the centralization of waqf administration. Under the banner of good management, waqfs, I argue, were re-conceptualized as real-estate wealth that could be developed through new accounting methods, statistics, and uniform methods of administration. During the French mandate, the creation of a national economy necessitated the separation of this sphere from those of politics and religion. Waqfs had to fall into one of these categories, and were actually divided as such: those that were "religious" and those that were "not so" and fell in the economic sphere. The dissertation proposes that the selection of truly religious waqfs hinged, among other things, on a conception of charity as confined to the public sphere.

In chapter 4, I show how the modern state re-articulated the relation of the individual to her family. In nineteenth-century Beirut, one of the main beneficiaries of charitable waqfs were families, rather than "public" sites of beneficence like mosques or fountains. Waqfs embodied and created subjects that favored and sustained personal and social relations with their parents, children, and ultimately their family, rather than citizens who kept the family in the private sphere and became individual citizens in the public. Ottoman reforms started to privilege

beneficence dedicated to the deserving and based on merit when family beneficiaries became extinguished. French Mandate reforms that limited family beneficiaries of waqfs to two generations and encouraged the reverting of "family" waqfs to private property further entrenched the categorization of properly religious and charitable waqfs as those dedicated to public beneficence. Such a devaluing of family beneficence and its association with nepotism fostered new kinds of subjects, individuals who related to the state as citizens.

The splitting of waqfs along the religious divide subsumed them to the modern architecture of state, law, and economy; it foreclosed the formation of certain kinds of subjects and "freed" real estate into the market. By virtue of their being confined to the sphere of religion, these waqfs belonged to the private affairs of the Muslim community to manage. However, as this dissertation shows, they were still subjected to a higher reason; the state defined and preserved public benefit. Indeed, the modern state started providing public goods that had formerly been left to the initiative of communities and good will of individuals. Chapter 3 contrasts expropriations of waqfs in the Ottoman and contemporary moments to illustrate how public benefit like the opening of roads and city planning gradually displaced the preservation of individual waqfs. Public benefit trumped the competing ideal of life of shariʿa's purposes that waqfs embodied and perpetuated. However, the success of the claim of religious endowments against their expropriation and compensation in shares during the reconstruction of the Beirut city-center shows that the ideals of life that endowments sustained have not completely lost their legitimacy.

It may strike the reader that after this lengthy introduction, I have still not really defined what waqf *was*. As the reader might have noticed, the definition and practice of waqf have transformed tremendously because of the modern condition. This does not mean that one should

not attempt to define waqf, but, I argue that there is no one single, atemporal, decontextualized definition of waqf: it is an account of the multiple possibilities of what waqf could be and of the conditions that allowed its possibilities. This is the account I undertake in Chapters 1 and 2.

PART I: STATE, LAW, AND WAQF

CHAPTER 1: WAQF: A NON-DEFINITION

The opening anecdote of this dissertation concerned a “human rights waqf,” founded in Beirut with a capital of $100 to protect human rights. This waqf, along with a few others that earmarked a small amount of money for some social work, stand apart from the rest of new foundations, which mostly make waqf of a mosque, or piece of land, or books, for the charitable purposes of housing prayer or creating Islamic centers and Islamic libraries. Both of these types of waqf, however, differ from the bulk of waqf endeavors in that same city, a couple of hundred years earlier. In those, founders made rent-producing objects into waqf and earmarked their revenues to support a multiplicity of charitable purposes, from providing for the salaries of teachers at madrasas or imams at mosques to buying bread for the poor. For instance, on Tuesday 1 September 1818, Darwīsh bin Ali agha al-Qaṣṣār, the head of a prominent merchant family in the Ottoman city of Beirut and the owner of a shop on the main square of the city, came to the shariʿa council and surrendered[1] in perpetuity the ownership of his shop to God the Almighty, while gifting the usufruct of the shop to the upkeep of the shrine of Sayyid Ahmad Badawī in Ṭanṭa, Egypt after his death. He thus made his shop into a waqf, waqf-ed his shop. That all of

[1] While I elaborate on the meaning of waqf in the first section of this chapter, the form of the translation of the verb *waqafa* could be made to talk to the change in understanding of waqf that I describe in this chapter. The Arabic word waqf is used as a verb [to waqf] and can be rendered in English as “made (a certain object, x) into a waqf,” or founded/established a waqf. “Made x into a waqf” is useful because “make into” implies a transformation, as I will discuss in this chapter, which is what happens when one makes a waqf: one transforms an object from one that is in the ownership of men (particularly the owner, as the object needs to in full ownership not possession of the owner) to one that is in the ownership of God. It also supposes an object prior to the moment of foundation (it is transitive), which is also more accurate in terms of the practices at that time. To establish a waqf however, emphasizes the creation of a new separate entity, the waqf, which reflects the new ways of understanding waqf that became possible with the modern state (like the human-rights waqf).

these many endeavors bear the same name of waqf points to the changes in the meaning and practice of waqf, as well as the complexity of defining this term.

However, studies of waqf (or *ḥubs/ḥabs* as it is known in North Africa), in Arabic or in English, like this dissertation, invariably start by defining what waqf *is*. They do so by providing a translation—"pious foundations" (Deguilhem 2004), "religious endowments" (Knost 2006), charitable endowments (Doumani 1998), or "charitable trusts" (Makdisi 1981)—or a legal definition from particular codes or *fiqh*[2] books (Dallal 2004). While some scholars argue that translation has the advantage of rendering a foreign concept familiar, it inevitably carries certain assumptions, and therefore obscures particularities of the native concept. If an endowment[3] is the closest civil law equivalent to the common law trust[4] it is because both invoke beneficiaries and assets held on behalf of these beneficiaries. The affixing of the adjective "charitable" to any of these conjures two characteristics that remain the subject of heated debate in legal circles with regard to trusts/endowments in general: perpetuity and inalienability (cf. the rule against perpetuities (Haskins 1977)). In relation to waqf, both these characteristics are matters of contention. The contentiousness holds even within those jurisprudential traditions such as the Ottoman , which follow a single legal school [*madhhab*][5]:in this case, the *Ḥanafī*. In addition, all of these translations obscure the ultimate purpose of the waqf in Islamic law: namely, closeness to God.[6]

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[2] Legal doctrine, as Hallaq (2009) translates it, also rendered as jurisprudence.

[3] "The property or fund with which a society, institution, etc. is endowed," where to endow is "to provide (by bequest or gift) a permanent income for (a person, society, or institution)" Oxford English Dictionary Online.

[4] "An entity created to hold assets for the benefit of certain persons or entities, with a trustee managing the trust" from http://dictionary.law.com accessed on 12/2/2009 [this is Black's Law Dictionary, the online free 2nd edition].

[5]As I mentioned in the Introduction, in Sunni Islam, four major schools form the *madhhab*s: *Ḥanafī*, *Shāfiʿī , Mālikī,* and *Hanbalī*.

[6] This has larger consequences, for it is not simply a matter of linguistics: most relevant studies take an approach that does not take ethical formation and "the desire to be close to God" as a proper sociological or anthropological explanation for an action like waqf-making. Instead, even if the purported aim of the waqf is closeness to God, their object of analysis ought to be the "real intent" of the founder, which is usually a calculative one: to escape taxes or

For studies written in Arabic, the practice of defining terms before going into the discussion is anchored in a tradition of Islamic legal writing.[7] Islamic legal scholars usually define the appropriate terms in both their common and legal usage [*lughatan wa iṣṭilāḥan*], in order to anchor themselves in a particular *madhhab*. This is a crucial step since the legal definition of waqf varies from school to school, and indeed within each school as well. As I will show in the first section of this chapter, this has led to the constitution of a lexical field in which the referent 'waqf', until the end of the nineteenth century at least, had in fact many meanings and this forecloses the simple definition of the term. Waqf could be perpetual and irrevocable, according to certain opinions, while for others, it could also be revocable and therefore temporary. These different definitions informed different practices of waqf, as well as the ways waqfs foundations were constituted as legal instruments. In both cases however, waqf consisted of a pious act through either the creation of a charitable institution or the financing of a charitable purpose. I also analyze the way waqf appeared in turns of phrase in court records in order to show how waqf was mostly approached as an object in property relations, a revenue-bearing object, without precluding a certain *use* of waqf as a legal person, even if mediated through physical persons. This first section provides a snapshot of pre-modern, post-classical Ottoman waqf understanding.

In the second section of this chapter, I begin to sketch the first moment in the modernization of waqf, the Ottoman reforms of the nineteenth century. I outline the major

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inheritance law, prestige, and political aims. While I do analyze the social and economic effects of waqf, I do not dwell on uncovering intent, which I would argue might be unknown to the actors themselves. I do nonetheless take the aim of getting closer to God as one worthy of investigating as a technique of ethical self-fashioning (as I discuss at length in chapter 3). It is worth noting that Amy Singer (2002) mentions the debates over perpetuity and inalienability (20), as well as the importance of *qurba* [closeness to God] (26), but these remain external to her general argument. She thus does mention the debate, but ends up adopting the authoritative definition, as she attempts to summarize the legal requirements for the founder, the objects, and beneficiaries. In addition, even after noting the importance of closeness to God, Singer turns to what she perceives to be the more significant task at hand, "discovering" the "attending motivations" (26) of "political legitimation, social status, and patronage" (27).

[7] This is especially apparent in the genre commentaries [*shurūḥ*] upon a "core/source text" [*matn*]

consequences of codification of the shari'a and its relation to the State, and in particular on waqf law, both in terms of the possibilities foreclosed and opened. Codification favored a single definition of waqf. While none of these codes was adopted as state law on waqf, they were produced by the agents of a modernizing state and reflected the attempt at tightening the state's grip on the production and administration of law. In addition, while waqf remained tied as a type of land and object, the notion that it could be a "legal person" came to be formulated in these very terms.

With the carving of the Ottoman Empire into nation-states under the mandatory powers of France and Britain at the end of WWI, the processes of codification and reception took on much more obvious colonial overtones. The third section of this chapter begins by outlining the various arguments and debates the French mandatory power developed in its experience in North Africa as it tried to regulate waqf, at first with the explicit aim of eradicating it. French Orientalists attempted to fit waqf in the categories of their own still in-process civil legal system,[8] questioning whether waqf was a real-estate right or was it a matter of personal status. Jurisdiction over waqfs ended up split between religious courts following religious law (as regards waqf foundation and administration) and civil courts following state-issued civil codes (when it came to waqf exchange, sale and termination). By examining the registration of a waqf, I show how the new colonial property régime, particularly its registry and new categories, de facto created waqf as a legal person.

The legal changes enacted during the French mandate, with regards to property in general and waqf in particular, provide the framework under which waqf law continues to operate today. Far from simplifying the matter, these parameters in fact have rendered the definition and

[8] Such encounters were crucial in shaping the civil legal tradition.

practices of waqf[9] even more complex. Starting with the human-rights waqf, I describe the historical conjunctures that made the possibilities of waqf to be used as a legal person (that were opened by the French law and property changes) to come into use. In addition, I show how the splitting of waqfs between courts and the separation of the "charitable institutions" of mosques and Islamic centers as *the* only charitable waqf rendered the idea of waqf as an economic endeavor (financing a charitable purpose) much less common and opposed to the real charitable waqfs, the charitable institutions—without it nonetheless completely disappearing.

I. Ottoman Post-classical Waqf
Multiplicity of definitions, waqf as object

Let us turn first to the pre-modern understanding of waqf. In this section, I will use the various legal manuals of what I introduced as "the library" to show how they provide two different definitions of waqf that prevent final closure of meaning. These different definitions articulate a debate around two of the supposed essential characteristics of waqf: its perpetuity and its inalienability. As a consequence of this polysemy, the various actors involved in waqf practices could choose between the different definitions. I will then analyze two specific cases (a foundation and a sale) that point to the debates on definition and illustrate how the different options enabled different practices. This is not to say that all possibilities were equally available to everyone in the same way. The definition that foregrounds perpetuity and inalienability certainly became more authoritative over time and comes to dominate the practice of waqf-foundation. That said, the text of the deeds continues to index the presence of the alternative definition. The case of the sale of a waqf in Beirut, which I take as my example, similarly highlights the inherent tensions of the process: although it affirms the *alienability* of certain

[9] by practices of waqf, as distinct from definitions of waqf, I refer to founding, suing, or adjudicating on waqf.

waqfs, its analysis also shows that this practice, and the definition on which it is based, were unorthodox.

Definitions: Abū Ḥanīfa vs. his Students

Waqf, linguistically speaking, is a noun, the gerund [*maṣdar*] of the verb *waqafa*. In common usage, waqf means halting, stopping. In legal parlance, at least for the Ḥanafi school to whose founder Abū Ḥanīfa (d. 148) himself is ascribed the following definition, a waqf is :

> "the confinement of a *ʿayn* [the corpus of a specific object, or the principal to use endowment terminology] to the ownership of the waqf-founder, and the gift of its *manfaʿa* [yield or usufruct] to some charitable[10] purpose."[11] (al-ʿAynī, *Ramz*, 1982 I275 :)

Here, then, waqf is the enactment of an owner's decision to dedicate the usufruct of his or her[12] property to some charitable purposes while he or she retains the ownership to herself. The usufruct could take the form of rent, taxes, bread, shelter, returns on money, and even shade. However, what does "the confinement of a ʿayn" to the ownership of its owner exactly mean? The question elicited internal debates among Ḥanafī scholars. Since the owner actually owns that property, saying that in waqf-founding the owner confines that ownership to himself or herself is a tautology, a non-action. It just confirms the ownership of the owner. Ibn Humām[13] objected to Abū Hanīfa's definition in the use of "confine" [*ḥabs*]. He argued that since the ownership remains in the hands of the founder, the act of founding has not changed any of the owner's rights that come with ownership: the rights to sell, gift, and bequeath. Waqf founding then, argued Ibn Humām, does not include any confinement: it is simply the will of the founder to gift

[10] A short discussion of what counts as charitable or not follows in the chapter, but its changing conceptions form the core of chapter 3.
[11] "*Ḥabs al-ʿayn ʿalā mulk al-wāqif w-al-taṣadduq bi-manfaʿatihā*"
[12] Throughout the dissertation I use he or she when both women and men could be the subjects of certain actions, and he when only men could be subjects (and she when only women could be so).
[13] A fifteenth century Mamluk jurist credited in the Ḥanafī school of having accommodated existing land practices of state ownership of land with Ḥanafī fiqh based on individual ownership (Johansen 1988).

the usufruct to a pious purpose (Assaf 2005:13). While gifting the usufruct to some charitable purpose, the owner retains full *milk* rights, and can revoke her waqf. Hence, for Abū Ḥanīfa, a waqf is not necessarily perpetual. This is the reason why certain explanations compare Abū Ḥanīfa's waqf to the gifting of usufruct or interest free loans [*ʿāriya*],[14] as the owner retains ownership and can actually retract the gift of the usufruct. The waqf is not a gift [*hiba*],[15] because the ownership of the object and with it the rights to sell, gift, and bequeath remain with the founder. In addition, after the death of the founder, the waqf reverts back to his or her estate, and is divided according to inheritance law[16]. Hence, for Abū Ḥanīfa a waqf is not necessarily inalienable either.

Soon afterwards, Abu Hanifa's definition was questioned by two of his prominent students, Abū Yūsuf (d.182 A.H.) and Muhammad al-Shaybānī (d.189 A.H.), waqf is "the confinement of the corpus [of a specific property] (*'ayn*) to the ownership of God (…)"[17] (al-ʿAynī, *Ramz*, 1982 I: 275). The students' innovative definition stems from a *ḥadīth* [a saying of the Prophet] supposedly unknown to Abū Ḥanīfa. Had this saying been known to Abu Hanifa, they claim further, he would have espoused their position. This may very well be true, but the authority that the students' definition acquired cannot be explained on such grounds only, as Abū Ḥanīfa also builds his argument on the basis of a *ḥadīth*. As Peters has argued (EI), the authoritativeness of the students' definition can be related to the changing socio-economic and military conditions of the Islamic world at that time.[18] Contrary to Abū Ḥanīfa who confines the ownership of the waqf to the waqf-founder, the students confer it to God. Following from their

[14] "*Tamlīk al-manfaʿa bilā ʿawaḍ*"
[15] "*Tamlīk al-ʿayn bilā ʿawaḍ*"
[16] It should be noted that an argument can be made for differing interpretations on this point.
[17] "*Ḥabs al-ʿayn ʿalā milk allāh*"
[18] I have not had the opportunity to further pursue why and when the students' definition became more authoritative. During the lifetime of the students, their mentor's definition still held currency. Abbasid Caliph al-Mahdī appointed to Egypt a judge who subscribed to this definition and attempted to revoke many waqfs (Abu Zahra 2004 [1959]:12-13).

definition, human ownership of the waqf, and with it the rights to buy, sell, gift, mortgage, and bequeath the object, "extinguishes" (al-ʿAynī, *Ramz*, 1982 I: 277). Here, then, waqf is clearly inalienable. The question of the perpetuity of the waqf follows from its inalienability. Since the only subject who can dispose of an object is its owner, and since God has become the owner of the waqf, the waqf will remain a waqf, until God inherits the earth. A waqf according to this definition is therefore also eternal. Thus, it is amply evident that even within a single juridical school, there has been, and continues to be, major disagreement on the supposedly essential characteristics of waqf: its inalienability and its perpetuity.

In addition to their differences, there is also commonality in the definitions. For example, in both these definitions, a waqf is a pious act that is not seen to be divorced from economic activity. Founding a waqf is an act that brings its founder closer to God, but it was also a revenue-generating endeavor. A waqf, in the sense of waqf-ed object, generated either rent that was dedicated to a pious purpose or use that was itself a pious purpose. In the latter category, founders built mosques, fountains, and madrasas and made them into waqf.[19] These would later be referred to these as charitable organizations [*mu'assasa khayriyya*]: charitable monuments built and made into waqf, like prayer spaces, madrasas, soup kitchens, Sufi lodges, libraries, guesthouses, fountains, bridges, cemeteries, wells, and hospitals (Hilmi, Article 17). In the former category, an array of lands, shops, houses, were made into waqf, so that their revenues went to the provisioning, running, and upkeep of these waqf-ed mosques, fountains, and madrasas.[20] Similar objects could also support other pious purposes, like the poor, or one's

[19] Mosques become automatically waqf, as in one cannot open a space for prayer then change their mind. Many times though, their waqf foundation deed was carved in an inscription.

[20] These revenue-bearing waqfs might remind the reader of endowments for universities in the UK and the US. Some scholars (Gaudiosi 1988) have advanced that these Western forms have their origins in the waqf.

family. Thus waqf was also a way of financing a multitude of public amenities and providing public services, and poor relief.

In addition, both these definitions emphasize waqf as a *process*; to waqf is to confine, to transfer ownership of a *res*. The title of waqf has also been applied to the objects whose ownership has been confined in this way. Instead of saying the land made into a waqf, the waqf-ed land, [*al-arāḍī al-mawqūfa*], the house made into a waqf [*al-dār al-mawqūfa*], implying the land or house or any object whose ownership belongs to God and whose usufruct belongs to the specified subjects, both land and house are referred to as the waqf. This usage appears in court records. Waqf there is used as a qualifier of an object (a shop, house, lot) to describe its "status." It is mostly used when identifying a plot of land through a description of its limits: it can be bordered "on the east by a shop waqf of al-Ḥamrā Sufi lodge" (MSB.S3/32/4), on the west by "a house waqf *al-jāmiʿ al-kabīr*" (MSB.S3/35/4), or on the "*qibla*[21] by the waqf of the priests" (MSB.S3/33/4).

Before turning to the possibilities of practice opened by these differing definitions, it is worthwhile noting that the critical strategy adopted above differs from existing historical studies of particular waqfs that use court, accounting, and other records to counter the modernist charges of waqf as stagnant and dead capital. These studies argue that the same waqf that the *fiqh* literature defines *in theory* as inalienable was *in practice* exchanged, sold, and alienated (Hoexter 1997, Meier 2005, Knost 2006,). The work these studies perform has been necessary in historicizing waqf practices. Nonetheless, it draws on and ultimately supports the trope of theory vs. practice that I discussed in the introduction, suggesting that waqf in theory is different from waqf in practice. Beyond the assumption shared by both those who claim the inalienability of

[21] The direction of the Kaaba, in Beirut, it is almost South.

waqf on the basis of "theory" and those who disprove it in terms of "practice," this section asked the question: "Does the fiqh literature really define waqf as inalienable?" It definitely does not.

Waqf Foundation Using the Students' Definition

In light of this debate, it seems appropriate to turn now to the various practices of waqf that the different legal definitions described above allow. The interpretation of Abu Hanīfa's students forms the backbone of the waqf cases recorded in the Beirut registers. Indeed, foundation deeds draw on and invoke the terms of their definition, mentioning the perpetuity and inalienability of waqf. Based on one of the earliest founding documents that I have found (MSB.S3/157 dated 29 L 1233 [1 September 1818]), I will first analyze a "typical" waqf founding document/deed [*waqfiyya*] in the ways that it actualizes the definition and requirements of waqf as described by the students. I will then show how even such an instrument, so unambiguous in its reliance on the students' definition, in fact points to the possibility of a different interpretation of waqf, as alienable and non-perpetual. As described in the Introduction, a waqf founding deed describes the owner and founder of the waqf, the object to be made into a waqf, the beneficiaries, and various stipulations, as to administrators, length of lease, and anything the founder might deem necessary.

The first place where we might encounter waqf as eternal is the verb forming the speech act (Austin 1962) of the foundation. After describing the founder, the *waqfiyya* registers the founder's actions "made into a waqf, eternalized, and confined, and dedicated and gifted to charitable purposes" ["*waqafa, wa abbada, wa ḥabasa, wa sabbala wa taṣaddaqa*"] (MSB.S3/157). The use of the verb "eternalized" already indexes the use of the students' definition. The objects made into waqf follow the verbs, which are then qualified with their

roots, echoing the speech-act. The *waqfiyya* sometimes mentions the consequences of the perpetuity of the waqf, mostly in terms of its inalienability. Expressions like "cannot be gifted, inherited, pawned, owned, appropriated, transferred, or transmitted, in all or in parts, to anyone" can follow the waqf object, and further confirm the use of the students' definition of waqf. Nonetheless, the use of the verb "eternalize" and the description of the inalienability of the newly found waqf are not requisites in the *waqfiyya*s, and many of the documents of the Beirut sharīʿa court skip them altogether. In fact, most of the *waqfiyya*s actually do not refer to the students' definition in this main part; that is, the speech-act whereby the founder declares that she is founding a waqf and describes its objects, beneficiaries, and stipulations.

It is after that speech-act that the *waqfiyya* spells out the legal consequences of the waqf according to the students' definition. Following the stipulations, a new section starts describing the actions of the founder who "took the waqf out of her ownership [*milk*] and transferred it to the ownership of God."The reference to the students' definition is here completely unambiguous. To a modern reader the sentence suffices to show that the founder is founding here a perpetual inalienable waqf, and the document does indeed spell it out as such: the founder thereby " made a legal perpetual waqf." The *waqfiyya*, however, goes on for at least an extra half-page. Why? Simply because a simple reference to the students' definition does not make this definition unquestionable, and Abū Ḥanīfa's definition always looms in the background. It can form the base of a challenge to that original *waqfiyya*. Potential heirs and interested parties, who might prefer to inherit the waqf's ʿayn, can conjure Abū Ḥanīfa's definition and argue against the perpetuity of the waqf. It is for this reason that the last section of the *waqfiyya* actually explicitly mentions Abū Ḥanīfa's definition and advocates in favor of the students' definition.

Before going into that procedure, the *waqfiyya* initiates another one, the so-called delivery and receipt [*taslīm wa tasallum*] : after the founder takes out the waqf from his ownership to that of God, he delivers it to an administrator [*mutawallī*] who stands in place of the new owner[22]. That action of delivery brings a debate among the students on how ownership [*milk*] can become extinct. The students disagree as to whether the utterance is performative, whether the uttering of "I made this into a waqf" enacts the waqf, and moves the ownership from the founder to God. For Abū Yūsuf, as for most other scholars of all schools [*jumhūr al-ulama*], arguing based on the analogy to manumission, the utterance suffices, as it is in itself a forfeiture of ownership. For al-Shaybānī, the waqf remains in the ownership of its owner until the delivery/handing in of the ʿayn, because all ownership ultimately belongs to God, so the forfeiture of ownership does not occur through intent and utterance, but only through delivery to an administrator (al-ʿAynī, *Ramz*, 1982 I: 276). It is also following the need for delivery that, for al-Shaybānī, the founder cannot be the administrator, whereas for Abū Yūsuf he can. The *waqfiyya* in question, in the delivery and receipt section, enacts the forfeiture of ownership in accordance to Al-Shaybānī's opinion, and thus renders the waqf irrevocable.

With the delivery and receipt, the second main part of the *waqfiyya* reaches an end. The third and last section introduces further action into what was a document registering a transfer of property, but now appears like one documenting a litigation. "Then, after the finalization of the waqf (…) the founder decided (it occurred to the founder) to revoke his waqf." Why would it occur to the founder to revoke a waqf they had just enacted, after having buttressed the foundation deed with every possible locution that renders the waqf unquestionable and irrevocable? The answer has a simple legal label: "procedural fiction" or "fictitious litigation" [*ḥīla*], but a more complicated explanation. These stratagems are based on the tenet that a

[22] The section also includes a "threat" [*tarhīb*] if anyone changes the waqf.

judge's rule cannot be revoked from within the same school. While a legal opinion [fatwā] is non-binding, a judge's decision cannot be easily appealed.[23] A fictitious litigation indexes the possibility of another definition even before it is brought up by the potential litigants. The founder in fact does not intend to revoke the waqf. But according to Abū Ḥanīfa, as we have seen, a waqf is not eternal. Despite all the buttressing that the deed might include to prohibit the questioning of the validity of the waqf in terms of its subject, object, purpose, and expression, the position of Abū Ḥanīfa (that the waqf remains in the ownership of its founder) renders the waqf by definition possibly revocable, even if it is perfectly valid. This is what the founder claims that, basing himself on the opinion of Abū Ḥanīfa, he wants to revoke the waqf. The (temporary) administrator steps in, as the caretaker of the interest of the waqf, and argues that the students' opinion does not allow revocation. The judge then rules in favor of the administrator. Consequently, waqf foundation documents, like the one I use here, even as they are based in and actualize the students' definition of waqf, actually point to the presence of another definition of waqf (and different requirements for irrevocability), that very much inform the content of the document.

In the same document, the founding of an irrevocable eternal inalienable waqf occurs three times, according to two definitions of waqf, and three interpretations as to what makes a waqf irrevocable [*lāzim*]. The speech-act (the main part of the *waqfiyya*) enacts an eternal inalienable and irrevocable waqf according to Abū Yūsuf. The delivery and receipt enacts an eternal inalienable and irrevocable waqf according to Al-Shaybānī. Finally, the judge's decision

[23] There were no "appeal" courts per se, but parties could appeal in different ways, like asking for a fatwa on the judge's decision, bringing the decision to the succeeding judge, or taking the case to the *maẓālim* courts [the temporal authorities' space for dispensing justice]. David S. Powers (1992) discussed this process at length, arguing not to deduce from the absence of appeal structures similar to modern Western ones that appeal did not exist, but why it took the shape it did. The legal reforms of the mid-late 19th century in the Ottoman Empire introduced formal courts of appeal named as such.

renders irrevocable what is considered an alienable revocable waqf according to Abū Ḥanīfa. While it is the students' definition of waqf that is actualized in typical foundation documents, Abū Ḥanīfa's definition appears nonetheless in the shadow, as a threat to the perpetuity of the waqf. Thus, it is not merely a debate within theory. It makes itself further apparent in the very court records themselves as it structures the actual documents. Abū Ḥanīfa's definition also seems to have informed a different type of waqf practice: temporary waqfs.

Waqf Foundation using Abū Ḥanīfa's Definition

The pervasiveness of founding documents using the students' definition of waqf renders the much fewer cases that invoke Abū Ḥanīfa's definition even more striking. The case I analyze here[24] involves a lawsuit [*daʿwā*] over the waqf-status of some objects of sale. The litigation begins by confirming that a sale occurred, in this case shares of an olive-press and shops in Beirut, for a certain amount of money, but that the buyer did not pay the said amount. The buyer claims that the bought objects are actually a waqf that the father of the seller had established, which would invalidate the sale—had the waqf been made according to the students' definition. The buyer brings in two witnesses to testify that the seller had made the said objects into a waqf.[25] It is their testimony that is of interest here. They claim that the father of the seller "he went to court, and told the scribe that he wanted to make these shares in these lots into a waqf, so write me a deed [founder said], so the scribe recorded it." The deposition sounds at first surprising in its mixing of indirect and direct speech, but the combination is far from unusual. It recurs mostly within actual rather than fictitious litigations and testimony can also include words

[24] I take MSB.S2/55 dated 17 Sh 1263 [25 July 1847], but towards the end of the third register, there are two more cases involving a similar procedure, MSB.S3/98 dated 20 S 1267 [24 December 1850].
[25] The burden of proof is on the buyer because his position is contrary to the "apparently existing state of affairs" (Messick, forthcoming).s

from colloquial Arabic (noted already for Beirut in Qattan 2003:66, see more generally Peirce 2003:106-7 and Mandaville 1966). Whether the current case is a fictitious litigation or not, it invokes a certain practice based on Abū Ḥanīfa's definition. The founder established a waqf, then his daughter sold it. The waqf that he founded when he went to court and summoned the scribe for a deed was neither perpetual nor inalienable.

The witnesses, however, seem to make a surprising faux-pas. While they are testifying to support the buyer's case that the objects sold were an inalienable waqf, in order to invalidate the sale, they start their testimony by saying that the founder did not found a waqf. Even more, the four witnesses continue the story of the seller's founding-act: the scribe records the will of the founder to establish a waqf, "without establishing a waqf, and without a ruling from the judge." The witnesses seem to suddenly switch sides and argue that the waqf was not valid, and consequently that the sale was. The intent of making a waqf coupled with a speech-act and its registry are sufficient according to both Abū Ḥanīfa and his students to have a valid [*saḥīḥ*] waqf. In any case, it is the irrevocability [*luzūm*] of that waqf that is at stake here. The seller's waqf is a valid, eternal and perpetual waqf, according to the students' definition. As shown above, for Abū Yūsuf, the waqf is valid and binding as soon as the performative word is uttered. For Muhammad al-Shaybānī, delivery and receipt are necessary to make the waqf valid. In this particular incident, we don't know if these have occurred, but the witnesses do not mention that as the reason invalidating the waqf. Instead they cite the absence of a judge's ruling, which can occur in two cases. A judge's decision can make a waqf founded irrevocable, even according to Abū Ḥanīfa's definition. A judge's decision, as shown above, can also be used in a fictitious litigation to avoid future attempts at revoking as per Abū Ḥanīfa a waqf that was intended to be

perpetual and inalienable. None of these cases involves the validity of the waqf; both revolve around irrevocability.

The judge uses this testimony to rule that it does not "prove the validity of the waqf, but its invalidity, nullity, void [*buṭlān*]." He himself takes the absence of a judge's ruling, which confers irrevocability to a valid alienable waqf à la Abū Ḥanīfa, as the proof of the invalidity of the waqf. In this line of argument, irrevocability is necessary for the validity of a waqf: the student's definition has become most authoritative, even and especially on the judicial plane. It appears also most common in the popular understanding of waqf. Indeed, the argument of the seller is "this is a waqf, hence the sale is invalid." There is no space in this argument for a revocable and alienable waqf. The argument plainly supposes that irrevocability is a *rukn* [necessary element] of the waqf, i.e. that a valid waqf must be irrevocable.

Going back to the judiciary, however, it would be fruitful to think more about the following: what does it mean for a judge to use a procedural fictitious litigation used to confer irrevocability as a necessary element [*rukn*] for a valid waqf? As any and all *waqfiyya*s state, the judges know that a waqf is revocable according to Abū Ḥanīfa's definition, and that irrevocability is not a necessary condition for the validity of a waqf. What this strategy (using a revocability rule as a validity rule) puts forward is a certain degree of formalization of procedure. The normative form of a *waqfiyya* with its three main parts (specifications of waqf elements, delivery and receipt, fictitious litigation) becomes the template of a valid waqf, independently of its content. The typical waqf instrument whose three parts answer to various demands of irrevocability acquires a life of its own and its tripartite form becomes a measure of its validity[26].

[26] An argument can be made here of this formalization in relation to the increase in procedural issues required by the reforms [procedure takes enormous amounts and cases can be made just through showing procedural shortcomings (Rubin 2006)], as well as the training of judges. The new school for the judges [*muʿallimhane- nūvvab*] was founded in 1855 and emphasized training students especially on procedure.

To bring the case to a close, the judge rules that the waqf was indeed invalid [*bāṭil*], which makes it null; the sale is declared to be valid and in effect, which makes the buyer liable to pay the price agreed upon. This case brings to mind the many procedural fictions used in courts, similar to the ones that Ghazzal (2008) describes for debts with interest, or for fixing agreed upon prices from further litigation. Interest-bearing loans took the form of a contract of sale that was followed by "a parochial claim of a 'harm' inflicted upon the defendants because of an alleged non-performance" (171)[27]. For the argument made here, whether this case is a fictitious litigation or not remains a minor concern. The crucial point that this example makes clear is that a revocable and alienable waqf practice is possible to imagine and utter.

The conditions of possibility of such a practice include the shariʿa's "open texts" (Messick 1993:30), texts open to interpretation and explanation, set in dialogue with existing known and unknown truths. Building on al-Nawawī's introduction to the *matn Minhāj al-Tālibīn*, Messick concludes that "the overall impression of shariʿa jurisprudence […] is of an unstable mix of the settled and the unsettled" (35). The majority of fiqh manuals belong to the latter type, the unsettled, and consist of elaborations, arguments within the Islamic tradition on issues that do not have clear and definitive answers in the Quran or the Sunna. In addition, the case of the sold waqf begins to point to some of the deep changes that will come to affect the openness of the texts, or rather the possibility of considering such texts as open, since it finally sanctions many of the dominant positions even if it points to the then unorthodox opinion of Abū Ḥanīfa. As Hallaq (2009) has described, the nineteenth century was a turning point that transformed the shari'a from a discursive practice to an entexted entity. "In its present form, the Shariʿa distinguishes itself as an entexted entity, in that it was transformed – over the past two centuries or so -- from a worldly institution and culture to a textuality. […]The Shariʿa then was

[27] I will add much more here on the cases of Ghazzal and how the case I have at hand is similar and different.

not only a judicial system and a legal doctrine whose function was to regulate social relations and resolve disputes, but a discursive practice that structurally and organically tied itself to the world around it in ways that were vertical and horizontal, structural and linear, economic and social, moral and ethical, intellectual and spiritual, epistemic and cultural, and textual and poetic, among much else" (Hallaq 2005-2006). The contribution this chapter attempts to make to the usually bleak and certainly negative depictions of modernization efforts consists in the possibilities that these new codes actually open, as well as the relationships they entertain with the shariʿa. While far from celebratory, it seeks to avoid contemporary critiques of waqf practices as "inauthentic."

II. Late Nineteenth Century Waqf:
Towards a Single Definition and the Question of the Waqf as Subject

The middle of the nineteenth century witnessed accelerating changes in the Ottoman legal system, including the reception, or some might say, the imposition of various European Codes. The question of influence and agency in these changes remains a subject of debate. Were the reforms imposed by foreign powers and westernizing elites? Did local bureaucrats have an agency in this change? Were the reforms articulated in an Islamic legal framework? Were they a way to curb Western influence? These questions do not speak to what actually remains of these reforms: the work they did and the influence they had on contemporaneous practice. This section will examine a new type of waqf manual that started appearing in the late nineteenth

century and investigate the novelties these opened up and the possibilities they foreclosed in waqf practices.[28]

The nineteenth century saw the rise of a new form of waqf manuals, structured very differently from the early ones I described in the introduction, which took the form of a discussion. Unlike these pre-modern discussions and the sections on waqf in the commentaries, the new waqf manuals took the form of a code. Classical *mutūn* might resemble codes in their conciseness, but they belonged to totally different legal universes. The former served as "a commentarial substrate as well as (…) madrasa textbooks" and "constituted not the law, but the interpretative basis on which the law might be founded in a particular time and place" (Hallaq 2009:375). Hence, while the *matn* was memorized by madrasa students in the course of their education, it was the commentaries on this *matn*, and never the *matn* itself, that were cited in court judgments. In addition, while a certain *matn* was usually widespread in a certain time and place, it was not necessarily exclusive. As I mentioned in the introduction, in nineteenth-century Beirut court records for instance, commentaries cited were mostly for the matn *Kanz al-Daqā'iq*. However, this did not preclude the heavy use of Ibn 'Abidīn's *Ḥāshiya*, a commentary upon a commentary on a different *matn*, *Tanwīr al-Abṣār*. On the topic of waqf, *shurūḥ* do provide a definition of waqf, the definition that the author of the *matn* considered more authoritative[29], but the definition is then qualified with pages of commentary. The commentator brings forth the debates on that definition and its implications, and might even give preference [*yurajjiḥu*] in his qualifications to a different definition or interpretation. A code with its definitive single

[28] This could also be articulated in relation to discussions about theory vs. practice in Islamic Law, and how early Orientalists depicted shariʿa as a static body of laws, completely disjoined from the practice and reality of the societies following these rules.
[29] so the definition appears usually as a quotation in the text of the sharḥ.

definition stands in contrast to these earlier writings. In this ideology of codification (that of Civil Law countries), the code takes over any precedent and claims to completeness, "providing a single body of law" of the state (Merryman 1969).The form of the code signals a change in the approach to and understanding of law, manifested in the production of legal texts and the administration of justice: state-endorsed and exclusive.

The new state-endorsed Ottoman legal codes of the nineteenth century did not provide any definition of waqf. The codification of the shariʿa in the Mecelle had not reached a section on waqf when the new sultan AbdülHamit II interrupted its publication in 1876.[30] The 1858 land code did not attempt to define what waqf was, for that belonged to the jurisdiction of the shari'a courts, and was left to the individual judge's decision. *Fiqh* books, fatwas, and waqf manuals remained the main sources from which individual judges drew to make decisions on the most appropriate rulings for the founding and administration of waqfs. As discussed in the introduction, waqf rules had traditionally been discussed as sections ("books" [*kitāb al-waqf*]) within the *mutūn/shurūḥ* and *fatwas*, with the exception of Al-Khaṣṣāf and Hilāl al-Baṣrī's (then Al-Tarābulsi's summaries of these two) two early books devoted solely to waqf. In the late nineteenth century and early twentieth century, new types of treatises/manuals dealing exclusively with waqf started appearing. These include Ömer Hilmi Efendi's *İtḥâfü'l-Akhlâf fî Mushkilâti'l-Awqâf* (1890 [1307]), which appeared in French in 1895, in Arabic in 1909, and in English in 1922; Muhammad Qadrī Pasha's *Qānūn al-'Adl w-al-Inṣāf f-il-Qaḍā' 'ala Mushkilāt al-Awqāf* (1893 [1311]), which appeared in French in 1896; Hüseyin Hüsnü's *Aḥkâmü'l-Evkâf* (1892 [1310]); Elmalılı Muhammad Hamdi Yazır *İrşâdü'l Akhlâf fi Aḥkâmi'l-Evkâf*' (1912 [1330]); and Ali Haydar's *Tertîbü'ṣ-Ṣunûf Fî Ahkâmi'l-Vukûf* (1922 [1340]). The last three

[30] according to the TDV İslam Ansiklopedisi entry on Mecelle-i Ahkâm-ı Adliyye . Öztürk (1996b:3) provides 1868-1889 as the window during which the Mecelle was published. Shaw (1977:119) advances 1866-1888.

Ottoman language manuals do not seem to have had any translations, and are the least available of the five books. Muhammad Hamdi's manual was recently re-discovered and transcribed into modern Turkish in a 1995 edition.

The novelty of all these manuals consists in their common format, introduced by the Mecelle: "the code" or general rules presented as articles and arranged thematically in sections. They diverge, however, in their audience or purpose: the first two manuals (Ömer Hilmi Efendi's and Muhammad Qadrī Pasha's) seem to have been targeted at lawyers and judges; the last three are lecture notes/textbooks intended for use in the new law schools. It is together, nonetheless, that these two types of manuals can be an indication of the way the reforms of the legal system became inescapable realities: the coupling of the adoption of the new codes as the exclusive law of the State with a new education system that familiarized the bureaucrats, lawyers, and judges to be with the new laws and made the ulemas' independent reasoning and traditional madrasa education both superfluous and inadequate.

Projects and Agents of the State

Ömer Hilmi Efendi's and Muhammad Qadrī Pasha's manuals, although not adopted as state law by the Ottoman state, almost acquired 'force of law.' Qadrī Pasha's codification was published only posthumously through the efforts of his son, following the editing and comparative compilation of its three manuscript drafts (Sirāj 2006:30).[31] Despite being under British Occupation, Egypt was still under Ottoman rule, and Qadrī Pasha's son navigated the state bureaucracy for publication. The Ministry of Education sent it to the Egyptian head mufti for scholarly review. The mufti observed that the book "misquoted its sources" (Sirāj 2006:30), and did not recommend it for publication. One can see here the splitting of ʿulama among a

[31] by two legal scholars one at the Law School and one at the *Dār al-Ulūm*.

traditionalist camp and a reformist camp (like Ömer Hilmi). Eventually, two teachers from the new-founded schools, thereby encrusted in the state modernizing project, edited the manuscript. Following that, the Ministry of Justice endorsed upon the recommendation of the shariʿa court inspector and printed the first edition of the book at its expense. The purpose of the book therefore was not to participate in a scholarly debate within the tradition, which the mufti must have recognized as the author's [lack] of authority as a scholar. It was instead targeted to courts, judges, and lawyers, which recognized its value as such. The preface to the 1936 translation (when Egypt had become a Kingdom under British "influence") presents the endeavor of Qadrī Pasha as an educative one "pour l'édification de ses contemporains" (1946:i), but mentions that the Egyptian government commissioned its translation. The unofficial endorsement of the manual appears unquestionable, and the purported 'pure knowledge' appears forced. The translation almost transformed the manual into a code, the translators claim. They note, nonetheless, the controversial nature of the book, as some lawyers considered it to be highly authoritative and some relegated it to a haphazard compilation of opinions.

Ömer Hilmi Efendi prepared his manual in the context of his position as a member of the Mecelle Committee where he was assigned the codification of the waqf topic. The manuscript was possibly still not ready before the interruption of the publication of the Mecelle, a few years after the assignment of Ömer Hilmi Efendi. However, through an initiative of the Directorate General of Waqfs [*Vakıflar Genel Müdürlüğü*] the book was transcribed to modern Turkish and republished in 1977. The Arabic translator of Hilmi Efendi's manual emphasizes its comprehensiveness, including its content of classical waqf fiqh but especially of recent development in practice, and their customary treatments. He advances that Hilmi Efendi's book has become indispensable to any "judge, president of a court, waqf employee, civil court

member and scribe, law student, waqf administrator, supervisor, collector, beneficiary, and mosque staff, claimant, defendant, and lawyer, and anyone related to waqf" (3). Confirming this claim, the Directorate General of Islamic Waqfs in Lebanon holds and uses a copy to this day—that is how I got a hold of a copy myself. These two manuals come close to being, in the minds of their authors and the practices of the courts, a State endorsed code on waqf.

The authors of these two manuals, however, came from quite different backgrounds, yet they shared a common path into the state bureaucracy. Born in 1821 to a Turkish bureaucrat who settled in Egypt, Qadrī Pasha[32] (d.1888) followed a course of studies typical of the century. he started with the memorization of the Quran, then attended a small local school after which he joined "madrasa*t al-alsun*" in Cairo, which had been founded in 1836 and headed by Ṭahṭawī,[33] teaching "both Islamic and European branches of learning" like "French, English, Italian, Turkish, Arabic, mathematics, history, and geography" and taught by "a staff of European and native teachers" including "several well-known Azharites" (Heyworthe-Dunne 1939:966). Qadrī Pasha seems to have worked in Arabic, French, and Turkish, and upon his graduation he occupied various governmental offices in the position of a translator, in Cairo, Damascus, and Istanbul. He returned to Cairo, and he was appointed successively as an advisor to the mixed courts, Minister of Justice [*nāẓir al-ḥaḳḳāniyya*], Minister of Education, then back again to the Justice. He was a member of the committee working on a new Civil Code and a new Criminal Law. He was also commissioned by the Sultan Abdel-Aziz to participate in the revisions to the Ottoman Dustūr (constitution). Qadrī Pasha was heavily involved in the process of translation and codification occurring at the time in the Ottoman center and peripheries. He not only translated into Arabic the French Penal Code in 1283, as well as the Civil Code used in the

[32] The biography is based on the introduction to the 2006 Arabic edition of his book, by Mohammad Ahmad Sirāj.
[33] He was a lead Egyptian educator and intellectual and designed the school tobe a space of connection between East and West, teaching its graduates Arabic and French.

Mixed Courts of Egypt, but also codified (and arguably coined) the term (Abu-Odeh 2004) personal status, as well as pecuniary transactions and waqf.

Ömer Hilmi Efendi[34] (d.1889) was born in 1842 in Karinabad (Karnobat, Bulgaria) and followed a more traditional education for a Muslim scholar, a *'ālim*. Following in the footsteps of his father, who was part of the *ilmiyye* [the religious class in the Ottoman Empire], he held a professorship [*mūderrislik*],[35] and acted as a supervisor [*dersiâm*] in Karinabad. After the memorization of the Quran, Ömer Hilmi studied under various ulemas. He read Ṣaḥīḥ Muslim and Ṣaḥīḥ Bukharī, and received his *ijāza* from the Kazasker of Rumeli. He started teaching at the Fatih mosque in Istanbul, before pursuing a bureaucratic career in the various offices of the Fetvâhâne-i Âlî and the Evkāf-ı Hūmayun. He received the honorary ranks associated with the judgeships of Jerusalem and Harameyn as well as that of Istanbul, considered the highest of all. He joined the Committee of the Mecelle in the early 1870s, and played a very important role in the preparations of the last four books of the Mecelle. First a member of the Court of Appeal, he became its head in 1888, and taught at the newly established Law School. Ömer Hilmi Efendi's education was very different from Qadrī Pasha's. Classical analysis of modernization would place Qadrī Pasha among westernized elites and Ömer Hilmi Efendi among traditionalist ulema. If such an analysis had been correct, Ömer Hilmi Efendi would have been part of the old guard, and should be opposing reforms that were undermining the reproduction of the system that produced him as a scholar. The fact that he did not but was an active member of the reformers points to the two men's convergence through their common careers in the state bureaucracy and their position as agents of the state that can be a better explanation of their production of such a novel form of *fiqh* manual.

[34] This biography is based on the İslam Ansiklopedisi entry on Ömer Hilmi Efendi (written by Tahsin Özcan).
[35] The grade of *müderris* is the highest in the *ilmiyye* (I elaborate on these more in the following chapter, but see Akiba 2004)

Exclusivity of Legislation

The form of these manuals as codes was in and of itself a novelty that could only alter the content of *fiqh*. While Hallaq sees in this entextualization the ossification of the shariʿa, one might note that even if one of these definitions is adopted as state law, it does not stop either the challenges to such an adoption, or the debates on whether it is an acceptable one, or the attempt to revise the law. The waqf definitions discussed above (Abū Ḥanīfa's and his students') were not mutually exclusive within a single text, like that of the commentary. As a matter of fact, I extracted them from a single commentary. After quoting the definition provided in the original *matn*, the author of the commentary expounded and explained the definition, placing it in relation to other definitions, weighing their respective evidences, and usually giving preference to one over the other. Both Qadrī Pasha and Ömer Hilmi Efendi begin with an article defining waqf. Waqf according to Qadrī Pasha is

> the confinement of a ʿ*ayn* from the ownership of any human being, and the gift of its *manfa*ʿ*a* to the poor, even if [the poor is only one beneficiary] among others, or to a charitable purpose (Article 1)[36]

According to Ömer Hilmi, however, it is

> the confinement of a ʿ*ayn* in a way to give its *manfa'a* to humans, and its prevention from ownership and transfer so it becomes within the ownership of God (Article 1)[37]

If these manuals are more comparable to *mutūn* in terms of their conciseness, then the provision of a single definition is not unusual. The *Kanz* provides one definition for instance, even if *Tanwīr al-Abṣār* provides both Abū Ḥanīfa's and his students.' Upon closer scrutiny however, a

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[36] "ḥabs al-ʿayn ʿan tamlīkihā li-aḥad min al-ʿibād w-al-taṣadduq b-il-manfaʿa ʿalā al-fuqarā', wa law fī al-jumla aw ʿalā wajh min wujūh al-birr."

[37] The Turkish reads: "menfaatı ibadallaha ait olur vechile bir aynı cenab-i hakkın mülkü hükmünde olmak üzere temellük ve temlik mehbus ve memnu kalmaktır." The Arabic translation is "ḥabs al-ʿayn ʿalā wajh taʿūd manfaʿatuhā ilā al-ʿibād wa manʿuhā ʿan al-tamalluk w-al-tamlīk litakūn fī ḥukm milk allāh."

few distinctions start appearing. The definitions used here combine definitions from different commentaries. Qadrī Pasha's definition brings parts of the *sharḥ* of Timurtāshī with others from *al-Fatāwa al-Hindiyyah*. In addition, the definitions are not attributed to any authority, and are made to stand as absolutes, contrary to the *mutūn*—both the *Kanz* and the *Tanwīr* refer to the definitions as "for him" [*'indahu*] or "for them" [*'indahum*]. The definitions in these new manual-codes are presented as definite and absolute.

Form is emblematic of deeper changes that were occurring within the whole structure of the judiciary and the realm within which these waqf manuals were to be used. As mentioned above, the original *mutūn* did not stand on their own except as textbooks and their meanings could not be understood outside of the commentaries that qualified the concise definitions provided. The new manual-codes came to be the sole source of "law" among lawyers and judges in terms of waqf. However, a puzzlingly revealing commentary on the first Article of Qadrī Pasha's code in its 1936 French edition alludes to the complexity of the imposition of a single definition as the exclusive definition of waqf:

> The judge does not have the right to claim that the definition of waqf given in Article 22C.C. [Code Civil] is up for dispute, nor does the judge have the right to claim that this definition has been refuted by the majority of Muslim legal scholars (Decision of the Mixed Court of Appeal 15 June 1926, Article 1.1)[38]

That the first explanatory note curtails the right of judges to challenge the Civil Code's[39] definition of waqf is surprising, if not also amusing as it indexes the challenges this definition must have been receiving.[40] As the note reports an actual court decision, one can imagine a judge

[38] « Il n'appartient pas au juge de dire que la définition du wakf donnée par l'art. 22C.C. est très contestable et répudiée par la majorité des docteurs musulmans. »

[39] The Mixed Courts followed a code based on the Code Napoléon. This same code formed the basis of the code adopted in the "native courts" [known as "*maḥākim ahliyya*" in Arabic, and "*tribunaux indigènes*" in French] or "national courts" (Brown 1995)

[40] The matter is complicated because of the presence of three types of courts in Egypt (like the rest of the Ottoman Empire, but with different names and times of formation) : the Mixed Courts that dealt with any case involving a foreigner, Native Courts (the equivalent of the Ottoman Nizamiyye Courts), and the shariʿa courts. The question of

in a sharīʻa court dismissing some mixed-court document based on state-issued Civil Code's definition of waqf as eternal by pronouncing that waqf *can* be temporary. The explanatory note shows the attempt at curtailing the rights of judges to decide on what law is—particularly, as in this instance, when the judge must have ruled against the legal definitions put in place by the state and by doing so challenged the state's authority as the sole definer of law.

The articles following the definition further delimit the consequences of the definition of waqf with regards the main element of controversy, irrevocability, and its two effects, perpetuity and inalienability. Here, both Qadrī Pasha and Ömer Hilmi Efendi seem to have adopted the students' approach to the definition with its emphasis on forfeiture of ownership and hence irrevocability. The irrevocability is the first thing that Qadrī Pasha's code states (Article 3), after stating that the mere utterance of a waqf enacts it. They consequently take the same position when they actually tackle perpetuity. Ömer Hilmi Efendi's Article 73 simply states: "A waqf has to be eternal. The temporary waqf is not valid." Article 13 of Qadrī Pasha's manual echoes this requirement "The meaning of perpetuity in a necessary condition for the validity of waqf." Both Qadrī Pasha and Ömer Hilmi's works can therefore be seen as attempts at codifying the most authoritative opinions in the Ḥanafi school,[41] even while they did mix some opinions and privilege a single definition as the only one, without referring it back to a scholar or placing it in the debates on waqf.

Formulating Waqf as a Moral Person

definition is further compounded by the question of jurisdiction, since waqf matters were supposed to be left to the shariʿa courts.

[41] For instance, all the articles of Qadrī Pasha's manual can be traced to seven almost canonical books of the Ḥanafī tradition (see the introduction to Qadrī Pasha's 2006 edition of the book, 2006:36-37).

The use of waqf in this transformative period retains many of the features earlier discussed (as an object in property relations and a revenue-generating object for charitable purposes), even if a new formulation of the waqf as a legal person starts to make its appearance. The 1858 Ottoman land code divides the lands of the Ottoman Empire into five types: *memülke*[42], *mîrî*[43], *mevkûfe*[44], *metrûke*[45], and *mevât*.[46] Except for the *mîrî*, all of the structures of the adjectives are passive participles, they are the objects of actions. Respectively, these various adjectives refer to land that can be held as *milk*, can be made into a waqf, can be left for public use, or simply abandoned. The lands considered *mevkûfe* [*mawqūfa* in Arabic] are those whose ownership belongs to God and whose usufruct goes to specified beneficiaries (all according to prescriptions of the founder, within the limits of the *fiqh*). Waqf in the Land Code was never the subject of rights around land. Ömer Hilmi Efendi also makes explicit the practice of calling the object made into waqf, the waqf-ed objet, waqf. In his second article he points to the practice of calling the *mevkûfe* lands waqf. Waqf can then designate the object made into a waqf, in addition to the process of alienation and dedication. When it was not seen as a process, it was made to stand for the object around which rights and duties the process of waqf making creates, the object made into a waqf. In a sense, this is a shortcut to saying that the object is made into a waqf.

Court records point, however, to a different usage of the word waqf, one that implies that waqf is beyond a process or even an attribute of objects, and pointing to the specific relations around these objects. Document MSB.S11/73/280 dated 6 Ra 1281 [9 August 1864] records the

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[42] Freehold, sometimes translated as private property.
[43] "*Terres domaniales*," these are lands that belong to the state.
[44] Land made into waqf
[45] *Mîrî* land left for public use, as in roads, communal lands, and others
[46] "*Terrains vagues*," abandoned, uncultivated usually because they are too far away from inhabited regions (a distance is given in miles, time, and hearability "on ne peut entendre une forte voix").

sale of eight shares of a shop (a third of it) to Ḥabīb and Francis, sons of Abdullah al-Muṣallī, and to Girgis, son of Ibrahim Audi, all of whom bought the shares toward [*lijihat*] the waqf of the poor of the Eastern Catholics. Waqf here stands as a person who can buy and sell, even if through physical persons. The "waqf of the poor of the Eastern Catholics" is close to a legal person that can acquire rights in objects. Therefore, while legal theory never formulated waqf as a legal person, the evidence from the court records cited here suggests nonetheless that the practices of waqf assumed a certain juridical personality to the waqf, even if it was not formulated as such.[47] Such an argument echoes Behrens Abouseif's (2009) argument that even if jurists did not articulate such a concept, since the waqf had the "attributes of a legal personality" (56) it was effectively one.[48]

The "absence" of judicial personality is a part of the many "lacks" of Islamic law perceived in Orientalist characterizations. In the same way that "Islamic law does not recognize the liberty of contract" (Schacht 1964:44) and has "no general law of contracts" (Ghazzal 2007:176) or "general term for obligation" (Schacht 1964:144), "Islamic law does not recognize juristic persons" (Schacht 1964:125). As the French Commissioner positioned in Lebanon and reporting on the previous laws regarding real-estate mentions, "[u]ntil the middle of the nineteenth century, real estate acquisition was limited to physical persons and the Turkish government or its public administrations (…). Moral persons were however ignored by the legislator" (French High Commissioner 1927:292). It was not until 1910 (the law of 16 February 1328) that associations, Ottoman companies, and the communities and charitable establishments

[47] The notion of a legal person can be found in the doctrine of the *dhimma*, "generally defined as a presumed or imaginary repository that contains all the rights and obligations relating to a person" (Zahraa 1995:202). It embraces both religious and financial obligations and rights. The question then becomes whether the waqf was considered to have a *dhimma*. One can find hints to that in debates over the capacity of the administrator of the waqf to buy for the waqf and the independence of the *dhimma* of the administrator from that of the waqf.

[48] The attributes include that it has a *dhimma* that is independent of that of its administrator: it can "own estates, receive donations, and acquire privileges, such as tax-exemptions" (57).

were allowed to own real-estate. One can say that it was not until 1910 that the legal person in the terms and understandings of Western legal systems came to exist in the letter of the Ottoman law.

This proposition echoes decisions of Egyptian courts and the commentaries on Qadrī Pasha's first article. "The main legal effect of the constitution of a waqf is taking out the ownership of the *biens* [objects] made into a waqf from the patrimony of the founder and its transfer into the ownership of the moral person called waqf" (Qadrī Pasha: Article 1. 6). As can be seen in comparison with the definitions provided above, this formulation contradicts any formulation of the ownership of the waqf, whether by Abū Ḥanīfa or his students, or any school or Muslim jurist prior to the end of the 19th century, as a matter of fact. According to these 'classical' definitions, the ownership of the waqf belongs either to God or to the founder, not to a juristic entity called waqf. The formulation of the waqf as being a moral person is completely novel.

III. French Mandate: Multiple Definitions, Waqf as Subject

After the end of WWI, and the dismantling of the Ottoman Empire, the project that the codification of Qadrī Pasha and Ömer Hilmi begun continued in Egypt and Turkey, as shariʿa courts were folded in national courts and the law governing waqf were codified and state-issued. In both countries, such laws not only codified, but also severely curtailed and even abolished waqf outside mosques and charitable institutions (Çizakça 2000).[49] In what became Lebanon, however, the French Mandate adopted a much more careful policy—informed by their

[49] I will discuss the arguments behind these measures in chapter 4. It is worth noting that Turkey reversed its position with a new and "modernized" law of waqf marrying American Trust Law with the shariʿa (Çizakça 2000:90-110)

(sometimes disastrous) colonial experiments in North Africa and the strong opposition of the Muslim population to their Mandate. The foundation of waqfs, and their definitions, was left to the "religious tribunals" based on the shariʿa, as they were deemed to be part of "personal status." This resulted in the halting of codification, keeping the variety of shariʿa definitions.[50] At the same time, however, since they also considered waqf to pertain to real-estate, the French issued Laws regarding its exchange, which without defining waqf, nonetheless forwarded the notion that waqf was alienable. Finally, in practice, the new land registry and its categories created waqf as a legal person.

Colonial Experiments: Algeria

The French came to Lebanon with extensive experience with waqf from their colonial enterprise in North Africa, an experiment that has been well documented and analyzed.[51] Through this experience, particularly in Algeria, the direct appropriation of waqf and their transfer to state domain left the realm of possible options, and instead it was through administration and rules of exchange that waqf was disciplined to modern understandings of state, law, economy, and religion. Algeria was a settler-colony, and this fact, along with the quasi-ignorance about Islamic Law at the time and a more aggressive "assimilationist" and civilizing policy, guided the first French regulations on waqf. Waqf lands, which at the time of the conquest constituted 25% of the land surveyed in 1830 (more than 60% belonged to the Ottoman governor), could not be sold as freehold to settlers. More troubling for the colonial

[50] That was done for each "religious community" as I will explain further in depth in the next chapter. However, each community was supposed to issue a "code" for these laws, to be ratified by Parliament as state law. Most Christian sects did this, but the Muslim communities have not, refusing to subject "religious law" to the authority of Parliament (Bīlanī 1971).
[51] For Algeria, see Saidouni (2008), Ruedy (1967), and Terras (1899) (also for Tunisia). For Tunisia, see Hénia (2004) and Cannon (1982 and 1985). For Morocco, see Luccioni (1982) and Kogelmann (2005). Finally, see Powers (1989) for a comparison between the French-Algerian and English-Indian policies and approaches to waqf.

power, these waqfs were later sold to European settlers by some beneficiaries or speculators and were then claimed back on the basis of their inalienability (Powers 1989:540). While some claim that the transformation of waqf was radical from the beginning where others argue that it was more gradual,[52] eventually French legislation radically transformed what waqf was and could be in French Algeria through integrating all "public waqfs" into the public domain and making waqf alienable. An 1842 decree extended public domain to include all waqfs (Ruedy 1967:75) and made waqf alienable when Europeans were involved in long rents or sale contract on waqf-ed assets (Pouyanne 1900:96). In 1859, the provision of alienability was extended to all transactions on waqf. Therefore, "only fourteen years after the occupation of Algeria begun, France sounded the death knell of the habous" (Ruedy 1967:77). Waqf, as it existed in Algeria in 1900, was nothing "but a ghost of Muslim waqf" (Pouyanne 1900:96).

The colonial "attack" on waqfs in Algeria did not go without resistance. The French forcefully repressed this, albeit at a high cost, which led them to adopt a different strategy in their subsequent colonies. In Algeria, muftis and scholars contested the reforms, and "many natives (…) show great repugnance to sell to Europeans waqf-ed immovables" (Pouyanne 1900:97). Many of vocal leaders of the opposition were exiled (Saidouni 2008). However, the "pacification" of Algeria turned out to be costly. Therefore, in Tunisia, Morocco, and Syria and Lebanon, the French adopted a much more 'subtle' but also more vicious/pernicious policy towards waqf. Writing about Tunisian waqf reform, Terras, French lawyer and author of a thesis in law "*Les Biens Habous* [*Waqf Assets*]," takes pride in the self-ascribed skillful maneuvering of the French administration. He writes: "our administration, through a series of wise [avisé]

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[52] Saidouni (2008), for instance, argues that French policy was not consistent from the beginning; it oscillated between the extremes of non-intervention and seizing represented in two founding documents. The capitulation act in July 1830 ensured the protection of the religion and property of the Algerians A September 1830 decree allowed the appropriation of the governor's possessions as state domain and included the waqfs dedicated to Mecca and Medina in these.

regulation, modified this institution to the point of making it compatible with your juristic ideas and with our practical needs, without offending/hurting the mores and beliefs of a foreign people" (1899:4).

The skillful French maneuvering drew heavily on the colonial knowledge produced about shariʿa. Waqf policy was indeed dialectically related to studies of waqf in the school that came to be called French Algerian Law.[53] These studies[54] were elaborated by members of the

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[53] Note that these were not the first Orientalist studies on waqf, as some had been written from the Ottoman Empire. One can cite here

1. Belin (1853) *Extrait d'un Mémoire sur l'Origine et la Constitution des Biens de Main-Morte en Pays Musulman*. This is an annotated translation of two waqf documents from the court of Galata, and do not contain arguments in a debate on waqf. He does mention that "des savants judicieux" have already studied waqf at length, but who are they? Belin (1817-1877) was an Orientalist who studied at the College de France and the Ecoles des Langues Orientales. He then moved the diplomatic ladder from a translator in Erzurum (1843) to a Consul in Egypt (1846), to General Consul in Istanbul. (http://turquie-culture.fr/pages/histoire/historiens/belin-francois-alphonse-orientaliste.html)
2. Gatteschi (1884) *Real Property, Mortgage, and Wakf according to the Ottoman Law*.

In addition, the French Consuls in Istanbul had been following closely the development of waqf reforms and regulations in the Ottoman Empire. Thus, reporting to the Ministry of Foreign Affairs in June 1867, the French Ambassador in Istanbul forwarded the new law on the rentals of waqf properties, translated as "law of the reform of waqfs." He seems apologetic but also hopeful: "Cette (…) loi contient encore quelques restrictions à la complète assimilation aux biens mulk ; mais il est entendu qu'on les fera disparaître ultérieurement et prochainement" (163) (Documents Diplomatiques 1867, cited in Deguilhem 2004 :402)

It is also important to mention the massive 18th century *Tableau Général de l'Empire Ottoman* by Ignatus Mouradgea d'Ohsson, an Ottoman-Armenian subject who had strong ties to the Swedish and French governments (he was translator at the Swedish Consulate in Istanbul and his mother was French). Supposedly in part a translation of al-Halabī's *Multaqā al-Abḥur*, the *Tableau* added personal Mouradgea had a "clear intent to explain the Ottomans to the outside world (…). [He advanced] a pro-Ottoman political argument opposed to the anti-Ottoman and Russophilic views of some Enlightenment thinkers" (Findley 1999:3).

[54] These studies include (this is far from an exhaustive list, the bibliography of Terras (1899) is a good reference for further works)

1. Worms, Mayer-Gondchaux (1846) *Recherches sur la Constitution de la Propriété Territoriale dans les Pays Musulmans.* Worms claims that he had two options to complete this study: one was to study the primary texts of the law and the second to rely on the studies of illustrious Orientalists on Egypt in particular. Although he would have preferred the latter as it would have been much less tenuous, he found their works unsatisfactory. He mentions Mouradgea d'Ohsson's *Tableau*, which shows that European knowledge about Islamic law in the Ottoman Empire informed to a certain degree French Algerian Law. Despite Worms' claims, Terras (1899) accuses him of relying too much on the Ottoman example and of not examining the actual land regime in Algeria and its neighboring North African countries (96).
2. Sautayra et Cherbonneau (1873-74) *Droit Musulman*.
3. Robe (1895) *Le Habous ou ouakof : Ses règles et sa jurisprudence*
4. Tilloy (1899) *Répertoire de Doctrine et de Jursirpudence*.
5. Two articles by Mercier : « *Le Habous ou Ouakof: Ses Règles et sa Jurisprudence* » (1895) and « *Deuxième Etude sur le Habous* » (1897),a reply to Clavel, and a book *Le code du Hobous ou Ouakf, selon la législation musulmane* (1899).
6. Clavel, E. (1897) *Droit musulman; le wakf ou habous, d'après la doctrine et la jurisprudence (rites hanafite et malékite).*

"colonial school," whose members were Frenchmen intimately connected to and invested in the colonial project: colonial officers, judges, scholars, etc. The production of colonial knowledge on Islamic law in Algeria begun in the 1860s (Powers 1989:542) and picked up around the middle of 1870s (from the dates of the titles in footnote 56). It seems that many if not most of the officers did not speak Arabic, so that Mercier's "perfect knowledge and command of Arabic" was duly noted by Terras (1899:5). Powers (1989) mentions that Zeys "did not know a word of Arabic" when he was made chair of Islamic law at the Ecole de Droit d'Algiers in 1881. Yet within four years, he managed to produce a book on Islamic Law, which was used as a textbook for law students.

Legal doctrine accomplished a different type of work than legislation. For Powers, "legislative enactments would not be sufficient by themselves to carry out the objectives of French policy. It was precisely at this point that legal doctrine (…) came to the aid of legislative enactments" (Powers 1989:542). While one might disagree with the insufficiency of legal enactments to radically transform property relations, he does mention, more crucially, that the work of these Orientalist "campaigned to discredit the institution among the Algerians themselves" (536). It insinuated and transformed the very thinking and meaning of shariʿa and waqf in particular. This was an interpretation that claimed truth and fixed what Islamic law was.

Transmission of Colonial Knowledge on Islamic Law to Egypt and the Levant

7. An article by Essyautier, L.A. (1898) "*La Propriété Indigène en Algérie: Le Habous*"
8. A doctoral thesis, Terras (1899) *Essai sur les Biens Habous en Algérie et en Tunisise*.
9. Morand (1904) *Étude sur la nature juridique du hobous.*

The discourses, debates, and arguments around waqf and its reform that were first formulated in French Algeria informed and influenced those happening in Egypt[55] and the Levant, through the circulation of both texts of "French Algerian law" and people in colonial offices. The author of *Colonial Doctrine of Muslim Algerian Law* [*Doctrine Coloniale du Droit Musulman Algérien*] argue that the ties of the authors of Muslim Algerian law to other Orientalists working on the Middle East remained loose, as they were mostly based in Algeria and targeting Algerian colonial policy (1979:13). However, 'Middle Eastern' writings, in Egypt particularly, during the debate on waqf reform in the 1920s and up to the 1940s show that while the Orientalists in Algeria might not have had close ties with their fellows in Egypt and in the metropole, their discourses circulated widely and informed debates that took center stage in Egypt twenty-five years later. Reflecting the heated debates around the topic, several doctoral dissertations by French and Egyptian lawyers studying in France, at the University of Paris's Law School, between 1924 and 1928, investigated various aspects of waqf and examined the arguments of both sides from the perspectives of both shari'a and the Civil Law tradition.[56] The waqf reform project in French Syria and Lebanon was contemporary to that happening in Egypt,

[55] Egypt constitutes a key interlocutor because of two main reasons. First, its legal codes provided the blue-print of many, if not most, of those of the Arab world (Brown 1995:106). Second, it was a place where the French were refining their experience with waqf. Egypt had acquired a semi-autonomous status from the Ottoman Empire after Muhmmad Ali's successful challenge to the Ottoman Sultan, a challenge that the Ottomans were able to contain and repel only with the help of the French and the British. In 1876, Anglo-French financial control was installed in order to manage the debt that the Egyptians had defaulted on. In 1882, the British occupied the country to crush the national resistance, but Egypt remained under Ottoman sovereignty. In 1914, the British declared it a protectorate before conceding "independence" to a kingdom where they retained control over the military, security, and the Suez Canal. Legal "reforms" had started since the beginning of the 19th century and the creation of Mixed Courts in 1876 introduced a code based on the French Code Napoléon. French and Belgian judges staffed these courts alongside native judges. Despite their growing presence, the British could not Anglicize the legal system because of strong local opposition (Brown 1995)

[56] These include

1. Shoukry Bidair (1924) *Institution des Biens dits «Habous » ou «Waqf » dans le Droit de l'Islam*.
2. Abbas Yaphet Massouda (1925) *Contribution à l'Etude du Wakf en Droit Egyptien*.
3. Cotta (1926) *Le Régime du Waqf en Egypte*.
4. Youssef Mohammad Delavor (1926) *Le Wakf et l'Utilité de son Maintien in Egypte*.
5. Ahmed Zaki Saad (1928) *Le « wakf » de Famille : Etude Critique*.

and here again, pamphlets in Lebanon and Syria reflect the awareness and influence of the Egyptian debate.

Colonial knowledge and discourse on waqf was also transmitted through colonial officers who moved between the various colonies and mandates. A key figure in the administration of waqfs in French Mandate Syria and Lebanon was the delegate of the High Commissioner on real-estate, Philippe Gennardi. As Kupferschmidt mentions (2008), his near absence from histories of the Mandate contrasts heavily with his heavy trail in the archive of the Mandate in Nantes: report after report on the waqf between 1922 and 1940 bear the signature of Gennardi. Born in 1881 in the Ivory Coast, Gennardi started a military career in Algeria and Morocco, which he had to abandon at the age of 27 because of a severe injury on the field. Holding a law degree, supposedly fluent in Arabic and versed in "Muslim Law," Genneradi was transferred to Syria and made responsible for the organization of the real-estate registry and the waqf administration apparatus.

Debates on waqf also occurred among the Muslim scholarly community itself from Egypt, to Palestine, Lebanon and Syria, carrying over to cities far and near. The presence of such a conversation across these newly formed nation-states does not come as a surprise given the Muslim community's pan-Arab[57] (or at least Syrian) nationalism,[58] and its opposition to the Mandate and therefore suspicion over the Mandate's legislation and intentions for the Muslim

[57] Muslims were not alone in their pan-Arab nationalism, which counted many prominent Christians (Orthodox) in its ranks. The "Libanists," proponents of an independent Lebanon consisting of the Ottoman Mount Lebanon with the Biqāʿ Valley and the coast, were however mostly Maronite Christians and were the advocates of the French Mandate. It will be recalled that France had been acting as a "protector" of the Maronites during the Ottoman Empire

[58] Most of the Muslim notables had pledged allegiance to sharīf Ḥusayn the guardian of Mecca and Medina, to whom the English had promised an independent Arab province in the Arab Ottoman provinces in exchange of support against the Ottomans. At the retreat of the Ottoman troops, a representative of sharīf Ḥusayn's son Fayṣal, Shukrī Pasha al-Ayyūbī beat the French to Beirut. He raised the Arab flag at the Grand Serail, before the French took over with troops and support from the British (who at the end betrayed their promise to Faysal and stuck closer to the secret Sykes-Picot agreement).

community. One could find in Damascus pamphlets on waqf reform from Cairo, Aleppo, Hama, Lattakia, and Tripoli, with ʿulama' responding to each other's opinions[59] and to proposed and enacted legislation in these different nation-states.[60] The debates were heated *among* the ʿulama' themselves, as there was not a single opinion on many of the matters, like the validity of exchanges of waqf (chapter 3) and that of family waqfs (chapter 4). Despite opposition to the French Mandate, the Muslim ʿulama' were not united in their stance towards the validity of family waqfs and exchanges. Some might argue that many who supported the French legislations to limit the scope of waqf and allow its reversion to private property were "co-opted," or "corrupt" individuals seeking personal profits. One might better think, I propose, of them as "conscripts of modernity" (Asad 1992). Indeed, many were state employees, and appealed to "modernity" and "progress" in their claims. In addition, one has to account for the popular demands in the forms of petitions sometimes signed by "hundreds of beneficiaries," from Tripoli, Sidon, and Aleppo. At the same time, waqf making continued unabated, along with complaints from the Muslim ʿulama on the French control over waqfs.

"What is waqf?" French Interpretations

Before delving into the French definition or non-definition of waqf, it is worth pointing to the extent to which they first misunderstood waqf. At the beginning of the colonization of Algeria, some Orientalists did not recognize in the Algerian and North African "*habous*" the Levantine waqf. They advanced a theory that these were different institutions. After this point

[59] It is unclear to me how much the Egyptians were engaged in what was going on in the Levant, but the Egyptian legislation and Azhari opinions were of great impact in the Levant, as testified in the publications of the proposed Egyptian legislation on waqf and the Azhar sheikhs' opinions on waqf in Damascus (along with support of rebuttals of the proposals and opinions).
[60] See for example the IFPO library's collected pamphlets that I use in chapter 4. I owe the knowledge of the existence of these pamphlets to Randi Deguilhem, in a presentation she gave at the Institut Français du Proche-Orient IFPO- Beirut in 2009, and to her chapter (2004).

was clarified, the problem of definition was posed again; but this time from outside the Islamic tradition, and in comparison to a different legal tradition. What was the equivalent of waqf in the French legal tradition? One after the other, various Orientalists insisted on its peculiarity. "No Muslim institution seems so foreign to our juridical conceptions than that of the waqf," Pouyanne, first-instance judge in Algiers, declares at the start of his review essay of Terras's essay. "It does not have any like in our codes; it is not a will, nor a gift, nor a substitution per se" (Robe 1875:50 in Mercier 1899:5). It is not a will because it takes effect during the lifetime of the founder, and is not restricted in the way wills are in Islamic jurisprudence. It is not a gift because it does not require the acceptance of the receiver. Although it is compared to a fee tail/entail/settlement,[61] it is different ,because waqf "is particularly an act of beneficence and charity. (…) It is an act of both religious and civil nature" (Revue de législation 1859: 264 fn 1). If waqf was neither a will, nor gift, not a substitution, what was it then?

The question of waqf's nature[62] was one of the most difficult, if not impossible, for these French jurists/administrators to answer. What is waqf? Is it a real-estate right? Is it a personal right? This debate represented at its core "jurisdictional politics," that is "conflicts over the preservation, creation, nature, and extent of different legal forums and authorities" (Benton 2001:10). Part of the colonial order was the division between personal status [*statut personnel*][63] and real-estate statutes [*statut réel*],[64] each of which fell under the jurisdiction of different courts and followed different codes. These disputes over jurisdiction were crucial, Benton argues,

[61] Defined by the OED as "settlement of the succession of a landed estate, so that it cannot be bequeathed at pleasure by any one possessor," an entail is rendered in French as "*substitution*," and it originates from the Roman tradition of fideicommis, a process whereby a person is entrusted with an object to be given to a third [called fidéicommissiaire]. The person entrusted does not hold on to the object or manage it on the behalf of the third party.
[62] Mercier sums up his study as "Nous avons essayé (…) de déterminer la nature exacte du houbous" (1899:78).
[63] "We understand by personal status, the sum of natural or familial states that distinguish among individuals and that are the sources of rights and obligations. One can cite for example the state of being male or female, of being married, widowed, or divorced, father or legitimate son, possessing legal capacity or minor" (Commentary 37 to Article 1 in Qadrī Pasha 1936:3)
[64] "All questions related to patrimony belong, in principle, to real status"

because they embodied "cultural boundaries," between settlers and natives, between civilized and savages. The question really arose after the promulgation of a new property law in 1873, known as Loi Warnier, after the colonial officer who helped draft it. Article 1 of the Loi Warnier stated: "the establishment of immovable property/real-estate property in Algeria, its conservation, and the contractual transmission of immovables and real-estate rights, follow French law, whoever the owners are. Therefore, all real-estate rights, servitudes, and causes of resolution contrary to French law are abolished" (Terras 1929:120). Article 7 continues: "This law does not derogate personal status nor the rules of inheritance among the natives" (Terras 1899:120). Deciding whether waqf belonged to real-estate statutes or belonged to personal status and/or inheritance would determine whether its jurisdiction fell under the civil courts and French codes or the "native courts" and the shariʿa—and that was crucial in determining its main defining characteristics: its perpetuity and its inalienability.

However, the problem of classifying waqf does not arise only from subjugating a foreign institution to the categories of French law, but from an inherent problem in law:[65] its categories and changes. As Terras advances, the limits between personal status and real status are not as clear-cut as would appear. "There is no absolute criterion that allows one to clearly delimit the domains of *statut réel* and *statut personnel*" (146). (148). Finally, legal categories are themselves open to change and interpretation. When the 1873 law was promulgated, Terras reminds us, legal theory leaned towards considering all rules relating to "adverse possession" [*prescription acquisitive*], inheritance, wills as pertaining to *statut réel*, along with "laws that, for justice

[65] Muslim jurists struggled with classifying waqf as well. The question on whether waqf fell in worship acts [*ʿibādāt*] or pecuniary transactions [*mu'āmalāt*] is one that scholars had raised, as in discussions of whether waqf involved right of God [*huqūq allāh*] or rights of men [*huqūq al-ʿibād*]. However, they concluded that actually waqf was a mix of both. This would not cause such a problem when both are elaborated by the same jurists, and are part of the same "divine law." The problem that the placing of real-estate property under French Law opened was the contradictions between the prescriptions of the shariʿa and those of French Civil Code. In short it is the question of the perpetuity and alienability of waqf that is at stake.

purposes or consideration of social economy,[66] prohibit certain modes of alienation" (146). Therefore, Article 7 provided an exception to the general statement of Article 1. Article 1 therefore abolished all real-estate rights except one type of such rights, the laws of succession. Terras, nonetheless, points to the shift in approach to these laws of inheritance, as appears from the decisions of Tunisian courts: "inheritances, even of immovables, are governed by the national law of the deceased [*de cujus*] and belong therefore to the *statut personnel*" (147). Therefore, inheritance was thought to belong alternatively to each, because in fact, these categories do not square with the complexity of legal and social relations. "Because of the complexity of the legal relations it engenders, legal institutions, as a totality, do not appear as homogeneous as to be classified with rigorous precision. In reality, they are composed of many legal provisions [*dispositions juridiques*], some of which belonging to *satut personnel*, the other to *statut réel*."

In Lebanon and Syria, the French Mandatory powers did not "define" waqf, or issue a comprehensive waqf law, like they did with real-estate, or commerce, or criminal law. In some ways, then, the project of the state adopting a single definition of waqf and having a single legislation on waqf appeared as a project that could only be pursued, even as a project, under certain conditions (as happened in Egypt[67] and Turkey). The various waqf codes of Qadrī Pasha and Ömer Hilmi did not become state law that defined what waqf was, in Lebanon. They became one among many opinions on the matter of waqf, even if their form rendered them more

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[66] I will elaborate on the purposes behind these legislations in chapter 4.

[67] In Egypt, a 1946 Waqf Law (no. 48) adopted the validity of temporary waqfs, except for mosques (it is important to note however that the Law was not comprehensive and still left any undecided issues to the shariʿa: this actually supports the argument I make in chapter 2, that the idea of a cohesive state with control over law, is a project) After the 1952 Revolution, the government aiming at the abolition of feudalism and agrarian reform, issued a new law (no.180) prohibiting any waqf that is not for a charitable institutions [*khayrāt*], like a mosque or a fountain, and prohibited the foundation of waqfs dedicated to families. It also "ended" [*yuʿtabaru muntahiyan*] existing family waqfs and reverted their ownership from God to the beneficiaries. Finally, in 1953, a new law allowed the Waqf Ministry's use of waqf revenues for any charitable purpose independently of the will of the founder (Siraj 2006:18-21, Baer 1958).

accessible to judges and lawyers trained in the civil law tradition, and with the procedure code coming from that tradition.

As the preamble to the decree organizing the administration of waqfs in Lebanon noted, “The administrative and judicial laws applied on waqfs are taken from religious shariʿa, which differs considerably from the laws that are applied in other governmental offices.” Jurisdiction over the foundation of waqf belonged to the religious courts that were to apply the shariʿa.[68] However, as partly real-estate, waqf was regulated on matters pertaining to patrimony in the civil code. Therefore, these various state-issued civil codes contained rules about waqf. In addition, certain legal ordinances around waqf exchange were issued by the French High Commissioner, such as Decision 80/1926 for the exchange of waqf immovables. Later on, however, the legislation over the administration of waqfs was given to a Supreme Waqf Council (later renamed Supreme Islamic Legal Council), which issued waqf legislation on exchange, including Decision 3/1930 revisiting the exchange of waqfs, and the ordinance for the rental of waqfs (n.d.). Therefore, the jurisdiction over the legislation on waqf according to the shariʿa was also split between the shariʿa court and the Supreme Waqf Council. These codes, particularly on exchange, allowed or even forced[69] the exchange of waqfs against cash and the reversion of waqfs to the ownership of beneficiaries, and therefore made waqf revocable, without tackling its definition as such.[70]

Since waqf involved “assets” and “patrimony,” it was regulated in the 1930 Real-Estate Code, which defines land categories parallel to the 1858 code: *milk*, *mīrī*, *matrūka*, and *mawāt*. When compared to the 1858 Ottoman Land Code, it becomes clear that the waqf lands have here

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[68] This was instated in the post-colonial l962 legislation on the jurisdiction of shariʿa courts, which included: “the waqf: its qualification [*ḥukm*], irrevocability [*luzūm*], validity, conditions, beneficiaries, and division [*qisma*]”
[69] Whether the exchange was forced or optional depended on the rights that existed on the waqf. Certain types of rights were to be eradicated.
[70] Post-colonial legislation on family waqf (1947) also forwarded de facto temporary waqf.

been completely displaced from a 'category' or a 'type' of land to a right on real-estate property. Articles 174 to 179 of the Code deal with waqf. However, unlike the rest of articles tackling various rights (like possession, usufruct, etc.), they do not begin with defining these rights, what they allow, or the rights and duties they create. The first article of the section just states: "it is not permitted to sell, dispose of, transmit through inheritance, or pawn a waqf-ed immovable but it is possible to exchange it, and to establish a dual-tenancy or a long-rent[71] on it" (Article 174). Here although this is not explicitly stated, waqf is implicitly defined as inalienable. Then, Article 179 specifies that "the regulations concerning the founding of a waqf, its validity, aim, division [*qisma*], rental, and exchange are specified in the special regulation pertaining to it." In the same section, dual-tenancies and long-rents are discussed and codified, in terms of the rights they give, the duties incumbent upon their possessors, and the way they can be transmitted and voided. Without a comprehensive law on waqf legislated by the Supreme Waqf Council, more and more aspects of waqf were being legislated by the civil code, and constructed as pecuniary 'transactions' rather than 'worship' acts. It is mostly the intentions and aims of a waqf that are left to the shari'a, since as we saw, some issues of rent, while ostensibly left to the shari'a, were also dealt with in the text of the 1930 code.

Creating Waqf as a Legal Person

The real-estate code made the legal effect of waqf incumbent upon its registration in the real-estate registry[72] (Article 176). Following that, waqfs were therefore noted in the real-estate registry, a process that, I will argue, redefined waqf and allowed its existence as a moral person

[71] These are types of leases that give long-term transmissible rights of use and usufruct on the waqf, against an original lump sum and small yearly or monthly installments afterwards.
[72] In some places then the religious courts' decisions were not legally binding, but were subordinated to civil procedures.

in the Western legal sense. The new property regime with its new categories misrecognized the subjects and objects of waqf, creating a fair amount of confusion and opening the door for a dispossession of some of the right-holders to the advantage of others, including the state. Let me illustrate with an example from the Beirut court records, which I was also able to follow through family archives and oral histories.

On Tuesday 21 February 1854, Mustafa agha Qabbānī, a merchant and an Ottoman resident of Beirut, carried out a big operation of waqf. Mustafa agha drafted three separate deeds to create three waqfs with different beneficiaries. The largest included many shops he owned in the souks of the walled city, and big chunks of a piece of a garden [*bustān*] just outside the walls in up-and-coming Zuqāq al-Balāṭ. The beneficiary of this endowment was his family. Mustafa agha also parceled out two smaller lots from his garden in Zuqāq al-Balāṭ, and made each into a waqf. One was also dedicated for his family, but rented out for 200 piasters a year through a long-term contract to the then-head of customs. Mustafa agha dedicated the second piece of his garden, the third waqf, and the subject of our scrutiny here, to his daughter, ʿA'isha Qabbānī. ʿA'isha was his third daughter from his first marriage, and was married to a scholar, Muhammad al-Ashrafī, the muftī of Beirut at some point. In the waqf deed, the founder allowed ʿA'isha to build whatever she pleased on the land and it would be her own.

Between 1854 and 1905 when she died, ʿA'isha Qabbāni, in turn, allowed her husband to build on the endowed land, using his own money, a house, a guesthouse, and a few other small rooms/buildings. Since her husband built these objects using his own money, with ʿA'isha's consent, he had various rights to dispose of them, as long as he paid the land-rent owed to the waqf. In 1875, the husband in question, Muhammad al-Muftī al-Ashrafī, relinquished the ownership of these trees and houses to God and dedicated their yields to his wife, and after her

death to their children, and if they had no children to his six brothers and sisters. ʿA'isha's husband died before her, and she became the administrator and beneficiary of the waqf her husband created. However, when she died herself, she left no sons or daughters, and therefore the beneficiaries of her husband's endowment were his brothers and sisters, while the beneficiaries of her father's endowment were her heirs, that is, her brothers and sisters.

At first impression, property relations around that piece of Mustafa Agha's garden agha seem to be somehow removed from common understandings of "private property" today. Here is a piece of land that has been endowed for a certain beneficiary, and on this same garden, houses and trees belonging to a different person and then dedicated to yet another set of beneficiaries. How could one "own" trees and buildings but not the land on which they exist? In fact, this scenario is not so different from contemporary property relations in the West. When buying a condominium in New York City, for instance, one does not also acquire shares of the land. One buys the airspace of one's apartment, while the land and common areas are held in common. In the UK, where the Queen remains the largest landowner, long leases over 99 years allow developers to build and sell anything from shopping malls to apartment buildings, with the agreement that the lease be renewed. If one shifts the language of analysis from "ownership" to "rights," the description of the endowments on the garden of Mustafa agha would appear to be less of a conundrum. ʿA'isha had the right of usufruct of the land, and therefore allowed her husband to build. He originally had the right of alienation, usufruct, and use of the house he built. He then forwent this right of alienation (when he endowed it) and transferred the right of usufruct and use to ʿA'isha, and then his heirs.

ʿA'isha's brothers were not very pleased with her husband's endowments, as it excluded them from any claims on the usufruct or use of anything built or planted on the waqf their father

founded. Lawsuits succeeded one another between the Qabbānīs and the Muftī al-Ashrafīs. In 1883, one of ʿA'isha's brothers claimed and was able to get a ruling arguing that ʿA'isha's husband had built beyond the limits of the piece of land that her father had endowed for her (BSC Ah29/44/142). In 1918, disputes had escalated to a degree as to require the intervention of the Waqf Director sent from the Waqf Ministry in Istanbul. ʿA'isha's brothers claimed that the administrator of the waqf of Muftī al-Ashrafī had sold them the houses that existed on the land, and that they were now their righteous owners. The court, however, ruled that the administrator had betrayed the waqf and that his sale was illegal and void. The administrator was therefore dismissed, and the Waqf Director made to administer the waqf in the interim. Most importantly, ʿA'isha's brothers were required to vacate the buildings and to pay the rent they owned for having occupied the buildings for eleven and a half years. In this case, the court confirmed the rights of the Muftī al-Ashrafīs. The quarrel does not end here, however. With the withdrawal of the Ottoman Empire and the French occupation, a new land registry and land code were instated. These re-arranged the various rights and provided new categories that the quarrelling parties had to use. These new categories favored one of the sides, in this case, those who had the knowledge to navigate the new French-created legal system and courts.

French legislation first introduced a new land registry (Decrees 186,188, and 189 dated 15 March 1926), whose novelty lay in its being based on maps. The registry, however, did not explicitly modify the Ottoman categories in use at the time.[73] It allowed therefore to preserve certain "facts," while opening the possibility of their re-categorization. On February 6 1929, the Land Surveying Commission arrived to Zuqāq al-Balāṭ. The house endowed by Muhammad al-Muftī al-Ṭarābulsī was inhabited by some of his heirs, three of his daughters from a different wife than ʿA'isha (Fāṭima, Naẓīra, and Yusr). The details of the decision of the Surveying

[73] Even if this would follow four years later.

Commission note in very abstract terms that it has decided to register the lot "in the name of the heirs of the deceased Muhammad al-Muftī al-Ṭarābulsī." The language of Commission does not specify the articulation of the various rights: if lot 340 is "in the name of their heirs" does it mean they have alienation rights to it? Are they beneficiaries, i.e. do they have usufructuary rights?

The original minutes of the record [*maḍbabaṭa*] registered the details of the various rights, as they appear from the various documents I just described. In the "legal type of lot," the surveyor had written down "waqf." This notation continues the categorization of lands as per the Ottoman Code. However, in the row with the "name of the landlord/owner" "the waqf of the deceased Muhammad al-Muftī al-Ṭarābulsī, and his heirs" was jotted down and the row titled "name of the waqf, type of right, amount of deferred rents, lump sum rents, and tithe" was filled with "family waqf." In the miscellaneous details row, we learn that "the land on which the house is built is private/specific/particular to the heirs of ʿAbd al-Qādir Qabbānī and the built-up areas to Muhammad al-Muftī al-Ṭarābulsī, the waqf-maker." The various facts noted in these records (that it is a waqf, that the land belong to the Qabbānī waqf, and that the built-up area belongs to the Ashrafīs) correspond to the different rights that I described above.

The information is dispersed in a new type of registry, with a "one format fits all" table containing rows and columns with headlines based on freehold, or consolidated rights, leading to the transformation of endowments mostly from an object around which property relations are articulated to a subject in these relations. For endowments for instance, the category of owners/co-owner does not represent any kind of useful information, as endowers forfeit ownership to God. A more fitting category in this case would be "administrator" and "beneficiaries." However, surveyors did not have such an option, and had to subject the

information to the space and structure of the table. Thus, the waqf became the "owner" of the newly created plot 340. In addition, the multiple waqfs could not be registered, and the title of "owner" fell upon those who were there at the time, the Muftī-Ashrafīs, while the rights the Qabbānīs held were relegated to the fine points around the lot—the Qabbānī name not even mentioned in the decision of the Commission. With its single table per plot, the new property registry did not allow for the multiplicity of rights to be concomitant: it hierarchically classified these rights with one of the right-holders having the title of "owner."

This episode of the registry does not exhaust all the possibilities that the French Mandate legal changes and property regime opened, like different jurisdictions, rules of evidence, and rules of exchange. Not every citizen knew of these possibilities, and many rights were lost during registry. However, the Qabbānīs happened to be "in the know," as Abd al-Qādir Qabbānī had been involved in government in Ottoman times and served on waqf committees during the French mandate (Manāṣifī 2008:48). His son Rushdī was also trained as a lawyer and followed up with the case. Abd al-Qādir objected to the registry and appealed the decision of the Commission, arguing that the land had been endowed for ʿA'isha Qabbānī and that the building on it was her "private property." Because the lawsuit pertained to the validity of waqf, it fell under the jurisdiction of the Islamic Court. Both parties brought documents: the waqf deed of Mustafa agha, that of Muhammad al-Muftī al-Ashrafī, and various other documents to prove their claims. The court examined all documents, and in its decision, ruled that the waqf of Muhammad al-Mufti was invalid.

The decision is surprising since it had been used in another lawsuit that took its validity for granted. We can see here new rules of evidence at play. The decision states: "it has not been proved legally and with official documents that the land was a *ḥikr* from Mustafa agha."

However Mustafa agha also did not provide proof of his ownership of the land he was endowing. The "glitch" with al-Muftī al-Ashrafī's waqf deed, however, is that it stated explicitly that the waqf object was the "building and trees in the land that is a *ḥikr* from the garden of the Hajj Mustafa agha." The court ruled that such a statement implied an acknowledgement [*iqrār*] that the land did not belong to Muhammad al-Muftī al-Ashrafī. Upon such an acknowledgement, the court continues, no claim can be made on the building on that piece of land, as the building follows the land. Given that one cannot endow any object that is not one's freehold, the waqf of al-Muftī al-Ashrafī was invalid. On July 16 1930, the earlier registry decision was reversed and judge ruled to "register the land in the name of the waqf of ʿA'isha Qabbānī and to register the building as the freehold (private property) of the heirs of ʿA'isha." In short, the new legal regime allowed the Qabbānīs to displace completely the claims to the al-Muftī al-Ashrafīs.

The registry episode represents but one moment of the conflict that the new property regime enabled around ʿA'isha Qabbānī's waqf. For many years to come, indeed, up to this day, the Qabbānīs quarreled among themselves (and we will follow some of these disputes in chapter 4) and with the Directorate General of Islamic Waqfs. Beyond this particular conflict, however, legal reforms paved the way for the transformation of the understanding and practice of charitable endowment. By misrecognizing the main characteristics of Ottoman waqf practices and making "waqf" a person, i.e, the "owner" of the lot, the new property regime opened the way for the use of waqf exactly as such, as a "legal person" who could buy, sell, etc… It opened the possibility for a new use of waqf, as a legal form/instrument [*ṣīgha*] and as a legal person. Today many of the new waqfs are either mosques and various Islamic foundations, or they exist mostly as legal persons very much like a corporation or a non-governmental organization. Their waqf

foundations do not include objects, at all. Let me turn to explaining how the legal possibilities intersected with historical contingencies to make the waqf as legal person a practice.

IV: CONTEMPORARY WAQF PRACTICES: MULTIPLE DEFINITIONS, WAQF AS LEGAL PERSON

The human rights waqf I began my introduction and this chapter, with is "Al-Karāma [Dignity] for Human Rights" (http://ar.alkarama.org/), an international human rights organization based in Geneva. It was founded as an association [*jamʿiyya*] in 2004, and became a Swiss Foundation [*mu'assasa*] in 2007 (according to their website). Lebanon is but one site among the 18 Arab countries where the organization operates, dealing mostly with arbitrary detention. Its main founder is a Qatari sociologist who used to be close to the Emir but who was imprisoned without a sentence for a few years because of a critique he had voiced about Sheikha Mozah, the Emir's third wife who has a highly public and active profile. The reformist Salafi was only released after pressure by the United Nations. He belonged to certain trends in Islam that were perceived by the regimes to be unorthodox and whose proponents consequently suffered similar repression as their secular liberal compatriots. Ideologically then both were convinced of the lack of freedom of expression and the need to create a machinery to monitor and help have international connections that could be force international regulations and agreements in such abuses. The founder attempted to join the Arab Commission for Human Rights, founded in France in 1998. The commission, whose members were secularists, did not welcome him because of his Islamist leanings. The common causes of "freedom of expression," protection from arbitrary detention,

and the creation of mechanisms for navigating the enforcement of international agreements on human rights were not enough to draw the two opposing ideologies together.

The founder found like-minded Islamists and began the organization, which has obvious Islamic overtones. Qatari funding supported a group of North African political refugees based in Europe (Algerians of the FIS [Front Islamique du Salut]), who brought their experience in human rights activism/mechanism [*āliyya*] and elected Lebanon to found a human rights organization in the form of a waqf. The waqf foundation I had seen, the lawyer of the organization told me, was in fact not only for the Lebanese branch, but for the whole foundation. Indeed, he explained, in Arab countries, non-governmental organizations cannot be established except through "a very official manner." In Lebanon, foreign organizations need the approval of the Cabinet. There are also restrictions, like the fact the 75% of the founders have to be Lebanese, which makes it very difficult to get a license especially for an *international* human rights organization [*jamʿiyya*] without political backing. Most international human rights organizations thus work without permits. The discourse of the lawyer portrayed the Lebanese State as an oppressive regime, with an understanding of the political that was state-citizen centered, and saw "civil society" as a non-political realm. He explained that the Lebanese State easily handed out permits for NGOs concerned with women's and children's rights,[74] but was very wary of those that directly addressed the relationship of the citizen to the state, those that are overtly political. Faced with these legal restrictions to founding an NGO, even in relatively liberal Lebanon, the choice fell on founding a waqf because of the relative ease with which one could do so. As a senior member of a different association that founded a few waqfs told me, "a waqf is the easiest way to start something like an association because you can do it with $50 and you can start working. It is less than the fees you pay for registering an NGO!" Al-Karama's

[74] such associations were regulated by the Ottoman law of associations of 1909/

founder used waqf to escape the control of the modern state, whereas the very possibility to actually found a waqf as a moral person, in lieu of an NGO, as well as the measure of autonomy afforded to religious courts in Lebanon, is the result of possibilities brought by the modern capitalist state and the property regime it instated.

Founding an association for public benefit [*jamʿiyya dhāt manafʿa ʿāmma*] is regulated in the civil code through Decree 87 on Public Benefit Associations of 1977, while that of an NGO through the 1909 Ottoman Law of Associations. There are constraints and restrictions to an association: five people are needed to form one, elections need to be held for its board. A local NGO can be operated through a simple public notice [*ʿilm wa khabar*].[75] In addition, since it was an association for public benefit, it could benefit from tax-cuts and various kinds of exemptions and reductions on phone tariffs for instance, as well as access to funding from the Ministry of Social Work by participating in some of their programs. However, both an association for public benefit and an NGO are ultimately accountable to an organ of the state. The Cabinet or the Ministry of Interior, respectively, could dissolve them, if they constituted a threat to national security.

On the other hand, "charitable" waqfs, as I described above with the French mandate, were left to Muslims to regulate as they were considered to be part of "religious affairs" of the community (chapter 2 elaborates on this at length).The regulations for waqf were not codified as state law. As the lawyer mentioned, they are "*flou*" or blurry, and this blurriness could afford them room for maneuvering. Since judges are not bound by a codified law and rule based on the

[75] There is a disagreement between the Ministry of Interior and various social activists about the way an association is founded: whether it needs a previous authorization or if the association just needs to let the Ministry know through a public notice. The Ottoman 1909 law requires the latter, while there was a Decree issued in 1983 (so around the Israeli invasion, converging with the analysis of Hajj Tawfīq regarding the freedom of association and its curtailment) requiring preliminary authorization [*autorisation préalable*], the decree was abrogated in 1984. The Ministry of Interior still insists on authorization. The Constitutional Court ruled against the practice in 2003 (from Tatar Liban Law, http://www.libanlaw.com/Docs/WT_Ar_Benevolent%20Org.doc)

most "authoritative" [*al-arjaḥ*] view on the school, each could exercise their own interpretation, reading, and assessment of the various opinions prevalent in the *fiqh*, independently of school, founders and experts explained to me.[76] Judges could decide on what they thought were acceptable objects waqf, as well as charitable purposes. Some, for instance, accepted to found "cash waqfs," like al-Karāma, while others refused.[77] One had to find a judge who supported such a waqf. While waqfs cannot engage in political activity, their perpetuity ensures that they cannot be dissolved. The judge can only hold accountable the administrators of the waqf in case of misuse of funds or purpose. "Waqfs have their sanctity [*ḥurma*], and their financial liability [*dhimma*] independent of the state, they cannot be confiscated or sold; they can only be exchanged for another lot or for a monetary equivalent" (Ḥūrī n.d.:4).

When I first contacted the administrator of al-Karāma and asked him how the founders came to the idea of making a waqf, he was very matter of fact and pragmatic about the decision: its "Islamic character" or "pious purpose" did not surface. Their lawyer had researched the advantages and disadvantages of waqf as compared to those of an association [*jamʿiyya*]. Waqf, he said, provided a legal instrument [*ṣigha qānūniyya*] and a legal person [*shakṣiyya*

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[76] This is not exactly the case, as Clarke (2011) describes, as "the respective presidents of the two sets of shari'a courts very effectively impose a consistent line, policed through the appeals courts they chair" (109). Clarke provides perhaps the only ethnography of the work of judges in Beirut, and he provides a very appealing analysis of the tragic tension of the judge's careers between being good scholars and good judges.

[77] Cash waqfs was a very common waqf in the core regions, but were almost non-existing in Beirut, with only one such instance in the registers of the nineteenth century (MBS.S40/10/845). At the beginning a peripheral affair, they generated a controversy in the Ottoman Empire when they started to dominate waqf-making in the core regions (Anatolia) (Mandaville 1979). Mandaville argues that for jurists cash was problematic from two standpoints: first, it was a movable, whereas the accepted waqfs were mostly immovables, unless *custom* in certain areas was otherwise, so the endowment of books and cultivation instruments and animals were allowed based on the argument that custom allowed it. It is by appealing to custom that this argument about waqf was repealed. The other problematic issue was about perpetuity, more accurately cash's lack thereof: money can be devalued or lost. Ebü es-Suud argued that land also could be exhausted and could be exchanged, so in fact it was only a matter of time and faster roll-over for cash, so the argument was also dismissed. It should be noted here however that these earlier types of cash waqf fall in the same kind of waqf I described earlier in that it is usually a non-negligible amount of cash that is waqf-ed, so that its revenue (interest from lending or profit from employing it) could actually be significant enough to support a charitable cause. It is a capital/principal that produces revenues. In the case of al-Karāma, the $100 are actually pro-forma just to create the waqf. The revenues necessary for the operation of the waqf are then collected through donations, grants, etc. held in the name of the waqf.

maʿnawiyya] for these actions [*taḥarrukāt*]. After the initial foundation as a waqf, Al-Karāmah did not work within the framework of the waqf. The waqf just gave them a legal body. Such a strategic use of waqf as an NGO and as a legal person in Beirut and Lebanon can be traced to a historical conjuncture and the self-ascribed *ilhām* [inspiration] of Hajj Tawfīq of the Imām Awzāʿī Islamic Studies College [*Kulliyyat al-Imām al-Awzāʿī l-il-dirāsāt al-Islāmiyya*].

I came to Hajj Tawfīq through a winding road. The lawyer of al-Karāma traced his exposure to waqf to a course/workshop on "Waqf and Collective Duties [*al-Waqf wa Furūḍ al-Kifāya*]" led by Abū Ṣalāḥ of the "Islamic Charitable Association of Guidance and Reform" [*Jamʿiyyat al-irshād w-al-iṣlāḥ al-khayriyya al-islamiyya*]. When I interviewed Abū Ṣalāḥ he pointed me to Hajj Tawfīq, who is interested in what Abū Ṣalāḥ termed private waqf [*al-waqf al-khāṣṣ*]. It was a booklet that Hajj Tawfīq had published on the so-called private waqf that opened the window of waqf before them, explained Abū Ṣalāḥ. The booklet, he remarked, contained all the documents (and procedure) necessary to transform an association into a waqf. The thirty-page booklet published in 1989 is in fact titled the "Islamic Charitable Waqf." The idea of 'private', nonetheless, must have come from the fact that these waqfs were not under the supervision or administration of the Directorate General of Islamic Waqfs,[78] but had an administrator that the founder could nominate and were actually under the supervision of the religious courts and their judges. Abū Ṣalāḥ credited Hajj Tawfīq for the revival of the idea of waqf in the middle of the 1990s (1995-7), a revival that echoed the revival of the Zakāt Funds [*ṣanādīq al-zakat*] of the 1980s. The practice of waqf had faltered so much that when Abū Ṣalāḥ and some members of the "Association of Guidance and Reform" went to the waqf judge to draft the first waqf foundation for the mosque of al-Sultan, there then was a big confusion because no one had founded a waqf in a long time, so neither the judge nor the scribe knew how to draft

[78] I discuss in depth the relation of waqfs and waqf law to the state in the following chapter.

such a document. There was some production in the court: they went and looked at older documents in the Ottoman register and asked the older generations of judges. At the beginning of the resurgence of waqf foundation, since this use of waqf was simply new, banks didn't know what to do with this entity: could they open an account for it? Eventually, waqf foundation became more common again, but it still remains far from frequent.

The idea of waqf as NGO has been legally possible since the Mandate regulations, but the conjunctures that allowed it to exist as a practice would only arise in the 1980s. The idea of using waqfs instead of NGOs, or of transforming existing NGOs to waqf, was, in his own words, a God-sent inspiration for Hajj Tawfīq. It actually preceded the "waqf revival" that Kuwait initiated in the 1990s.[79] But waqf had been, and up to this day continues to be, one of the very ways through which the Israeli dispossession of lands had been possible.[80] Therefore when Israel invaded Southern Lebanon in 1978, the idea of waqf for a man from the generation that had endured 1948 and was very much in touch with the Palestinian struggle was not totally foreign. In 1982, when the invasion reached Beirut, General Security [*al-amn al-ʿāmm*] revoked twelve permits of seven Islamic and five Christian associations, because they were related to parties opposing Israel. This move brought to the Hajj uncanny resemblances to the Israeli strategies in Palestine, and crystallized the idea that political factions could use the power of the state to threaten the operation and existence and basically silence opposing parties. Along with it, the experience of waqf in Palestine forwarded the waqf's independence from the state as a way to

[79] In the introduction of the 2004 Deguilhem and Hénia book on waqf, a note from the editor (the Public Foundation of Waqfs [*al-amāna al-ʿāmma l-il-awqāf*] in Kuwait, founded in 1993) describes the book as part of a "strategy to promote waqfs" (7) adopted by the Executive Committee of the Conference of the Ministry of Waqfs and Islamic Affairs in Muslim Countries in 1997. It designated Kuwait as the coordinating state for this project to "revive waqf and develop its socio-economic possibilities for the profit of Muslim societies" (7). Scientific research on waqf, its law and historical manifestations, was encouraged through an international competition for research on waqf, a "scientific journal," and even fellowships for doctoral students.

[80] See for example Yazbak (2010), Khayat (2010), Dumper (1994), Reiter (1996, 2007), Ashtiyah (1962), and Shaham (1991) for the Christian and Jewish Waqfs.

found Islamic organization without such a threat. They founded in 1979 the Islamic Center for Education. It took a few years, and the dreadful events of 1982,[81] to convince the board of trustees of the Association of Benevolence and Beneficence [*Jamʿiyyat al-Birr w-al- Iḥsān*],[82] of which he was a member, to convert the association, and all of its schools and university campuses, into a waqf. Waqf, explained the director of the Association of Benevolence and Beneficence, allows for the preservation of property from the intervention of political power [*al-sulṭa*].

Because waqf revival came from Muslims familiar and active in social and educational work working through associations and NGOs, the new waqfs adopted much of the format of NGOs: they have internal regulations instead of just founder stipulations, and an administrative board in lieu of an administrator. The name that the Hajj Tawfīq's booklet gives to these waqf is "Charitable waqf of public benefit" an amalgamation of the fiqh category of "charitable waqf"[83] with the "of public benefit" of 1977 law of "Association of public benefit." In fact, Hajj Tawfīq's booklet particularly describes samples of documents to be presented to the religious court for the transformation of Associations into waqfs. One would address the judge with a letter attesting that "the Board of Trustees [of the Association] has decided to make into a waqf all the institutions of the association and its movable and immovable possessions" (1989:10). Notice that the famous object that is made into waqf, which both definitions outlined in the first section require to be a usufruct-bearing *res*, movable or immovable, becomes here an institution. For instance, in the waqf of the Islamic Center for Education, the phrasing is "made into an Islamic

[81] This is the date of the Israeli invasion that reached Beirut and included the massacres of Palestinians in Sabra and Chatila.
[82] Inhabitants of the predominantly Sunni Muslim Tarīq al-Jdīde had been founded the association as an NGO in 1937 through a *ʿilm wa khabar* from the Ministry of Interior as way to promote Islamic education and various charitable purposes serving Muslims. They created the Arab University, with support from Egypt, in the 1950s to counter the "Christian missionary founded" American University of Beirut and Université Saint-Joseph.
[83] Chapter 4 discusses at length this category and its grammar, and how it has changed with the modern state.

charitable waqf all that is related to the Islamic Center for Education, be it immovables or movables, present or future." The use of cash, like in the case of al-Karāma, brings these foundations more in line with the requirement of the fiqh, even if the cash is not used as a revenue-bearing principal but as a place-holder to create the legal person of the waqf.

In our animated discussions about the differences between pre-modern and contemporary waqf practices, Hajj Tawfīq insisted that the new waqfs were indeed different from the old ones. In fact, not only different, the new waqfs were *better*. He insisted that that in older times, waqf was not thought of dynamic [*ḥarakiyyan*] meaning that civil work [*al-ʿamal al-ahlī*] used to take a specific shape, and a fixed one, a building, a shop: . He says they were the ones to have introduced in Beirut the concept of the "dynamic waqf" [*al-waqf al-mutaḥarrik*], a waqf that is based on institutions and universities. For Hajj Tawfīq then, the way waqf used to finance certain institutions *fixed* the "flexibility" of movement that one could have in markets. It echoes very much modernist arguments (that I will discuss further in chapter 4) that waqf was outside the market and thus incompatible with development (Klat 1961). This view remains anchored, even in Hajj Tawfīq's discourse. However, the waqf as NGO that has no object but can itself be the subject of property relations and "own" property allowed these organizations to "escape" this predicament.

One could argue that these new waqfs were actually NGOs that, instead of being under the scrutiny of the Ministry of Interior were under the more sympathetic scrutiny of the religious courts and judges, which are actually under the Prime Ministry. It was therefore not state power that these waqf were avoiding but a certain branch thereof, and they navigated the ambiguities of legislation and jurisdiction to create a new entity, the charitable waqf of public benefit. Therefore, the state loses its coherence, and, instead of waqf against the state, we see founders

navigating ambiguities of authority and jurisdiction between of the mufti, the Chief Justice of the religious courts, the judges, the Ministry of Interior, and the Prime Ministry around waqf. Things got a little out of hand, and people started making a "few waqfs and putting them on the side," Abū Ṣalāh explained, in case they decided to one day work through them. They started with little capital and used the official document and the legitimacy offered by waqf as a way to collect donations. There was some talk of fraud, of people collecting money for the waqf and disappearing. The mufti of the Lebanese Republic explained, "All of a sudden, there was a burst in waqf-making, not land and property: 10 computers or a $100. The abundance of waqfs is suspicious [*tuthīr al-tasā'ul*]." While some such waqfs were indeed frauds, many also challenged the institutions of Dār al-Fatwā: a waqf to create a competing zakat fund, for instance. The Mufti of the Republic used his position as the highest authority on waqf (according to Legislative Decree 18/1955) to issue a decision requesting each judge to relegate to the mufti every waqf procedure that came to the judge, for final approval. The decision overworked the mufti as he had to contact the various judges and regional muftis and chief-justices, since he did not know the people making these requests. In addition, it was almost impossible to enforce, especially in the peripheries: the judges were not legally accountable or responsible to the mufti, but to the Chief Justices, and the Prime Ministry. If they were bound to him it is because of his position as the most learned. The Decision therefore exacerbated tensions between the Chief Justice (particularly in Beirut) and the mufti.[84]

Despite his attempt at regulating the creation of waqfs as NGOs, the mufti himself very much understood waqf as legal person, as appears in the transformation that occurred to the ubiquitous but extremely opaque and controversial "Waqf al-ʿUlamā' al-Muslimīn al-Sunna," or

[84] The Chief Justice of Beirut appears to be harboring certain desires and plans at becoming Mufti, threatening the existing mufti.

the ʿUlama' Waqf. I first encountered that waqf (because indeed it was a moral person) in a conversation with the lawyer of the DGIW, when asking him about the waqf-ed lots that were under the supervision of the DGIW. He showed me a list, but told that this did not include the "lots of Waqf al-ʿUlama'. Waqf al-ʿUlama' was originally a waqf like the hundreds of waqfs noted in the courts of Beirut. In its structure, its *waqfiyya* followed exactly the structure I described above based on the students' definition. It would have easily passed unnoticed, unremarkable were it not for its illustrious founder, the Ottoman Governor of the province at the time, Naṣṣūḥī bey. On May 3rd, 1895, the said founder surrendered the ownership of an 875 m² lot to God and dedicated its revenues to the students of legal religious sciences [*al-ʿulūm al-dīniyya al-sharʿiyya*]. The founder divided the revenue among teachers and students, and dedicated 2/5 of 1/3 of the revenue to the administrator of the waqf, which he assigned to the mufti of Beirut.

At the end of 2006, the mufti addressed a judge of the religious court asking for a new foundation deed. The mufti spoke in his capacity as the administrator of the ʿUlama' Waqf,[85] which was therefore not under the administration or supervision of the DGIW.[86] The process itself is unexpected but could be analyzed in a tradition of renewing deeds and restating waqfs in order to preserve them. It was a practice that Sultans sometimes carried out upon their ascension, or at random times every few hundred years. However, the reason behind the mufti's request was different. He describes how various muftis before him bought "lots for the ʿUlama' Waqf" and registered them under the name "Muslim Sunni ʿUlama' Waqf administered by the mufti of the

[85] The position of Mufti of Beirut became the Mufti of the Lebanese Republic (as I explain in further detail in chapter 2), making the Mufti of the Republic the administrator of the waqf.
[86] This might be a little confusion because in the newly founded Lebanese Republic the mufti was legally the highest authority on waqf. However the DGIW was the effective supervisor and administrator of various waqfs (further described in chapter 2).

Lebanese Republic."[87] Notice that these practices of buying "for the waqf" already suppose the waqf as a legal person that could own lots (as compared with the above-mentioned opinion of Hilmi Efendi that buying for the waqf does not necessarily make the object to be part of the original waqf). The current mufti followed his predecessor's lead in buying for the waqf, and notes in his memorandum that these lots "have become appended to the principal [*aṣl*] of the waqf." Therefore, he argues, it is necessary to document this waqf with a new waqf deed that notes the new "name" that the waqf has acquired and its new objects. The mufti requests the new waqf deed to explicitly state and consider the "Muslim Sunni ʿUlama' Waqf under administered by the mufti of the Lebanese Republic" a "charitable waqf having its own moral and legal personality that is completely independent of the DGIW, since the day of its foundation by Naṣṣūḥī bey." In this request, the transformation of the waqf from an object to a moral person becomes particularly stark as the mufti struggles to subject the old foundation deed to the new understanding of waqf, requesting a rewording of the original foundation deed that would have been un-utterable in the late nineteenth century when the deed was drafted.

The dominance of the understanding of waqf as moral person appears in the near absence of new foundations that approach waqf as revenue-bearing object that supports a charitable purpose. The only exception I encountered was al-Faḥl's waqf (MBS.H 2003/134), which waqf-ed a piece of land for the charitable purposes of creating an Islamic center, which included a mosque and various shops to support the operation of the center. Hajj Tawfīq commented that this waqf was problematic precisely because the founder "wanted something between a waqf and

[87] The practices stirred a lot of controversy back then, particularly with mufti Ḥassan Khalid: he was accused of using the funds of the DGIW (and inciting people to add to this waqf rather than to donate to the DGIW) to buy lots for the ʿUlama' Waqf that was not under the supervision of the DGIW, particularly because this waqf carried the stipulation of a revenue percentage that went to the mufti personally, independently of his salary.

something commercial." For Hajj Tawfīq then the idea of a waqf as a process that could be charitable through the creation of money was contradictory. This tension or even conflict that Hajj Tawfīq identifies between waqf as charitable endeavor and waqf as a commercial enterprise is a very modern one, and one that has been a particularity of the waqf revival, because of the transformations I described. The earlier notion of waqf as a waqf to finance and support charitable works remains confined the example of the Faḥl Islamic center, and to the Directorate General of Islamic Waqfs.

The DGIW itself operates more as a real-estate developer than as a charitable organization or "social work" agency. For instance, in the past 10 years, it has developed a few waqf lots in downtown Beirut, which were under its supervision as shops and offices, through a financing model of Design-Build-Operate-Transfer (discussed at length in the last chapter of this dissertation). A 1982 report of the DGIW resembles a building portfolio. The opening remarks of the Mufti are entitled "The Development of waqf resources is our means to energize Islamic *daʿwa*."[88] The creation of revenue-bearing projects on waqf-ed land is key in such a development, as the money it produces is the key element in facilitates the work of preachers, scholars, and administrators. The mufti calls for "stirring the wheel of waqf development in order to provide a fixed revenue [as opposed to needing to constantly collect donations] for a budget that can support such an effort" (1982:3). The following pages describe projects for offices, housing, and shops, on empty plots made into waqf and under the supervision of the DGIW. In addition, renovations and expansions of existing mosques are designed to create revenue-generating facilities like shops and offices. To illustrate, the mosque of al-Hamra, in the nineteenth century part of the suburbs of Beirut, found itself in what was becoming in the late

[88] *Daʿwā* literally means invitation. It is used to refer to various activities inviting Muslims to live virtuous Muslim lives, "socioreligious activism. For an in-depth discussion of the term, see Mahmood (2005:57-74).

1960s and early 1970s a booming modern office and residential area, with cinemas, cafes, and the cosmopolitanism symbolic of Beirut at the time. The mosque, with its capacity of 100, could not accommodate the growing population. Instead of just expanding the mosque, the DGIW made plans for a huge commercial development, on the lot of the mosque and two adjacent ones that were empty but also waqf-ed. The project, which exists up to this day, is an eleven-floor office building with a shopping mall, but it also includes a mosque, and various amenities for an Islamic center.[89]

CONCLUSION

In this chapter, I have argued that there was no single "definition" of waqf that could convey how waqf was understood or practiced: it oscillated between perpetual and temporary, thing and person, process and organization. Before the advent of the modern state, a multiplicity of definitions allowed for waqf to be a perpetual dedication for charitable purposes aiming at bringing the founder closer to God or it could be a temporary such dedication—with the former definition being the more authoritative. With the beginning of Ottoman modernization, codification paved the road for the foreclosure of this multiplicity of definitions to a single acceptable one—even of it was not enforced at the time. It also introduced the explicit idea that waqf had a legal personality, that it was a subject in property relations. The French Mandatory state, with its highly contentious relation to the Muslim population, could not continue this

[89] The revenues that the rents that many of these projects were supposed to bring in are currently minimal because of the Rental Law that protected tenants but ended up keeping rents at the devalued rents that are far from current market rates. The DGIW is in the same boat as hundreds of thousands of owners as the issue is a national one that is currently being debated in the Cabinet (see for example al-Akhbar Saturday February 11, 2012). Because of the amount of time and effort required to run all of these projects, collect rents, maintain facilities, etc. the DGIW subcontracts these tasks to a management company.

project. It split the jurisdiction of waqfs between religious courts and civil courts and refrained from issuing a holistic code on waqf. However, codes on the exchange of waqf forwarded a waqf that was alienable and temporary. At the same, the French real-estate registry enshrined the waqf as a legal person, a process that opened the possibility of a new practice of waqf and that allows a negotiation of an association's relation to the state. Nonetheless, the understanding of waqf as inalienable object remains looming, and opens other possibilities for DGIW to resist expropriations, as I will discuss in chapter 5.

Such an analysis speaks to discussions in the anthropology of property that have redirected the study of property from a relation between persons and objects, to one between people around objects, and analyzed property regimes where "objects" and "people" are less completely distinguished in comparison to those regimes which presuppose a separation between the two (Strathern 1999), and have historicized property as a Western native category (Hann 1998). This literature has recently tackled the tension created by the commodification of bodies and body parts in the West, where subject and object assume much more solid distinction (Scheper-Hughes and Wacquant 2002, Sharp 2006). Much less investigated in the anthropological literature however is the personification of objects, especially in the case of corporations and foundations (it is a substantial legal debate however). Corporations straddle the line between being objects and subjects in property relations. On the one hand, certain physical persons can claim certain benefits through the possession of shares of the corporation. The corporation shares are objects around which persons can make claims on other persons. On the other hand, the corporation can act as a (legal) person and enter itself in property relations around other objects. In the same way, waqfs at times appear as objects around which property relations are articulated, at others, as subjects who come to acquire land and money. Analyzing

waqf historically shows that it does not fit squarely in either of these categories. The fluidity of treating waqf as both subject and object invites us to rethink the fixity of the categories of subjects and objects when approaching property as a relation between people around objects (Humphrey and Verdery 2004).

In the introduction, after introducing the human-rights waqf, I had asked: "What is 'Islamic' about championing human rights and why did the founders make a 'religious' endowment instead of creating an NGO?" The answer to the first question is that there is nothing "Islamic" about the endeavor: it was simply a legal instrument. To the second question, I have started to provide some of the answers based on the relationship between state and waqf law and administration. It is to these that I turn now in more detail.

CHAPTER 2: THE SULTAN, THE JUDGE, THE SUPERVISOR, AND THE ADMINISTRATOR: STATE AND LAW IN WAQF ADMINISTRATION

In 2003, the Lebanese state issued a law, Decision 43, which required the Directorate General of Islamic Waqfs [henceforth the DGIW] to be named as the administrator of any new mosque or prayer hall, even if a private individual or an association had funded the construction and the upkeep of the mosque. To someone familiar with the history of mosque and waqf administration, this law comes as a surprise. After all, attempts at state administration and supervision of mosques and waqfs in Lebanon have had a long history, starting with the Ottomans, before Lebanon even existed as a nation-state. The law causes one to puzzle: why, up to this day, does state control of mosques and waqfs seem to be far from a *fait accompli* when it has had such a deep history? Why does the modern state still need to issue such laws asserting its control over mosques? What does this paradox tell us about the nature of the modern state and its use of law and about shariʿa-defined practices, in Lebanon and more generally?

To answer this question and to better understand the form of waqf administration today, this chapter sketches a history of waqf and mosque (as one particular type of waqfs) administration in Beirut since the nineteenth century. Early in that century, each waqf was individually administered according to the founder's stipulations as noted in the founding document or according to customary practice when no such document was present. The qadi [judge] and the Ottoman state had certain supervisory powers,[1] which will be described first. The chapter then turns the spotlight on three significant moments in the administration of waqfs in Beirut: 1850, 1922, and 2003. An 1850 Imperial Decree [*firmân*] (VGM300/82) represents a

[1] The intervention of the Ottoman state in this process of administration will be detailed later.

critical moment in the administration of waqfs in Beirut, as the Ottoman state presented arguments for a newly founded Waqf Ministry to take control over the administration of certain of these Beiruti waqfs. In 1922, the French mandatory powers claimed supervision of these same waqfs, while in 2003 the Directorate General of Islamic Waqfs attempts to extend its administrative powers over all new waqfs through Decision 43.

At the same time, by examining the various arguments advanced during these three moments for the extension of state control (and what exactly was meant by such a term) over waqfs, I analyze how each moment represents a different articulation of state power and law-ethics, which commands a different way of appealing to authority. I show that the modern state's exclusive production and administration of law, in its Ottoman, colonial, and post-colonial incarnations, re-articulates the ways jurists-scholars of the Islamic tradition [ʿulama'/*fuqahā'*] can claim authority. The state provides a new space from which to make authoritative statements that stand as law, without being able to eradicate appeals to the moral epistemic authorities of the ʿulama'.

1850, 1922, 2003: An Overview

Before the major shifts the 1850 Imperial Decree introduced in Beirut, all the laws of waqf—and law and ethics in general—including the behavior and ethics of waqf administrators[2] were elaborated by jurists-scholars who did not necessarily belong to the state apparatus.[3] Administrators [*mutawallī*s/ *nāzir*s/*qayyim*s] stood as representatives of the founders to care for the waqf and ensure its revenues reached its beneficiaries following the stipulations of the

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[2] Making sure that he is following the founder's stipulations, that he is caring for the waqf he is entrusted with, that he is trustworthy.

[3] I will elaborate on that below. As a reference, for a discussion of the ʿulama''s role and relation to the state under the Ottomans, one can refer to Hallaq (2009), Zilfi (1988), Heyd (1961), Feldman (2008) for general histories, Winter (1992) on Egypt and Rafeq (1994) on Syria.

founders. They were responsible for renting the waqf-ed assets, collecting their revenues, and distributing these revenues to the beneficiaries. The nomination of beneficiaries, in the form of office-holders like imams, callers for prayer, janitors, and the like, was also under their jurisdiction—if these had been left unspecified by the founder. The administrators were accountable to judges since the latter were the Sultan's delegates entrusted with the application of the shariʿa[4]; thus, administrators had to refer to them with any decision contradicting the stipulations of the founders.

The 1850 Imperial Decree provides a lens to analyze the reshuffling of this order following the 1826 founding of a Waqf Ministry and the application of this new order to cities in farther provinces like Beirut.[5] The Decree appealed to the authority of Islamic jurisprudence in order to effect changes in waqf administration and supervision. First, the ministry stood as the waqf "supervisor" [*nāẓir*], a term usually used in Islamic jurisprudence interchangeably with administrator.[6] Here, however, the term couched a new state organ in the language of Islamic jurisprudence, thereby legitimizing it by placing the new organ in line with classical jurisprudence. Second, the decree used arguments from Islamic jurisprudence in order to dismiss the original *mutawallīs* of some waqfs. The Decree introduced two major changes in the production and administration of law. Firstly, and most importantly, the decree represents the beginning of the state's takeover of the production of legislation on waqf administration. Second, effectively, the ministry took over most of the powers of the judges and became the reference and arbitrator for the administrators of some waqfs [*mulḥaqa*], and assumed the responsibilities of the administrator for other waqfs [*maẓbûṭa*]. Indeed, by requiring the *mutawallīs* and other

[4] As judges' jurisdictions were delegated by the Sultan, we can understand why many of these waqfs were actually noted down in the central administrations' Finance Ministry [*mâliye*].
[5] These reforms were applied in Beirut starting the middle of the 1840s because of the Egyptian occupation of the Syrian provinces between 1832 and 1841, when Istanbul gained back control over them.
[6] Waqf studies treats these as two separate functions, but as I will show below, in the *fiqh* they refer to one person.

waqf office holders to be appointed from Istanbul and by making compulsory an annual (or bi-annual or quarterly) auditing of the accounts of the waqf by the ministry, it took over some jurisdiction from the domain of the judges and gave it to a different organ of the state, the Waqf Ministry. Nonetheless, struggles between different ministries over waqf revenue and administration already illustrate the reasons why "state control" might be a project rather than a possibility.

The French Mandate's institutions for waqf administration appear to be in continuity with the Ottoman Waqf Ministry, as Decree 753 of 1922 created a similar organ within the Lebanese and Syrian Mandate. However, because of the different relation of the French to the shariʿa and the different state structure they sought to implement, both the arguments used to justify this organ and the actual relation of the waqf administration to the state differed.[7] The Preamble of Decree 753 of 1922 introduced new concepts, like "religious law," "religious assets," "public utility," and "Muslim community" mixed with arguments borrowed and modified from Islamic jurisprudence (such as "the waqf's interest"). The French mandatory authorities presented the state and its laws as outside and beyond "religious" laws and communities but gave these 'religious' communities the right to follow "their religious laws" in certain domains.[8] Accordingly, the Preamble created the Muslim community as a community, "*ṭā'ifa,*" outside the state, coming together as the collective owner of the waqfs. The new waqf administration was therefore to be *outside* the state, unlike the Ottoman Waqf Ministry. It was created as an

[7] Obviously, because it is a colonial state, but also because of its very different relation to the shariʿa.
[8] One might wonder what stood in the way of the French mandatory state taking over legislation on waqf, marriage, divorce, and inheritance. Why would it be more acceptable to allow foreclosure for debt than say exchanges of waqf? The acceptability of reforms seems to hinge on the economy/religion distinction, wherein the superiority of the European colonial powers could be accepted in the domain of the economy. That would overlap with Chatterjee's argument that the arena of the family and religion part of "inner culture" left outside of colonial powers intervention. However, one can also advance an argument that the French experiment in Algeria was transferred as colonial knowledge. Indeed, the French did try and impose much wider reforms in Algeria, but these were met with such resistance that necessitated a re-assessment of policy in Lebanon and Syria.

independent authority with fiscal and administrative independence as well as a juristic personality. In addition, because of the constitutionally created freedom of these communities to follow their own laws, the new waqf supervision had a special council (Supreme Waqf Council) to legislate on waqf. However, because of "public necessity," the state reserved the right to intervene in this administration. At the beginning of the Mandate, this necessity meant that all executive and legislative power for waqf administration and legislation was concentrated in the French High Commissioner, or the State. For example, among many other duties, the Supreme Waqf Council's decisions needed to be ratified by the French High Commissioner; the latter also appointed the Director and the members of the Supreme Waqf Council. Therefore, despite the supposed independence of the Muslim community in the administration of its waqfs, the 1922 Decree further concentrated the production of law on waqf in a state apparatus. It also further stripped qadis of their jurisdiction in supervision of waqfs and extended the jurisdiction of the General Supervision to all waqfs, including those that were exempt at the time of the Ottomans.

As I shall explain later, critiques and resistance to French control over waqfs and Muslim nominal independence resulted in a new law for the administration of waqf in 1930. The 1930 Decree effectively delegated executive authority to the Muslim community: a new Muslim electoral body elected members of the Supreme Legal Council (legislating on waqf) and of administrative and scholarly boards (the executive administration and supervision of waqf). The 1930 Decree also restored exempt waqfs to the supervision of qadis. However, the Decree would not and could not resolve two interrelated tensions inherent in the *modern* state: that between the independence of the communities and the state's sovereignty, and that between the single exclusive law of a state with a civil law tradition and the multiplicity of Islamic legal producers and opinions. By placing waqf *law* in the realm of the "religious" and allowing it to follow

"religious law" while claiming exclusivity in the production of law, the state has to either authorize the law that is being followed (and therefore undermine the "independence/autonomy" of the communities in their religious laws) or to surrender some of this sovereignty (and delegate the production of law to this Supreme Legal Council). In any case, however, the law of waqf will be both singular and state-authorized. This necessitated a way to mediate the plural opinions characteristic of the shariʿa with the Civil Law tradition in modern states and its single exclusive law. The Supreme Islamic Legal Council gave shape to such an organ, which would be the "official"/orthodox/most authoritative representative of this community and an organ that could relegate the most authoritative and famous opinions, and could enact them as state law.

If the original Mandate legislative board was to represent the Muslim community's most authoritative opinions and was to create state law, the legislators that created it did not address how such power to make law could actually remake the very way Islamic jurisprudence and authority was produced and enacted. Authority to produce law could be acquired by occupying a certain bureaucratic position, and was not necessarily tied to epistemic authority. By the time of the 2003 Decision, it is apparent that the DGIW is marshaling the authority of the modern state, particularly law, and advancing arguments couched in reasons of modern states,[9] like public utility, to go against some Islamic jurisprudence rulings, like the founder's right to name an administrator. However, such claims do not go unchallenged: while the 2003 Decision attempts to uphold the DGIW as the single official authority to control mosques, it points to the challenges this claim receives. On the one hand, the Decision reinforces the "state-effect": the DGIW appears to represent the state apparatus and to control waqfs. It presents mosques as a "public utility" that "private" entities should not control. On the other hand, its various sub-

[9] The Ottomans had started using such reasons, as I show in chapter 5. However in the Ottoman case, the balance between arguments of public utility and those upholding principles from Islamic jurisprudence had not yet been toppled towards public utility.

articles point to the challenges from other state apparatuses and private actors to the DGIW as the administrator of waqfs and as a representative of *the* Sunni Muslim community. Rather than an administrative apparatus that occupies a known and stable position in the state and uses its authority to issue a law to enforce a certain decision, the DGIW appears as an actor mobilizing the law and the effects of the state in order to reinforce its position in a struggle over whose voice is to be heard and which Muslim Sunni religious discourse is to become *the* official one. At heart then, is the way legal, moral, and epistemic authorities are marshaled.

I. PRE-MODERN SNAPSHOT: INDIVIDUAL WAQF ADMINISTRATION AND STATE SUPERVISION THROUGH QADIS

Ottoman State and Production of Law

The Ottoman Empire was a Muslim power, and one that conquered in the name of and served Islam, even if until the nineteenth century the majority of its population was not Muslim (in the 19th century two things contributed to the creation of a Muslim majority: losing the Christian provinces and population transfers). However, as Zilfi argues, the Ottoman Sultan did not really make claim to the "legitimizing blood of the Prophet Muhammad or his tribe (…). Performance in the name of Islam had made the Ottomans a dynasty." The Ottoman rulers instead valued titles such as 'warriors' and 'conquerors,' and it was only with their military losses at the end of the Empire that they "resorted to such abstractions as spiritual hegemony as the myth of caliphal transfer from a descendant of the Abbasid dynasty" (Zilfi 1988: 27). Deringil (1998) argues that the late 19th century (especially with the reign of AbdülHamit [1876-1908]) use of Islam as a way to gain legitimacy as an Empire was a pattern among all old-regime empires (the Russian, Japanese) trying to survive the threat of modern nation-states. This

heightened drawing on Islam appears in the use of arguments from the Islamic tradition in order to effect some changes.

The Ottomans reconfigured the state's relationship to the jurists-scholars (in the so-called post-classical age). The state came to engulf[10] most jurists-scholars, through state-appointed judges and muftis, the creation of an official scholarly hierarchy [the *ilmiyye*], the endorsement of Hanafism as the state school, a mechanism of "official" endorsement of more authoritative opinions, and most importantly through madrasas waqf-ed by the ruling elite. For Hallaq (based on Makdisi 1981 and Zilfi 1988),[11] the foundation of madrasa waqfs[12] was the earliest and most effective tool that allowed the blurring of the distinction between judges who were at the service of the state and jurists-scholars who pursued their scholarly endeavors independently of the ruling class and most often held income-generating activities on the side. Indeed, when members of the ruling class founded a madrasa as a waqf, as they did on a massive scale in every city the Ottomans conquered (Hallaq 2009: 155), they could chose beneficiaries to their likings, whether as teachers or students. "With the incorporation of the professors into the madrasa system, the political domain encroached further into the terrain of the law, subordinating a considerable segment—even the elite—of the professorial community and contributing to the increasing diminution of the 'moral community' of the legists" (Hallaq 2009: 151). However, what Hallaq does not highlight, and which we find to be the crucial Ottoman innovation, is the linking of judgeships and professorships. The highest judgeships in the Ottoman Empire belonged exclusively to the highest professors, which were those who graduated from Istanbul (Zilfi 1988: 24-5, 60-1). The creation of an official hierarchical religious establishment, engulfing judges,

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[10] "Co-opt" in the terms of Hallaq (2009: 146).

[11] He does not even argue, he presents them as truths.

[12] This boomed earlier than the Ottomans, with Seljuq Niẓām al-Mulk (1018-1092) building eleven madrasas in Baghdad (Hallaq 2009: 141).

professors, and muftis, made for the dependence of a large proportion of the jurists, particularly in Istanbul, on the state.

This dependence needs however to be qualified by three caveats. First, both Hallaq and Zilfi equate professorships through Sultan founded waqfs to state appointments. “By the sixteenth century,” Zilfi argues, “it was a rare Ottoman scholar whose name did not somewhere appear on a state ledger” (1988: 28). Nonetheless, it will be recalled that waqfs, even when founded by Sultans, belonged to God and went out of the possession of the Sultan or the Treasury, who could not claim back the agricultural lands and shops which he waqf-ed for the benefit of these madrasas. This granted financial independence to these madrasas, and one cannot consider the professors thus salaried to be state employees. Second, Hallaq, in support of the subordination of the ʿulama’ to the ruling elite, insinuates their (in)security of tenure. His argument draws from the freedom of the founders to run the waqfs as they please in naming beneficiaries, administrators, and even giving themselves (or others) the right to change stipulations even after ‘finalization’ of the irrevocability of the waqf. Based on the example of Nizām al-Mulk, he argues that the rulers,[13] with the exception of the late Ottomans, “personally took charge of appointing, with handsome pay, well-known jurists and law professors. He retained exclusive powers over appointment and dismissal, for this guaranteed his leverage to bestow *personal* favors and thus acquire the loyalty of the legal profession” (Hallaq 2009: 150). However, the professors’ security of tenure was guaranteed in jurisprudence, against possible

[13] In the original, the subject of this sentence is Niẓām al-Mulk, but the sentence following states that with the “partial exception of the late Ottomans, this personal involvement was invariably the rule” (Hallaq 2009: 150). I have therefore allowed myself to makes “rulers” the subject of this phrase.

injustice on the part of judges and even founders, and they could not be dismissed without a reason.[14]

The third caveat warns against an Istanbul and state-centered perspective and deserves more elaboration because of its particular significance for the study of Beirut. While the Ottoman state created an official ulema hierarchy in Istanbul, endorsed the Ḥanafī school and even "canonized[15]" certain opinions over others and made fatwas of official muftis binding, the hegemony of this approach was far from complete. Indeed, while some 50% of the Syrian Ḥanafī scholars in Damascus, Aleppo, and Jerusalem (Rafeq 1999: 76) went to study in Istanbul to be able to hold official positions, like judgeships and muftiships, many of them did not. The latter group contained several celebrated scholars, which suggests that independent scholars still produced legal texts as a hermeneutical effort, rather than as state-sponsored effort. "Those who held the formal position of mufti in Damascus appeared more punctilious with regard to doctrine sanctioned in Istanbul than the three great figures (…) whose fame rested more on their writing than on their official position (Mundy and Smith 2007: 22). In addition, even those scholars who studied in Istanbul did not seem to be in dialogue with the Ottoman Turkish canon, very rarely referring to writings in Turkish, up to the middle of the 18th century (Mundy and Smith 2007: 22). They also seem to retain very much of the local jurisprudence tradition, refusing to implement fees on marriage and to force peasants back to their lands and even challenging Ottoman scholarship (Rafeq 1999: 82-3, 91).[16] As Martha Mundy and Richard Smith eruditely explain, the "Syrian scholars belonged to the Ottoman tradition and context, but they appear to

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[14] A historical study of the professors at Imperial madrasas to would help shed light on the interference of politics in appointments. In addition, an analysis of waqf-founding deeds would also help support/contest the argument that the founders included clauses to change stipulations.

[15] For a great exposition of early Ottoman policies and their implementation in the Syrian provinces, see Guy Burak's most excellent dissertation "*The Abū Ḥanīfah of His Time: Islamic Law, Jurisprudential Authority and Empire in the Ottoman Domains (16-17 centuries)*."

[16] Rafeq mentions for example an epistle by ʿAbd al-Ghanī al-Nabulsī against Rūmī scholars who had condemned the Sufi Ibn ʿArabī.

have also maintained, or even renewed, in a spirit of neo-classicism, their references to the pre-Ottoman tradition in the Hanafi school" (2007: 22).[17] Such a tradition appears in the library discussed in the introduction, whose legal commentaries hail mostly from the Mamluk period and whose fatwas belong not only to the Ottoman canon (like the fatwas of various sheikh ül-Islam) but also to the independent scholars of Syria and Palestine. It is now high time to turn to the manner of waqf administration that these manuals describe, before analyzing the changes the Ottoman state introduced in the nineteenth century.

The Role of the *Mutawallī/Nāẓir/Qayyim*

The administrator of the waqf [*mutawallī/nāzir/qayyim*], along with the founder [*wāqif*] and the qadi, form the main cast of characters who make very frequent appearances in the Islamic jurisprudence manuals' Book of Waqf section, and particularly, the sub-section on administration. Before going onto the respective roles of these actors, I first need to substantiate the claim that the three terms I identify as describing the administrator [*mutawallī/nāzir/qayyim*] actually refer to the same person in this context; after all, in Mamluk Egypt, these three different terms referred to three different people holding distinct responsibilities (Amīn 1980).[18] Yet, by the time of the late Mamluk-early Ottoman period, the Egyptian scholar Ibn Nujaym's (d. 1531) Book of Waqf shows that the three terms, *nāẓir*, *qayyim*, and *mutawalli,* appear to be used interchangeably when discussing the person who takes care of the waqf. A lengthy section (226-245) that discusses the *nāẓir*'s qualifications, behavior, and appointment starts with the following sentence: "He who is fit for *naẓar* [supervision] has not asked for *wilāya* [wardship] over the

[17] The Ottoman sheik ül-Islams of the 16th century had married the Mamluk tradition to the administrative laws of the Sutlans (Mundy and Smith 2007: 13), using different arguments based in jurisprudence to explain these laws. Mundy and Smith also do not claim this to be an exclusive characteristic of the Syrian provinces, but point to the lack of comparative studies from Anatolia.
[18] As I will show later in this chapter, this becomes true even in the 19th century.

waqf [and another condition].”[19] It seems in this phrase that the *naẓar* and *wilāya* are synonyms, as in the axiom on which this rule draws “whomever has asked for *qaḍā’* [judgeship]” cannot be invested as a qadi. Al-ʿAynī (d.1451), writing a century earlier between Mamluk Egypt and Syria, confirms this reading when he explains the meaning of *wilāya*: it is the “taking charge/assuming the care [*tawallī*] of the affairs of the waqf, which is the supervision/looking after [*naẓar*]of these affairs” (al-ʿAynī 1982, *Ramz*, I: 278). If al-ʿAynī privileges the use of *mutawallī*, Ibn Nujaym seems to move between one term and the other indiscriminatingly. At the beginning, his preferred term appears to be the *nāẓir*, and the term *mutawallī* appears mostly when he is quoting other jurists, as if it was their commonly used term. However, as the discussion develops, the terms appear as frequently. *Mutawallī/nāẓir/qayyim* all seem to refer to the same person of the administrator.[20]

Appointment letters to administrators in Beirut seem to confirm this reading. For instance, the first record of MBS.S03/160 consists in the appointment of the hajj Muḥammad bin al-marḥūm ʿAbd al-Qadīr al-Qassār as the administrator of the waqf dedicated to the sayyid Badawi shrine in Tanta, Egypt. In the exact wording of the appointment, the judge “appointed and assigned him as a supervisor” “*nāẓiran mutawalliyan, qayyiman mutakalliman,*” conflating the three different words for administrator. The structure of the sentence, apposition and alliteration, using parallel sentences and rhyming rhythms, emphasizes the equivalence of these terms, but it also renders the appointment inescapable. In addition, the document refers to the position of the administrator as “*naẓar wa tawliya*.” This is not an exception, but the general practice. MBS.S02/03 starts by using the term *nāẓir*, but then couples it with *mutawallī*, again

[19] “A*l-ṣāliḥ l-il-naẓar man lam yas’al al-wilāya ʿalā al-waqf.”*

[20] Singer (2002) mentions that the chief white eunuch was the *nāẓir* of the Haṣṣeki Sultan kitchen soup in Jerusalem and the *mutawallī* a different person, appointed by the former (55). Given her description of the waqf founding document, which only mentions a selection of/section on the *nāẓir* but nothing on the *mutawallī*, I wonder whether the *mutawallī* in Jerusalem had actually “bought” the *nāẓir* -ship from the chief eunuch.

confirming the equivalence of these terms. On the other hand, MBS.S07/27 mostly uses the word *mutawallī/tawliya*, but then couples with *nāẓīr* when referring to the actual assignment.

After establishing that in Ottoman Beirut at the turn of the 19th century, the three terms *mutawallī/nāzir/qayyim* all referred to the administrator of the waqf, we can now turn to examine his responsibilities. A large part of the discussion serves to determine jurisdiction: the rights and responsibilities of various above-mentioned actors involved around the waqf. What does each of these characters stand for with respect to the waqf? One of the main problematics of waqf centers around accountability stemming from the transfer of ownership to God that occurs for the vast majority of waqfs. With the founder no longer an owner, who can make decisions for the waqf and who is responsible and will be accountable and liable for any problems? The simple answer is the *mutawallī*.[21] Indeed, in one interpretation, the person whom the founder appoints as an administrator is actually the founder's agent [*wakīl*] (al-Khaṣṣāf 1999). As an agent, the *mutawallī*, or the *waliyy* in al-Khassāf's terminology, stands in the place of the founder[22] (al-Khaṣṣāf 1999: 168). Such a title gives the *mutawallī* a lot of executive power in managing the affairs of the waqf. Indeed, an agent represents the principal who delegates power to that agent to act on their behalf. A similar description of the *mutawallī* can be found in Ibn Nujaym's discussion, when he advances that "the *mutawallī* is the agent of the founder"[23] (242) and "the *nāẓir* is either a custodian [*waṣiy*] or an agent [*wakīl*]" (241), [24] where the custodian and the agent are equivalent in being both responsible for taking care of the waqf.[25] This is confirmed in

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[21] The extent of his or her responsibility is a matter of question (discussions on *yad amāna* and *yad ḍamān*).
[22] He also becomes the founder's testamentary executor[22] [*waṣiyy*] if the founder extends the appointment after his death.
[23] "*Li-annahu wakīluhu*"
[24] I elaborate on what Ibn Nujaym says later: "The *mutawallī*'s duties are different from those of wage laborers [*ujarā'*] and agents [*wukalā'*]" (*al*-Baḥr, 1915 V: 244).
[25] Ibn Nujaym before that goes at length to clarify this distinction between custodian and agent. He starts by analyzing the state of an old distinction that al-Khaṣṣāf makes in his *Adab al-Qāḍī*, that between a custodian [*waṣiy*] and a caretaker [*qayyim*]. For al-Khaṣṣāf, "the custodian [*waṣiy*] is delegated the safeguarding/ preservation [*ḥifẓ*]

Ibn Nujaym's use of caretaker [*qayyim*], *mutawallī*, and *nāzir* interchangeably.[26] What are exactly the duties and areas of jurisdiction of the *mutawallī* over waqf affairs? What are his rights?

The tasks of the *mutawallī* fall under three main umbrellas: caring for the waqf (repairs),[27] exploiting the waqf (renting or planting), and finally fulfilling its purpose (distributing revenues to beneficiaries). However, the duties of the administrator are not set in stone but vary with custom [*bi-ḥasab al-ʿurf*], argues Ibn Nujaym with support from al-Khaṣṣāf. "What the founder assigns to the *mutawallī* does not have fixed limits, but it is determined according to custom/practice [*mā taʿārafa ʿalayhi al-nās*]" (243). The general realm of the duties of the *mutawallī* are the care of the interests of the waqf [*yaqūm bi-maṣāliḥ al-waqf*] like its repairs/maintenance, exploitation [*istighlāl*], sale of the harvest, and spending what he has collected according to the stipulations of the founder (*al-Baḥr*, 1915 V: 243-4). The *mutawallī* is not required to do more than what his fellow *mutawallīs* do. Part of his duties can be taken up by specific individuals: a rent collector can gather rents and taxes from tenants and the checking and weighing of the money can be the responsibility of the cambist. The remaining duties of the *mutawallī* include, according to Ibn Nujaym, "commanding, forbidding, management [*tadbīr*], contracts, and cashing money" (244). It is his responsibility to sue any tenants (in case they do not pay rent etc…) and rent the waqf assets. All these functions and actions of the *mutawallī* give

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and the management/taking action [*tasarruf*] whereas the caretaker [*qayyim*] is only delegated preservation without prerogative" (Ibn Nujaym, *al-Baḥr*, V: 243). According to this distinction, it seems that the *mutawallī*, as a *qayyim*, does not have the prerogative to take decisions and actions [*taṣarruf*] for the waqf. His duties seem to be following rules and any new decision cannot be his prerogative. However, Ibn Nujaym argues that the jurists of his time and place advance that both custodian and caretaker necessitate spending [*infāq*] and have therefore equal responsibilities.

[26] A few lines below, the same distinction is made between the *mutawallī* and the *mushrif*. Here, the former has the right to make decisions, whereas the latter only preserves things in their existing state.

[27] It is important to remember here that waqf is a practice of charitable giving: in order to produce revenues that will allow the fulfillment of the charitable purpose of the waqf, taking care of the waqf-ed assets, through repairs and renovation is absolutely necessary.

him privileges and rights to the waqf, usually a wage apportioned from the revenues of the waqf. These rights arise from the labor he puts in as a caretaker for the waqf. If the care of the waqf does not require any labor, the *mutawallī* does not have any right to the fee. Ibn Nujaym illustrates this case with the example of a mill rented long term whose beneficiaries take their shares directly from the long-term tenant. In this case, the *mutawallī* does not receive any fees, because "what he receives is by way of wage, and there is no wage without labor" (244).[28]

The Interplay of the Founder's Will and the Law [*Sharʿ*][29]

In carrying out his duties, the *mutawallī* acts in his capacity as an agent of the founder, entrusted to carry his will as expressed in his waqf founding document. Here, the stipulations of the founder enter in the picture. As the original owner, the founder of the waqf is the highest authority in decision-making concerning the waqf—guided ultimately by the shariʿa. As long as his stipulations do not contradict the *sharʿ*, they form guidelines that the *mutawallī* needs to follow. As the famous dictum goes, "the stipulation of the founder is like the text of the legislator." However, Ibn Nujaym expands on the inaccuracy of this statement as a rule, quoting from other scholars on a consensus among the *umma* [*ijmāʿ*] that some of the stipulations of the founders are valid and can be followed, while others are otherwise. He quotes Abu Abdullah al-Dimashqī that the dictum is true in "its meaning and signification, and not in its necessity" [*f-il-*

[28] The labor of the *mutawallī* varied greatly depending on the size and the type of the waqf. In an imperial soup kitchen that had dozens of villages as waqf and that fed hundreds of poor daily, the *mutawallī* had to deal with "the logistics of supply, staff, and revenues," and supervise the functioning of the kitchen, which might require a fair amount of labor (Singer 2002: 104). In smaller waqfs, the administrator acts as a landlord, renting, taking care of repairs, and ensuring that tenants pay their dues. Most *mutawallīships* of smaller waqfs did not constitute "full-time jobs" in the way we understand them today as they mostly involved collecting rents for a few assets. The *mutawallīs* of waqfs of mosques (like the ʿUmarī mosque with its assets and the mosque itself to manage) would have more work but nothing compared to larger waqfs. Small waqf *mutawallīs* could be merchants, artisans, clerks, judges, imams, or mothers at home. Given that their fees were mostly nominal, one would be hard-pressed to call them a "rentier" class.

[29] Sharʿ shares the same root-verb as shariʿa, and is many times used as a synonym. However, when authors of *fiqh* manuals, when the authors refer to God's law in its varying appearances and interpretations (like the laws they are producing) they use *sharʿ* rather than shariʿa, therefore I tend to use it.

fihm w-al-dalāla lā fi-wujūb al-ʿamal]. This qualification implies that the text of the founder is understood to be a felicitous representation of his desires and thoughts, the language of the text represents common understandings of the language. The *mutawallī* and the judge can go back to the text [*naṣṣ*] of the foundation and use it as an accurate reference/representation of the will of the founder. The same work of exegesis applied to the Quran can be applied to the waqf's founding document. Contra Ibn Nujaym, Ibn Abidīn writing in the 19th century uses the same phrase, with three positive injunctions: the dictum is true in "its meaning, signification, *and* necessity."This is not to be taken to mean that the stipulations of the founder apply even if they are contrary to the *sharʿ*, but that they are necessary in the case they do not contradict it. However, if these stipulations contradict the *sharʿ*, the judge and the *mutawallī* has the right or even the duty not to follow them. For instance, Al-ʿAynī argues that a treacherous [*khā'in*[30]]administrator, whether he is the founder or named by the latter, is to be removed from his position—"even in the case that the founder has stipulated he should not be removed, that is that the qadi and the sultan should not remove him—because this is a stipulation that is contrary to the *sharʿ*" (al-ʿAynī, *Ramz,* 1982, I: 278).

The stipulations of the founder nevertheless occupy a central location in the running of the waqf. While the Islamic jurisprudence provides general rules on the jurisdiction of the *mutawallī/nāẓir* (and that of the qadi), these only apply when the founder has not stipulated particular conditions. For instance, Ibn Nujaym discusses at length when office-holders who receive a share of the revenues of the waqf for the fulfillment of a certain function (like imams, callers for prayers, teachers, and students) forfeit their share: the acceptable length of their absence, the reasons for the absence, their location. The section, however, ends with a caveat

[30] *Khā'in* here has a slightly different meaning from the common one today, traitor. It is used when someone is entrusted with something/ a task and is not truthful and just to that/ does not do to the best of his knowledge and honestly [*yukhliṣ* and *yaṣduq*]

“but, if the founder has stipulated in all these conditions, they shall be followed” (Ibn Nujaym, *al-Baḥr,* 1915 V: 227). When the stipulations do not contradict the Islamic jurisprudence, they then acquire priority in the running of the affairs of the waqfs over opinions expounded in Islamic jurisprudence manuals and fatwas. In the presence of founder stipulations, waqfs should not be treated according to their general aims, but according to the particulars laid down by the founders. For instance, a waqf whose revenues support stipends of Islamic jurisprudence teachers and students who attend a particular school do not receive their stipends if they do not attend this school—even if they are engaged in teaching and learning somewhere else.[31] Particular stipulations of founders override the general aims of the waqf, even the general good/interest of the waqf.[32]

The role of the Qadi

If the *mutawallī/nāẓir* has such wide powers on the waqf, those of an agent, why is the judge so present in the Islamic jurisprudence discussions on the role of the *mutawallī/nāẓir*? In what capacity does the judge intervene with the *mutawallī/nāẓir* and within the affairs of the waqf, and what areas fall under his jurisdiction? The question is especially important given the “maxim” that Ibn ʿĀbidīn describes: “the particular jurisdiction overrides the general one.”[33] Therefore, the functions of a *mutawallī* appointed by the judge who has a general jurisdiction on waqf as part of the shariʿa cannot be fulfilled, reversed, or superseded by the qadi when the

[31] This will be important for later when the Waqf Ministry decides on transferring the income of one waqf to the other.
[32] This brings in the difficulty of deciding what is best for the waqf. One recalls here the Quranic story of the prophet Khidr who damages a ship belonging to a poor good people, kills a young man, and rebuilds a wall in a city where Moses and himself were ill-treated. Moses cannot hide his surprise at these seemingly mean acts. Khidr finally explains how his interventions were eventually for the best of the subjects, based on future events that Moses did not know. Khidr’s knowledge however was bestowed by God and not within the reach of humans.
[33] The maxim is extracted from Ibn Nujaym’s classic “*al-Ashbāh w-al-Naẓā’ir*,” from which are also borrowed the general maxims that open up the Ottoman Mecelle (see chapter one for further detail).

mutawallī is present (Ibn ʿĀbidīn, *Ḥāshiya*, 1966 IV: 374). It would be useful to go into some length here on who the qadi is, in what capacity he is appointed, and by whom. The qadi is a "representative of authority, invested with the power of jurisdiction" (EI).[34] The Caliph/sultan appointed qadis, and delegated to them, directly or indirectly, his power to administer justice, and in particular the application of the *sharʿ*. The qadi therefore can intervene in the actions of the founder and the *mutawallī/nāẓir* in this capacity as someone invested with the application of the *sharʿ*. Ibn Nujaym finds it necessary to stop his discussion of the appointment of *mutawallī/nāẓir* in order to give a warning on which qadi has the right to "nominate a custodian [*waṣiy*], a *mutawallī*, and have the supervision of waqfs" (Ibn Nujaym, *al-Baḥr,* 1915 V: 233). A long discussion ensues about whether any judge, unrestricted or unqualified, can unconditionally deal with the affairs of the waqf. Ibn Nujaym argues that a judge can supervise waqfs only if his appointment letter specifies this domain to be under his jurisdiction. Only the *qāḍī al-quḍāt* can automatically deal with any and all waqf affairs because "obviously such an appointment is like describing these domains of jurisdiction in the appointment letter" (233). This is obvious to our author because the *qāḍī al-quḍāt* is the highest judiciary authority, to whom all judiciary power is delegated.

The qadis' powers of jurisdiction originated in their delegation from the sultan. Therefore, the qadi stood for the sultan in that capacity to administer justice, including in waqf affairs. The sultan, however, retained the "power to do justice in person" (EI), which explains the occasional designation of the ruler – sometimes along with a judge, sometimes not – as a possible intervener in the affairs of the waqf. For instance, the sultan himself can appoint an administrator. It is also because of this retained power that in, al-ʿAynī's discussion of the

[34] Tyan, E.; Káldy-Nagy, Gy. "Ḳāḍī." *Encyclopaedia of Islam, Second Edition*. The entry seems a bit dated, with information on the Ottoman period not updated to newer findings like Akiba's (2003 and 2004).

treacherous administrator, both the qadi and the sultan are cited as possible authorities to dismiss such an administrator. Note however that here too, the legal maxim that the particular trumps the general jurisdiction prohibits the Sultan from dismissing and reversing a "just" decision by a judge he appointed. This is at the core of delegation of power.

The examples above bring us into the domains that are under the jurisdiction of the judge. These are the naming of the *mutawallī* (in the cases that I will describe below), making sure the *mutawallī* follows the *shar*ʿ, and if the latter is infringed, dismissing the *mutawallī* or revoking any of his decisions, which could include appointments to offices, leases, and other affairs of the waqf. Mutawallīs do not always need to be appointed by qadis; sometimes they are appointed by the founder or his stipulations. In the latter case, and when there is no contention over the *mutawallī*, there is no need for an official appointment by the qadi. However, the appointment of a *mutawallī* falls under the qadi's jurisdiction in four cases: if the founder dies without having nominated a *mutawallī*,[35] if the *mutawallī* appointed by the founder dies after the death of the founder, if the *mutawallī* does not fulfill his duties towards the waqf, or if the *mutawallī* declares to the qadi his wish not to be a *mutawallī* anymore. It is therefore in the case when there is no clear *mutawallī* that the judge appoints one.[36]

Whether he has directly appointed him or not, a major responsibility of the qadi is supervising the *mutawallī*. The qadi makes sure the *mutawallī* is trustworthy, that he is renting as he should, that he is repairing the assets of the waqfs, and that he is distributing the revenues. He does so as a representative of the Sultan for the administration of justice, but also because of his

[35] Ibn Nujaym is here again much more cautious. He qualifies the absoluteness of this rule with some very pragmatic considerations. If some beneficiaries of a waqf, renowned for their virtue and righteousness, name a mutawallī in the absence of a stipulation, Ibn Nujaym considers this appointment not only valid without the approval of a qadi but also even commendable. Indeed, in "our age, given what is known about the greed of the qadis towards waqf assets [*amwāl*]" (*al-Baḥr*, 1915 V: 233), such an appointment would uphold the interests of the waqf better.

[36] I will detail the ways this appointment works in the Ottoman Empire below. It is not enough for the judge to appoint the *mutawallī*, a record/request needs to be send to Istanbul, which then sends a *berat*.

being a representative of the poor and the orphans. "The qadi is delegated with looking after the poor and the dead"[37] (Ibn Nujaym, *al-Baḥr,* 1915 V: 246-7).[38] If the administrator stands for the founder, the judge stands for those who are many times the ultimate beneficiaries of the waqf, the poor and the orphans, those who cannot represent themselves (the poor because they are a collectivity, the orphans because they are minors). In both these capacities, the judge supervises the *mutawallī.*

While supervision of the *mutawallī* is a qadi's duty, the jurisprudence manuals do not provide a description of how a qadi could discover a treacherous *mutawallī*, through for instance the process of individual *mutawallīs* submitting yearly/bi-yearly/quarterly reports. Generally, there was an implicit trust in the uprightness of these *mutawallīs* who were to take care of the waqf and best serve its interests. One of the rare instances where there is a mention of a way for a judge to know about the mismanagement of the waqf (in this case his renting the waqf's assets for below the market rate) occurs when "inhabitants of the neighborhood" [*ahl al-maḥalla*] cannot be excused for remaining silent on such an abuse (Ibn Nujaym 235). In this case, moral and communal mechanisms that reflect a commitment of living as good Muslims ensured the good administration of the waqf, rather than a strict process of accountability.

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[37] *l-il-qāḍi wilāyat al-naẓar ʿalā al-fuqarā' wa ʿalā al-mayyit ayḍan"*

[38] This is confirmed early on in the discussion, when Ibn Nujaym discusses the reasons why a judge is allowed to dismiss an untrustworthy mutawallī/nazīr. The argument does not say that this is unethical to start with , the main argument that allows the judge to make such a decision is to safeguard the interests of the poor [*masākīn*] (227).

II. The 1850 Decree
Waqf as Real-Estate Wealth and the Beginnings of State Administration

Administration or Supervision

The nineteenth century witnessed a change in this pre-modern order of waqf administration, which is most often described as the transition to "state control" over waqfs (Barnes 1986).[39] Indeed, in 1826 a Waqf Ministry[40] was created, and slowly Imperial orders seized various waqfs in the centre and the provinces and put them under the administration and supervision of the Waqf Ministry, like the Decree I will discuss in this section. I will start by unpacking the term state "control" over waqf, and what duties and responsibilities it entails. I will show how the State inserted itself in the mix through the Waqf Ministry, stripping qadis of many of their powers, by distinguishing between administrators [*mutawallī*] and supervisors [*nāẓir*], terms borrowed, then re-signified, from Islamic jurisprudence.

In a codified waqf manual written at the end of the 19th century, Ömer Hilmi Efendi starts by providing definitions of the various key words associated with waqf, including *nāẓir*, *qayyim*, and *mutawalli*. He begins with the latter, and provides a similar description to Ayni's earlier one: "He who is appointed to take care of the affairs of the waqf and to look after is interests according to the stipulations of the founders in his founding document" (Art.8). According to the author, *qayyim* is a synonym of *mutawallī*. The *nāẓir* is the person appointed to supervise the acts of the *mutawallī* and to be a reference for the *mutawallī* regarding the affairs of the waqf" (Art.11). Interestingly, Ömer Hilmi inserts a caveat warning that, in certain areas, the word *nāẓir* denotes the *mutawallī*. While the caveat might be correct, it is worthwhile noting that the

[39] The second part of a three part waqf conference organized by Randi Deghuilhem and the Islamic Legal Studies Program at the Harvard Law School was as a matter of fact called "The law of waqf: Modern state control and nationalization."
[40] For the details of who instituted the ministry and how, the main reference would be Barnes (1986).

mutawallī of the imperial waqfs was called *nâẓir-i evkâf-i hümâyûn*—showing that actually even in Istanbul the distinction between *mutawallī* and *nāẓir* is not as entrenched at this moment in time as Ömer Hilmi's new definition suggests.

Even a history of the Imperial Waqf Ministry written in Istanbul in 1917 by one of the premier scholars of the late Ottoman Empire, Ibnüelmin Mahmud Kemal,[41] with one of his colleagues Hüseyin Hüsâmeddin, declares that, "the administration of waqfs is called supervision [*naẓar*]" (1917: 5). However, the section continues and describes a *new* development, "*Lately*, the *nāẓir* to whom the administration of the affairs of the waqf has been conferred by the person in charge [*waliyy al-amr*] has been called the *mutawallī* of the waqf, whereas the title of *nāẓir* has been used more generally. It is given to those who have been checking the affairs of the *mutawallī* and to those who have supervised the general administration of the Muslim waqfs" (5-6). In his work, unlike Kemal and Hüsâmeddin, Ömer Hilmi does not present this development as a historical one,[42] but separates and clearly distinguishes the positions of *nāẓir* and *mutawallī*, thereby normalizing it. Article 303 of Hilmi's waqf manual, for instance, prohibits a single person to be both an administrator and a supervisor of a waqf.

This new distinction between supervisor and administrator served the Waqf Ministry in Istanbul particularly well, since it increased its revenue and control, which is clear from the case of Beirut's waqfs, now reorganized into three categories. As described in the previous section, before the creation of the Ministry, all waqfs were administered by administrators and (nominally) "supervised" by judges.[43] There was no person called a "supervisor" separate from the judge. Following 1850, the Waqf Ministry became exactly such an institution. It classified waqfs into three categories depending on their administration and supervision. The "seized

[41] He was such a prominent and prolific scholar that the İslâm Ansiklopedisi dedicated 13 pages to his biography.
[42] As I have argued in chapter 1, this might be traced to his position as an agent of the state.
[43] There is no procedure in the *fiqh* compendia on how to actually carry such supervision.

waqfs" [*awqāf maẓbūṭa*] had the Waqf Ministry as both their administrator and supervisor. This meant instead of an individual administrator for these waqfs in Beirut, an employee of the Ministry took charge of renting, collecting the rents, and paying the beneficiaries. That employee was accountable to the Ministry: he would send the Waqf Ministry in Istanbul accounting documents and any remainders of the revenues of the waqfs after payment of beneficiaries. Second, the "appended waqfs" [*awqāf mulḥaqa*] remained administered by local Beiruti administrators, according to the wills of their founders, but here too, the administrators were also accountable to the Ministry, which also claimed the remainders of the revenues. Last, the "exempt waqfs" [*awqāf mustathnāt*] did not present any accounting or remainders to the Ministry, were administered by their own administrators and remained under the jurisdiction of the local qadis.

It seems therefore that the administration/supervision distinction that stands as a "normal state of affairs" for Hilmi (and for the Ottoman state) represents the attempt of the state to take over the jurisdiction of judges over certain waqf matters. This very fine new distinction between administration and supervision couches a new arrangement in the old terms of the Islamic jurisprudence, and hints at the re-organization of the production and administration of law, and the role of the state in this process as well as in the life of its citizens.

Arguments of the Decree

These new distinctions (between *nāẓir* and *mutawallī*) that take the appearance of old ones allowed the Waqf Ministry to legitimize its jurisdiction over certain waqfs, particularly those classified as seized or appended. In what follows I will explore the process through which waqfs were classified as either seized, appended or exempt by discussing the arguments used to

seize some of Beirut's waqfs. It is worth remembering that the "normal state of affairs" before the creation of the Waqf Ministry was that all waqfs were "exempt" (even though the terminology itself would be incorrect and anachronistic at that time, because the category was only brought into existence by its relation to the trilogy of seized/appended/exempt and the presence of a waqf ministry). Unless there was an order to "seize" or "append" them, all waqfs were considered exempt. The Sultanic Decree [*firmân*] of 1850 [1266] advanced arguments for seizing [*zabt* (Arabic *ḍabṭ*)] some mosques in Beirut and Sidon by the Waqf Ministry—effectively dismissing their current *mutawallīs*.

In the same register, a very similar decree follows, concerning some of the mosques of the city of Tripoli. It appears, therefore, to be very much a formulaic order, and part of the Ottoman state's (latest wave of) efforts to claim control over waqfs, but it is precisely this scripted quality that provides insight into the general order of arguments advanced for this claim to seize the administration of some waqfs. Rhetorically, the firman uses repetition, particularly towards the aim of discrediting the current *mutawallīs* and therefore justifying their dismissal. Every time the Decree refers to the current *mutawallīs*, it uses a variant on "those who *claim* to be *mutawallīs*:" "*mütevellîlîğî iddiʿâsinde bulunân kesâne*." The first time the Decree refers to those holding mutawallīship, it laments that these waqfs have been passing from hand to hand [*şûnun bûnun eyâdîsine geçerek*], from this to that, a brusque dismissal of the legitimate claims these *mutawallīs* might have had to their appointments. The Decree does not base its claims on slander however; it actually presents arguments that borrow discussions from Islamic jurisprudence about the administration of waqf, such as the proper procedure for the appointment of a *mutawallī* and the reasons behind his or her dismissal. It is important to keep in mind that the Decree draws on Islamic jurisprudence and bases the legitimacy of its arguments or

conclusions on familiar arguments from Islamic jurisprudence manuals and fatwa collections in order to justify the dismissal of current *mutawallīs*.

The three main such arguments for dismissal are embezzlement, the neglect of the waqf's assets and their repairs, and the absence of official appointment letters in the hands of the administrators. Each one was enough grounds for proving the untrustworthiness of the *mutawallī.* Let us first turn to embezzlement or, as the Decree terms it, "*ḥâṣilâtlerî ṣarf-i me'kel*." One of the few characteristics of the *mutawallī* that are explicitly specified in the Islamic jurisprudence manuals is trustworthiness [*amāna*] (al-Khassāf 1999). Therefore, a *mutawallī* who appropriates and spends waqf revenues contradicts the very definition of a *mutawallī*, who is supposed to take care of an object entrusted to her. Ibn Nujaym, for instance, allows a qadi to change the untrustworthy persons [*ghayr ma'mūn*] in a group of *mutawallīs* appointed by the founder. By accusing various *mutawallīs* of Beirut mosques of embezzlement, the firman therefore creates the legal [*sharʿī*] ground to dismiss them. The Decree does not stop here, however. The mutawallīs, and other office holders, the Decree claims, do not have in hand founding deeds or official appointment letters. In addition, no record of their appointment exists in Istanbul. The Decree argues that these are necessary for appointments, because where an original founding document is missing, the founder's stipulations cannot be known, including whether they named any administrator. In that case, a qadi's appointment becomes necessary. The absence of such official appointment documents opens the *mutawallī*s to dismissal. The last argument that the Decree advances concerns the repair, upkeep, and maintenance of the waqf assets [*ta'mîrât ve tanẓîfât esbabı*], or rather the absence thereof. Here again, the argument draws on one of the most important responsibilities of the *mutawallī*s as described in Islamic jurisprudence manuals. For instance, when Ibn Nujaym details the functions of the *nāẓir*, he

advances that "the first thing the administrator does with the revenues of the waqf is to start with the repairs [of the waqf] and the fees of the *qayyim*" (Ibn Nujaym, *al-Baḥr,* 1915 V: 235). It is important to note that the *nāẓir* is required to start the repairs even if the founder did not stipulate that in his founding document.[44] Letting the waqf assets fall into disrepair is considered a treason[45] and reason for dismissing the *mutawallī* (234).

Ḥüsn-i Idâre:[46] A New Understanding of Administration?

While the Decree justifies its seizing of waqfs on particulars grounded in the language of Islamic jurisprudence, like saving the waqfs from embezzlement and disrepair, it also advances a more general principle that uncannily resonates with analyses of modern state power (Foucault 1991): *ḥüsn-i idâre*, or good management. The term appears earlier than the 1850 Decree and in many documents relating to waqf (Öztürk 1995: 74). The use of the term "*ḥüsn-i idâre*" signals a new conceptualization of waqfs as real-estate wealth, which has a reality of its own more than the sum of its individual parts (each and every waqf). that needs to be developed and whose administration is an area of expertise for bureaucrats. Whereas records had been kept since the Ottoman conquest of most waqfs (see chapter 4), it was only with the foundation of the Waqf Ministry and its seizing of administration and supervision that uniform methods of administration, statistics, and new accounting methods entered into use. This new conception

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[44] Deciding to examine all waqfs in the Sultanate and assess whether their administrators were according to the founders' wills, whether they were fulfilling their duties, and whether the act of foundation itself was valid, is itself not a new idea. As Barnes (1986) elaborates in a whole chapter, such ideas circulated at various times. The example Barnes elaborates is the one forwarded as advice to the Sultan Murad IV (1623-40) by a "confident, mahrem-i esrâr, and a gentleman-in-waiting, musâhib" (60). Koçi Bey, as he was called, advised the Sultan to examine all foundations to check on their validity, and proposed that only waqfs that supported mosques, shrines, were to be allowed to exist, while nullifying all "family waqfs. Koçi Bey was mostly concerned with fluffing the income of the Treasury.

[45] "*Wa min al-khiyāna al-imtināʿ ʿan alʿamāra."*

[46] The expression "*ḥüsn-i idâre*" appears in the Gülhane Edict, and therefore seems part of the language of the Tanzimat. I would be interested in further investigating whether it carries over from Islamic genre of advice to the Sultan or not. My guess is that it is a more modern expression.

takes us very far from a "*mutawallī* [who] aims in his actions for the care of the waqf and its well-being" [47] (Ibn Nujaym, *al-Baḥr*, 1915 V: 235), with the individualized care that it presupposes.

How did the Decree re-articulate the responsibilities of the *mutawallī/nāẓir* and the judge and what practices of good management [*ḥüsn-i* idâre] did it introduce? What does it therefore tell us about the ways state agents, judges, and administrators marshaled authority? These are the three points of intervention of the Decree on which I will elaborate below. In short, in terms of division of labor between *mutawallī* and qadi, the Decree divested judges from two of their main roles in waqf matters, transferring these to the Waqf Ministry. The first such role was the judge's, now the ministry's job of supervising the *mutawallīs* and ensuring they followed the shariʿa. Second is the appointment of *mutawallīs* and other office-holders and waqf beneficiaries when the founder did not specify any (which is the case here since the waqfs are very old and no foundation deeds exist). The Decree also made the waqf ministry the *mutawallī* of certain waqfs, and took on the tasks of the mutawallīs to repair, rent, and distribute revenues from the waqf. While discussing this new division of labor, I will show how the Decree introduced new practices of good management in each of these tasks: specific ways of bookkeeping, accounting, and procedures for each task. Finally, I will conclude the subsection with the consequences of the Decree on the production of law—the Waqf Ministry came to legislate on the administration of waqfs, which had usually been determined by an interplay of the founders' stipulations and the jurists' law.

[47] *Wa yataḥarrā fī taṣarrufātihi al-naẓar l-il-waqf w-al-ghibṭa.*

Redefining the Jurisdiction of Judges

After discrediting the *mutawallī*s, the Decree did not turn to the judges, requesting them to apply the *sharʿ*, that is to dismiss these untrustworthy and corrupt *mutawallī*s and appoint other trustworthy ones. Could it be that this task was no longer under the jurisdiction of the judges? Judges, as discussed above, were the sultan's delegates for the application of the shariʿa and supervising *mutawallī*s. In the first attempts at organizing the administration of seized waqfs outside of Istanbul (Sultanic Decree dated 21 February 1841 [29 Z 1256]), while the *mutawallī*-ship of these waqfs were handed to waqf employees who were members of the local provincial administrative councils, the judges still supervised them (Öztürk 1995a: 81). In Beirut, for example, the waqf employee/accountant,[48] with the help of a head secretary, a secretary, and a collector formed Beirut's Waqf Office [*Evkaf Dairesi*], which represented the Waqf Ministry in Beirut(Çelik 2010: 57). The judge's retained jurisdiction over supervision appears in the accounting documents of the Beirut waqfs sent to Istanbul. Indeed, these bear the judge's seal (BOA.EV 11192/41).[49] In these registers, the waqf employee/accountant drafts an accounting book of certain waqfs,[50] based on the book/records the *mutawallī*s presented to him, in the presence of the qadi who oversaw and approved the accounting record. At the beginning of the reforms then, judges still supervised administration.

The results of this first re-organization were deemed unsatisfactory and blamed on the judges who were "too busy to take appropriate care of waqf matters"[51] (Öztürk 1995a: 82). To remedy this perceived failure, a new organization (Sultanic Decree 22 June 1842 [13 Ca 1258])

[48] Whether the waqf official is a *muhasebeci* or a *müdür* and whether these terms are coterminous or whether they has stirred cons there is a very long discussion in the literature on the terminology and what it reflects.
[49] the date of the document falls almost a year after a new Decree that would alter this arrangement, which reminds us that actually Decrees were still not uniformly and contemporaneously applied to all provinces. Öztürk actually mentions that some provinces were altogether exempt from the application of the Decrees because the Tanzimat had not been applied there.
[50] I am unclear if all waqfs or which waqfs, and how these are decided.
[51] "*hakimleri şerʿî işlerle meşgul olduklarından vakıf işlerine gerektiği gibi bakamadığı.*"

handed supervision to the provincial rulers (governor [*kaimmakam, vali*]), treasurer [*defterdar*], and military commander [*müşir*]). In this case, the local government appointed a waqf director from local public and customs employees. Heere, however, contrary to the first arrangement, the judge was nowhere to be found. The new waqf director was responsible to provincial council and the Waqf Ministry, and not to the judge (Öztürk 1995a: 82). This new organization and restriction of the jurisdiction of the judges on supervision of *mutawallīs* is confirmed in the following accounting record sent from Beirut to Istanbul, dating from 1843 [1259] (BOA.EV 11443). The judges are not present at the ratification of the register, again drafted by the waqf employee.[52] Barnes describes this restriction of the jurisdiction of the qadis in waqf affairs as a particularly novel one. "The administration and supervision of evkaf had been the special province of the kadıs since Umayyad times. […] evkaf affairs were removed from their jurisdiction and placed under a secular administration directly responsible to the Evkaf Ministry" (102). Without discussing the appropriateness of the adjective secular to describe such an administration, it is important to remember that the business of administration has always been the domain of women and men who did not necessarily have any knowledge of the law[53]—as discussed in the requirements of the *mutawallī* in jurisprudence (trustworthiness, soundness of mind, and majority). Be that as it may, what matters however, is that the jurisdiction of qadis in terms of waqf affairs was then restrained. Indeed, what we see in the 1842 Decree, and in the seizing order, is exactly the taking away of one of the major responsibilities of the judge in waqf, supervising the *mutawallī*.

A direct consequence of the restriction of the judge's supervision of the *mutawallīs* was their subsequent relegation to the sidelines in the matter of waqf audits, which was also taken

[52] The *mutawallīs* of the various waqfs are still present and ratify the draft after having handed their accounting to the employee.
[53] Even if some founders might nominate the judge as a *mutawallī*.

over by the Ottomans. Because auditing is part of supervision, when the 1842 revised decree on waqf administration suspended the supervisory powers of the qadi, the auditing of waqf accounting was transferred to the Waqf Ministry.[54] The 1850 Imperial Decree mentions such audits in 1846 and 1847 [1262 and 1263]. The *Evkaf Defterleri* [Ev.d] [Waqf Registers] series at Ottoman Archive in Istanbul [BOA] holds such accounting registers from Beirut detailing the revenues and expenditures of various mosques, shrines, and waqfs in Beirut start in 1839 [1256]—the year the Egyptians surrendered back the control of the city to the Ottomans (BOA.EV 11192).[55] The 1850 seizing decree requires the waqf director to send his accounting to the Waqf Ministry once every year in registers detailing the yearly revenues and expenditures for each waqf.[56] By 1863, auditing had increased fourfold to a quarterly basis. The Decree, therefore, not only took away the qadi's supervisory jurisdiction over waqfs but also created a procedure that systematized it.

In addition to supervision, judges were also sidelined from their jurisdiction appointing *mutawallīs* and various office-holders in waqfs, which was then vested in the Waqf Ministry. Indeed, as Barnes (1986) shows, the jurisdiction of judges over waqf affairs had been limited by 1837 [1253], sixteen years before the Decree, as a consequence of a report on Izmir judges who were appointing the highest-paying candidate, rather than the most-qualified candidate, to vacant waqf offices. Barnes cites an imperial Decree of 1837 that is worth quoting at length:

[54] The auditing is therefore not contingent upon seizing of administration by the Waqf Ministry (and the 1850 zabt), but applies to what seems to be charitable works [*khayrāt*]: those supporting mosques, Sufi lodges, saints' tombs, water fountains, and the poor directly (that is what I am assuming from the BOA.EV 11192 sent from Beirut in 1842, which includes the accounting for thirty waqfs, much more than those that will be seized by the Waqf Ministry 8 years later)

[55] The earliest register in the archive of Beirut Shariʿa court, dating from 1843 [1259], lists the various assets of the various Beirut waqfs (sometimes coupled with the amounts of their monthly rents). It does not look resemble an inspection/audit of the incomes and expenditures of the waqfs. This is however the only such example of an exhaustive summary of waqf assets in the whole record of the shariʿa court in Beirut, signaling the loss of jurisdiction of the judge in the auditing of these waqfs.

[56] "her bîrin sene bi sene vâridâtî va muṣârafâtinî nuṭq memhûr ve mamḍî defter hazîne-i mezkureye taqdîm ve iṭâre olunmak üzere"

> While it has been the customary procedure to confer on persons the office of administrator (tevliyet), preacher (hitabet), and prayer leader (imamet) by the kadıs and their deputies (şerʿiye memurları), since excessive and exorbitant fees have been taken by these şerʿiye officials, and whereas posts have been conferred by them upon those who are either unqualified or incompetent, (…) henceforth the issuing of these decisions and the conferral of these offices will be made by officials placed in the sancaks and the eyâlets who are known as muaccelât nâzıları (…) (Barnes 1986: 103)

The Decree remains silent on the issue of appointments to offices. The qadi's registers in Beirut reveal that judges still appointed office-holders and *mutawallīs* to the waqfs that were under the supervision of the Waqf Ministry and the administration of their own *mutawallīs* (e.g. MBS.S9/151).[57] The entry in the register notes that the qadi appointed the office-holder and is in fact addressed to the Porte requesting the issuing of an appointment-letter [*berat*] from the center. The details of the entry reveal that office-holders first went to the Waqf Accountant and took the exams that certified their competence. The role of the qadi consisted simply in the formal appointment, while the actual process of appointment happened outside of his jurisdiction.[58]

Claiming the position of the Mutawallī or the Bureaucratization of Mutawallī-ship

The Decree's main consequence and innovation is to claim, for certain waqfs, the position of *mutawallī* for the Waqf Ministry, thereby bureaucratizing a previously less-rigid post with respect to position, salary and the location out of which the *mutawallī* operated. The *mutawallī* ceases to be that individual whom the founder names or the judge appoints, known for

[57] In addition, office-holders who had appointment-letters from Istanbul sometimes registered them with the qadi (e.g. MBS.S3/142), using the qadi as notary.
[58] Chapter 4 discusses these appointments at length from the point of view of the relation that the waqf creates between founder and beneficiaries, instead of the relation of the waqf to the state.

his trustworthiness, soundness of mind and maturity.[59] Administration reverts to a bureaucratic state apparatus, where the individual bureaucrat is (theoretically at least) replaceable and interchangeable. It signals a change from individualized administration to a uniform state policy, a bureaucratized board administration, applied to all *maẓbūṭ* waqfs. Waqf administration outside of Istanbul had been regulated through imperial orders since 1841 [29 Z 1256]. After various experiments in 1841, 1842, and 1845, the 1863 regulation[60] on waqf administration clearly delineated the manner of waqf administration outside of Istanbul until the end of the Empire. The 1863 regulation makes the waqf director a member of the local provincial council (the local Ottoman state administration), and subjects his decisions to approval by that council.[61] From bookkeeping to budgeting, the regulation standardizes all the administrator's tasks. While earlier *mutawallīs* mostly held their positions on the side, even in the larger waqfs,[62] the new administrators follow a "career" path as waqf administrators, signaled in the change of the title of administrator from a *mutawallī* to an *evkâf memuru/müdürü*, a waqf director/employee in the very "state-bureaucrat" meaning of director/employee. For example, the *memur/müdür* receives from the Waqf Ministry a fixed monthly salary according to the hierarchy of provincial waqf directors[63] (5% of the collected waqf revenues for his services,[64] and a uniform fee (Article

[59] This is not to say that all administration was previously individualized. Very far from that, some waqfs had enormous waqf-ed asssets that required a massive administration (Singer 2002). In addition, as might be recalled from chapter one, many such positions were concentrated in the hands of a single individual (the Graand Vizier, the Chief Euneuch, the qadi, etc.) who then farmed them out. However, even in these cases, there was no uniform manner of administration.
[60] The opening of the regulation mentions an earlier such regulation that Öztürk discusses (1995a: 91), mentioning that some provinces like Damascus were excluded from its application up to a year later.
[61] This appending to the local provincial council appears in the waqf directorship's "double-seal," one of which the waqf director holds, the other the local administrative council.
[62] Even in larger waqfs like the soup kitchen of Jerusalem, administrators held other functions, such as being members of the military-administrative class (Singer 2002: 105)
[63] According to Öztürk's table of new salaries of waqf employees, Beirut's waqf director, who belongs to Grade 1, received a salary of 1750 qurush (almost double his older salary of 1000 qurush), while his secretary's salary decreased to 300 qurush (from 400). The name given is a certain Feyzullah effendi, which is not the same as the one given in the Salname (the yearbook published by Istanbul).
[64] Except for the Baghdad waqf director, he receives 10% of the revenues.

47)).[65] As Yayla (2011: 11) points out, this bureaucratization also manifests itself in the location from which these *mutawallīs* operate: earlier *mutawallīs* probably did their duties as *mutawallīs* from their homes or shops. The new waqf directors hold office in the provincial council's building, where the seals and accounting books do not leave the location, signaling that these are tied to the position and not to the individual. With the seizing of many of the waqfs and their placement under a Waqf Ministry, waqf administration turns into a *service* that the state provides, replacing the three main tasks of the *mutawallīs*—repairing, leasing and collecting rents, and distributing revenues—and subjecting administration to uniform policies. The takeover of the administration of waqf therefore helps create the modern state as an entity independent of those who occupied it, with buildings and offices filled with bureaucrats, archives, and laws. It creates a standard of management

The first object taken by the new management were the accounting techniques of the newly appointed waqf director [*evkâf memuru/müdürü*]. Accounting actually became a "governmental discourse" (Yayla 2011: 1); the 1863 administration regulations contained three long articles describing the way accounting was to be done from the type of registers to be held to the type of information to be recorded. In total, the waqf director prepared and maintained six types of registers. First was a daily register "where they will note the amount, recipient, *hasibet*, and other details of all waqf incomes and expenditures and unexpected expenses" (Article 3). Based on this, two types of quarterly registers were to be drafted to be sent to Istanbul, one for the revenues and one for the expenditures. The revenues register was to include the breakdown of all revenues and the sum total of the expenditures. The expenditure register would only include the breakdown of the expenditures (Article 3, still). Based on the quarterly registers, a

[65] Even if founders actually specified in the founding documents the maximum length of rental, and that the *fiqh* regulated very much as we saw above the administrator's tasks.

yearly register would be prepared detailing all waqf incomes, expenditures, remittances, and remainders (Article 3). Finally, the waqf director would maintain two registers, one for seized waqfs and one for appended waqfs, detailing their assets and their beneficiaries (Article 5). The maintenance of the accounting required a significant amount of labor that must have occupied the waqf director/bureaucrat.

As accounting methods were systematized so too was the form of the accounting registers, which were made uniform. Before the 1863 Regulations, each director sent registers as they pleased (some were beautifully bound and were of course perfectly organized according to their own logic): “The accounting books were in different dimensions and thicknesses, with different types of paper (…). The types of entries in the books were also different, reflecting the characteristics of the persons who kept the books” (Yayla 2011: 11). The 1863 Regulations specified for all six types of registers that they had to follow a sample that the treasury would send[66]. By 1880 (BOA.EV25057), the registers[67] were printed with fixed column width and headings. It was a new kind of “disciplinary writing technique” (Yayla 2011: 14) where the scribe now bureaucrat was conscribed by the logic of the register to help create uniform administration, fashioning the bodies of the bureaucrats to the needs of the modern state.[68]

The Decree, by appending the administration of some waqfs to the Waqf Ministry, also subsumed the collection of revenues to the new ministry. which changed its structure, both in the imperial center (Istanbul) and in the provinces. In the center, instead of a supervisor (one of the

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[66] Article 4: “*Defterleri hazineden gönderliecek numunelerine tatbiken tanzim olunacaktır.*”
[67] They were truly huge registers (almost one meter wide and 60cm high) that made for long discussions with the staff at the archive on how to make copies as they were extremely inconvenient to handle and fell beyond the range of the digitizing technology in use, making for certain parts of the copy to always be blurry
[68] It is important to note here that scribes who were at the service of the Porte before the Tanzimat also went through a process of training that subjected them to uniform ways of writing and notation. Looking at the Mühimme Registers shows a consistency in style. Nonetheless, scribes were still differentiated and their authority varied. Therefore, I am not arguing that the new “order” systematized a disorder, but that it gave a different emphasis, or rather a lack thereof, to the scribe-bureaucrat.

various high officials) farming out the various administrator-ships, the Finance Ministry employed new waqf collectors [*muaccalât nâẓiri* or *muaccalât müdürü* later] collected the waqf revenues. In the provinces, instead of the administrators themselves collecting rents, taxes, and various revenues owed to the waqf, then paying the various beneficiaries and expenditures, the salaried collectors also took over. The collectors took out the tithes, paid the functionaries of the waqfs, including the administrators, and delivered any remainders to the Finance Ministry which was to direct them to the Waqf Ministry—an aim never fulfilled.[69] Instead, the money was spent as the Finance Ministry saw fit. Revenues came to be expanded on modern state building and consolidation, like the expenses of a modern army, unlike the previous accumulation of waqf administrative fees as the personal wealth of high officials.[70] Even more importantly, revenues of all waqfs were consolidated in a single fund and spent as necessary, independently of the wills of founders.

The language of the 1850 Decree presents the seizing as a way to rid waqfs from treacherous *mutawallīs* whose negligence appears in their neglect of one of their most important tasks: the repair of waqf assets. At least four times, the Decree repeats that the seizing will "save the waqfs from ruin" [*awqâf-i şerîfe khayrâtlerînin kharâbiyyetten (…) qûrtârılması*] and that the new directors will "complete the necessary repairs and cleaning" [*lâzimgelen taʿmîrât ve tanẓîfât esbâbinî istikmâlî*]. The 1863 regulations however do not dictate any inspection duties for the waqf director, but they go into very much detail on how and when money should be spent on repairs, which underscores the Decree's concern for "embezzlement," but also confirms the interpretation of the waqf seizing as an attempt of state seizing of resources (Barnes 1986). The

[69] Barnes (1986) describes at length petitions from the Waqf Ministry demanding that the Finance Ministry forward their revenues (108-9).
[70] Öztürk (1995) pushes the argument further and advances that even the repairs necessary for the waqfs became secondary to these expenses, whereas most waqf foundation deeds stipulate repairs as the first expense before beneficiaries. This decision, according to Öztürk, was a deliberate one aimed at eliminating waqfs.

details of the procedure for repairs show a deep concern for the possibility of false claims of need for repairs when the supposed repair money would go into the pockets of administrators or waqf directors. The state now tightly controlled repair expenses, through approval by the provincial council for any repair above 500 qurush and through approval by the imperial treasury for any repair beyond 2500 qurush. In such cases, the waqf director was to present a written report to the council, which would send a member with the waqf director and with experts (master builder and waqf experts [*ehl-i vuqûf*]) to inspect the locale to check if it actually needed the described repair. The inspection procedure would continue, examining the amount of the repairs, to verifying their execution and quality and the payment of the contractors (Article 20). The rest of the section on repairs includes very detailed descriptions of various scenarios (assets being in far away places, the amount of repairs, etc…) and acceptable expenses and compensation.

The other task *mutawallīs* used to fulfill and that now fell on waqf directors was the leasing of waqf assets. The seizing of multiple waqfs from a multiplicity of *mutawallīs* and their placement all under a single waqf director afforded an easier avenue for standardization. This change is apparent in the standardization of rent contracts for the *maẓbūṭ* waqf assets: these are mostly yearly contracts, printed, with particular details filled out by hand for each case (Gerber 1985:190). This is not to say that these contracts were no longer negotiated, but it does indicate that the dominant mode of operation became the standardized procedure,[71] and furthermore that such a project of uniformization was being undertaken. The regulations on waqf administration lay out in detail the manner of renting, the fees to be charged and to whom they will be forwarded, bookkeeping requirements, the hierarchy of approvals, and the penalties for infringing on rules. Without going much into the details of the policies, the regulation seeks to

[71] Gerber mentions that most of the contracts were yearly.

limit certain types of contracts and practices prone to giving permanent rights on waqf-ed assets and ensure maximum rents (through public auction and liability of tenants). Waqf assets were part of the national economy that the state was to preserve and make grow.

Law and Authority, between State and Scholars

It is important to note that I am not arguing that the Ottoman Waqf Ministry was the first time a state had intervened in the administration of waqf or taken over the administration of waqf.[72] I am more interested by the types of arguments advanced for such an intervention, how they resonated with the production and administration of law in modern states, and the consequences they had on the ways scholars invoke authority. As I described here, what the Decree ushered was not only the takeover of the administration and supervision of certain waqfs by the Waqf Ministry. More importantly, it introduced legislation and regulations that subjected waqfs to a new and standard administration. Instead of individual waqfs individually administered, waqfs came to be perceived as forming together an important part of the national economy that needed to be well managed and developed. This administration and supervision sidelined judges in their duties as upholders of the shariʿa and introduced the state as a legislator on matters that had been under the purview of the shariʿa. The introduction and enforcement of various regulations concerning rent and the distribution of waqf revenues to beneficiaries show that the state can replace scholarly opinions on the manner of administration. Thus, the many

[72] A case in point is Egypt's waqf administration, starting with Islamic conquest and the Righteous Caliphs. A cursory history in the EI points to the presence of an "institution for *wakf* administration," the waqf council [*diwān al-aḥbās*], from early in the Islamic history of Egypt. The council seems to be headed by the qadi who fulfils the tasks discussed earlier: supervising, making sure that the beneficiaries receive their share and that there is no embezzlement. However, an unexpected feature of the coucnil is that it collected and dispensed of the extra revenues from the waqfs, making the practice of the Ottoman Waqf Ministry a late-comer to the possibilities of state intervention. In fact, the Fatimids went even further, farming out the revenue collection for a fee paid to the Bayt al-Māl [State Treasury], and from which upkeep and beneficiaries were paid—if these beneficiaries showed proof of their claims. Yet, importantly, in these cases, the qadi remains very much in charge and is the head of the waqf council.

fatwas and lengthy discussions in jurisprudence manuals are rendered irrelevant, and so the stipulations of founders in these domains. The Waqf Ministry produces much of waqf law while it also takes on the duties of the administrator for seized waqfs. The Decree therefore forwards the Waqf Ministry, along other locations within the state, as a new and powerful authority with which they have to contend over the production of waqf law.

III. DECISION 753 OF 1922

During World War I, it became difficult for the Ottoman Waqf Ministry to supervise the waqfs under its jurisdiction. Indeed, the ministry's waqf accountant had fled the city and sending accounts for auditing to Istanbul might have been a little strained given the exceptional times (blockades on the port, famine, etc…) and the claims to independence that were voiced in the Arab provinces, Beirut included (Eddé 2009, Khoury 1987, Longrigg 1958, Thompson 2000, Kassir 2003). Therefore, when the French mandatory powers arrived to Beirut, the various waqfs that had been under the supervision and administration of the Waqf Ministry had not been audited for a few years. The French were quick to claim the institutions and the place of the Ottoman State. Among the early pieces of French legislation was Decree 753, on the Administration of Islamic Waqfs. It remained in effect from 2 March 1922 until 22 December 1930, when Decree 157 replaced many of its provisions. Decree 753 created a General Supervision of Islamic Waqfs [*murāqaba ʿāmma l'il-awqāf al-islāmiyya*] for both Syria and Lebanon. The apparatus of the directorate consisted of three organs: the Supreme Waqf Council[73] (the legislative and administrative apparatus), the General Waqf Committee[74] (an

[73]Conseil Supérieur des Wakoufs, or *al-majlis al-aʿlā l-il-awqāf*. The Council decides [*yuqarriru*] on the manner of administration at and outside the center (Article 6.2 and 6.3); on beneficiaries of increases of waqf revenues (Article 6.4); on the ways to rehabilitate Islamic waqfs, increase their revenues, and ameliorate their administration (Article

advisory apparatus), and the General Supervisor of Waqf[75]. The Decree furthered many of the changes introduce by the 1826 Ottoman Waqf Ministry, particularly, the two main elements above identified: the production of waqf law by a General Supervision of Islamic Waqfs instead of various jurists and the supervision of waqf administration by the General Supervision of Islamic Waqfs instead of the qadis. Before going into the effects of the Decree, analyzing the preamble of the Decree will allow us to understand the arguments it advanced. Even if its effects on the production of law and the ‘ulama’ were to a certain extent similar (centralization of law production in the state, creation of an "official" Islam, marginalization of legislative efforts of the ‘ulama’) to the Ottoman decree, the ways it operated differed considerably. Thus an exposition of the decree's language is necessary.

Arguments of the 1922 Decree

Because the Ottoman state took the application of the shariʿa as one of its responsibilities and sources of legitimacy,[76] the arguments of the 1850 Decree for seizing the administration and supervision of waqfs are articulated from *within* Islamic jurisprudence. I have already shown how the 1850 Decree uses concepts from the *fiqh*, and arguments that qadis, the original supervisors, could use to dismiss *mutawallis*. The underlying cause of the seizing is articulated as a concern over the interests of the waqfs and their preservation so that the charitable purposes of

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6.6); and on the number and salaries of the Directory's employees. Part of the Council's "financial" duties is the auditing of the accountability of the Directorate.

[74] Commission Générale des Wakoufs, or *al-lajna al-ʿāmma l-il-awqāf*. Eventhough Article 10 starts by describing the Commission as the "highest administrative power," in effect its role was very vaguely defined beyond the discussion fo the budget: "it discusses (…) all issues related to the interest of the waqf that the Council or the local majlis bring to it" (Article 10). It was dissolved in later revision of the Decree.

[75] Contrôleur-Général des Wakoufs-, or *murāqib al-awqāf al-islāmiyya al-ʿāmm*. The General Supervisor runs the daily business of the administration. He is the only executive power, takes decisions on administration issues that are beyond the powers of local administrators and collects fees and rents (Badr 1992: 20). He suggests the budget, the committee discusses it, and the Council approves it.

[76] There is an argument that the legitimacy of the Ottoman state started relying on the "Islamic" side only later, that is towards the 18th century.

their founders and therefore the good deeds the founders had planned for could actually reach them. The French Mandatory powers had a different relation to the shariʿa and a different understanding of their role in the fulfillment of the aims of the waqfs, their administration, and supervision. The preamble to Decree 753 makes a long exposition of the reasoning behind the Decree, who is to administer the waqfs, and the role of the French Mandatory power.[77] Its language introduces new concepts, like "religious," "public utility," and "Muslim community."[78] Instead of arguments from the *fiqh*, the Decree uses "public utility" as the underlying cause for the supervision of waqfs. The argument places waqfs in the private affairs of the Muslim community, creating a complex situation where the state constructs and acknowledges a "religious law" outside a state whose sovereignty necessarily resides in its exclusive production and administration of law. It becomes therefore necessary for the state to endorse and authorize certain now called "religious" laws of waqf; in fact, the decree delegates the creation of waqf law to an "independent" organ "representing" the Muslim community[79] and its most authoritative opinions. Therefore, while such a policy of state control of waqf stands in the line of the Ottoman modern state's centralization of the production of the law of waqf in the state, the way it is achieved necessitates a very different maneuvering and operates very distinctly from the

[77] It will be recalled from earlier discussion (in chapter one), that the French had already experimented with waqf administration in Algeria starting in 183—to disastrous consequences, including upheavals and revolts.
[78] The preambles mixes this argument with concepts borrowed from the *fiqh*, such as "the waqf's interest," but uses them in a different grammar. I will illustrate this at length in the next chapter.
[79] the same process happens with "personal status" legislation, which is produced by a Muslim Council and then ratified as state law. What actually happens then is a subsuming of the production of the shariʿa to the modern state legislative process. The logic is exclusive state law on certain issues, but because some of these are acknowledged as belonging to the "religious" and "private" and at the same time the state cannot just leave these to decide for themselves, the state creates a process through which these religious laws are then endorsed.

Ottoman precedent (even if the effect on the production of authority and law among ʿulama' might be very similar, the relation of the official ʿulama' to the state is also different).[80]

Such logics of the state are reflected in the argument of the Preamble, which begins with the premise that waqfs have a "purely religious Islamic character" [*awqāfuhum hiya dīniyya islāmiya maḥḍa*] and can only be administered by Muslims. It then presents a sketch of waqf administration under Ottoman rule particularly during WWI. It follows with the principle that "the government [*ḥukūma*] has the right [*ḥaqq*] to supervise the communities [*ṭawā'if*] and the duty to preserve their interests [*maṣāliḥ*]." However, it continues, waqf follows laws taken from the "religious shariʿa" [*al-sharīʿa al-dīniyya*] which are notably different from those of the state. Therefore, it concludes, the supervision of waqfs is only required for the necessities of great public interests/utility [*mā taqtaḍīh al-manāfi' al-'umūmiyya al-'uẓ'mā*].

The tour-de-force of the Preamble, and the premise allowing the complex maneuvering that gives the supervision of the waqf in the final instance to the French mandatory state, consists in the characterization of waqfs as "religious." According to the Preamble, "Since waqfs, established by Muslims intending beneficence and piety [*al-khayr w-al-taqwā*], have a purely religious Islamic character, they can only be administered by Muslims." Assigning the adjective "religious" to these waqfs is a new characterization, one that was un-utterable in the 19th century (more below). As I have described in chapter 1, it might stem from the puzzle that waqfs created for French jurists who complained: "the waqf does not have an equivalent in our codes; it is neither a will, nor a gift, nor even a testamentary settlement [*substitution*]" (Robe 1875:50 cited in Mercier 1899: 5). Given this perplexing situation, the French struggled to assign waqfs to a certain sphere, to classify them as belonging to the "economy" or "religion," in order to govern

[80] While one might assume that this solution would actually leave the production of the so-called religious law undisrupted, we will see how the creation of such a "Muslim" legislative body rearticulates the field of law and knowledge production.

them: Was it an economic endeavor or an act of worship? As discussed, in Algeria, the French placed them within the economy,[81] and declared waqfs previously administered by the state to be public domain—a measure that incidentally allowed the settlement of colons and the dispossession of the original beneficiaries. Such land grab would have been nearly impossible in Lebanon, especially given the hostility of many Muslims to the French mandate and the conciliatory gestures the French had to extend to them in order to govern (Eddé 2009). Since they could not be placed in the economy, the charitable waqfs in Lebanon and Syria belonged to "religion."[82]

Although the juxtaposition of waqfs with "religious" was novel, I do not intend to suggest that the modern term for religion *dīn* was not used in pre-modern discussions nor that there was no attempt to actually classify waqf within a certain category of practices. The Arabic translation of religion [*dīn*] and religious [*dīnī*] gloss over the very distinct meanings that the Arabic term held prior to the modern era. *Dīn* implies submission to, surrendering to God. It also appears in the Quran in the sense of judgment and retribution as in *yawm al-dīn* (the Day of Judgment) (EI). A widespread definition of *dīn* includes faith (*īmān*), the practice of islām, and the interiorization of faith [*iḥsān*]. *Dīn* also signifies habit or custom [*al-ʿāda*] and worship [*al-ʿibāda*] (*al-qāmuūs al-muḥīṭ*). Ghazālī's famous and massive *Iḥyāʾ ʿulūm al-dīn* [*La vivification des sciences de la foi*] consists of four books that would give an idea what the "religious sciences" include. They are "*ʿibādāt* (worship practices), *ʿādāt* (habitus in the Aristotlean understanding), *muhlikāt* (vices,), *mundjiyāt* (virtues). In that sense, it forms part of the binary pair: *dīn/dunyā*, where *dunyā* is worldly matters, temptation away from God. However, even in

[81] One might also compare the French experience in Algeria with the British in India (see Powers 1999 and Kozlowski 1985). The French emphasized the "land aspect" of waqfs and the potential income it can produce whereas the British focused on its "holy" aspect. The French also (quite conveniently)constructed it as a legal subterfuge [*ḥīla*] to "escape" the law of inheritance and any potential expropriations/'arbitrary' state seizing.
[82] Chapter 4 elaborates how other waqfs (family waqfs) were placed in the economy.

this opposition, it is possible to subsume these worldly matters into the worship of God, as in the saying that the exercise of public office, and the dispensing of advice to rulers, is part of *dīn*.[83] In short, the "Muslim concept [of *dīn*] denotes above all the Laws [and ethics] which God has promulgated to guide man to his final end, the submission to these laws (and thus to God), and the practice of them (acts of worship)" (EI).[84] Dīn encompasses all the ways one should live one's life as a Muslim. What is crucial in our case is that in all these various uses of the term *dīn*, it never appears as a separate "sphere."

Despite an all-encompassing conception of *dīn*, Muslim scholars nevertheless attempted to classify such things as waqf and other practices; the former presents a compelling example of this. Islamic jurisprudence distinguishes, most generally, between "liturgical acts or acts of worship [*ʿibādāt*] and 'transactions' between particulars [*muʿāmalāt*]" (Johansen 1999: 60). The former are devotional acts to God, usually comprise five sections on ablutions, prayer, fasting, almsgiving, and pilgrimage; in short, the relation of man and God, while the latter deal with relations among men, including sales, rents, inheritance, marriage, divorce, etc… Some have argued that the proper fulfillment of liturgical acts is left to the Day of Judgment, whereas the enforcement of bilateral agreements belong to worldly authorities (Johansen 1999). Waqf founding falls in both these two categories. Done with the aim of getting closer to God [*qurbā*], it involves a human being's relation to God. As a nineteenth century jurist and teacher of the law of waqf argued, waqf "can be said to be like worship" (Yaızr 1995: 250). However, it also creates relations between men. The translator of another 19th century jurist and author of codified waqf manual foregoes the liturgical act of waqf-making, and calls the waqf, the "transaction of waqf" (5). This did not mean that the waqf did not belong to the category of *dīn* anymore. Both

[83] As Laoust remarks on his entry on Ibn Taymiyy in the EI, "*Dīn* is intimately bound up with the temporal."
[84] A more thorough examination of the pre-modern use of *dīn* is called for (as I do for *maṣlaḥa* in chapter 3) using pre-modern dictionaries like *al-Qāmūs al-Muḥiṭ* and *Tāj al-ʿArūs.*

ʿ*ibādāt* and *muʿāmalāt* fall within *dīn*. Describing waqfs as *religious* possessions would have been an impossible utterance.

A characterization of waqf as religious presupposes a modern architecture of state, economy, religion, and law. Affixing the term "religious" to describe waqfs as possessions places them in the "sphere of religion," and therefore as part of the "private" affairs of the community to be managed by the community according to its own laws (which also become characterized as religious); here the classic modern scheme of privatized religion makes itself visible through the proclaimed "autonomy" and "independence" of the various religious communities in the running of their "properly religious" affairs. Article 6 of the 1922 Mandate regulations states: "Respect for the personal status of the various people and for their religious interests shall be fully guaranteed. In particular, the control and administration of wakfs shall be exercised in complete accordance with religious law and the dispositions of founders" (Longrigg 1958: 377).[85] This article grants "the entitlement to difference [and] the immunity from the force of public reason" (Asad 2003: 8) Notably, however, it is the state that provides such an immunity, a state that presents itself as outside of these religious communities, as a "secular" state. The state, the preamble declares, is the "guardian" of the various religious communities[86] (Haut Commissaire 1922: 334). Concurrently, this description obscures both the Catholicism of the French Republic and its use of this Catholicism to secure a connection with and present itself as a protector of the Christian Maronites, whose existence was a significant reason for France's presence as a mandatory power. Yet, this private immunity only goes so far: Since it is granted

[85] The 1926 Constitution enshrines this right in Article 9: "La liberté de conscience est absolue. En rendant homage au Très-Haut, l'Etat respecte toutes les confessions et en garantit et protège le libre exercice, à condition qu'il ne soit pas porté atteinte à l'ordre public. Il garanti également aux populations, à quelque rite qu'elles appartiennent, le respect de leur statut personnel et de leurs intérêts religieux" (Rapport 1926: 202)

[86] "L'Etat, tuteur légal des collectivités."

by the state, the immunity is not absolute, as the Preamble points out: public utility might require the intervention of the state, even in these “religious” possessions.

Because of this religious character of waqfs, the “Muslims” acquired the right to administer “their” waqfs according to “religious” shariʿa.[87] That necessitated the creation of the Muslim community as a community both *outside* and within the nation-state of Lebanon. The Muslim community, one might argue, already was imagined as a community, as an “*umma*.” *Umma* however, like *dīn*, had a multiplicity of meanings (al-Sayyid 1984: 44) both in the Quran (the group/community [*jamāʿa*], followers of prophets, *dīn*, a righteous man that can be a leader) and in later practice, but it was not necessarily restricted in the Quran to a “religious” community (see al-Sayyid’s discussion pp. 45-7) nor to the Muslim community in particular. It had the potentiality to include all of humanity in its surrendering to God, in all of the world becoming Muslim. It is pregnant with the potential reunification of humanity in “a single human world in the name of Islam” (41). That Muslim/human world community, the universal *umma*, was however imagined and projected as a universal and all-embracing community, among other things, through property: the common ownership of land and booty (83). While at the beginning of the conquests, booty and land were divided among the Muslims, later on Abu Bakr was said to have made (certain types of) conquered land into waqf with all Muslims as beneficiaries of the right of use, so as to allow the new Muslims of later times to have access to these lands.[88] Therefore, the French Mandate’s linking of property and community, as in the Preamble’s statement “waqfs are like the religious private property of the Islamic community,”[89] is not a novelty. The question of whether *waqfs* could be thought of as the property of the Muslim community remains more problematic .

[87] “Lā yajūz an yudīrahā illā al-muslimūn .”
[88] “The ownership of kharaj land belonged to the Muslim community as a whole” (Cuno 1995: 123-4).
[89] *“Bimā anna al-awqāf hiya bi-mathābat mulk al-ṭā’ifa al-islāmiyya al-dīn.”*

However, the shape and form of the Muslim community under the French mandatory nation-state of Lebanon differs radically from the political imaginary of the *umma*. It is a community *among others*, outside the state and circumscribed within the nation. The *umma* implies a very different vision. In the latter, the community as a whole had a single leader (single power) and was invested with the power to decide on this leader through *shūra* [consultation]. The duties of the *imām* reflect his leadership of the *Muslim umma*: "guarding the faith against heterodoxy, enforcing [Islamic] law and justice between disputing parties (…), protection of peace in the territory of Islam and is defense against external enemies, (…)receiving the legal alms, taxes" etc…(EI). In contrast, the French divorced the Muslim community in Lebanon from the larger Muslim *umma* and from the state and created for it (and for each non-Muslim) community a different "official" leader/representative to the state, the mufti (and the patriarch). The duties of this leader become restricted to the "spiritual well-being" of the congregation and to (what comes to be defined as) "personal status," which includes waqf. By doing so, the Decree actually straddles a difficult line. It places the law of waqfs in the hands of the Muslim community, as a "religious" and therefore private (outside of the state) matter, while one of its claims to sovereignty stems from its exclusive production and administration of law. The handing down of jurisdiction to the Muslim community over these affairs occurs through a delegation of legislative power to the Supreme Waqf Council. The decisions of the Supreme Waqf Council are then ratified as state law. The creation of such a council therefore concentrates the production of law on issues like waqf in the hands not the Muslim community and its many jurists wherever they may be but to the Lebanese representatives (at first appointed, but then elected) of the Supreme Waqf Council.

State Production of Waqf Law: the Supreme Waqf Council

The 1922 Decree officially consecrates the radically modern Ottoman nineteenth-century changes in state and law: taking the legislation on waqf matters from the hands of the scholarly community of jurists and placing them into the hands of the Supreme Waqf Council, which becomes the highest legislative and administrative authority for the supervision of the waqfs (Article 5). The Council was therefore made responsible for legislative changes (pertaining particularly to financial matters). Starting with Article 6 that defines the responsibilities of the Waqf Council, the Council is made responsible for deciding on the "ways that local directors and waqf administrators should follow in the administration of general/public and familial waqfs [*al-awqāf al-ʿumūmiyya w-al-ahliyya*]." Therefore, while the Article still assumes and concedes that some waqfs are administered by their own administrators—persons distinct from the Directorate, the Director, and his various local delegates—the laws these independent administrators are to follow are now issued by the Council. The Council and the Directorate more generally assumes the responsibility of legislating on all waqf affairs, and for all waqfs: the Council decides on "the amendments to be introduced, according to the shariʿa, on the laws particular to Islamic Waqfs" (Article 6.1).

Such a statement supposes that the 'legislating' members of the Council are familiar with the shariʿa, and assumes a single law for waqf and a single waqf law-making body, the Council. If the only enforceable waqf law is the one produced by the Council, the legislative efforts of other jurists-scholars become much less central to the production of waqf law. It will be recalled that Ottoman waqf law was elaborated in a whole body of literature by jurists (through waqf manuals, *fiqh* books, fatwas, epistles, etc…). The relevance of this body of literature becomes much less evident when the State adopts a particular version of this body or even other

legislations elaborated by the Council (which had some jurists on it but did not give them free reign) as “the” law of waqf administration comes to be applied on all waqfs. This process puts at a further remove the pre-nineteenth century Ottoman multiplicity of laws and of law-producing scholar-jurists. It does follow that waqf law produced outside the bounds of the Council does not make its way into state-sanctioned waqf law, or that, as I will show in contemporary Beirut, the boundaries between state and non-state scholars are as clear as they appear to be from such an Article. As I will elaborate further below, the distinction between state and non-state ʿulama’ is much more blurred because of the blurriness of the state as an entity, where appeal to the fiction of the fixity of the state is used to actually negotiate between the views of the various scholars. The process of production of waqf-law itself nonetheless does not assume such independent scholars engaged in a hermeneutic effort for the production of law.

Jurisdiction in Supervision: General Supervision of Islamic Waqfs, “Shariʿa” Judges (aka qadis), and the French Mandatory Authorities

Decree 753 does not stop at extending legislative power over all waqfs to the Directorate, it also gives the General Waqf Supervisor jurisdiction over all waqfs, including those that had been exempt from such jurisdiction during Ottoman times. Article 21 states: “As the General Waqf Supervisor, he can oversee/control [*yurāqibu*] the actions and administration of the administrator of general/public and familial waqfs [*al-awqāf al-ʿumūmiyya w-al-ahliyya*] and the directors of charitable Islamic associations whatever their purposes are. He also works to force the [above-mentioned] administrators and directors to comply with the rules of the codes in effect [*marʿiyya*] and the founding documents of the associations.” He had the right to audit and examine the work of these administrators and directors. This Article therefore extends the

jurisdiction of supervision of the so-called exempt waqfs over to the General Supervision, which basically obliterates the category of exempt waqfs. All waqfs are now supervised by the General Supervision.[90] The qadis have lost any jurisdiction they had had over the supervision of waqfs.

Nevertheless, the Decree does not specify any process through which this auditing is to happen. Therefore, while Decree 753 extends the jurisdiction over supervision of all waqfs to the General Supervision, the process of auditing remains unsystematic, and un-enforced unless a particular Director or a particular waqf or case come to the fore, either out of zeal (some might say rapaciousness), a dispute, problem, or complaint. While the absence of systematic auditing might appear as a lack of actual enforcement, it provided space for maneuvering around waqfs and people.

While the Decree placed the production of waqf law and waqf administration in the hands of the General Supervision, effectively, it left to the French High Commissioner the last word in any decision any of the bodies of the General Supervision could take. One might recall that the Preamble puts forward the premise that the government has the right to supervise the communities and the work of their representatives, while limiting such an intervention and supervision to the "great reasons of public utility". The powers of the High Commissioner were far from limited however. In general, the opening articles and definitions of the new directorate do not hide the High Commissioner's role in the administration. Indeed, the Directorate General of Waqf, an independent, "purely Islamic" [*islāmiyya maḥḍa*], authority, with its financial and administrative independence, is directly attached [*tābiʿa ra'san*] to the High Commissioner or his representative. (Article 2). It is he who appoints the General Supervisor; he can also dismiss

[90] Article 23 shows this extension of jurisdiction by making the Supervisor of waqfs the legal representative of both "public and family waqfs." The full text reads: As a representative of the Islamic Waqfs, the Supervisor can make lawsuits (…) or can represent the waqfs in any lawsuits about public and family waqfs.

him at any time (Article 24). Hence, the General Supervisor and his decisions are at the mercy of the High Commissioner, who ultimately functions as a representative of French power.

Examining how members of both Council and Committee were chosen, how often they met, and how they operated also shows that their powers were also much more limited. Both Council and Committee, mostly appointed, come out as peripheral to the functioning of the Directorate, especially as the Council meets twice a year and the Committee once. The Council totals ten members, 6 of which are "natural members," that is members who are de facto part of the Council because of their position: the director of the General Supervision and the highest shariʿa judges in each of Beirut, Damascus, Aleppo, and Latakia, and the shariʿa judge of appeal (all of which are positions to which judges are appointed after examinations). It also had a "representative of the Muslim community [*ṭā'ifa*]" (Article 9.2) in each of the four cities *appointed* by the local government (the French?) after consultation with the local Muslim community of scholars [*ʿulamā' al-islām*]. The members of the Waqf Committee are the same as those of the Council with the addition of local waqf directors, a representative of each of the [local] committees [*lijān*] of the *qaḍā*'s [county] and the *liwā*'s[91] [district].

Representatives on all boards were therefore appointed directly or indirectly by the High Commissioner. In addition, all bodies were to report to him or to his representative. The Council was to inform the High Commissioner of anything illegal [*mughāyiran l-il-qānūn*]. Only he can decide on an extraordinary Council meeting (other than the two mentioned in the Decision). Decree 753 also makes his representative, his advisor on real-estate matters, the only means of communication between the General Supervision and all other state administrations during the whole mandate. This was in line with the general manner of French administration, where Lebanese directors-generals holding the executive power were supposed to be the right hand of

[91] These committees take on the local administration of waqfs in smaller towns and remote areas.

the governor of Lebanon, but "real power in the administration lay in the hands of the French 'advisers'" (Traboulsi 2007: 88). Finally, and most importantly, no decision taken by any of the bodies of the General Supervision could be effective unless the High Commissioner ratified it.

While the newly created General Supervision appears to replace the Ottoman Waqf Ministry and to continue along the lines and even further the changes that Ministry had introduced (production of waqf law by the State and restriction of waqf supervisory jurisdiction by judges), the actual setup and functioning of the General Supervision shows a very different relation to the State. The Ottoman Waqf Ministry was part and parcel of the Ottoman Muslim state, whose attempt at waqf administration, supervision, and waqf law-making stems from the Islamic tradition. If the sultan could actually remove waqf supervision from the hands of judges, it was because their power to do so originally emanated from him; he delegates such power. In fact, he could make an argument from within the tradition for such a restriction of jurisdiction. The French created General Supervision is actually an *independent* authority, which hands waqf administration, supervision, and waqf law-making to the Muslim community. However, because its claims of sovereignty stem partly from its exclusive production and administration of law, the State effectively retains the power to ratify all decisions of the Supervision, except the ones that are based on the shariʿa. In addition, based on claims of "public utility," it reserves the right to supervise the Supervision. As we have seen, that supervision was so tight that it almost amounted to French Mandatory State administration, supervision, and legislation over waqfs.

IV. Transitions

The nominal control Decision 753 gave to the Muslim community over the waqfs remained proved controversial and was heavily contested. It confirmed to many that the French were acting as a colonial power, intent on "wrecking religious foundations"[92] and land-grabbing at the expense of the Muslim community. Gennardi, the advisor to the High Commissioner on real-estate and his representative at the General Supervision of Waqfs, reported "lack of cooperation by local governments and waqf officials" (Kupferschmidt 103) from the beginnings of the implementation of Decision 753. Writing on 11 September 1921, he complained that "the Beirut mufti refuses to work with the local waqf committee and thwarts the collection of waqf revenue" (Kupferschmidt 103). Similar resistance erupted in Damascus and Aleppo. The opposition to the Decree and to French control (from the different cities of the French Mandate, including Damascus, Aleppo, Beirut, Tripoli) gathered and organized a Waqf Congress in 1930 in Aleppo, creating a Waqf Defense Committee consisting of 24 members. It comes as no surprise then that the Supreme Waqf Council issued a Decision in 1930 to re-organize the waqf administration with the aim of effectively handing the administration to the "Muslim community" through lifting the High Commissioner's hand from administration and transferring its delegation to the control of elected boards.

Jurisdiction over Waqf administration and Supervision: the "Muslim community" (via the General Supervision) and Shariʿa Judges

Decision 10 of 1930 reversed one of the "advances" that Decree 753 had made in relation to the Ottoman reforms. While Decree 753 had extended the Directorate's supervision over all

[92] "Ruiner les foundations pieuses"

waqfs, therefore eradicating any "exempt" waqfs and subjecting *all* waqfs to the supervision of the General Supervision, Decision 10 reversed that extension of jurisdiction of the General Supervision and gave it back to the shariʿa courts.[93] The first article states that very clearly: "Elected councils with the support of Directorates are entrusted with the administration of seized waqfs and with the supervision over appended charitable waqfs. Supervision and inspection of family waqfs and exempt waqfs revert to the shariʿa courts." Instead of concentrating supervision of waqfs in the Supervision, Decision 10 split this jurisdiction between the Supervision and the shariʿa courts, in line with the argument that Muslims should be allowed to exercise control over their waqfs according to the shariʿa, which as shown in section 1 of this chapter actually left supervision of waqfs to the judges. This division of jurisdiction remains to this day, and continues to cause competition between the courts and the Directorate General of Islamic Waqfs (the new name for General Supervision), as well as struggles in determining jurisdiction over cases (more below).

Decision 1930 represents an attempt to redress the control the French State had over the General Supervision by putting into action the claim of the Preamble to the 1922 decision: that the waqfs are "religious possessions of the Muslim community" and that only Muslims have the right to administer them.[94] It is important to note that waqfs, as we described in chapter one, in the Ottoman practices did not belong to anyone but to God. Their ownership reverted to him, and

[93] Note that as for the Ottoman period, this was not an extension of state control over areas that were not controlled by the state. It is a change of jurisdiction between the different state apparatuses: the DGW and the shariʿa courts. In both cases, legislation on waqf is issued by the Supreme Islamic Legal Council.

[94] Replacing a single General Supervision for both Syria and Lebanon, the 1930 Decision proceeded to a decentralization that took the shape of four different directorates for each of Damascus, Aleppo, Beirut, and Latakia (Article 2)—providing a certain degree of continuity with the Ottoman administrative divisions (each of Beirut, Damascus, and Aleppo had their own waqf administrations). The jurisdiction of each directorate actually refers to this Ottoman administrative past. For instance, the area under the jurisdiction of "the Damascus Directorate is all the land of the previous Damascus province" (Article 6). Each directorate (Damascus, Aleppo, Beirut, and Latakia) had its own director. In addition, each of the four directorates supervises any local waqf offices present in its administrative sub-divisions (county [*qaḍā'*] and district [*liwā'*]). The new decree emphasizes local waqf administration and local knowledge in counties and districts under the supervision of the local mufti or local imam (Article 8).

the beneficiaries had rights to their usufruct. As discussed in the first section of this chapter, their administrators could be designated by the founders, and in case these were extinct, it was the judges who guaranteed the rights of the beneficiaries, usually the poor (not the Muslim community). The Ottoman State took over a lot of the jurisdiction of the judges in the Waqf Ministry (section 2). But, when the French Mandatory State replaced the Ottomans, the independence of the Muslim community in the administration of the waqfs was advanced, and therefore waqf administration was to be divorced from the State. With the aim of handing the administration of waqfs to the "Muslim community" as a prerogative outside of the state, the 1930 Decision created *elected* administrative and scholarly councils[95] with extensive executive powers, dwarfing the power of the appointed Director. The electing body representing the Muslim community was a new Islamic Electoral Council—a council that came to acquire a major role especially after Independence in the election of boards and most importantly the mufti

[95] As the Directorate fulfills the role of administrator for the seized waqfs, one notices that the Decree now distinguishes between the different tasks of the administrators and hands them to two different councils: administrative and scholarly. As described in the first section of this chapter, the administrator of a waqf is responsible for repairing, renting/exploiting, collecting revenues, and distributing them to beneficiaries. He also designates these beneficiaries, when the founding document does not specify or name them, such as the appointment of imams, callers for prayer, janitors, etc. Decision 10 divides these tasks between two separates bodies: the administrative council and the scholarly council. Such a division confirms the newly founded distinction between economy and religion, and hands each of tasks to a different expert. The administrative council's council duties fall mostly under a financial umbrella (Article 24): supervision of the budget and the expenses, deciding on repairs and construction of waqf lots (from the bidding of design to the auditing of accounting), renting out waqf-ed assets, auditing the accounts of appended waqfs, auditing the expenses of the Directorate and legally prosecuting any irregularities. It also approves the trimester-ly and annual reports of the expenses and activities of the Directorate. Such activities are termed as caring for the "interest of the waqf" (see chapter 3). The scholarly council's main task is the examination of the candidates to the religious positions and their appointment according to the Ottoman code of *Tawjīh al-Jihāt* and taking decision about the legal matters raised by the director or the administrative council. It also functions as a "guard" that checks that the decisions of the administrative council on the accounting of the appended waqfs and the seizing of certain waqfs conform to the shariʿa (my analysis). The Decree also creates a "classification committee" that is to inventory and classify all religious buildings from mosques to schools to charitable foundations, with all their employees. Its tasks seem to be a "rationalization" and standardization of the employees. Three classes of such buildings are created, each with a certain number of employees, and salaries. Long gone the days when founders decided on these!

himself.[96] These administrative and scholarly councils took most of the executive authority in waqf administration, replacing the single-handed administration of the Director, who retained a modicum of power in "small" decisions.

The State and The General Supervision

Appointments and Elections

The "independence/autonomy" of the Muslim community was granted by the state, which however retained the right to intervene for "reasons of public interest." The 1930 Decision makes the four directorates ultimately accountable/under the supervision of the heads of states in Syria and Lebanon. The decision specifies that these are the Prime Minister in Syria and "the highest Muslim religious functionary" in Lebanon and in Latakia. This distinction lies in the possibility of a Christian being the Lebanese Prime Minister, which would defeat the whole purpose of entrusting the administration of Islamic waqfs to the Muslim community. Therefore, in Lebanon, making the Prime Minister the state representative to which the waqfs were accountable was impossible. This defining clause beautifully illustrates the processes of "secular" state formation as it highlights the erasures and assumptions of this order. Because Syria, as was created under the mandate, was a Muslim majority state, the Article did not specify a "Muslim" Prime Minister. However, as the case for Lebanon proves, that is exactly what is required. A very similar process occurred during the formation of the modern "secular" states of Europe, whose Christian majority could then become unmarked and secular. As Anidjar

[96] The Electoral Council comprised all Muslim deputies and some 32 members representing Muslims in liberal professions (lawyers, engineers, pharmacists, etc.), scholars, waqf administrators, official Islamic charitable associations, and the highest Muslim officials: judges, the mufti, the Waqf Director, and the representative of the descendants of the Prophet Muhammad. The Electoral Council, following very strict rules for its meeting and voting, elects the members of the scholarly council and then those of the administrative council. This structure was retained after independence, but the composition of the electoral committee is subject to constant debates.

eloquently puts it, "Christianity (that is, to clarify this one last time, Western Christendom) judged and named itself, it *reincarnated* itself as secular" (2006: 60). It is this very genesis that hides the majority's religion and makes it unmarked, that could illuminate the contemporary European feeling of "threat" from its "minorities."[97]

However, the question remains; why specify the highest *"religious"* Muslim functionary instead of the highest Muslim functionary? A "pragmatic" answer is possible. Given the Christian 'majority' in the newly founded Lebanese state, neither the president, nor the speaker of the parliament, nor the prime minister was Muslim, up until 1927.[98] Given that situation, determining the highest among the deputies and ministers would have been a difficult task. Therefore, the specification of the highest "religious" functionary serves to unlock this bind and restrict it to a few contenders whose "highest" authority could be easier to determine. In fact, the question of whom the "highest Muslim religious functionary" in Lebanon is more complicated than it appears. While contenders include shariʿa court judges (or the Supreme Judge) and muftis,[99] determining which one of these would be the "highest" caused contention, especially since Tripoli and Sayda each had their own muftis and judges and Tripoli boasted many a learned scholar.[100] The adjective "highest" Muslim religious functionary referred to an individual's location in the state hierarchy rather than the most learned or authoritative scholar. In addition, the new logic that the Lebanese nation-state instated appears in the primacy and preference given to the Beirut mufti. Thus the competition was between the highest judicial

[97] As is probably clear from the argument I am presenting, I do think that the process is particular to Christianity.
[98] In 1927, Muhammad al-Jisr was the first Muslim to occupy any of these positions—he was a speaker of the parliament.
[99] the Prime Minister had not yet been designated for the Muslims—this was to happen 1942 in the national Pact [*al-mīthāq al-waṭanī*]
[100] This competition appears in the staffing of the Waqf Supervision at its creation. . The first president-elect of the Supreme Council was judge Muhammad al-Kastī (b.1869) (al-Ḥūt 1984:19), who had served as the head secretary of the Beirut Ottoman court for a long while and until the retreat of the Ottomans. The General Supervisor from 1922 to 1940 was Shafīq al-Malak from Tripoli (al- Ḥūt 1984: 19).

authority (in the shariʿa courts) and the mufti. This competition between the two organs was to become a long-enduring one, which still manifests itself up to this day. During the French Mandate, the highest authority on waqfs had been the *qādī al-quḍāt* al-Kastī, given his long experience in the Ottoman courts. However, Al-Ḥabbāl argues, after the void left by the illness of al-Kastī, who was the "only qualified functionary and the highest authority on waqf affairs," that the question of who had the attributes of the "highest Muslim religious employee [*muwaẓaf*]" came to the fore. The question was addressed to Gennardi, who responded that the mufti held these qualifications,[101] therefore making the mufti the highest authority on waqf. Thus, the mufti became a key figure in the administration of waqfs, as he was responsible for the appointment of the director (Article 7)[102] who was accountable to him.[103]

It ostensibly seems, therefore, that the waqf administration was handed over to the Muslim community, as elected boards and a mufti-appointed director carried most administrative duties. However, the mufti's appointment originated from the president of the state, in keeping with Ottoman practice. Indeed, at the end of the 19th century, as outlined in Article 38 of a 1913 [1331] Ottoman law on "qadis and shariʿa functionaries" a local committee of scholars[104] elected three possibilities for a mufti, one of which the sheik ül-Islam appointed (al-Ḥūt 1984: 41, Walī 1993: 254). Muftis at that point held their position for their lifetimes, so when the French had arrived, there was already a mufti (Mustafa Najā). Questions occurred at Naja's death in 1932 as to how a colonial Christian power, whose authority and right to govern the region and Muslims in particular had been, and were still, challenged, could actually select and appoint a mufti, the

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[101] I would need to find out more about this process, and how this happened and why. It is also related to the re-organization of the shariʿa judiciary and the elimination of the qadi

[102] The article actually uses the passive: "A director is appointed in each directorate"

[103] Post-colonial Decree 118/1955 makes him the "highest reference for Islamic waqfs" (Article 3).

[104] It was composed of all those who taught at mosques, madrasas, preached, as well as Muslim elect-members at the provincial administrative council and municipal council.

Muslim religious head of the community.[105] The electing board[106] solved the problem by selecting itself a "winning" candidate, Muhammad Tawfīq Khālid. The president, Charles Debbas merely ratified the decision of the board by issuing a presidential decree [*marsūm jumhūrī*]. However, the practice was not institutionalized and when Khālid passed away in 1951, eight years after the independence, time was ripe for a new legislation for the procedure of election of the mufti. The same Islamic Electoral Council that elected the members of the Supreme Waqf Council was made to elect the mufti.

Financial Independence and the State

The budget of the DGIW derives from two types of revenues, the ordinary and the extraordinary. The latter come from exchanges, fees, gifts, donations, and wills. The ordinary revenues consist of rents of built plots, of un-built plots, long leases, and various sorts of other revenues. From this budget, the DGIW disburses for habitual and unexpected expenditures. Habitual expenses include the salaries of the employees at the DGIW, general administrative expenses, the allowances of the clergy ["*rijāl al-dīn*"], social expenses like fellowships as well as general and particular donations, costs of maintenance and renovation of existing structures, retirement plans, and foreseeable equipment for existing structures. Extraordinary expenses are those that allow the DGIW to expand its activities, like new works and their necessary equipment. From this picture, the DGIW appears to have the financial independence of a public authority.

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[105] One can see this reluctance and distrust in mufti Naja's refusal of taking on the title mufti of the Lebanese Republic that General Gouraud offered him in 1920 instead of the mufti of Beirut (al-Wali 1993: 251). He was forced, nonetheless, under threats of arrest or deportation to assist to the ceremony of proclamation of Greater Lebanon on the side of Gouraud (Eddé 2009: 17)

[106] It was composed of 36 Beiruti scholars and convened at the house of Muhammad al-Kastī who was the chief justice[qāḍī al-quḍāt, a position that was eliminated at his death]. The other candidates were : Muhammad al-Unsi, Saīd Ayyās, Muhammad Saʿīd Ayyās, Mustafa Ghalayīnī, amd Muhammad ʿUmar Barbīr. Khāled won with a majority of 22 votes.

However, looking more closely into revenues and expenses starts to complicate the picture. For instance, what are the revenues labeled as "various sorts"? The Financial Regulations of the DGIW (22 March 1926) describes at length some of these various sorts of other revenues. These include "fixed amounts from the transmission of the tithe [land tax] and other *public* revenues owed from the State to the DGIW" (DGIW 1959: 85 and in al-Ḥūt 1984: 102). This situation derives from Ottoman practices of delegating and giving rights of tax collection to individuals, who sometimes made them into waqf. What this practice translates to in modern parlance is an earmarking of the revenues from taxes of citizens to go in the budget of the DGIW, making the financial independence of the DGIW since it meant that Ministry of Finance owes some of its citizens taxes to the DGIW. Therefore, the so-called financial independence of the DGIW appears to be much complicated, and its ambiguous connection to the state is revealed as we observe money circulating between the various state ministries and public authorities.

Public Authority and the State

The contradictions incurred by DGIW between its independence from and connection to the state lies in its very nature, its public character— its foundation as a "public authority." Such a form, while (theoretically) granting the DGIW financial and administrative independence, is actually very much bound to the state. The *state* needs to acknowledge that mosques and waqfs are *public utilities* (a public need that should be satisfied or a public good, not profit), and important to be fulfilled (and therefore should not be left to individual initiatives/ effort/ enterprise) and are best served if administered independently (Yakan 1963:128).[107] The French

[107] There are other legal theories on whether it is public utility that defines administrative law, which Yakan outlines (1963: 144-154).

mandatory powers actually saw waqfs as a way to fulfill these public utilities like education. "Les wakfs généraux, en raison de leur charactère universel d'oeuvre de bienfaisance, peuvent donner en Syrie un revenue qui permettra d'augmenter et d'élargir *les œuvres d'assistance publique*, de couvrir entièrement le budget du culte musulman, d'aider aussi, dans une notable proportion, les œuvres d'enseignements du droit et de la littérature musulmane" (Haut Commissaire 1922: 333). We see here that the High Commissioner actually treats waqfs as a way to provide some of the public goods that the state provides: education and poor relief.

One its *public utility* character was recognized, the legislative needed to pass a *law* to create the DGIW. It can also be dissolved if the state decides that public utility is no more of needed. It acquires privileges of state institutions because of this fact. However, it also submits to the "administrative tutelage [of the state] so that it does not overextend the [jurisdiction] legislation that created it(…). The manner of supervision differs; the central authorities can approve the public corporation's decisions before their application, or it can supervise and audit its accounting" (Yakan 1963:208). The DGIW therefore always remains suspended between autonomy and dependence, at the margin of the state, and that is what the Decision that I opened with this chapter highlights.

V. DECISION 42 OF 2003

The DGIW as State Apparatus

In 2003, the Supreme Islamic Legal Council[108] issued a decision[109] (Decision 42) requiring any new mosque to have the Directorate General of Islamic Waqfs as its administrator, even if a

[108]As we discussed above, the Supreme Islamic Legal Council had jurisdiction over waqf legislation. More generally, in Lebanon, the legislative power is invested in the Parliament [*majlis al-nuwwāb*], who can delegate this

private individual or an association had funded its construction and upkeep. Decision 42 mobilizes the authority of the State to project the appearance that the DGIW is part of the State apparatus. The Decision appeared in the official gazette of the Lebanese Republic and the mufti of the Lebanese Republic signed it. It appeals to previous state regulations to authorize itself. Decision 42 makes three innovations with respect to the process of mosque building and waqf administration. First, anyone who desires to build a mosque or prayer hall needs to first request written approval from the DGIW on the plans and building permit documents and then make the DGIW the administrator (this counters the use of shariʿa courts and their judges who allow founders to make whomever they want as administrators) [Article 1B]. They also need to make the plot or part thereof where the mosque/prayer hall stands into a waqf (this counters any claim that Islamic organizations might lay using different legal opinions to say that a prayer hall does not need to be a waqf) [Article 1D]. Finally, no organization, institution, association *[jamʿiyya, mu'assasa, rābiṭa, hay'a*], or similar organism can take any existing or new mosque or prayer hall as its headquarters, base, address, or private waqf, from whichever private authority, and for whatever purposes, subjects, or activities (this counters the use of the Ministry of Interior to circumvent passing through the DGIW AND the shariʿa courts) [Article 1H]. Despite these allusions to an overarching control over Muslim bodies, systems and institutions, in the following sections I will show that, in fact, the DGIW's self-proclaimed authority was challenged by the other organs of the state, but also by individuals from within it and without it.

legislative power to the Cabinet in certain matters . The Supreme Islamic Legal Council was given legislative power on the religious affairs on the Muslims.

[109] In the legal hierarchy, a decision [*qarār*] is at the lowest of the scale, followed by Legislative Decrees [*marāsīm ishtirāʿiyya*], Laws [*qawānīn*], the Constitution, and International Conventions.

Challenges to the DGIW as a Public Authority

The Circulation of Waqf Objects among Various State Apparatuses

The Mandate debates over the authority responsible for waqfs continued in the post-colonial period. Indeed, the claim that the mosques are a public utility does not necessarily imply that the DGIW should be responsible for their administration, as Decision 42 does. Indeed, two other state apparatuses can present contenders to such a task: shariʿa courts and the Ministry of Interior. The issuing of the waqf-foundation deed is under the jurisdiction of the shariʿa courts.[110] Any waqf deed, in order to be effective, needs to be drafted by a shariʿa judge and registered at the shariʿa court. Article 17 of the Organization of Shariʿa Courts of 1962 [*tanẓīm al-maḥākim al-sharʿiyya*] describes the jurisdiction of these courts as including "the waqf, its rules, binding-ness, validity, necessary conditions, beneficiaries"[111] (no.14). It also includes the appointment of administrators of the family waqfs (no.15), deposition of the administrators of family waqfs or exempt waqfs and the decision on how much money they need, giving permissions to administrators and the administrator of purely family waqf, drafting and recording the waqf deed according to its rules [*uṣūl*]. The DGIW was the administrator of its own mosques and waqfs, but was not involved in the supervision of family or associations' waqfs—that was the responsibility of the shariʿa courts. The administration of the DGIW and that of shariʿa courts are actually separate (they are housed in two different buildings). In addition, the shariʿa courts report directly to the Prime Ministry and do not fall under the purview of the mufti. Even more, these

[110] Note how Sunni is un-marked. For instance, the Supreme Islamic Legal council is the Sunni one, the Shiite one is qualified with Shiite. See Max Weiss (2010) on the formation of Shiite identity in French Mandate Lebanon.
[111] "*ḥukmuhu, luzūmuhu, ṣiḥḥatuhu, shurūṭuhu, istiḥqāquhu, qismatuhu qismat ḥifẓ wa ʿumrān*"

two state apparatuses did not have an official bureaucratic procedure that required communication and information sharing.[112]

Another contender for the supervision of mosques is the Ministry of Interior. Most Islamic organizations are NGOs and associations that receive a permit from the Ministry of Interior. Instead of registering mosques as waqfs in shariʿa courts, associations could use the jurisdiction of the Ministry of Interior over NGOs and have mosques as their headquarters. In that case, neither shariʿa courts nor the DGIW have supervisory power. Decision 42 attempts to restrict this possibility by prohibiting any association to have a mosque for headquarters. However, given the many points at which the jurisdiction of this or that organ of the state is impossible to determine, Decision 42 conjures an image of a coherent state that the DGIW is to occupy.

The Circulation of Persons between the State Apparatus and "Private Entities" **[jihāt khāṣṣa]**

Decision 42 portrays the DGIW in opposition to organizations, institutions, associations *[jamʿiyya, mu'assasa, rābiṭa, hay'a*], or similar private bodies. The DGIW appears as part of the state apparatus distinct from such private associations. The DGIW, however, does not have the resources to staff all mosques from the graduates of its shariʿa school.[113] It cannot control the affiliations of its religious staff—even if it has the power to dismiss them because of misconduct[114] and even if it specifies in its regulations that they cannot enroll in any political parties or unions (as defined in Article 35 of the Administrative Regulations of the DGIW, 3

[112] Hajj Tawfīq recounts how he sent a list of the waqfs of the Birr and Iḥsān to the GDIW when Marwān Qabbānī was its director, and how Qabbānī's reply was "thank you very much, but this will sit on a desk and will not be useful," because the DGIW does not have jurisdiction over such waqfs. The lawyer of the DGIW complained about the lack of coordination between the DGIW and the shariʿa courts.
[113] Kulliyat al-Sharīʿa and Azhar Lubnān.
[114] See for example the case of Malas, http://www.al-akhbar.com/ar/node/32818.

April 1980). Therefore, many of the religious staff and employees of the DGIW belong to the very associations whose activities in and administration of mosques Decision 42 attempts to restrict. Conversely, many private organizations have on their boards official employees. Let me illustrate with two examples.

Sheikh Muhammad is the resident imam at one of the mosques administered and supervised by the DGIW. He is beloved by the worshippers. As one of them, Samer, explained, "He keeps the sermon short and to the point, does not ramble, and does not rebuke constantly—preaching to the converted, we who go to the mosque to pray." Samer was very surprised to hear that Sheikh Muhammad was a very active member of the Jamaʿa Islamiyya [Islamic Group]. The Jamaʿa has been very closely associated with the Egyptian Muslim Brotherhood since its inception in the early fifties. Echoing the ideology of the Brotherhood, it lamented the state of Muslims in the world and in Lebanon in particular: in prey to materialist desires, abandoning Islam, lured by the West and its values. It took upon itself spreading the Message of the Qur'an and organizing Muslims in a society where "Islam would be the measure of the individual's actions."[115] Implicit in the Jamaʿa discourse is a critique of the official representatives of the Muslims, the mufti and the institutions that stand for official Islam, which people refer to as Dār al-Fātwa.[116] Therefore, while the association to which Sheikh Muhammad belonged was highly critical of the DGIW and Dār al-Fatwā in general, he was able to secure himself a position at a mosque the DGIW administered. Negotiation between the DGIW and "private organizations" then seems to happen on an individual basis, rather than them standing on two ends of a

[115] From their website: http://www.al-jamaa.org/pageother.php?catsmktba=15. The Jamaʿa distinguihed itself from its sister organization "*Jamāʿat ʿIbād al-Rahmān*" by its political positions and its military actions: supporting transnational Islamic struggles and the Palestinian cause. Up to the past few years, for instance, they were very much in line with Hizbullah's positions, especially in Parliament.
[116] Dār al-Fatwa, literally the house of fatwa. The complex that houses the mufti and the institutions of official Islam, representing Muslims to the State. It is used figuratively to refer to the official religious Muslim authority.

spectrum. When the DGIW mobilizes such a trope of independence and opposition between the DGIW and private organizations, it is to make a claim on the control of mosques and to try to silence some of the groups challenging its authority and its fulfillment of its duties as a leader of Muslims.

The reverse coin of members of organizations circulating in the corridors and mosques of the DGIW are state employees staffing the waqf boards of various "private" organizations. Both the Attorney General at the Sunni shariʿa court, Samīr ʿĀliye (the "boss of all these judges" according to Hajj Tawfīq), and the Inspector General at the Supreme shariʿa court, Fawzī Adham, are on the waqf board of the *Birr and Iḥsān*. The organization is an Islamic one that recently converted itself to a waqf, whose main purpose is the provision of education, on all levels. The new campus of the Arab University in Dibbiyye, part of the waqf of the *Birr and Iḥsān*, includes a mosque that is not under the administration of the DGIW or any formal state apparatus. As a prominent member of the organization, Hajj Tawfīq asks, "Who is going to stand against us, unless there is a reason?" If it is the very people who are requesting mosques to be administered by the DGIW who are administering some of the mosques outside the DGIW, the constructed opposition in the administration of mosques becomes not an opposition between private organizations and the DGIW control of mosques, but one between particular organizations and those dominating the DGIW.

Decision 42 embodies a mobilization of the trope of the state and an appeal to its stability and authority by a certain group in order to silence the challenges it is receiving. Telling in that regard is the statement of the mufti when I asked him about the reasons behind the Decision. "It was different movements, associations, and parties [*qiwā ḥizbiyya*] producing sheikhs and

students, each on their own, without approval, and challenging the authority of the *Dār*." Such challenges pushed him to try and put an end to the chaos it was producing. What is untypical for an Islamic authority is the tool deployed in order to silence these various groups: legislation. Indeed, while the diversity of legal opinions might be the main characteristic of Islamic Law, the various weights they afford derive from both the moral and epistemological authority of their authors. Instead of using such epistemic and moral authority, which is also one of the bases of the challenges to the DGIW and official Islam, to counter the claims of other groups, the DGIW used state law as a way to silence them.

CONCLUSION

In this chapter, by focusing on various moments in the administration of waqf, I have attempted to bring forth the fundamentally different logic of modern power but also to point at the incompleteness and the contradictions this new order engenders. It is not that waqf administration and supervision have been taken over by the state, but that this is an always incomplete project that forever calls for new attempts at control. The modern project is always so: a project. While in some sense, modern power appears to have an overwhelming logic, when examining it in one particular area, here waqf administration, its ambiguities and contradictions come forth. What surfaces, as the various moments illustrate, are constant re-articulations with changing conditions.

When an Ottoman Muslim state attempts to take over the supervision and administration of waqf and monopolize the production of law, and waqf law in particular, it does so drawing on arguments from within the Islamic tradition but also advances a new ideal of "good management." Most of the laws it introduces usher in techniques of micromanagement with

standardized procedures of accounting and calculation, regulations in Foucault's terminology, making waqfs a resource to be managed and made to grow. When a French colonial power takes over the state apparatus, the techniques through which waqfs are governed, the approach to waqf as "real-estate wealth," and the form of a centralized waqf ministry/directorate remain the same; these are modern techniques of government, one might say. However, new arguments and a new arrangement reflecting the different relationship between the state and the Muslim population (now conceived as a community among others) are advanced. The state places waqf within the domain of the religious and creates it as a patrimony the Muslim community owns and administers collectively. Because the state itself defines the waqf directorate as an independent public authority, the directorate remains under the umbrella of the state, in an ever ambiguous independence, at the "margins of the state."

What ensues is therefore is an "independent" organ to represent the most authoritative Islamic legal opinions and to produce waqf law as state law. This organ creates a new space from which scholars can produce authoritative opinions. At first an organ to administer waqfs, and enabled through the Supreme Legal Council to create waqf law, this very power to issue enforceable state laws actually allowed the DGIW and the supreme legal council to acquire a life of their own. Through, or even rather than, managing waqfs, the "official" authoritative law they produce actually reinforces their own position and silences other authoritative views. But at the same time, because of the circulation of people and things between the DGIW and varying "non-state" actors, an individualized negotiation process mediates the application of the law. As appears through waqf administration, the modern state's exclusive production and administration of law re-articulates the ways scholars of the Islamic tradition can claim authority from within the state, from epistemic and moral to one appealing to law and the force of the state. In

sketching the changes in the manner of waqf administration, I have attempted to describe the varying conditions under which individual founders were making waqfs. We can now turn to the waqfs themselves, their founders and beneficiaries, and the relations they supposed with the state and those they created with their families, and the ways these have transformed under these different conditions.

PART II: MODERNIZING WAQF

CHAPTER 3: THE "WAQF'S INTEREST"[1] AND PUBLIC UTILITY

> "Waqf is done neither for business nor for making profit" (Hilāl 1936:95).

In the 1990s, after the end of a fifteen-year civil war, Beirut's newspapers were replete with articles discussing the reconstruction of the city center. When the proposal for a private real-estate holding company passed the legislature in 1991, the debate continued and intensified, the plan meeting with criticism from rights holders [*aṣḥāb al-ḥuqūq*],[2] architects, and planners. The rights holders' grievances concerned the decision to expropriate their holdings for reasons of public benefit and to compensate the owners through shares in the stock of the company, later known as Solidere.[3] This was a massive operation of dispossession that threatened to take away their ownership of land, shops, apartments, whether in whole or in part (through shares). Most importantly, the new law would rob them of the possibilities the city center held for their future. However, despite the campaigns and lawsuits filed against it, the company proceeded with the expropriations, with backing from the government led by Prime Minister Rafīq Ḥarīrī, who was—not coincidentally—a major stakeholder in Solidere (Sarkis 1998).

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[1] I translate *maṣlaḥat al-waqf* as "the waqf's" interest rather than "waqf interest" because "the waqf" conveys better what I will demonstrate in this chapter: that the interest was particular and individualized in each case.

[2] One of the first plans treated the whole area as a *tabula rasa* and was built on a modernist plan with very clear-cut zoning based on function. It involved the destruction of all existing fabric to create a new vision for the city. The call was for a more democratic approach to the design, including public debate (which happened *de facto* because of the ire of all, but was not actively sought or included in the process). Architects and planners advocated a more sensitive approach to the fabric; the rights holders wanted their own rights back. For more on this, see Hourani (2005), Makdisi (1998) and the books cited in footnote 42.

[3] It is the acronym of Société Libanaise pour le Développement et la Reconstruction. The articles of the incorporation of the company passed the legislative in 1992.

Among the very few who were able escape this dispossession and to retain physical assets instead of company shares was the Directorate General of Islamic Waqfs.[4] As a headline in 1994 announced, "all immovables that are affiliated with the DGIW will be returned." In a nation-state where *public* interest and utility forms the highest reason and the only constitutional limit to the right of property, how was the DGIW able to negotiate such an exception in the name of the waqf's interest and religious interest more broadly? I contend that one can begin to understand this contradiction by examining the genealogy of "public utility" and "the waqf's interest" and their articulations in the context of Beirut, with the various historical relations of state and law I have already described in earlier chapters. Therefore, in this chapter, I will turn to focus on the relations between the state and individual endeavors of waqf, and the ideals of life sustained by each.

As I have already explained in depth, in pre-modern postclassical Ottoman practice, waqf was defined in the shariʿa and the state's role was to preserve the shariʿa. Each waqf's interest reflected common interest and the state preserved it as such. When the modern state's role started to revolve around the management and progress of the nation's economy, the waqf's interest became subordinated to a higher concept of public utility defined by the state. In the pages that follow, I will examine the notion of the "waqf's interest" at four moments in this process, paying special attention to how that concept intersected with public utility. I argue that while the concept continued to be used throughout the period, transformations in its grammar affected its use, its conjunction with other concepts, and the types of cases to which it was applied.

As detailed in chapter 1, waqf endeavors in nineteenth-century Beirut most often involved a revenue-generating object whose ownership the founder surrendered to God, while its

[4] The waqfs of the various Christian denominations also had this privilege. Actually, very early in the reconstruction debate, in 1991, all heads of the main religious communities coalesced in their interests in keeping their lands and presence in the city center, and formed a unified front of demands against Solidere (Annahar 17 August 1991).

usufruct and use went to support a certain charitable purpose. Waqf assets were rented, but their exchange for money or another asset was a more complicated matter, due to the fact that they were inalienable, as per the most authoritative definition. Their exchange hinged on the concept of the "waqf's interest." Basing my discussion on debates over the waqf's interest as concerned waqf exchanges in the *fiqh*, I will first show that the concept was consistently invoked with the twin concept of "the stipulations of the founder," and that it was aimed at being a guide for individual transactions rather than a general principle. Because the waqf was an act of charity, the waqf's interest represented the interest of the community while overlapping with the interests of the founder, who would only receive her good deeds as long as the waqf was productive.

Next, I address the implications of 19th century Ottoman legal transformations on the use of the concept. Some of these changes, as seen below in the Law of Expropriation, introduced the notion of public utility; the concept itself was defined from outside the shari'a, as the Expropriation Code was "received" from the French one. Although public utility actually excluded the waqf's interest, the concept of the "waqf's interest" continued to be used, creating legal deadlocks where different stakeholders could appeal to both these concepts. Using the case of waqfs expropriated for the widening of a road in Beirut in the 1890s, I demonstrate that when the Ottoman state resolved such conflicts, it upheld both positions and resolved the conflict through technicalities that avoided an explicit assessment and prioritization of one interest over the other. This situation, however, did not remain so for long.

In the third section of the chapter, I show how the imposition of a French Mandate on Lebanon and Syria brought with it a colonial legislation that actively subsumed the waqf's interest under that of the public interest, trumping the former and making the latter the highest reason of state. At the same time, colonial legislation on waqf incorporated the waqf's interest

into its justification for new legislation on waqf exchange. I argue, however, that such legislation deployed the same term without attention to its grammar or to its place within Islamic jurisprudence. It decoupled the waqf's interest from the stipulations of the founder and appealed to the concept as a general principle of law, using it alongside certain Muslim scholars' authoritative opinions in order to justify a single, exclusive, and enforceable new legislation on exchanges and rents. Here, instead of the waqf's interest, we are closer to an abstract waqf interest, which comes to be rendered many times as religious interest.

Finally, I return to the waqf expropriation in the reconstruction of downtown Beirut in order to argue that the concept of the waqf's interest continues to form a concept representing ideals of life that appeal to and represent the Muslim community. Despite the Mandate's enshrinement of public interest as the highest cause the state should preserve, the preservation of the waqf's interest formed a recurring argument that various Muslim groups used in making demands of the DGIW and the mufti as a guardian of the interests of the community. The crisis almost provoked by the decisions about expropriation for shares allowed the DGIW to successfully negotiate waqf's exemption from expropriation. However, here, waqf appeared again as patrimony, or in other words as real-estate wealth that could be made to grow independently of each waqf. It was not the interest of each waqf that the DGIW preserved, but waqf in general, as fungibles representing the patrimony of the community.

I. Pre-modern Snapshot:
Shariʿa-defined and State-preserved "Waqf's Interest"

Interest [*Maṣlaḥa*], the Purpose of the Law, and the State

Before delving into a snapshot of the pre-modern grammar governing the waqf's interest, I would like to spend some time unpacking the term interest, *maṣlaḥa*, since it stands at the core of both the waqf's interest and public interest. "The breakthrough for the concept of *maṣlaḥa* in Islamic legal theory […occurred…] in the later 5th/11th century" (Opwis 2005:188), with Ghazālī, and, Opwis argues, "the constituents of the concept (…) did not actually change" after him (197). *Maṣlaḥa* after Ghazālī became a technical concept, not to be confused, as he himself wrote, with a more pedestrian understanding of interest as "bringing benefit and fending harm" (Ghazālī 1997:416). It occurs in manuals of *uṣūl al-fiqh*, or Islamic legal theory, "the theoretical and philosophical foundations of Islamic law" (Hallaq 1997:vii), which include "the sources of the law and the methodology for extrapolating rules from revelation."[5] As I have already explained earlier, the main sources of the law are the Quran and the Ḥadīth. When these are silent on cases, the consensus of scholars follows as a source, then analogy. These four methods became uncontroversial sources for deriving rules, making them the four most widely-accepted sources of the law. Discussions of *maṣlaḥa*, however, fall most often within "other" methods for deriving legal determinations, whose status in the four main sources varies according to school and scholar. *Maṣlaḥa* is "the embodiment of the purpose of the law" (Opwis 2005:183), in other words, it is seen as the preservation of *the purpose of the shariʿa*, which is maintaining religion, life, mind/reason, lineage/progeny/offspring, and property of humans (Ghazālī, al-Mustaṣfā 1997:417). These various purposes of the shariʿa are deduced from a multiplicity of legal

[5] Calder, N. "Uṣūl al-Fiḳh." *Encyclopaedia of Islam, Second Edition*.

determinations explicit in the Qur'an.[6] For instance, the presence of a punishment for unlawful intercourse shows that the preservation of offspring is an interest that the shariʿa seeks to preserve. Therefore, *maṣlaḥa* goes beyond a state's or an individual's assessment of harm and benefit, and takes the form of the purpose of the shariʿa as appears in the scriptures: the preservation of religion, life, mind/reason, lineage/progeny/offspring, and property.[7]

The place of *maṣlaḥa* within other legal principles differs between scholars, as Opwis describes, because at heart is the question of the limits of human reason and the possibility of knowing divine will.[8] Positions of scholars vary from those that only accept as legal determinations what is explicitly mentioned in the Qur'an and the Sunna, to those who consider the *maṣāliḥ* as the ultimate purpose of the shari'a. The latter thereby measure each legal determination to these *maṣāliḥ*, dismissing even those based on the more authoritative derivations by analogy or consensus if they contradict the ultimate purposes of the Shariʿa, which appear cumulatively. As Hallaq (1997) explains, many early Hanafīs actually discuss *maṣlaḥa* with analogy because the *ʿilla* or *ratio legis* (the attribute common to both cases that makes them comparable) is usually deduced by the reasoning of the scholar, and must be in line with the *maṣāliḥ*. The widespread Ḥanafī position has mostly overlapped with Ghazālī's opinion on the matter—that *maṣlaḥa* is not a lesser legal source of law but one that only applies exceptionally, and supplants all four other sources in such cases of necessity [*ḍarūrāt*], but only

[6] As Ghazālī explains, the absoluteness of these *maṣāliḥ* comes from the fact that they have been corroborated by a multiplicity of legal determinations in the scriptures, none of which by itself is enough to makes these *maṣālīh* part of the *ḍarūrāt* (see also Opwis 2005 and Hallaq 1997)

[7] Any other interest that is not explicit in scriptures is known as *maṣlaḥa mursala* and is not for Ghazālī an acceptable source for legal determinations (Ghazālī 1997:420)

[8] As Johansen (1999) argues powerfully in his introduction, contingency became accepted as part of the process of producing law and is even considered a *raḥma* from God. There are limits to human reason, but it does not mean that one cannot know—it means that one can only know to the best of one's knowledge.

if it is certain (or beyond any reasonable doubt) [*qaṭʿiyya*] and universal (involving the totality of Muslims) [*kulliyya*].[9]

Opwis argues that, in English, *maṣlaḥa* is "frequently rendered as 'public interest,' although it is much closer in meaning to well-being, welfare, and social wealth" (2005:183). The observation of the translation into English seems to be a correct observation, as even a scholar attuned to the language-prison of modernity like Hallaq renders *maṣlaḥa* as such. In a footnote, Opwis continues and adds the following:

> *Maṣlaḥa*, in my view, should be translated as 'public interest' only when it refers to the permissibility of the political authorities to issue rulings that concur with the public good within the sphere of *siyāsa*.[10] When, however, a *muftī* gives a legal opinion on grounds of *maṣlaḥa*, this has little to do with 'public' well-being but is usually based on considerations of a single, private case (183 fn.3).

I would like to argue that despite Opwis's laudable attempt at scrutinizing the translation of *maṣlaḥa* and her use of the Arabic word, she reproduces a "modern" understanding of "public" in her elaboration of when *maṣlaḥa* should be translated as public interest. It would seem that the difference between the cases Opwis describes is two-fold. Firstly, in the initial case she cites, the issue is between the subjects that make the decision based on *maṣlaḥa*—the state or a private scholar—while the second case concerns whether the interest and wellbeing being defended refers to that of a collective or of a single person. These are two different understandings of "public" (public as state and public as collective) and they do not necessarily overlap. Indeed, a private scholar could give a legal opinion on issues of "public interest" based on the *shariʿa* (and not outside of it, i.e. on *siyāsa*). Secondly, depending on its place in the legal scaffolding,

[9] Therefore, it is permissible to kill a Muslim that the enemy is using as a shield, if the enemy's winning could reasonably lead to the winning of the enemies and the death of all Muslims. However, those on a sinking on an abandoned ship cannot rid themselves of or eat one of their fellows to save the rest of them, because this is not a total necessity.

[10] "the discretionary authority of the ruler and his officials, one which they exercise outside the framework of the *S̲h̲arīʿa,*" "Siyāsa." Encyclopaedia of Islam, Second Edition. Brill Online , 2012.

maṣlaḥa can always require a collective interest, one that affects all Muslims. For Ghazālī, this is the case, as there is no *maṣlaḥa as a legal concept* that is not collective: *maṣlaḥa* needs to be total to serve as a ground for a legal determination. To illustrate, when a private scholar (like al-Ghazālī) determines that it is unacceptable for a group of three or four human beings stuck on a boat to eat one of them to survive, this is, in Opwis' categorization, a "single, private case," that will not affect the "public well-being." However, the reason behind Ghazālī's opinion is that a legal determination based on *maṣlaḥa* needs to affect all Muslims, and this is not always the case for all scholars. When *maṣlaḥa* is introduced in legal maxims, it can be about the preservation of religion, property, offspring, reason, and the life of a single individual ("private" in Opwis' case), as in the maxim of the particular harm being suffered to avert a collective harm. In this case still, while the particular/collective dichotomy might be at work, it is not necessarily in conjunction with an opposition between non-state and state. The distinction that Opwis introduces does not also acknowledge that it is also "private" scholars like Ghazālī who might be making decisions for "governmental authorities" about the "public good." In short, Opwis's mapping of collective interest with the state's does not hold true in the pre-modern understanding of the state and the role of the shariʿa and scholars in it.

The concept *maṣlaḥa* also appears in legal maxims, [11] where it is most often associated with the adjectives collective [*ʿāmma*] or particular [*khāṣṣa*]. In his famous legal maxims manual "*al-Ashbāh w-al-Naẓā'ir*," which provides most of the opening section of the Mecelle, Mamluk-Ottoman Egyptian Ibn Nujaym discusses one of the main legal maxims "Harm should be

[11] "These are *ma<u>dh</u>hab* internal *legal* guidelines that are applicable to a number of particular cases in various fields of the law, whereby the *legal* determinations (*aḥkām*) of these cases can be derived from these principles. They reflect the logic of a school's *legal* reasoning and thus impart a "scaffolding" to the "case-law" (*furūʿ*)" Heinrichs, W.P. " Ḳawāʿid Fiḳhiyya." Encyclopaedia of Islam, Second Edition. Brill Online , 2012.

removed."[12] Sometimes, removing a nuisance produces another one, and therefore a series of other rules are established to compare nuisances, like assessing which is the greater of harms to be avoided. Another rule for comparing harms is "the harm of particulars is to be borne to avoid the harm of the collectivity/general harm." [13] The example that Ibn Nujaym gives here to illustrate that rule uses one of the ultimate examples of "public utilities": roads. A privately owned [*mamlūk*] wall that has tipped on the collectivity's road [*ṭarīq al-ʿāmma*], and that therefore presents a threat or blocks the road should be demolished and removed at the expense of the owner to avoid general harm/nuisance [*darar ʿāmm*].[14]

In these understandings of collective interest, the state does not appear. Ibn Nujaym's example indicates that lands and shops were "expropriated" before the formulation of "expropriation legislation," but that these were rarely state endeavors. A well-documented example will illustrate how collective interest was upheld under the Ottoman state. In 18th century Ottoman Aleppo, "it was not government but numerous individuals and charitable foundations who made the daily decisions affecting urban development"[15] (Marcus 1989:293). On the other hand, the state "upheld the institutional framework that ordered the process [of development]" (296). The "numerous individuals" operated as individuals sometimes, as in the case of waqf endeavors, but in many other cases, they formed "various autonomous communities, namely the *millets*, or ethnic groups, guilds, and religious orders" (Çelik 1986:33) and they themselves took care of sanitation (garbage collection), the maintenance of roads and water distribution, education, and social security. The unit of self-administration was the

[12] *Al-ḍarar yuzāl*
[13] *Yutaḥammal al-ḍarar al-khāṣṣ li-ajl dafʿ al-ḍarar al-ʿāmm*
[14] The reader might have noticed, I have avoided translating *darar ʿāmm* as *public* nuisance and *maṣlaḥa ʿāmma* as *public* interest, and have preferred the use of collective/general interest and nuisance (and as their opposite, particular interest and nuisance). This is because the "public" of "public utility" "public good" and "public interests" in our modern understanding carry particular associations, other than just the collective: its connection to the state.
[15] I find the term "urban development" rather anachronistic.

neighborhood, which had a headman that would represent it in dealings with the state. To illustrate the different role of the state and the different way public utilities, which came to be seen as the responsibility of the State in the 19th century, were provided, the case of the provision of water in 18th century urban Aleppo would be useful, as it illustrates the interplay of neighborhood, guilds, and state. Mosques, schools, and fountains had rights to water coming to the city, rights which were enforced by state-courts. Two guilds also entered the picture: one took care of the maintenance of the waterways and was paid by each neighborhood through collections from residents, the other guild's members roamed neighborhoods with buckets of water to sell to households. In case of conflict, a process of negotiation among inhabitants, sometimes mediated by authority figures (like the guild's heads, the sheikhs), and also sometimes by the qadi, upheld the "collective" or "general" interest. It is the shariʿa that defined *maṣlaḥa*, and the state's role consisted in the application of the shariʿa, which would then safeguard the collective interest. In this case, it is not the state that defines what counts as a public good, or, in the particular example at hand here, public utility. The state's role is the preservation of the purposes of the shariʿa [*maqāṣid al-sharīʿa*], as elaborated by scholars outside the state and as enacted in individual waqf endeavors.

The Grammar of the "Waqf's interest"

In light of this discussion of *maṣlaḥa,* let us turn to the discussion of the waqf's *maṣlaḥa*, or the waqf's interest. The discussion of the waqf's interest arises mostly in relation to exchanges and rents, but is most recurrent in the lengthy discussions of exchanges. Even the earliest waqf compendia, al-Khaṣṣāf's and Hilāl al-Basrī's—both written in the ninth century AD—discuss waqf exchange, but the criteria of exchange, or the various parameters used to assess the

exchanged waqf and its substitute, had not yet crystallized into the generic “waqf’s interest” that would become dominant in later manuals. Al-Khaṣṣāf’s discussion does not even formulate the waqf as an entity having an interest. For him, the substituted waqf was to be more productive and more advantageous for the beneficiaries [*ahl al-waqf*], and not of the abstract legal entity “the waqf.”[16] Hilāl al-Basrī, on the other hand, does speak of the waqf as such an entity when he is surprised that his master denies non-stipulated exchange, even when it is “good for the waqf” [*wa huwa khayr l-il-waqf*]. Still, in this case, the exchange itself is beneficial and good for the waqf; it does not serve an independent good called “the waqf’s interest.” The various criteria that enter in assessing the worth of the substitute-to-be and comparing it with the existing waqf-ed asset (size, revenue, etc. as discussed below) had not yet formed a compound all-encompassing term, interest [*maṣlaḥa*], which concurrently would become a much more elusive concept. Coincidentally or not, however, the second characteristic of the substitute mentioned in al-Khaṣṣāf, that it be “more advantageous” [*aṣlaḥ*], has the same root as the principle of the *interest [maṣlaḥa]* of the waqf. Both *ṣāliḥ* (*aṣlaḥ* being the comparative from the adjective) and *maṣlaḥa* are derived from the same root ṣ.l.ḥ, which is the opposite of degeneration and decay [*fasād*]. This is not to say that it presages the later crystallization of all criteria under *maṣlaḥa*, but that the *ṣalāḥ* and *khayr* of the waqf—its good—has always been something to care for.

When later jurists argued that exchange of a waqf in case of necessity would be permissible *because it is for the waqf’s interest*, is *maṣlaḥa* used in the technical sense expounded? Are the jurists making a legal determination based on *maṣlaḥa*, *maṣlaḥa* being the purpose of the shariʿa, or is it used in the more pedestrian understanding of *maṣlaḥa* as benefit? The coupling of “*ḍarūra*” with the argument for exchange based on *maṣlaḥa* seems to imply that

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[16] “The waqf” comes to stand for many components of the waqf. In this case of the benefit of the waqf, the waqf stands for the beneficiaries of the waqf. In other cases, when saying this land is waqf for instance, waqf stands for the waqf-ed object.

the latter is used as a legal concept. In that case, the *maṣlaḥa* of the waqf needs to be an indispensable one (part of the five maṣlaḥas that the shariʿa preserves), total, and certain. One could argue that the preservation of the waqf helps in preserving property and religion. However, would the disrepair of waqf lead to "severe harm" for property and religion for all Muslims? Given the extent of the use of waqf for mosques and madrasas, one might argue that this is indeed so. The question then becomes whether the disrepair of one waqf would lead to such drastic consequences, and the answer is, of course, no. However, given the cost of repairs and the threat of disrepair in the face of decay, given building techniques and natural catastrophes like earthquakes, fires, and storms (as discussed below) each and every waqf was bound to face the question of exchange. So, while individually, the interest of each waqf does not threaten the *maṣlaḥas* of religion and property totally, since each and every waqf might be reasonably expected to face such a threat, the waqf's interest in general can be considered part of the necessities to be preserved.

However, at other points, *maṣlaḥa* seems to be used much more casually—as in benefit—instead of following the aims of the shariʿa. The Damascene scholar Ibn ʿĀbidīn, for instance, discussing, towards the end of the eighteenth century, the possibility of exchange in the case of a waqf that has some revenue but it does not suffice to its repairs, argues for the validity of such an exchange: "if the qadi allows it and he sees benefit in it"[17] (IV:384). Another more "casual" or systematic use of *maṣlaḥa* associates it with the "interests of the benefeciaries," as in discussing why a stipulation that prohibits the qadi from exchange is invalid "because it is a stipulation that involves forgoing interest for the beneficiaries, and is an impediment to the waqf. It is therefore a stipulation that has no benefit for the waqf nor interest, making it unacceptable" (IV:386). The juxtaposition of *maṣlaḥa* with synonyms like *fā'ida* pushes one to think that in this particular

[17] "*idhā kāna bi-ithn al-qāḍī wa ra'yuhu al-maṣlaḥa fīhi*"

case, the term is being used casually, rather than as a legal concept. While arguments for both a casual and a legal use seem to be plausible—even in the case where benefit is used in a pedestrian manner—it is important to note that it is the qadi who decides what is for the benefit of each waqf, and that, most importantly, he bases his decision on criteria elaborated by scholars (as described below) rather on the existence of a certain "public interest" defined by the State, and existing outside of these scholars' interpretations.

"Waqf is no Business" vs. the Waqf's interest: Exchange as Individualized Exception

While caring for the waqf and preserving its interest are arguments presented in discussions of exchange, it is important to understand the place of an argument on the benefit of the waqf within questions of its administration. I will show how the dominant logic of exchange (and administration in general) preserves the waqf as its founder created and imagined it, thereby making the "waqf's interest" the criterion for assessing an exchange rather than the logic that drives it—even if there are some tensions towards making the logic of administration. The logic of preservation seeks to keep exchange as exceptional as possible through a literal reading of stipulations and through constrictive conditions of necessity for exchange.

All discussions of waqf exchange occur under the main heading of stipulations of founders. The titles of the sections in waqf manuals—"The Stipulation of Sale and Exchange is Valid for Abū Ḥanīfa" (Khaṣṣāf 1999:21), "A Man Waqfs a Land of his on the Condition that he can Sell it" (Hilāl 1936:91), "On the Stipulation of Exchange" (Ṭarābulusī 31)— already point to the intimate connection between exchange and its stipulation. Discussions of the validity of non-stipulated exchanges for "the benefit of the waqf" occur in these same sections. These are, however, in dialectical tension with the stipulated ones, and do not fall under the duties of the

administrator and the manner of administration. According to Abū Yūsuf, the dominant opinion allows for the founder's stipulation of exchange,[18] so that the founder, the administrator, or any other person named in the founding document can carry it out.[19] Without such a stipulation, only the qadi can proceed with the exchange and there must be grounds for it; there must be a necessity [*ḍarūra*] for exchange (further discussed below).[20] For the caretaker of the waqf, therefore, the waqf's interest would not be the principle guiding her actions and opening possibilities for exchange to fulfill that interest. The highest principle is following the stipulations of the founder, as long as they do not contradict the *sharʿ*.[21]

To illustrate the principles guiding exchange, one can imagine the order of questions concerning the possibility of one: First, did the founder stipulate the exchange? In the case that he or she did, then exchange can proceed. In case the founder did not stipulate it, the second question and option that could allow the exchange becomes, is the waqf in a state of complete disrepair? It is after answering yes to one of these questions that the waqf's interest comes into play when comparing the old waqf-ed object to the new one. The waqf's interest is simply the principle that guides the exchanged objects, not the principle that determines the possibility of exchange. Prioritizing and making the waqf's interest the highest principle of administration would shift the order of the questions, bringing to the forefront "is it for the waqf's interest?" Even more than a different prioritizing, such an ordering would actually disentangle the principle

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[18] This is the most authoritative position. However, an opinion attributed to Muhammad makes the stipulation invalid without invalidating the waqf itself (Ṭarābulusī 2005:31). On the other hand, for Abū Ḥanīfa, the stipulation of exchange or even sale is not controversial because for him a waqf is not perpetual, therefore a sale or an exchange can be done even without a stipulation.

[19] I will discuss below the restrictions on the person who can carry out the exchange as a way to restrict it.

[20] That is the dominant opinion. There is a minor opinion that the administrator can proceed with an exchange in the case of necessity. Here also, there is a (minority) opinion that does not allow for exchange even under such conditions (in the fatwas of Qāḍīkhān as mentioned in Ibn Nujaym (222).

[21] As elaborated in chapter 2.

of the waqf's interest from the web of stipulations and necessity, rendering the latter two concepts irrelevant (as would happen during the French Mandate).

The logic of exchange and the place of the waqf's interest in it come into relief in discussions of the thorny question of the non-stipulated exchange of a prosperous waqf: Can one exchange a prosperous waqf for a different object that is for the "benefit" of the founder-specified beneficiaries? This is a complex question because it necessitates a restatement and justification of the logic of exchange. As described above, two main reasons can lead to exchange: stipulation and necessity. According to the first, a prosperous waqf cannot be exchanged. Second, prosperity contradicts necessity and prohibits exchange. Allowing such an exchange would make the benefit of the waqf an operating logic of administration, where *mutawallīs* would manage waqfs as commercial endeavors seeking and planning for profit. Such an approach to waqfs is explicitly denounced in one of the earliest waqf treatises: "waqf is done neither for business nor for making profit" (Hilāl 1936:95).[22] The author continues to reject the non-stipulated exchange of a prosperous waqf. "If it was valid to sell the waqf without a stipulation specified in the foundation document, he could sell [again] the object he exchanged the waqf for. This way, the waqf could be sold every day, and that is not how waqf is/works" (1936:95). The way waqf works, or dominant logic of administration, is that of the continuity of the founder's foundation. In their rejection of a non-stipulated exchange of a prosperous waqf, jurists articulated this very principle very explicitly: "it was called waqf because *it remains* and is not sold" (Hilāl 1936:95), "the duty [*al-wājib*] is keeping the waqf as is without any additions" (Ibn Nujaym 2002:320). The theme of keeping continuity and perpetuating the waqf as its

[22] "*al-waqf lā tuṭlabu bihi al-tijāra wa lā tuṭlabu bihi al-arbāḥ*"

founder created it echoes the legal maxim of keeping old usage as is [*al-qadīm yutraku ʿalā qidamihi*].[23] Increase, profit, growth is not an imperative [*lā tajib al-ziyāda*].

Against this logic of perpetuation, jurists continue to debate whether "the waqf's interest" alone can govern non-stipulated exchanges. Al-Ṭarābulusī mentions that, according to Muhammad al-Shaybānī, a non-stipulated exchange can only be the prerogative of a qadi (and not the *mutawallī*) and only if he sees an interest in it (2005:32). In this case, then, the first order of questioning remains in order (was it stipulated?) but the second one (is there a necessity for exchange) does not. The waqf's interest, therefore, even as it displaces necessity, does not become the highest principle of *administration* (as practiced by *mutawallīs*) because non-stipulated exchanges hinging on interest solely belong to qadis alone and cannot be practiced by *mutawallīs*.[24] Nonetheless, this opinion of the permissibility of a non-stipulated exchange by a qadi for the waqf's interest is far from unanimous. Principles of caution trump the waqf's interest according to certain jurists. Al-Ṭarābulusī himself warns that such exchanges can be "attempts at revoking the waqfs of Muslims, as is common in our time" (32). The argument of the fear of annulment of waqfs constitutes one of the most enduring rhetorical fields hovering around waqf. To this day, it is used to both justify certain opinions and put into question the moral rectitude of qadis and waqf administrators. Statements like "we have observed immeasurable corruption as unjust qadis have used it as a subterfuge to annul the waqfs of Muslims, and they did what they did…" (*al-shahīd* in Ibn Nujaym iii:320) sound as familiar and incendiary today as they did ten centuries ago. According to these jurists, the risk of exchange leading to a loss for the waqf is not

[23] A similar principle of continuity operates in the burden of proof in competing claims of ownership: the person who has the object is assumed to be the rightful owner, whereas the burden of proof lies with the one trying to change the status quo.

[24] The highest principle of administration remains the following of the founders' stipulations. In this opinion, a non-stipulated exchange hinges solely on interest and not on necessity but it does remain framed in relation to stipulation and its absence, making it an exceptional instance in administration.

worth the benefit that might accrue to the waqf. The Ottomans seem to have leaned towards such a view, as a sultanic edict of 1544 based on Ebussuʿūd's opinion required not only the permission of a qadi, but also that of the Sultan (in Ḥilmī fn. p.).[25] Such a measure confirms and extends the exceptionality of exchanges, which is guaranteed in the fiqh through constrictive readings and requirements of stipulations and definitions of necessity, as I will now describe.

Constricting Stipulations of Founders

To summarize the discussion above, the waqf's interest was never the principle of waqf administration. It was a concept that functioned in dialectical tension with the stipulations of the founder and the logic of perpetuation of the waqf. The dominant logic of administration was one of continuity rather than one of growth and profit—while still emphasizing economic rationality and calculation. This hierarchy appeared in the framing of exchange as an exception. For each case, the founder needed to openly stipulate it; thus, the benefit of the waqf and the exchanges that might be necessary to fulfill this interest did not become a taken-for-granted characteristic of the waqf, contrary to the eternal pious purpose of the waqf, for instance. Even if such an eternal pious purpose is not specified in the foundation, it is assumed to exist and assigned to the poor as long as the founder utters the term waqf. Waqf therefore does not inherently carry with it a logic of benefit that would make exchange a natural process; exchange remains an exception that is perpetuated as such by requiring stipulation and necessity.

Subjecting exchange to stipulation serves very much to restrict it, a purpose that becomes also apparent in the very way the stipulations for exchange are to be formulated and interpreted. From the person who can carry out the exchange, to the number of exchanges that can be carried

[25] Ibn ʿĀbidīn even mentions that a mutawallī who is close to the Sultan can directly seek the Sultan's approval for the exchange (iv:389).

out, to the exact phrasing of the stipulation, the varying rules of exchange and their subjection to the stipulations test serve to make exchange a more exceptional enterprise. The most "explicit" stipulation would be "on the condition that I can sell it and buy in its place an object that would be waqf-ed in eternity, like this object" (from Hilāl 1936:91). Eliminating the language "that would be waqf-ed…." is only permissible by *istiḥsān*, whereas by strict analogy it would not be. However dropping "and buy in its place …" would invalidate the stipulation and the waqf because a stipulation of sale goes against the definition of the waqf. The reading of this "ideal" formulation remains to be taken literally, however, in that it implies that an exchange is only allowed once. For more than one exchange, the stipulation needs to indicate it. The question of who can carry out the exchange elicits even more restrictions. A stipulation that the founder can carry out an exchange does not transfer to the administrator after the death of the founder. One could argue that this stipulation belongs to the founder as administrator, and could then be transmitted to future waqf administrators. Other scholars advance an argument based on a more literal reading, saying that if the founder names a person (as in x, or themselves) this right cannot be transferred. Restrictions also extend to whether named persons can keep this right after the death of the founder. They cannot do so, unless the founder mentions it, because they are like agents, and agency ends with death.[26] It is not only that exchanges are subject to stipulations, but that the stipulations themselves are then read restrictively, and eventually result in the limiting of exchanges.

[26] This is the opinion of Abū Yūsuf. Muḥammad considers the named person an agent of the poor (recall the discussion on chapter 2 on the qadi as representing the poor) and therefore their agency does not end with the death of the founder.

Defining Necessity

Even in cases when exchanges were allowed, such as when these were stipulated or when an argument from necessity arose, these exchanges were often rigidly controlled and tightly delimited. In cases where a stipulated exchange can be carried out by an administrator, the latter then has to proceed in a manner that preserves the waqf's interest. However, an exchange can also be valid if there is need for it, without a stipulation, or even contrary to a stipulation prohibiting exchange. In the case of necessity, in the dominant opinion, only the qadi can complete a waqf exchange without stipulation. Calling for a qadi shows that this is no routine operation, as it stands above the duties of the qadis standing for the beneficiaries and making sure that administrators obeyed stipulations and the *sharʿ*. Even more, al-Ṭarābulusī even specifies that it is not merely any qadi who can exchange a waqf: only the "qadi of heaven"[27] has this right. Such conditions on the person carrying out the exchange increase the requirements and the points of checks and balances on exchanges, and establish them as rather out-of-the-ordinary transactions.

The definition of "necessity" [*ḍarūra*] posed, and continues to pose, a challenge for scholars and jurists. As many modern scholars have pointed out, the answer to the question, "what is necessity" is far from obvious (Illitch 1992). After all, telephones might be a necessity for New Yorkers but not so much for villagers in France. Electricity is a necessity for most of the modern world, but was not so for our medieval ancestors. Needs and necessities are products of social, economic, and technological conditions. Therefore in the nineteenth century, where there might have been a necessity to exchange a waqf that became a swamp, modern technology might now allow for its drainage and subsequent use. Jurists actually struggled with the relativism of

[27] As might be recalled, being at the service of worldly powers seeking to legitimize themselves and their rule, qadis had reputations of power-mongering and self-interest and a *ḥadīth* sought to curb the eagerness of any scholar to a judgeship career: "of every three qadis, two are in hell" warned the prophet.

the term, and some attempted to distinguish when necessity for exchange arises depending on the type of waqf-ed object.[28] Two temporal frames enter in the assessment of necessity: the present and the future, and in both of them, there should be necessity. In the present, the waqf needs to be in a state that is completely un-utilizable [*yakhruj ʿan al-intifāʿ b-il-kulliyya*].[29] However, this is not enough to warrant exchange. It should also be impossible to repair the waqf, meaning that its future productivity is also not guaranteed. It is when the waqf is unusable in both the present and the future that necessity for exchange arises.

This condition then produces the need to define usability or *intifāʿ* and its end, the limit beyond which an argument for the necessity of exchange arises. It will be recalled that the one of the most common definitions of waqf includes the gifting of an object's *manfaʿa* [yield or usufruct] to some charitable purpose. There must then be such yields for the waqf to achieve the goals of its founder. A land ceases to have usufruct when it cannot be cultivated or rented, or when its maintenance exceeds its revenue so that there are no yields that could benefit the waqf. The usability of a house comes into question when it is falling apart and becoming rubble, and nobody wishes to rent it. These criteria appear to be unambiguous cutting-points, but their clarity can be put into question. Is the waqf considered usable if there remain only a few *para*s after repairs, a few *akçe*s, or a few *guruş*? For how many years should the administrator have attempted to rent the waqf's asset without success before concluding that they cannot be rented?[30]

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[28] See for instance Ibn Nujaym in his Epistle *Taḥrīr al-Maqāl fi Mas'alat al-Istibdāl*, pp166-7.
[29] Such as if it does not have revenues that can be used for repairs, or no one is willing to rent it through a long lease contract where the lump sum paid upfront could be used for that purpose.
[30] These discussions bring out a major challenge that waqfs face: their endurance. With natural disasters like plague, earthquakes, and floods, the perpetuity of the *res* and the revenue of the waqf are not guaranteed. The costs of maintaining houses, khans, hospitals—what in modern parlance we call overhead—are far from negligible.

Calculable Economic Interest: Revenue, Size, Location, and Value

Examining the terminology of the exchange in these early waqf compendia shows that even when exchange criteria are not measured up to the abstract concept of “the waqf’s interest” [*maṣlaḥat al-waqf*], “economic” factors determine the choice of the exchanged object. In his very short discussion of exchange, Al-Khaṣṣāf brings in the example of a waqf-ed palm tree orchard, whose trees were uprooted and which had become a wasteland. In this case, he says, it is valid for the qadi to exchange it for another piece of land that is “more productive and more advantageous for the beneficiaries” (1999:21). The necessity of the exchange stems from the original land becoming “unproductive.” The criteria for determining an appropriate substitute are for it to be “more productive” [*aʿwad*] and “more advantageous” [*aṣlaḥ*], even if smaller. Economic rationality based on this calculation privileges revenue as the highest principle, rather than size or value for instance. Abstract calculation detaches the purpose of waqf from the particular object made into waqf. In such a formulation, revenue is the most important determinant in considering the exchanged lot, and the other “functions” such as purpose, and the actual role of waqf in the urban fabric and the community, do not figure in the weighing of the various options for exchange. For instance, a soup kitchen provides for the poor of a certain neighborhood and its transfer to a different area could be detrimental to the well-being of the community.[31] However, such considerations do not seem to enter in the assessment of an exchange.

Hilāl al-Basrī’s discussion of exchange is much more expansive and brings up other criteria for comparing the waqf-ed land to be exchanged and its substitute. His discussion forms the backbone of al-Ṭarābulusī’s waqf compendium, written 600 years later, and together, these two

[31] Similarly, peasants renting from the waqf enjoyed a certain stability and peace of mind from tax-collectors and their changing rates, as they pay rents to the waqf administrator who pays (or not) the taxes due.

manuals structure all subsequent sections on waqf exchanges in the *fiqh*. These discussions center on the validity of such stipulations of various criteria of exchange and examine them against the *sharʿ*: so while on the surface, they discuss the validity of the stipulation, they are actually assessing the *sharʿī* validity of the content of the stipulation, the criteria. According to Hilāl, a founder who stipulates exchanging for a piece of land cannot exchange for a house. If she specifies that she is to exchange for a land in Basra, she cannot exchange it for a piece a land in any other place. Lest it be thought that these elaborations are actually about entrenching founders and their stipulations, one should note that Ṭarābulusī explains the reason behind the non-interchangeability of lands of two villages—and it is not that "because the founder stipulated so." It is because "the lands of villages vary in their provisioning and productivity" (2005:32). Location matters also because of long-term calculations of economic interest, "even if the new piece[32] is larger, more valuable, and because of the possibility of its [the waqf's] ruin in the worse off of the two locations and its undesirability" (Ibn Nujayam al-Baḥr v:223). Ṭarābulusī adds another case, however, based on the tax-status of the land: the original and exchanged waqf-ed lands do not have to be of the same tax-status, because there is no land without tax. Therefore, by this logic, type and location, but not tax-status, enter into the criteria for assessing the validity of exchange. Location trumps value and revenue, which trumps size (and tax-status) in assessing the exchanged lots.

The privileging of location over revenue as the ultimate measure of interest has a certain immediacy that remains far from the complex calculation associated with a profit motive or a capitalist endeavor. The rationale of assessment only examines revenue, and does not place the land in larger schemes of development and growth that would alter its potentiality and use or technological innovation that would change its productivity and thus revenue. Of course, such is

[32] The word used is *al-mamlūka* referring to the status of the land as freehold and not waqf-ed yet.

the rhythm of the pre-capitalist world, not conscripted yet by the notion of progress and ever-increasing accumulation.

II. POST-TANZIMAT OTTOMAN BEIRUT: UPHOLDING PUBLIC UTILITY AND THE "WAQF'S INTEREST"

The nineteenth century saw a reconfiguration of the concept of the waqf's interest, not only because of changes within the shariʿa itself and its relationship to the state, but especially because of competing interests introduced with the redefinition of the state and its role. Among these new competing interests, a law of "expropriation" dated 11 March 1856 [4 B 1272] introduced the notion of a public utility [*manāfiʿī ʿumūmiyye*]. I hesitate to term it expropriation because the law was not called "*İstimlāk Niẓāmnamesī*" but had a much longer title: "Regulations about lands to be bought from their owners against proper compensation in the necessity [*lüzum*] of the Sultanate's planning of matters including public utility [*manāfiʿ ʿumūmiyye*]." It appears therefore that the term "*istimlāk*" or expropriation had not yet crystallized as a concept. Indeed, while Ṣemseddīn Samī's 1890 "Turkish Dictionary" includes the term and defines it in exactly the same terms as the title of the law (the state's voluntary or forced buying of a property for public utility), he actually notes that "even though it is a nice term [*güzel bir lügat*], it is not Arabic." He goes on to explain that under the "m.l.k." entry of Al-Zabīdī's *Tāj al-ʿArūs* no form *istifʿala*[33] occurs. Al-Zabīdī mentions the term under the *tamalluk* entry and commends the use of *tamalluk* instead. The concept, with its assumption of the state being responsible for and carrying out works for public utility, seems then to have taken on this meaning in the nineteenth century. It is a new role of the state that crystallizes with the solidification and creation of the term *istimlāk*. Government has as its purpose "the welfare of the

[33] One of the meanings of the form (the one in use in *istamlaka*) is to make into, to take into.

population, the improvement of its conditions, the increase of its longevity, health, etc" (Foucault 1991:100). The state now provides for the public, which necessitates sacrifices in the name of this very public utility.

It might be worthwhile to probe a little further toward the meaning of "public" in public utility. The term summons the meaning of "what is collective, or affects the interests of a collectivity of individuals" (Weintraub 1997:5), rather than what is open and not hidden.[34] In that sense, the "public" of "public utility" seems to echo the meaning of collectivity summoned in the shariʿa concepts of "public interest" [*maṣlaḥa ʿāmma*] and "public nuisance" [*ḍarar ʿāmm*] that we discussed above. However, there is another dimension that appears with the notion of public utility: its relation to the state. The Oxford English Dictionary[35] defines public utility as "a service or supply regarded as essential to the community," making public utilities a particular kind of the public good, those that are deemed necessary and have a use-value. The OED then specifies that these utilities can be provided "by the government or privately." This small parenthetical brings in another dimension of public utilities: that of their relation to the state, [36] or the role that the state has or should have in their care and administration. Otherwise, they could

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[34] The relation of these two meanings is far from clear, and so is their distinction. One might wonder if the notion of open-ness and visibility was not derived from the notion of collectivity. In his genealogy of the use of the term private, Raymond Williams (1976:242) first traces it to religious orders that have been withdrawn from public life (deprived). He notes that the "sense of secret and concealed both in politics and in the sexual sense of **private parts**" was later acquired. Its opposition to public only came later. I would like to keep this note in mind, because I will show later that the notion of public can evoke visibility and transparency.

[35] I would prefer to use a French dictionary, since the code was received from the French, but the Littré does not provide a definition. I would like to consult a French legal dictionary eventually. The legal French Wikipedia entry on general interest is very explicitly about the connection of state to public.

[36] In "The Theory and Politics of the Public/Private Distinction," Weintraub attempts to disentangle the different meanings of the public/private distinction. One major distinction is whether the public is the object of analysis and the private a residual category of what is not public, or vice versa. In the first category, Weintraub argues, the public stands for the "political," and that takes two major forms: one where the public and the political is what is related to the state (as in "utilitarian liberalism" where the private becomes essentially the market [rational self-interested individuals]) and another where the political is a certain "civic" space of citizenship and "active participation in collective decision making" (10) (as in Habermas's public sphere). The other traditions that use the public/private distinction start from an investigation/ interest in the "private" wherein the public becomes the residual category. Here again, two bodies of scholarship can be identified, first Ariès et al. Then the literature of feminists who identify the private with the household, and the public as everything else, in a critique of the confinement of women to the space of the private and the devaluing of "private" labor (as opposed to public wage labor).

be simply called common utilities or common necessities. Indeed, as may be recalled from chapter 2, under the Mandate, the *state* classifies certain amenities as *public utilities* (a public need that should be satisfied for a public good, not for profit), and important to be fulfilled (and therefore should not be left to individual initiatives/ effort/ enterprise) and are best served if administered independently (Yakan 1963:128). Therefore, public utility in the modern sense is one that the state defines, for the benefit of the collective.

Waqf and Public Utility

After this detour that only began to shed some light on the many complexities and specifics of the terms "public," "interest," and "utility," it is time to analyze the effect that the introduction of a notion such as public utility (with the particular role of the state that it assumes) had on the notion of the waqf's interest. Let us return, then, to our late Ottoman "Law of Expropriation."

The first Article of the Law already defines what counts as public utility: "the creation of hygiene and health/safety establishments, the foundation of public schools whether by the Imperial government or by populations, the building of barracks, hospitals, water tanks for fires, fountains, sidewalks, rails, docks, harbors, canals to prevent the floods of rivers for navigation, the establishment of water pipes, the creation of promenades, public gardens, the construction and the widening of quays, markets, squares, and streets" (Young 1906:127). Note that mosques and other prayer halls do not fall within that. In Beirut, the expropriation law was heavily relied on when Ottomans set out to make the cities of Empire conform to model of European cities, through "laws and regulations, their enforcement, and the establishment of municipal, commercial, and health councils" (Hanssen 1998:44). Beirut was to become a showcase of

Ottoman cities during the reign of Abdülhamit II (1876-1909). For that reason, "urban renewal" became necessary: building new government offices, a municipality, and the opening and widening of new roads. The construction of such a project will allow me to examine how the notion of public utility intersected with that of the waqf interest.

On Tuesday 5 June 1894 [1 Z 1314], the municipality of Beirut destroyed a series of shops and buildings in order to widen the road leading from Bāb Idrīs, the Western gate of the city to the government house situated on the Eastern "Saray" gate. Among those, four shops were waqfs. The revenues of two of these shops supported the ʿUmarī mosque, located on the road that was widened. The rents of the two other shops supported the families of their founders. The expropriation law of 1879 [1296] required that owners be paid in full before proceeding to their eviction. From the court records, this seems to be the case: the two administrators of the "family" waqfs came to court and bought assets for the waqf in exchange for the destroyed shops within a few months of the expropriation. This does not seem to be the case, however, for the ʿUmarī's waqfs, which were administered by the Waqf Ministry in Istanbul via a representative in Beirut. The case of these two shops seems to have caused a great deal of tension between the (local) administrative council of Beirut and the Waqf Ministry, eliciting long and multiple communications involving the council and the Waqf Ministry but also the Ministry of Interior, the State Council, the Grand Vizier, which finally ended with the issuance of a Sultanic order [*irade*].

At the crux of the dispute was the amount of compensation that the municipal council should pay the Waqf Ministry. The original shops were assessed to be worth a total of 70,000 piaster. Trouble started, however, when the Ministry turned out to be the administrator of a bakery, a waqf for a different mosque, on the side of the widened street, that would therefore

benefit from the widening. Beirut's administrative council proceeded to assess and impose on the bakery, that is on the Waqf Ministry, some fees—as it did to all properties on either side of the road. These included an improvement tax [*ṣerefiyye*], the price of the remainder of the lot in front of it, as well as some fees for the execution of the road widening, to a total of 11,441 piaster (ŞD 2289/36/2.2). The Waqf Ministry, whose opinion the Ministry of Interior endorsed, argued that the leveling and paving of the street did not benefit the waqf (the bakery that is) but actually harmed it. It sounds a bit puzzling and somehow farfetched for a widening and paving of a street to harm the waqf, but one should not take the argument literally. What matters is the type of argument possible; it is in the name of the "waqf's interest" that the Ministries challenged the improvement tax, and the widening of the road. Pitted against each other are "the waqf's interest" and "public utility." The State Council avoided a direct assessment of the two interests, and instead argued based on what was presented as a technicality: since all shops on the widened street paid these fees, the waqf could not be exempt. It therefore avoided making an explicit pronouncement on what mattered in the last instance, or what is the relation of the waqf's interest to public interest. The State Council's decision did not explicitly appeal to any general rule or principle behind the equal treatment of all; however, one could maybe venture to argue that it is the famous "right to a fair trial's" first principle: the equality of all before the law. This principle itself nonetheless represents a different kind of reasoning from shariʿa, which "did not apply equally to 'all,' for individuals were not seen as equal to each other. (…) Islam never accepted the notion of blind justice" (Hallaq 2005-2006:168).

III. Mandate Articulations:
Subordinating the Waqf's Interest to Public Utility

While Ottoman legislation and practice preserved the role of the State as a guarantor of both the interests of the waqf and those of the "public," the French mandatory power[37] that replaced the Ottoman state in Lebanon after WWI presented itself as the necessary guarantor of the interests of the various sects, but reserved itself the right to intervene in waqf affairs for "reasons of public interest." In the introduction to Decision 753 of 1922 on the administration of Islamic waqfs, the word *maṣlaḥa* is used six times, quite a bit for a fourteen-point preamble [*asbāb mūjiba*]. As I described in the previous chapter, the Decree states the principle that "the government has the right to supervise the sects [*ṭawā'if*] and the duty to preserve their interests [*maṣāliḥ*]." However, it continues, waqf follows laws taken from the shari'a, which are different from those of the state. Therefore, the supervision of waqfs is only required for the necessities of great public interests/utilities [*mā taqtaḍīh al-manāfi' al-'umūmiyya al-'aẓīma*]. In this explanation, the waqf's interest is left to the Muslim community to preserve according to its own laws. However, as the last point emphasizes, "public interest" trumps any other waqf's interest.

This ordering of rights does not mean that the "waqf's interest" disappeared from legal reasoning. A puzzling memo by the General Treasurer, French officer Carlier, on rentals of waqf properties is part of the civil code of the State of Greater Lebanon, but presents arguments using the concept of the "waqf's interest" to justify the imposition of a fair rent [*ijārat al-mithl*][38] on all

[37] Note that the French came to Lebanon and Syria having already experimented with the Algerian waqf legislation. They were in some sense, waqf experts.

[38] As might be remembered, the concept of the waqf's interest appears also in rent discussions. I use here the French law on fair rent because it illustrates more starkly the way the the waqf's interest continues to be used and in which grammar. Most commentaries of my library stipulate that waqfs should be rented at market value and for a maximum of three years, to avoid a devaluing of their leases. Longer leases, like exchanges, were exceptional and to be decided by the judges on individual cases. These, however, became very common.

waqf properties.[39] Carlier starts with a generalization: the "scholars of Islam" have agreed that contracts with rents lower than the fair rent are void, because they harm the waqf. He then uses as precedent a decision by Ibn ʻAbidīn, the Damascene Hanafite scholar (1784-1836) whose commentaries and fatwas were very authoritative in the courts, if the reader recalls from the introduction. Ibn ʻAbidīn settled a dispute between an administrator and a qadi on the legality of paying a rent lower than the fair rent, arguing that a contract below the fair rent was invalid. Finally Carlier advanced "a general principle" from the Islamic judicial, accepted in the Islamic courts: the rent amount had to be for the "benefit of the waqf," and was thus obligatorily constrained by the fair rent. Hence, Carlier presents French mandatory authorities as restoring the integrity of the Islamic legal tradition.[40] However, examining the logic of Carlier's argument attests to a different grammar of the "waqf's interest." Here, the waqf's interest is used as a general principle to lay absolute rules that are not negotiated individually by case and that are not in dialogue with the stipulations of the founder. In addition, the adoption of one opinion on rent as final and absolute contradicts the multiplicity of valid opinions that constitute Islamic jurisprudence, even in the Ottoman canon.

This approach to waqf's interest as a general principle reflects the different property regime and understanding of property and waqf. Reports of the French High Commissioner to the League of Nations explicitly refer to waqfs as patrimony, as the totality of possessions thought of as real-estate wealth that could be made to grow, if managed well. "Studies aimed to ensure the free circulation of waqf immovables, whose inalienability constituted an obstacle to the economic development of the country. They also aimed at improving the possibilities of the management and exploitation of the communities' patrimony" (Rapport 1926:106). Discussing

[39] I will discuss the content of this memo at length towards the end of the paper, and its role in accumulation by dispossession as it subjects waqf to the 'laws of the market', and dispossesses long-term tenants.
[40] This is also the case in the introduction to The Decree 753 of 1922.

some of the legislation issued, the High Commissioner highlights that it will allow "the rational development of land and provide better conditions for the management of the real-estate capital that waqf immovables represent" (19XX:108). Here again, what is marshaled to explain these reforms and justify the intervention in waqf affairs is the public interest. Indeed, the French perceived these waqfs as "prominently harmful for public interest, collective or individual" (106). The value of the individual endeavor of the founder, of bringing good deeds to its founder, along with the shariʿa purposes it embodies of preserving family and religion for example, seem very far behind. This is an era of developing national economies and increasing real-estate wealth.

French Mandate waqf legislation (between 1922 and 1930) inverted what had been the dominant Ottoman paradigm throughout the four hundred years of Ottoman rule in the Arab provinces: the exceptionalism of exchanges, which required the approval of the Sultan himself. Between 1922 and 1930, waqf legislation under the French Mandate centered on the exchange of waqf, encouraging and even forcing the exchange of waqfs for money in various cases. Decision 80/1926 forced the exchange of all waqfs having rights of usufruct that were inheritable (Article 4). The Decision specified how these moneys were to be then reinvested, since these were exchanges. For the waqfs of the DGIW, it did not couple the exchange with the stipulations of the founders and allowed the use of the money to any purpose the Supreme Waqf Council approved. For individual waqf founders, however, the stipulations of the founder would then re-apply to the new waqf. It is with Decision 3/1930 that any right-holder or beneficiary was allowed to exchange any waqf, except for "religious institutes" (Article 3), without further delimitating limits for the use of the funds, according to any stipulations. With Decision 3, after

an "exchange," the waqf could simply end. Exchanges ceased to be exceptions bound by stipulations of founders and necessity.

IV. Post-War Reconstruction
Marshalling the Waqf's Interest against Public Benefit

Despite all legislation and practice that subsumed the waqf's interest to new conceptions of property and to public interest, the waqf's interest remained a powerful reason that, even if used in its modern grammar (unhinged from stipulations and necessity), allows the challenge of the very public utility to which it is to be subsumed. I return now to the contradiction I described in the opening of this chapter, the forestalling of waqf expropriation in the reconstruction of downtown Beirut. A political, economic, and moral struggle that hinged on concepts of "public utility" and the "waqf's interest" allowed the prevention of the systematic dispossession of the DGIW from the city center. The existence of such an episode of exception does not deny the truth, extent, and violence of the dispossession, but illustrates the incompleteness and contradictions that exist in the reasoning of modern states. By showing that it is possible to provide reasons that can win over "public interest," reasons steeped in other interests (the waqf's), I underscore the constant battles modern states wage to uphold the ideals they present and the tenacity of other traditions in interpellating citizens.

Explaining Waqf Exchange

The process of waqf exchange in the reconstruction of downtown Beirut remains a quasi mystery. The negotiations that occurred around waqf possessions in the reconstruction of Beirut's city-center are almost absent in the academic industry of articles, books, dissertations,

and research that the reconstruction fueled.[41] Two authors discuss it, Heiko Schmid in his dissertation and in an article based on it, and Tamam Mango in an MA thesis. Schmid's article, however, provides most of the material for the chapter of Mango's MA thesis that reinterprets Schmid's data to rightly distinguish between the treatment of what she terms "secular property rights" and "Islamic property rights" and highlight important conflicts between waqf administrators.[42] Schmid's discussion of waqf exchanges falls within his analysis of how Solidere and Hariri managed to defeat the various opponents and visions for the city center: through force, bribery, compromise, political influence, and economic power. He portrays the reconstruction process as a battle among actors mobilizing strategies and resources. The DGIW appears, along with various churches, as one of the actors in the struggle over the reconstruction of the city-center (actors that include religious foundations, refugees, old tenants and owners, academics, architects, and planners). While the resistance of these various actors did have an effect on the original reconstruction and its plan, from modifications of the master plan, to slowing the process, to various actors retaining some of their possessions, the story that Schmid tells is the story of dispossession. Instead, I think it is important to highlight the (somehow) successful negotiation of the DGIW to keep real-estate assets instead of shares. This episode may be thought of as insignificant if one approaches history from its end, if one of thinks of winners and losers, but it might be less so when thinking of the instability of these outcomes—in other words, that what seems so natural could be otherwise.

In Schmid's narrative, the story of waqfs in downtown Beirut is one where their administrators initially refused expropriation, but were then co-opted by different means. He distinguishes between the Muslim and the Christian reasons behind the refusals of expropriations

[41] See, for example, Kabbani (1992), Khalaf and Khoury (1993), Beyhum (1995), Tābit (1996), Makdisi (1997), Rowe and Sarkis (1998), Becherer (2005), and Salwaha (2010).
[42] Despite its raising interesting points, I do not discuss Mango's chapter because it relies on Schmid for data.

in order to explain the different strategies used to reach agreements with the two communities. The DGIW based their argument against expropriations on "religious reasons" (Schmid 2002:238), while the Christian foundations were opposed to the reconstruction in line with Christian lay leaders. Therefore, Schmid suggests, it was easier to curb the resistance of the Christian foundations through economic and symbolic retribution. Using big Christian families as contractors in the reconstruction "embedded" them in the reconstruction process. They then had "a strong influence on the religious decision makers of their denominations and were able to break up the resistance" (239). Financial lure was also effective to tame the DGIW. "Far better compensation was unofficially granted to the religious foundations than to normal owners, anyway. Simultaneously, the areas around the places of worship were generously restored, in order to emphasize symbolically the role of the foundations in the city centre" (239). In addition, in both cases, Solidere/Hariri "recruited supporters among the respective religious foundations" (239): the question of how he did it, and why they supported the project, remains unanswered, but the reader is left to imagine personal profit.

Schmid's study is based on "action-oriented political geographical analysis that particularly tries to re- and deconstruct the different perspectives of the protagonists" (Schmid 2002:232). Because the author places emphasis on actors, history appears to be made by main characters, willful and woeful. For instance, "Hariri proved to be a clever strategist and superior tactician, understanding how to use his resources and power to resolve the conflict in his way" (Schmid 2002:238). Schmid also emphasizes the intent of actors, making assumptions about their desires and interests. The "main interest of the Christian and Muslim foundations," he argues, "was to maintain a symbolic representation of their religion in the city centre of Beirut, in addition to mosques and church buildings" (Schmid 2002:236). The DGIW and the various

churches appear as uniform bodies with clear motives. Because the actors are concerned with outcomes, Schmid's analysis treats arguments as *instruments* that various actors mobilize in a power struggle. The DGIW, for instance, "declined the expropriation for religious reasons," whereas, as mentioned above, their real motive and desire was to keep a symbolic presence. I raise these issues not to say that Schmid's analysis is incorrect; to the contrary, he actually forwards many of the issues at stake and the strategies at play. However, it is also important to acknowledge structural limitations and possibilities, beyond the motives of actors and direct causes. Most importantly, however, we must recognize that religious reasons are more than just excuses; they stir feelings, galvanize subjects, and produce public debates. Here, therefore, I will not take these arguments to be epiphenomenal means, mere instruments to an end, but will approach them as logics embedded in traditions and representing ideals of life.

I believe that my approach illuminates the reasons why the expropriation of waqfs was so contentious and stirred such emotions, accusations, and debate. Of course, expropriation was a general rule that applied to all owners and tenants. Like the infinite number of heirs owning lots, the "far-scattered and fragmented" waqf properties also "formed a rather restrictive and persistent obstacle" to the reshuffling of the city centre (Schmid 2002:236). The argument here echoes those advanced during the French Mandate in order to submit waqfs to the laws of capital accumulation, when the aim of profit started replacing that of permanence. In the 1990s, waqfs again became obstacles when planning and reconstruction approached downtown Beirut as a tabula rasa that was to be made compliant with the needs of global circuits of transnational capital. What I am hinting at here is that waqfs, with the types of social relations they created and ideals of life they promoted, might represent a logic that contradicts that of the reconstruction incarnating global capitalism. Thinking of structures reveals that waqfs represented a threat, not

to the expropriation per se, but to the arguments behind this expropriation and the structures that authorize it.

Marshalling the Waqf's Interest

At the beginning of 1994, a short news brief buried in the local page informed readers that the Members of Parliament of the Jamāʿa Islāmiyya issued a statement saying that the "obscurity and vagueness that surround the fate of the waqf lots in downtown Beirut is the reason behind the turmoil around them, regarding the good intent, vigilance/jealousy, or even unstated intentions" (Annahar 14 January 1994). The brief refers to the many questions and the commotion surrounding the waqfs of the DGIW in downtown Beirut (for example Annahar 1992, 30 April, 25 May, 15 December, 31 December). However, instead of blaming a certain party or gesturing to the often-used "corruption," the Jamāʿa bring up not an action or a decision, but an attitude and a characteristic of the process of decision-making about waqfs and their exchange: the disclosure of information. In this, we can note the association of "public" with visibility. They refrain from pointing fingers, but their declaration is an invitation to a more "open" and transparent waqf administration.

The DGIW operates through opacity. It does not publish annual (or other types of) reports, nor does it distribute them. Security guards strictly regulate access to its offices because they are part of Dār al-Fatwā where the mufti holds office. In addition, while the land registry is public and one can request a list of all plots any person owns, I was denied the request of such a list for the DGIW because the "approval of the DGIW is required." I encountered that opacity in action as I was trying to do research at the DGIW. I was only allowed access to the Ottoman record of waqfiyyas, which seemed harmless, too far away from contemporary debates on the

exchanges of Solidere or any claims of "corruption."[43] Therefore, when I asked to see the file of one of the family waqfs involving a lawsuit with the DGIW, I was shown the file in one of the cupboards of the director's office: the issue is so sensitive that the file remains under the scrutiny of the director and is inaccessible even to DGIW employees. That was also the fate of minutes of the meetings of the waqf committees: sitting in a cupboard. The hidden geography of the DGIW also included an archive in the basement, locked and inaccessible. The opacity that the DGIW sustains reflects its uneasy position between the state and the Muslim community, bound as it is to both public interest and the community's interest.

The uneasy positioning of the Lebanese religious leadership, including the mufti, between state and community is one that the leaders themselves acknowledge. The mufti, the "religious head" of the Muslim community (as Decree 18/1955 defined him) along with the religious representatives of the various communities to the state explicitly defined public interest and the interests of their communities as two separate interests. On a hot August night in 1991, the interim mufti, Muhammad Rashīd Qabbānī, the Metropolitan of the Greek-Orthodox Church in Beirut, Bishop Elias Audi, and the Maronite Archbishop of Beirut, Bishop Khalīl Abī Nādīr attended a dinner hosted by Tammām Salām, a prominent Beirut politician.[44] They discussed the reconstruction of downtown Beirut and said they "sought public interest, in addition to preserving the existence of the waqfs that belong to their communities and institutions" (Annahar 17 August 1992). We have here two interests against each other, the "public" interest and the interest of the (religious) community. Herein lies the conundrum for these men: they stand in a

[43] Because of a myopic vision of history echoing nationalist histories that place the Ottoman past in the prehistory of Lebanon as a nation-state, Ottoman records are thought to bear no connection to the present. Indeed, with the radical changes the French introduced, the new land survey, mapping 19th century waqf is a complicated, but not impossible task.

[44] He became MP in 1992 and 1996, and he was then the director of the Islamic Charitable Association [*al-Maqāṣid*], one of the oldest Muslim associations in Beirut. The Association built a network of modern Muslim schools in Beirut starting in the late 19th century, and is responsible for the Muslim cemeteries in Beirut (see Shibāru 2000).

position where they need to preserve both interests. As heads of their communities, they are accountable to preserve the interests of their community's waqfs. As state agents, they are to uphold the public interest. Their position within the state and their commitment to uphold public interest subjects them to the suspicion of both state and community.

As I have already remarked, the waqfs of the DGIW fall between public utilities and collective private goods of the Muslim community. As the DGIW is part of the state apparatus, waqfs can be constructed as part of public funds [*māl ʿāmm*]. However, because Decree 753 defines them as the patrimony of the Muslim community, they belong to the "private" affairs of the community. However, whether one considers them to be public goods or the property of the Muslim community, waqfs were the object of an act of "commoning" (Harvey 2012:73). Harvey distinguishes between public spaces and public goods on the one hand and commons on the other. While public goods and utilities are provided by the state and are open, commons can be privately owned and exclusive. What renders them commons is their summoning the energies of their users into their creation, shaping and perpetuation. Whether Muslim waqfs belong to the state-connected "public" goods might be a matter of contestation, however, they are undoubtedly commons. As the fiery debates within the Muslim community show, the waqfs of the DGIW in downtown Beirut were a common not as in "a particular kind of thing, asset or even social process, but as an unstable social relation between a particular self-defined social group and those aspects of its actually existing or yet-to-be-created social and/or physical environment deemed crucial for its life and livelihood" (Harvey 2012:73). The waqfs represented the existence of the community as such and their expropriation provoked a heated debate between various Muslim, each marshalling the waqf's interest within a different grammar.

The opposition to the possibility of expropriation marshaled the concept of the waqf's interest as described in the first section: in conjunction with the stipulations of the founder and as an exception to the logic of preservation of waqfs. Opening the debate on the last day of the year in 1992, the association of the Azhar graduates in Lebanon called for the "preservation of waqfs in downtown Beirut (…) and their development according to applicable regulations, while respecting the founder's stipulations" (Annahar 31 December 1992). A few months later, the Association for the Preservation of the Qur'an also made a statement that it would "work to preserve the Islamic waqf properties in Beirut totally, in terms of their limits and location, without any change or exchange. It will not accept any attempts at harming, decreasing, or changing the waqfs or their locations" (Annahar 28 July 2007). We see here arguments echoing the logic of preserving waqfs as per the wills of the founders, rather than seeing in the expropriations a possibility to incur *further* benefit for the waqf— as al-Khaṣṣāf states explicitly, "waqf is not business."

In reply, the DGIW responded using the same rhetoric, as it marshalled the waqf's interest within the grammar of the modern state, a logic that the Ottomans had introduced and the French enshrined. In a published article, the DGIW used the waqf's interest as an abstract principle. The responsibility for the Islamic waqfs in Lebanon falls to the Supreme Islamic Legal Council,[45] which has previously taken decisions with regards to waqfs in Beirut's central district so as to fulfill *Islamic interest* and the preservation of the waqf lots." The Council then asserts its independence and autonomy. It is true that it is part of the state, but its allegiance also cleaves to the shariʿa. "[The Supreme Islamic Legal Council] takes its decisions after examining the waqf issue from all its angles and adopting a sound position that fulfills *the waqf's interest* (…) and

[45] After the DGIW approves the exchanges, this is the organ within Dār al-Fatwā that gives the final approval of exchanges.

accords with the shariʿa rules and the highest *Islamic interest*" (Annahar 13 January 1994). As I will discuss in the following chapter, interest is detached from the legal edifice that produced it and untied from its place as a controversial and exceptional source of law that is ultimately supposed to ensure the *purposes* of the shariʿa.

The New Logic of Exchange

These statements echo the justification of the preservation of the waqfs from within state law. In 1977, Mufti Qabbāni, who was then DGIW director, countered when the Public Works Ministry attempted to take over war-damaged lots: "the waqf lots are not the private property of a single individual, but they are the property of the whole community [*ṭā'ifa*]. Consequently, they have the character of public utility [*lahā ṣifat al-manfaʿa al-ʿāmma*], and therefore cannot be sold." He then cited the article from the Real-Estate Code that affirms the inalienability of waqf, before concluding, "this is the rule of the *sharʿ* and law." Contrary to Schmid's argument, the mufti justifies the inalienability of waqfs through an argument of public utility and not by reverting to the legal determinations of the shariʿa, he does not bring anything outside of state law to make his argument for the inalienability of waqfs. However, the situation is much more complicated, because Decree 753 distinguishes between the waqfs as the property of the community and a higher public interest and its associated public domain. The jump from the community to the public remains problematic. In addition, even immovables belonging to the public domain can be sold. Finally, other state-issued regulations, as we have seen above, allow the exchange and alienability of waqfs. Even more, as we have described in the first section, the *sharʿ* allows for exchanges based on stipulations and necessity.

The opacity surrounding the exchanges and deals between the DGIW and Solidere fueled terrible speculations and accusations. From "The Corrupt: The Grave Seller" to "Dār al-Fatwā: The Required Corruption and Reprehensible Squander," newspaper articles and online posts pointed fingers to the DGIW, Dār al-Fatwā, and the mufti. The press used the mufti's very statements about the inalienabilty of waqf to discredit the course of action on waqfs in the reconstruction of the city center. When Solidere started the work of reconstruction, "Dār al-Fatwā committed a monumental real-estate massacre" (al-Akhbar 2 February 2010). Among its crimes, Dār al-Fatwā merged and apportioned waqf-ed lots, relinquished most of them (it owned a minimum of 56 waqf-ed lots in downtown Beirut, claimed the same article), subdivided and sold waqf-ed lots, including a cemetery,[46] and sold the air-rights above the newly built al-Amīn mosque.

Comparing the list of waqf-ed lots in downtown Beirut that were under the supervision of the DGIW in 1989 and today shows much less of a massacre. The DGIW administered[47] twenty-four lots in downtown Beirut in 1989, according to a report that an engineering and consultancy company prepared for the DGIW at the end of the 1975-1989 civil war in order to propose development plans for the DGIW. Of these twenty-four lots, eight were mosques and six were shares (less than 12.5% of each lot) that devolved to the DGIW as the "charitable share" of a reversion of family waqfs to private property. The DGIW then "owned" ten lots in downtown Beirut, and shares of some more. The "presence" of the Islamic waqfs was not in fact as prominent as the DGIW's detractors or the Sunni Muslims nostalgic of an imagined Sunni Beirut past portray it. However, it is worthwhile mentioning that back then, like today, even if these lots

[46] The Sunṭiyya cemetery has been the center of a controversy of its own (see Annahar 04, 07, 09, and 12 July 2006), and that is what the newspaper article title of "Grave Seller" refers to.
[47] I still use administered and not owed because the DGIW is actually the administrator, since ownership of waqf-ed lots belongs to God. However, the common idiom is that the DGIW "owns" waqf lands, as a result of the process of registration I described in chapter 1.

were not numerous, they were extremely valuable and incurred considerable revenue for the DGIW. A list of current waqfs shows that all the mosques remain, and seven out of the ten lots are still in the hands of the DGIW. The so-called massacre involved three lots and shares in six more. Can we therefore say that the DGIW preserved the waqf's interest?

While exchanges in downtown Beirut resembled earlier exchanges in the importance given to the value of the lots exchanged and in the use of a monetized assessment, they were not done on a one-to-one basis. In earlier expropriations, as we have described, administrators, with the approval of qadis, compensated for, then exchanged, each waqf-ed asset for another asset that was for the "benefit of the waqf." In the case of Solidere, exchanges took the form of a large-scale compiled monetized swap. In the earlier exchange I described occurring in nineteenth century Beirut, the subject of contestation was the funding of different waqfs together in one account with the Waqf Ministry. The Waqf Ministry attempted to assess each waqf's interest on its own. In the 1990s at the time of the exchange, and as we analyzed in the previous chapter, all of the DGIW's waqf revenues were centralized into one fund and spent irrespectively of the stipulations of each waqf's founder. Waqfs had become fungible. The DGIW seems to have two accounts with Solidere: a monetized assessment of what they own and a monetized assessment of what they owe. The first account includes the value of, for instance, shares of plots, waqf-ed shops, and apartments that the DGIW supervises and administers. The second includes rights of others on the assets of the DGIW (servitudes and shares), as well as dues to Solidere for infrastructural works (10% of the value of the land), and any cost Solidere expends on the assets of the DGIW (for restoration, for instance). Therefore, the 300 shares of a lot that the DGIW "owned" were not exchanged for an object that is of equivalent value. They could be used to pay off some of the infrastructural dues to Solidere. They could be consolidated with other shares and

exchanged for a larger asset. The exchange therefore embodied the modern understanding of waqf as real-estate wealth that is to be made to grow rather than to be preserved as per the will of the founder.

CONCLUSION

Centering on the expropriation and exchange of waqf, this chapter has analyzed the transformation of the concept of the waqf's interest conceived as embodiment of the purposes of the shariʿa preserved by the state when it intersected with the new, now state-defined public interest and public utility. The modern state subordinated individual waqfs to the logic of improvement, even while the subordination of the waqf's interest to public utility continues to be a subject of contention and struggle. In pre-reform Ottoman Beirut, the waqf's interest was a concept used in conjunction with the stipulations of the founders to assess whether exchanges based on necessity were fair for the waqf. Each waqf exchange was assessed and effected individually, and was an exception that the Sultan approved for each case. The Ottoman state's introduction of the concept of public utility, coupled with the state's duty to preserve these individual acts done according to the shariʿa, created deadlock situations that resulted in endless lawsuits.

The colonial state resolved these conflicts and subordinated the waqf's interest to public interest that the state's duty was to maintain. When waqfs became constructed as real-estate wealth, the waqf's interest became an individual goal guiding the administration of waqfs. Instead of seeking the preservation of each waqf as its founder created it, legislation encouraged exchanges for the waqf's interest. The waqf's interest was decoupled from stipulations of founders and necessity, and made the logic of exchange. While the Mandate legislation

subsumed the concept of the “waqf’s interest” to the grammar of civil law and to public interest, one should not conclude that the new grammar now structures the terms of the debates on waqf and that Islamic scholars adopted the new grammar. This became particularly apparent in 1991, when the private real-estate holding company responsible for the rebuilding of the war-ravaged city center of Beirut expropriated owners in exchange for shares in the company, to the owners’ great dissatisfaction. After an outcry emerged around the role of the DGIW to preserve waqf and religious interest, the Directorate General of Islamic Waqfs was able to marshal the concept of the “waqf’s interest” in these particular exchanges to refuse the exchange of lots instead of shares and therefore to escape expropriation.

In this chapter, I have shown how the different purposes of the state, one that sustains the shariʿa and the other public interest and the nation’s economy, re-articulate the relation of individual waqf endeavors to the state. I now turn to how these changes re-arrange the relations of the founder to his or her family.

CHAPTER 4: CHARITY AND THE FAMILY

> "Truly pious is he who spends his substance upon his near of kin" (Qur'an 1: 177)
>
> "Even more, waqf is the foundation for the formation of families and the belonging of each of their generations to earlier generations. How many families broke up and disappeared because they were not built around a waqf that would bring them together. But waqf is also the reason behind disputes that divided families because of worldly envy and greed" (Ziade 1997: 143)

On Tuesday 21 February 1854, the reader might recall from chapter 1, Mustafa agha Qabbānī founded three waqfs. He surrendered the majority of his landholdings to God. For eternity from that day forward, a trustworthy administrator was to rent the land, and its yields were to support beneficiaries that Mustafa agha had himself designated. The land could not be sold. The land could not be gifted. And the land could not be pawned. In doing so, Mustafa agha performed an act of charity defined in Islamic Law, whose rewards would continue to flow onto him after his death and up until the Day of Judgment. In addition to bringing its founder closer to God, Mustafa agha's waqfs generated revenues through rent to support beneficiaries of his choosing. In one of these waqfs that we discussed earlier, the founder designated his daughter, ʿĀ'isha, and stipulated that in the unfortunate event of the extinction of his lineage, the revenues of the waqf should go to the poor of Beirut. After the litigations pitting the Qabbānīs and their in-laws,

described in chapter 1, bitter lawsuits over the waqf divided the Qabbānī family itself. The subject of the lawsuits this time was the reversion of the waqf back into private property. One side of his family secured a court decision that authorized the reversion, thereby allowing for the sale of the waqf. The other side won an appeal, but it was not one that challenged the possibility of the sale. Instead, their victory gave the other side of Mustafa agha's family the latitude to sell it for themselves. How could Mustafa agha's heirs sell what was originally inalienable? How could they forget that they were depriving their forbearer of the fruits of his good deeds? In other words, how did such a waqf, an act of charity, become just a piece of land, its pious aims irrelevant?

This chapter argues that the answer to this question hinges on changing conceptions of charity. Starting in the nineteenth century, a waqf's charitable purpose of supporting the family of the founder was brought into question. Such "family waqfs" became constructed as opposed to truly "charitable waqfs". However, when Mustafa agha waqf-ed his lands, it was acceptable for him to dedicate the revenues to his family as an *act of charity*, or even more, that such an act was one of the most charitable ones. Indeed, in nineteenth century Beiruti waqf practices, sites of beneficence were not confined to "public" goals, be they poverty relief, mosques, madrasas, or fountains. Of the 135 waqfs founded between 1843 and 1912, 56% directly named family beneficiaries (Adada 2009: 141),[1] as the Qabbānī waqf did. I show that this practice echoes discussions in the shariʿa and the *fiqh* to privilege the family in charitable giving. In addition, I argue that the logic of family as charity pervaded what contemporary taxonomy terms "charitable waqfs." Through an analysis of one Beiruti waqf that epitomizes "charitable waqfs," the ʿUmarī mosque, I show how even waqfs that are now distinguished from and even opposed to family waqfs supported families. Based on the chronological appointments to the offices of

[1] I calculated the percentage based on Adada's tables 26 and 27.

the ʿUmarī mosque held at the Ottoman state archives, I demonstrate that these positions were often inherited, thereby favoring, again, the family as a site of beneficence. However, I analyze the way family was enacted as a site of charity, and show how the logic of the family came to be supplemented by an ethic of merit, character, and experience.

In the second section of this chapter, I trace the beginning of the devaluing of family beneficence in what comes to be defined as the public realm towards the end of the nineteenth century, with the rise of the modern state, its exclusive control over law and the administration of justice, and new forms of knowledge. Legislation on the transmission of office began foregrounding the ethic of merit over the logic of the family. Offices in charitable works (mostly mosques and schools) [*khayrāt*], become dedicated to the deserving based on merit. These definitions stand in opposition to the pre-modern construction of family as a legitimate and even privileged side of charity. Nonetheless, this reordering of logic and the devaluing of the logic of family occurs only in waqfs involving offices in charitable works. Waqf manuals still explicitly define the family as a charitable goal for waqf. They did not question the charitable character of waqfs dedicated to families.

Section Three turns particularly to the attack on the charitable character of family waqfs during the explicit colonial project of waqf modernization according to the laws of economy. However, the ambiguous categorization of waqf between personal status governed by religious law and real status governed by civil law (as I described in chapters 1 and 2) and the hostility of the Muslim community to the colonial powers prohibited an explicit colonial policy on family waqfs. Instead, the French mandatory powers turned the question to the Supreme Waqf Council and a debate among Muslim scholars turned around whether family was a legitimate site of charity. While they deemed mosques and other charitable works "religious" and embodying the

true form of waqf and charity, modernizing reformers argued that family waqfs were not religious, that they should be assessed according to the rules of the economy, and that they should be reformed to "bring benefit" because that is what the shariʿa requires. Therefore, a modern waqf law should abolish family waqfs or make them temporary in order to avoid their deleterious economic effects. I show how such debates subjected waqf to new understandings of economy and religion that were remaking Islamic law.

The post-colonial Lebanese state adopted the latter solution, which, when combined with colonial policy that allowed the exchange of waqfs (described in chapter 3), almost eradicated the practice of family waqf. In the fourth section of this chapter, I engage the tension between a logic of family that privileges the family independently of the private/public divide and an ethic of merit in public office, to show that the latter persists today. Drawing on contemporary family waqfs histories, I show how the care of the family as a moral good continues to inform contemporary practice even in the public office. However, they are far from dominant and produce anxieties as an ethic of merit and an understanding of privileging of family as nepotism become hegemonic.

Excursus

Contemporary research on waqf reflects modern oppositions between family and charitable waqfs. Most studies take as their subject either charitable waqfs (McChesney 1991, Hoexter 1998, Van Leeuwen 1999) or family waqfs (Doumani 1998, Reiter 1995, Layish 1983, Powers 1989). However, the argument that pre-modern Islamic tradition did not oppose these two types of waqfs is not new. In 1951, J.N.D. Anderson advanced a similar argument when

discussing the decision of the British Privy Council that waqfs were supposed to support some public, religious or charitable purpose:

> But the ancient texts made no such distinction between a Waqf for the family or descendants of the founder, and one for the family and descendants of anyone else whom he likes to name as the beneficiary of his pious dedication. At first sight, indeed, it would appear to the Western mind that such a Waqf might be regarded as more 'charitable' than one for his family. This, however, would be a misapprehension, as the traditions regarding the duty of providing for one's own relations clearly show (296).

Anderson's remark, as I will illustrate in this chapter, reveals a deep understanding of the Islamic tradition, but sixty years after its utterance, its consequences for studies of waqf and Islamic law remain largely unexplored[2] except in a few scattered remarks and notable exceptions (for instance Meier 2001 and Stillman 2000). In a later study of waqf transformation in India under the British colonial yoke, for instance, Kozlowski alludes to the issue when he writes "even an endowment for a mosque or school had a personal dimension, since the staff obtained their livings from it" (Kozlowski 1985: 25). The institution of waqf, he notes, "did not lend itself to facile distinctions between 'private' and 'pious' interests. (…) [M]ost endowments were not devoted purely to one purpose or the other. They were mixed" (Kozlowski 1985: 60). Moreover, Kozlowski argues, revealing an unacknowledged yet likely debt to Anderson, "the tendency to distinguish sharply between the apparently selfish and the seemingly altruistic was in large measure the result of the examination and criticism of the institution in colonial legal and political contexts" (Kozlowski 1985: 60). This chapter takes Anderson's observation and turns it on its head, towards what Anderson terms the "Western mind." Rather than assuming that it reflects a certain kind of Islamic exceptionalism, or a vestige of a pre-modern ethos, I will use it

[2] This, one can assume, is largely due to the continuous entwinement of academic endeavors in the West with the policies and projects of their states, which were mostly interested in using studies on Islamic Law as a way to "understand and reform" Islam rather than to probe Western assumptions.

to question assumptions about modern liberal democracy, and the role of family along the shifting public/private divide.

I. PRE-MODERN CHARITY: PRIMACY OF FAMILY

Spending on Family as *Ṣadaqa*

Islamic notions of charity are distinct from Western/Christian ones.[3] One can trace this tendency from the meaning of the English word charity. The OED traces it to "Christian love, which implies both God's love of man, man's love of God and his neighbour, and especially to his fellow-men." Another "secularized" definition of charity is "benevolence to one's neighbours, especially to the poor; the practical beneficences in which this manifests itself as a feeling or disposition or as action (almsgiving)." In these definitions, emphasis is on the sites of benevolence. This was not however how the *sharī'a* defined the distinctive features of *ṣadaqa*. In order to avoid oxymorons like "charity for one's family," I use here the Arabic Qur'anic word for charity, *ṣadaqa*, which is not defined in relation to type of beneficiaries, but in relation to its voluntariness and its intent. Hadith collections and the Islamic law manuals of my library did not address *ṣadaqa*[4] in a separate book/section [*kitāb*]. They usually tackled it within sections on zakat [alms-tax], waqf, *nafaqa* [maintenance/family support], and gift.

Two distinctive characteristics of *ṣadaqa*, its voluntary character and its purpose of bringing the benefactor closer to God, surface in relation to other forms of spending and giving. Notably, its voluntariness is highlighted in its opposition to zakat and *nafaqa*. Zakat is often termed *ṣadaqa*, and is required of every Muslim who can afford it and is to be distributed to the

[3] For example, the Internal Revenue Service defines charitable organizations that are worthy of support and tax-emption by their beneficiaries, as those excluding private interests and the family.
[4] The Encylcopedia of Islam provides a very detailed and good introduction to *ṣadaqa*.

Muslim poor. *Ṣadaqa* came, however, to imply *voluntary* giving, as opposed to zakat, obligatory giving.[5] *Nafaqa* denotes spending in general terms, but in the manuals, it usually follows divorce and discusses the rights of others on one's spending. N*afaqa* [spending] consists of "food, shelter, and clothing" and is required [*tajib*] for another person related through "three things: marriage, *qarāba* [nearness of kin], and ownership" (al-'Aynī, *Kanz*, 1982 I: 186). Hence *nafaqa* usually refers to the required maintenance of one's wife/husband,[6] one's near of kin, and one's slaves. One's near of kin are here one's parents and one's children.[7] Beyond these requirements, spending on the near of kin [*qarāba*] counts as *ṣadaqa*.

Besides voluntary giving, the other distinctive and main characteristic of *ṣadaqa* is its purpose, getting closer to God. The term itself comes from the verb-root ṣ-d-q, which means to be truthful. *Ṣadaqa* signifies then "the truthfulness of the slave [of God] in his worship" (al-ʿAynī, *Ramz* 1982, I: 70), and its mandatory component, the zakat, is an "integral part of religious ritual" (Hallaq 2009: 231).[8] This hints to the main characteristic of *ṣadaqa*, drawing its donor closer to God. *Ṣadaqa* is discussed with gifts [*hiba*] in an attempt to distinguish them, because both involve the transfer of property without compensation. The *ṣadaqa* is, however, distinguished by its motive, "*ibtighā' wajh Allāh ta'āla*" (Al-ʿAynī, *Ramz* 1982, II: 145), that is "to please God (…) in the hope of a reward in the hereafter (…). It must, that is, constitute a *ķurba*, an act performed as a means of coming closer to God" (EI). *Ṣadaqa* is then primarily distinguished by the *qurba* intention behind it, unlike modern charity that is distinguished by its beneficiaries, the inclusion or exclusion of private interests.

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[5] There is a disagreement on whether this is a modern understanding, as the Quran and many fiqh manuals use *ṣadaqa* for zakat in many places (EI)
[6] The requirement of the wife spending on her husband is a matter of debate within the *Ḥanafī* tradition.
[7] For more detail on zakat and *nafaqa*, one can refer to Mattson 2003
[8] Zakat has a connotation of return, "of paying out of the growth of one's property with a view to purifying that property (Hallaq 2009*::* 231). On that matter, see also Bonner 2003.

Discussions in the Book of the Waqf do not always elaborate on the *qurba* purpose of waqf. If the definitions of waqf according to Abū Ḥanīfa or his students do not include an explicit mention of *qurba*,[9] the term *taṣadduq* implies a similar concept as it denotes an act whose aim is *qurba*, as discussed. Ibn Nujaym (d.1563[970]) however dwells on *qurba* in the meaning, reasons, and conditions of waqf-making. Most prominently, he mentions that "the reason behind waqf-making is the will of the commendable soul to do good to his *aḥbāb* ['beloved'] in this world, and to get nearer to the Almighty in the afterworld"[10] (Ibn Nujaym, *al-Baḥr* 1915: V.188). The waqf-maker's *aḥbāb* are not those who he knows and loves, as a literal translation might imply. Ibn 'Abidīn explains, the *aḥbāb* are "those to whom he wishes to do good, from a near of kin[11] [*qarīb*], a poor person, or a stranger" (*Ḥāshiya* 1966, IV: 339). This outlines the two distinct temporalities at work in a person's actions and existence in this world. Human acts are assessed in terms of their repercussions in this world as well as in the afterlife. Certain actions are favored in time frames beyond an individual lifetime, or even human existence in general. While waqf is not part of the duties of the subject towards her maker [*huqūq Allah*], like prayer, almsgiving, and pilgrimage, it is ultimately a means to get closer to God.

After this elaboration on the meaning of *ṣadaqa*, it is now timely to explore the following question, which is of direct import to the argument. Is the family present in discussions of valid receivers of *ṣadaqa*? A remark on the use of the term "family" has become necessary. Because

[9] For Abū Ḥanīfa, waqf is "the confinement of a *ʿayn* [the corpus of a specific object, or the principal to use endowment terminology] to the ownership of the waqf-founder, and the gift of its *manfaʿa* [yield or usufruct] to some charitable purpose" (al-ʿAynī, *Ramz* 1982 I:: 275). For his students it is "the confinement of the corpus [of a specific property] (*'ayn*) to the ownership of God (…) and the gift of its yield or usufruct [*manfaʿa*] to some charitable purpose [*al-taṣadduq b-il-manfa'a*]". Both are discussed in chapter 1, "Waqf, a non-definition."
[10] "*Sababuhu irādat mabūb al-nfas fī al-dunyā bi-birr al-aḥbāb wa fī al-ākhira bi-l-taqarrub ilā rabb al-arbāb jalla wa ʿazz*."
[11] Based on Muhammad Asad's translation, I use near of kin instead of next of kin because the Arabic word implies proximity.

the argument advanced in this chapter hinges around the inclusion or exclusion of family from charity, the question of what type of family waqf and Islamic law privilege becomes irrelevant. Rather than engaging in the debates on whether the modern capitalist state favors the nuclear family (Engels 1972 [1882], Smith and Wallerstein 1992), I am interested in contributing to discussions on the supposed deleterious effects that family ties and identities have on building efficient non-corrupt states, a debate that is at the center of Lebanese politics, as I will discuss further below. Whether *ṣadaqa* injunctions and waqf practices favor the nuclear family, patrilineal descent, or cognatic groups matters much less than the sheer presence of any part of the family in the (worthy) recipients of *ṣadaqa*. Therefore, I will continue to use family to denote any of the groups. That said, the terminology of family in waqf manuals is very rich and varied. It distinguishes between the nuclear family composed of wife (or wives) and children [*'iyāl*], the descent group [*al-nasl, al-dhurriyya*], the receivers of *nafaqa,* which is the nuclear family and the parents, the patrilineal lineage [*ahl al-bayt, al-jins, al-āl, al-ʿaqab*], and the near of kin [*qarāba, dhawī al-nasab*], which includes both parents' lineages but excludes one's parents and nuclear family [*'iyāl*] as these are supposed to be closer than "near of kin." The near of kin are in their turn distinguished by degrees of proximity, those who are very close and prohibited from marrying [*dhawī al-raḥm al-muḥarram*][12] and those that are farther [*dhawī al-raḥm al-ghayr muḥarram*]. This section first discusses injunctions from the Qur'an and the hadith to spend on one's family as a *ṣadaqa*. It moves then to discussions in the Book of Waqf in 15th to the 19th century *fiqh* manuals on the receivers who invalidate the intent of *qurba* in waqf-making and notes the absence of the family in these. The section then contains some remarks on the way early *fiqh manuals* referred to waqf dedicated to the heirs of the endowers, and their recognition as a distinct type of waqf, but not one which was opposed to "charitable" ones.

[12] These include, for a man, his sisters (suckling sisters too), aunts from both sides, nieces, mother-in-law,

Both the Qur'an and hadith contain positive injunctions to privilege the family as the primary recipients of charity. In the Qur'an for instance, a verse describing the principles of piety, excludes "mere compliance with outward forms" (Asad 2003: 46, fn143), and places spending on one's family immediately after the basic beliefs in God, the Last Day, the angels, revelation, and the prophets. "Truly Pious is he who spends his substance upon his near of kin" (Qur'an 1: 177). The family [*dhawī al-qurbā*] comes first in the pious spending, followed only afterwards by orphans [*al-yatāmā*], the needy [*masākīn*], the traveler/wayfarer [*ibn al-sabīl*], and beggars [*al-sā'ilīn*]. Many hadiths echo the Qur'an in the charitableness of spending on one's family, for instance "when a Muslim spends on his family [*ahlih*] seeking reward for it from Allah, it counts for him as *ṣadaqa*". Another hadith introduces an even more radical suggestion—that charity should start with one's self. "Start with your own self and spend it on yourself [*taṣaddaq 'alayhā*], and if anything is left, it should be spent on your family [*ahl*], and if anything is left (after meeting the needs of the family) it should be spent on relatives [*qarāba*], and if anything is left from the family, it should be spent like this, like this" (Muslim). These are but a few examples of a central theme in the Quran and Islamic ethics, the care of the family, and especially parents.

The commentaries *al-Baḥr*, *al-Nahr*, and *Kanz* raise the question of the validity of the waqf around three categories beneficiaries: the self, the rich, and non-Muslims. For these three categories of beneficiaries, an argument is made as to whether the dedication of the usufruct to them counts as a *ṣadaqa*, and hence provides for a valid waqf. The question of whether to make one's family the beneficiary in waqfs counts as a valid *ṣadaqa* that will fulfill the goal of the waqf as a *qurba* is never discussed. This absence of family from the uncharitable beneficiaries supports the argument of the "taken-for-granted-ness" of its charitable character.

The first category of uncharitable waqf beneficiaries involves the self. al-ʿAynī discusses the permissibility of making one's self the beneficiary of one's waqf during one's lifetime and among other beneficiaries (whether family or poor or named individuals or mosques). He reports two opinions, Abū Yūsuf's, which allows the practice so as to encourage the making of waqfs, and al-Shaybānī's, which declares that this stipulation makes the waqf invalid. The justification for this invalidation of the waqf is that such a stipulation prohibits *qurba*. *Qurba*, according to al-ʿAynī's explanation, occurs through forfeiture of ownership rights: the rights to sell, bequeath, pawn, and here the right to usufruct seems to be among those. Keeping the right of usufruct counters complete forfeiture and hence invalidates the waqf. [13] In this definition, *qurba* occurs with forfeiture independently of the recipients of the usufruct.[14]

The second category of uncharitable waqf beneficiaries is the rich. The rich appear in Ibn Nujaym's supplement to the definition of waqf that he quotes.[15] The qualification comes from the work of another leading Mamluk scholar a few generations prior writing before the Ottoman conquest, Ibn al-Humām (d.1457[861]): waqf, in addition to confinement of ownership, necessitates either dedication of usufruct to a charitable purpose [*taṣadduq*], as in the definitions above, or the "spending of the usufruct on whomever he wishes" (Ibn al-Humām's qualification). This qualification implies that *ṣadaqa* does apply to anyone wished by the waqf-maker. Could this qualification be presupposing or addressing the designation of family members as beneficiaries? Ibn Nujaym thankfully elaborates on it, and shows that the debate is accruing indeed on what counts a *ṣadaqa*. The problematic beneficiaries however are not family members,

[13] He reports this position as the opinion of Hilāl al-Ra'y al-Baṣrī (d.245[859]) in *Aḥkām al-Waqf* [The Rules of Waqf]
[14] See al-Khaṣṣāf (1999: 18) "The waqf is that which is always and forever not owned by anyone, and which does not revert back to the ownership of its [previous] owner or to his heirs"
[15] Waqf according to the students of Abū Ḥanīfa is "the confinement of the corpus [of a specific property] [*'ayn]* to the ownership of God (…) and the gift of its yield or usufruct [*manfaʿa*] to some charitable purpose [*al-taṣadduq b-il-manfa'a*]" (al-ʿAynī, *Ramz*, 1982 I:: 275).

but the rich. Is giving to the rich a *ṣadaqa* [charity]? Is giving to the rich a *qurba*? For Ibn al-Humām, the answer is long, but definite: "dedication of the usufruct to whomever he wishes among the rich, without the intention of *qurba*, is valid, even if for the validity of the waqf, the intention of the *qurba* is ultimately necessary, as a condition for perpetuity, through the poor or a mosque for example. It remains a waqf even before the usufruct reverts to the beneficiaries counted as *qurba*, *without it being counted as a charitable act*" [Ibn Nujaym 1916 V: 1887, my emphasis]. Giving to the rich is not a *ṣadaqa*, then.[16] As long as the rich receive the usufruct of a certain waqf, the waqf is not fulfilling its ultimate goal of *ṣadaqa*.

The last discussion of uncharitable waqf beneficiaries occurs around the non-necessity of being a Muslim to make a waqf. If the founder is not a Muslim, what counts as a *qurba* for her? Ibn Nujaym advances that the waqf needs to be a *qurba* "for us and for them" (1916: V.189). For instance the waqf of a Jew on a synagogue is considered invalid because it is not a *qurba* for "us," and waqf of a Christian or a Jew for the hajj is also considered invalid because it is not a qurba for "them." The waqf of the Christian or the Jew for any poor, even if they are infidels (as long as they are not engaged in war against Islam), is considered a *qurba*. In these discussions of the recipients of waqf yields that invalidate the intent of *qurba* in waqf-making, the family is never brought up. The absence of family in discussions of uncharitable beneficiaries points to its unproblematic status in the practice of waqf-making.

I have shown, first, that the family was a priority in receiving *ṣadaqa* according to the Quran and the hadith and, second, that it was also absent from the invalid charitable beneficiaries of waqfs. If that was indeed the case, family was not outside charity, which is the presupposition of the modern grammar of waqf *dhurrī* and waqf *khayrī*. In that grammar, the distinction

[16] Ibn Nujaym mentions a less authoritative position that considers giving to the rich a ṣadaqa, either through an analogy with gifts, or as a lesser degree of "good."

between family and charitable waqf is superposed neatly on the private and the public, cast as an opposition requiring different legislations and rules on the different sides the opposition. The 1947 Lebanese Law of the Family Waqfs [*Qanūn al-Waqf al-Dhurrī*] overlaid the categories of Family and Charitable waqfs on the French categories of Private and Public waqfs used in the Regulation on the Lease of Waqf Plots (date unknown but probably around the mid nineteen twenties). According to the first Article of the former, "a charitable waqf is that which benefits charitable purposes since its inception, like mosques, hospitals, shelters, and the poor." A family waqf according to the same source is that which benefits "the founders and his descendants, or anyone he wishes to benefit, before dedicating to charitable purposes."The family waqf definition includes here waqfs that benefit any particular individual, and hence mobilizes the shifting private/public distinction. This opposition started to be operative towards the end of the nineteenth century, and appears to be a product of the modern state and the colonial encounter (Kozlowski 1985). Contrary to this modern opposition, I show here that while early manuals discussed "family waqfs," they did not contrast them to "charitable waqfs." None of these were discussed as categories, but they were examples of types of beneficiaries of waqf. More telling, these different beneficiaries were not distinguished along a private/public distinction, but a perpetual/non-perpetual distinction.

Al-Khaṣṣāf's (d.874[261]) "The Rules of Waqf" is one of the most cited sources in litigations on waqf in the Beirut record of the 19th century. The various sections of the treatise are organized along topics discussed in the format of a dialogue between the author and an imaginary interlocutor, probably a disciple. Al-Khaṣṣāf's dialogical waqf treatise, like that of his contemporary Hilāl al-Ra'y, resembles fatwa collections as it is organized around particular cases studies, subdivided in sections. The treatise does not follow the logic that can be followed

in the organization of the Book of Waqf (linguistic meaning, legal meaning, cause [*sabab*], object [*maḥall*], conditions [*sharā'iṭ*], basic elements [*rukn*], rules [*aḥkām*], advantages [*maḥāsin*], and characteristic [*ṣifa*]). Al-Khaṣṣāf's treatise seems to mix cases on beneficiaries and administrators, the validity of the waqf and of testimonies on waqf, and the possible founders of waqf. The aim was not to create waqf typologies, in relation to beneficiaries or objects endowed, but to discuss the validity of certain waqfs and to resolve complex and unclear cases.

Discussions of family beneficiaries take up a lot of the treatise, mostly due the variety of terms for kin used in specifying beneficiaries. Because of this wide variety discussed briefly in the introduction of section I, important questions arise as to which members of the family these terms include and how to divide the yield among them. The Arabic "*waqf dhurrī*" has been rendered in English as family waqf, whereas the Arabic is much more accurate in specifying the kind of family imagined: it is a waqf for one's descendants. Discussion of waqf on one's descendants actually occurs as one among many other familial beneficiaries. Al-Khaṣṣāf determines who is meant by *ahl al-bayt, ḥashm, qarāba, arḥām, ansāb*, *jins*, *aqrab al-nās*, the poor of the *qarāba,* a*wlād* and *banūn*, *nasl*, *dhurriyya*, "*aqab*, *ibn*, *abnā*", *mawālī*, *ummahāt al-awlād* and *mamālīk*, and *waratha*. The aim again is to specify which members of the family these various terms reference. The waqf on descendants by this definition is no more particular or distinct from other types of waqfs benefiting family members. Al-Khaṣṣāf discusses these "family waqf" (in the all-encompassing meaning that does not really have a direct translation in Arabic—that I know of) along with other beneficiaries and does not group them together as one type of waqf opposed to the "charitable" waqfs. For instance, the discussion of the waqf on near of kin is followed by a discussion of the waqf on certain people [*qawm*], then by waqf on

neighbors. The discussion of the waqf on the repair of a mosque or a watering channel precedes that of waqf on a child that will never be born. In these early discussions, then, while family and charitable waqfs are certainly distinguished, they are not opposed.

The general thrust of al-Khaṣṣāf's discussion does not oppose family to charitable waqfs. One instance, however, is more ambiguous, and appears at first glance to contradict my argument of the absence of such an opposition. In discussing the need for perpetual beneficiaries for the validity of a waqf, al-Khaṣṣāf gives the example of the perpetual waqfs of the Companions of the Prophets: "some of them made it perpetual *fi abwāb al-birr* [in charitable purposes], while others said for my near of kin, *fi abwāb al-birr*, and for the poor" (al-Khaṣṣāf 1999: 18). One might imply that in this example al-Khaṣṣāf is opposing charitable and family waqfs. Nonetheless, one needs to place this example in the context of his general discussion, perpetual beneficiaries. In that light, the distinction illustrates the necessity of perpetual beneficiaries for the validity of the waqf, in the case one names particulars. The same argument reoccurs with a different and surprising example: a waqf to support the repair of a mosque is not a valid waqf, because repair might not be necessary if the mosque falls into disuse (al-Khaṣṣāf 1999: 112). So the original example might as well have been "some of them made it perpetual *fi abwāb al-birr* [in charitable purposes], while others said for repair of a mosque, *fi abwāb al-birr*, and for the poor,"[17] which shows that the opposition is not between charitable and family beneficiaries but between perpetual and non-perpetual charitable purposes.

[17] The example that he gives right after the repair of the mosque is about naming a single individual without naming a perpetual charitable purpose.

Family as the Logic of Charity

After showing how the family was a legitimate and even privileged beneficiary of charity and waqf in the waqf literature, I now turn to the analysis of this privileging as it operated even in what is now called "charitable waqfs." What modern legislation labels as "charitable" waqfs includes mosques, madrasas, fountains, and hospitals, which are themselves waqfs, and the various waqf-ed objects whose yields supported them.[18] This second section analyzes one such waqf from 19th century Beirut, the ʿUmarī mosque, and shows that the yields from the waqfs that support it fall along family lines, showing the constructed-ness of the opposition between family and charitable waqfs. In the expenses of the mosque, repairs come as a first priority, as they guarantee the continuous existence of the revenue-bearing object and the waqf itself (al-Khaṣṣaf 1999: 92). Offices follow, and consist of the various employed positions necessary for the upkeep and the operation of the mosque. Finally lanterns and their oil, rugs, pitchers for ablutions, and similar commodities and consumables necessary for the running the mosque form another type of expenditures. I restrict my examination to the variety of employed positions or offices and to the logic of their transmission from one office-holder to another. First, it is important to understand what portion of the total expenditures these salaried positions represented. The table below stems from accounting documents sent from Beirut waqf administrators to the central state in Istanbul during the nineteenth century.

[18] Before the takeover of waqfs by the modern nation state, such waqfed objects were the only continuous source of income for the functioning and upkeep of these structures.

year	Regular Expenditures [*mu'tâdât*]		Total Regular Expenditures	*Share of Offices in regular expenditures*	Extraordinary expenditures (repairs, etc..) [*zuhûrât*]	Total Expend itures	*Share of Offices in total expenditures*
	Offices	Equipment for the mosque					
1841	3,815	5,385	9,200	*41%*	20,099	29,299	*13%*
1842	4,042	6,960	11,002	*37%*	14,606	25,608	*16%*
1843	5,012	9,926	14,938	*34%*	17,697	32,635	*15%*
1874	38,580	3,172	41,752	92%	8,072	49,824	77%
1876	38,580	-	-	-	33,428	72,008	54%
1882	35,760	5,188	40,948	87%	31,276	72,224	48%

Table 1 Expenditures of the ʿUmarī waqf , in *qurush—paras* were dropped (source: BOA. EV11192, EV23231, EV23127, EV25507). The amounts starting 1874 were for one trimester of the year only (that I multiplied by 4), because quarterly accounts replaced the yearly ones. Because the record is spotty, I do not have a full year's expenditures.

The table shows that offices constitute a considerable expense, tending to form a least a third of the regular expenditures of the waqf. Examining their transmission from office-holder to office-holder reveals the channels along which charity is distributed across the limits of tenure [what I call the logic of transmission], and as the following analysis shows, the primary route of transmission is from father to son,[19] but supplementary criteria, such as merit, experience, and character also come into play. Apart from office expenditures, for the two other types of expenditures, repairs and mosque equipment, the logic of family could have also directed the distribution of charitable funds, as many crafts were also passed on from fathers to sons within a system of apprenticeships and guilds. Unfortunately, no records exist on the suppliers and day-to-day transactions of the mosque that would allow us to test the family logic beyond offices. I start the argument with an analysis of the archival documents used to determine transmission to show how the logic of the transmission of office prior to the nineteenth century changes. I then outline the shifts in the logic governing the direction of transmission from a primacy of family to a primacy of abstract competence, as it is apparent in the new 1870 legislation regarding Appointment to Office.

[19] Most of these offices can only be held by men.

Documents

The two main logics governing the transmission of offices, the familial and the abstract, appear in the content of archival documents at hand. Beyond content, however, these logics even structure the form of the documents. Early accounting documents emphasize and embody the presence of the scribe, on whose authority the value of the document lies. Later documents have a logic and form of their own and their authority is that of a state that exists independently of its agents. While acknowledging the shift towards state control of waqf revenues that occurred in the 19th century with the founding of the Waqf Ministry in 1826, it is important to remember that waqfs were not independent of the state beforehand. Sultans founded waqfs and court dignitaries administered them. In addition, waqfs were a main concern for the state in issues of taxation, and particularly around the question of whether they were to pay certain dues or not. Land surveys, carried at the time of conquest and updated at the enthronement [*culûs*] of a new sultan, therefore included extensive surveys of waqfs.[20] With waqf registers held in Istanbul, claims of waqf status could be verified. Finally, detailed waqf accounting ledgers were held by the Treasury (first as *Hazine/Muhasebe Defterleri* and after 1882 [1300] as *Esas-i Cihat Defterleri*)[21] arranged by city, recording the main waqfs in all the details of their offices, names of office holders, salaries, dates and types of appointments, and documents delivered to the office holders for their appointments. These "*Muhasebe*" registers constituted a "base-record" or summary/index [later called *esas*] of positions, but also held pointers to the various documents that supplemented this base-record.[22] The administrator paid the salaries of the office holders from the revenues of the waqf. However, the appointments to some of these offices necessitated confirmation through an official *berat*

[20] BOA, TT393 (1520 [926AH])is the earliest exhaustive record of the waqfs of Bilad al-Sham
[21] The specific circumstances under which these new accounting books were introduced remains unclear to me at this point
[22] Detailed analysis of the relation between administration and records/archive organization forms the material of the first chapter of the dissertation

[letter of appointment] either by a qadi sanctioned by the sultan, or more generally by the sultan himself, the source of all grants. These offices gave their holders continuous rights to revenues and to revenue collection (for administrators), and were then similar to other rights to revenue like the various tax farms (*timar, ze'amet, has*), and hence were to be issued by the Sultan. Moreover, the *berat* in the case of some offices like the imam and *khaṭīb* was necessary for the "validity of the Friday and Eid prayers" (BOA. C.EV 26358).

One such accounting waqf base-record register [*muhasebe defteri*] from the archive of the Directorate General of Waqfs in Ankara [*Vakıflar Genel Müdürlüğü* (VGM)] dates from 22 December 1786 [12 Ra 1201], and holds the accounting of the waqfs of the province of Quds [Jerusalem] including Beirut. These waqf accounting base-records were cumulatively written and structured in the process of writing, as they serve the purpose of documenting changes in the office-holders. The bound register consisting of several hundred blank pages, opens with a note where the scribe inscribes himself and the process of writing in the document: "[written] through the efforts of the poor and humble Darwish Mustafa (…) may God forgive his sins and conceal his shortcomings." After an index, the waqfs are listed by city, with blank pages left between cities at the time of drafting. For every city, on each page a few waqfs are listed with their various office-holders. The number of waqfs included per page depends on the scribe-judge's assessment/perception of the size of the waqf. On each page, the word waqf forms a "*medd,*" an elongated word that occupies the whole width of the page and serves visually as a title under which the offices of each waqf are listed. Under each *medd/*waqf, horizontally written blurbs visually embody the various offices at the waqf. The name of the office holder forms the heading of the "blurb" that records his office and salary. Here again blanks are crucial and left aplenty between the offices, and well as between each waqf. These blanks come to be filled out as old

office holders die: their blurbs are crossed out and a new blurb recording the new holder is written in a different direction, diagonally or vertically.

The 1786 waqf accounting base-record for Beirut was transposed in 1882 [1300] to a new register for the province Suriye. Drawing up a new register is a common practice in accounting, for instance after the ascension of a new Sultan to the throne. The older index can also become too crowded with the passage of time, necessitating the transfer of the current positions to a new register. However the 1882 registers, the *Esas-i Cihat-i Defterleri*, were unlike their predecessors, the *Muhasebe Defterleri*, in their format and logic. Instead of white pages that the scribe structured according to the information he had at hand, the new registers' page are organized as the spreads of a table, drawn under the title of *Defter-i Esas-i Cihat*. The headings of the columns necessitate for each entry a general number, the type of appointment, location of service, offices and names of the office-holders, date of appointment, location of the *khayrât* and *mabarrâat* along with the names of the founders [v*âqif*], the number of the old register, stipulations of the founder, the "events" [*vukuât*], a transfer sign, and remarks. Instead of the various offices of one waqf and all the waqfs of each city being listed together, offices are entered one by one *au gré des* appointments; it is only when an appointment is made that the office is entered in a row. The new *Esas-i Cihat* register does not form a comprehensive index of the waqfs of a city like the older *Muhasebe* register, but rather records events: the various appointments to offices. After a new office is entered, changes to that office are added onto the same row, in the "event" column, which takes up most of the second page. Each office comes to have a number in the general index of the province [*esas-i cihat*]. Interestingly, the type of information recorded does not differ from the earlier index to the new one, except for a few more columns that remain mostly unused (perhaps only in the case of provincial waqfs). The logic

however is much more linear. The presence of the grid epitomizes the inversion of the structuring agent; instead of the scribe and the content structuring the blank register, it is the register with its fixed size columns, rows, and cells that forces the scribe to follow its logic. The state and its categories acquire an existence independent of the agent and the particular scribe. This change in the form of documents reflects the change in sources of authority from a primacy of the personal to one of abstract knowledge. "[O]ld registers bore the personal mark of a particular *kātib* and displayed the artistry of his scribal craft. The text was suffused with the human presence, the *haiba*, the prestige, dignity, and awe-inspiring quality of specific men who concretely embodied the state. This was reinforced and perpetuated by kinship relations of descent and marriage among functionaries and officials (…). [A] new register's authority rests on its diffused formal abstractness, implemented through the standardized printed forms now available for all official acts" (Messick 1993: 240-1).

Office transmission in Beirut's ʿUmarī Mosque

For Beirut, the base-record of the 1786 register originally listed six waqfs,[23] including three mosques, a madrasa, and a Sufi lodge. Later on, at various dates, a few different hands added the waqfs of ten other mosques and Sufi lodges.[24] Among the first list, the câmii-i kebîr-i ʿUmarî (ʿUmarī mosque thereafter) lists the largest number of offices: a supervisor, an orator [*khaṭīb*], two *imams* [conductors of prayer], a Ḥanafī professor, seven callers to prayer, a reader of the *sūra* of *yāsīn* after the noon prayer, a caretaker [*qayyim*], an imam for the afternoon prayer

[23] Those are 1. câmii-i kebîr, 2. Sheikh Salâḥeddîn, 3. mescid-i Ḥavâridhî (cavaridi?), 4. mescid-i Evzâʻî and maqâm-i şerîf-i imâmü'l-muctehidîn al-sheikh AbdulRahmân bin ʻamr al- Evzâʻî, 5. medrese-i cedidâr, 6. zâviye known as khânegah-i Tevbe

[24] Those are 1. câmii-i şerîf-i Emîr Munzer, 2. câmii-i şerîf-i Saray (something something Emir Assâf), 3. zâviye-i ve mescid-i şerîf-i Mağâribe, 4. mescid-i şerîf-i zâviye-i Ḥamrâ, 5. mescid-i Meczûb, 6. câmii-i şerîf-i Dabbâğ, 7.mescid-i şerîf-i known as zâviye-i Khulʻ, 8. shop (illegible) Ḥacî Yûsuf Ḥammûd , 9. mescid-i şerîf-i Bedevî qaddasa sirrahu, 10. câmii-i şerîf-i Şemseddîn.

[*imâm-i ʻasr*], two *türbedârs* [caretaker of the burial grounds, in this case, the "mausoleum" that supposedly entombs a few hairs of the prophet]. This totals seventeen offices just for the ʿUmarī mosque. The number is small in comparison to waqfs founded by Sultans, their families, and their retinue (wives, mistresses, and others)—like for instance the staff of 49 that served the Haṣṣeki Sultan soup kitchen in Jerusalem (Singer 2002). But for the small provincial town of 6000 that was Beirut at the beginning of the 19th century (Fawaz 1983), the ʿUmarī waqf offices were substantial. From these offices, the 1786 and the 1882 base-records[25] detail changes in six offices out of the sixteen: an orator [*khaṭīb*], two imams, two burial ground caretakers, and the Ḥanafī professor. The earliest "update" after the original positions listed in the 1786 register dates from 1850 [28 S 1266/ 12 January 1850], the date at which the mosque's administration was transferred to the Imperial Waqf Ministry, implying that beforehand, the administration was occurring at the local level, without interference from the capital. A further reading of the imam office's supporting documents mentions that the imam listed in the 1786 register was appointed in 1712 [1124]. The offices listed in the 1786 register are even older than the register; they were transferred from an older register without being updated, confirming Istanbul's non-interference in (some) provincial waqf administration at the level of appointments.

From the 1786 and the 1882 base-records for Beirut's ʿUmarī mosque, it appears that the logic of appointment to offices was articulated around the family up to the end of the nineteenth century. When an office became vacant, as upon the death of its holder, a son of the office-holder, usually the eldest, served after his father in the same position upon confirmation of his competence. The appointments mentioned in the 1786 and the 1882 base-records fall in two

[25] Other documents that sometimes list the offices in detail, and fewer times their holders, are the accounting documents sent to the Waqf Ministry (BOA.EV.d.). These list the revenues and expenditures of the waqfs, but their purpose is different from the documents I am using here: they are concerned with balancing accounts and not, like here, with keeping track of office holders. They can be useful to contrast with the indexes, but the names of office holders are too sporadically mentioned to allow tracing the changes through these documents.

categories: those where the name of the new holder shows that he is the son of the older one,[26] and those where the names of new holders seem unrelated to the older one. Appointments of the second type might imply that offices did not necessarily stay within a family, and that these appointments can be used to disprove the pervasiveness of family logic. However, the sultan-signed appointment letters [*berât-i ʻâlî*][27] (which described the details of the new appointments) mention that the new holder was either appointed in the absence of heirs of the original holder or in the case of their incompetence,[28] as will be elaborated below. They hence prove that the family remains the primary determinant, only supplanted in its absence, or incompetence. Table 2 visualizes the recurrence of transmission of office within the family or outside of it, within the six documented offices of the ʿUmarī Mosque in the 19th century. As apparent in the table, within one office, and for all offices except the *türbedâr*, appointments seem to move in and out of families.

Yet, while the principle of family right to the office might lead to the assumption that most of these offices remained within one family, this was not the case. First, the different life spans and expectations in the pre-modern period and up to the end of the 19th century precluded the assurance of having surviving offspring. In addition, and as will be discussed below, competence intersected with the familial right to office, and was a necessary criterion for assignment. Therefore, the logic of transmission to family served as a guiding principle rather

[26] The classical naming practice in these documents was "X son of Y." In the case of Beirut, it seems that "family" names were commonly used, so many times the name mentioned would be X son of Y Surname.
[27] Why and how *berats* were issued is itself a fascinating topic of investigation around the constitution and negotiation of legal authority. For instance, VGM 515.177 mentions that the *khaṭīb* had received a *berat* from the qadi of Beirut in 1712 [1124], while the new office holder received a *berat* from the Sultan. Why and when one refers to the qadi or to Istanbul, and how the qadis deal with claimants who have *berats* from different sources falls beyond the scope of this dissertation. I owe this point to a discussion with Guy Burak.
[28] Appointment letters do not describe how competence was determined and by whom. I discuss further below the institution of exams and the composition of examination committees.

than an iron rule. Rather than a perpetuation of privilege, it provided a security for the precarious lives of these employees who were mostly far from wealthy.

orator [*khaṭīb*]	**first imam afternoon prayer [*‘aṣr*]**	**second imam, noon prayer [*ẓuhr*]**	**first *türbedâr***	**second *türbedâr***	**Ḥanafī professor**
sheikh Barzanjī (1712/1124)	sheikh Muhammad				*new office in 1856*
interruption in the historical record					
al-sayyid al-sheikh ‘Abd al-Raḥmān al-Naḥḥās(1851/1268)	[sheikh ‘Ali Fākhūrī]	Muhammad Ḥammūd (1852/1269)	sayyid ‘Abd Allāh son of ‘Abd al-Sattār Bikdāsh (1873/1290)	sheikh Muhammad Khaṭīb	sheikh Muḥyiddīn (1856/1273)
	sayyid ‘Abd al-Bāsit efendi son of sheikh ‘Ali Fākhūrī (1864/1281)	sheikhs ‘Abd al-Raḥmān and Muhammad sons of Muhammad (1860/1277)	‘Abd al-Raḥmān son of sayyid ‘Abd Allāh (1898/1316)	‘Abd al-Ghanī bin ‘Abd al-Rahmān al-Bindāq (1890/1308)	‘Abd al-Bāsiṭ [Fākhūrī] (1889/1307)
‘Abd al- Qādir son of ‘Abd al-Raḥmān (1908/1326)		sheikh Muhammad Tawfīq Khāled (1915/1334)	Ḥassan brother of ‘Abd al-Raḥmān (1911/1330)		sheikh Ḥāmid (1908/1326)

Table 2 ʿUmarī Mosque office holder chronology (based on base-records VGM515, VGM162.5, and VGM161.300, and the documents they point to).[29] Dates in parenthesis indicate the appointment date. Within each office, a change in color indicates a change in the family of the office-holders—it is the change that is significant, not the color itself (I use two colors only while there are many more families). Note that here I take family as restricted to patrilineal descent because I take a common surname and the mention of "son of" as evidence of family. Offices could have gone to a son-in-law or the son of a sister, but these require evidence not readily available.[30]

Logic of Appointment: Family and Supplementary Reasoning

Examining the base-records' supporting documents with their more detailed descriptions of appointments provides a deeper understanding of the logic of transmission of these rights and duties in the premodern period. Though it is true that family forms the overarching logic under which they are transmitted, that logic is nonetheless entwined with other requirements. For example, when the transmission of office necessitates the fulfillment of duties, like teaching or leading prayers, certain competences and traits of character become necessary. The transmission of one office in particular – the Ḥanafī professorship – provides a good example of an

[29] I also used the Evkaf Defterleri mentioned in footnote 4.
[30] Oral histories of families and family trees would be helpful here, but have not been collected.

interruption of the family-based logic, where the other criteria for eligibility and the choice of the new holder were explicitly mentioned in the appointment letters. The Ḥanafī professorship was made a permanent office in 1856[1273], after a petition by various ulema and notables from Beirut for the creation of the permanent office of Ḥanafī professorship within the offices of the ʿUmarī mosque. However, the petition names Sheikh Muḥyiddīn al-Yāfī as a possible inaugural officer, and presents the following credentials for his appointment in the position: his assiduous devotion in teaching at the mosque and his being among the most esteemed and magnificent ulema [*min ajall al-ʿulamā'*].[31] He became the mufti of Beirut sometime in the decade spanning from 1848 to 1858 [1265-1275] and was a member of the Sufi Khalwatiyya[32] before becoming its leader in Damascus, housed in a lodge named after him (Walī 1993: 250).[33] Upon his death, his son, Muhammad ʻAbd al-Raḥīm, was found to be incompetent.[34] The incumbent, the mufti of Beirut ʻAbd al-Bāsiṭ (Fākhūrī), was appointed on 14 August 1890 [28 Z 1307] because he was "characterized by and renowned for his asceticism and righteousness" ["*zuhd ṣalāḥ ile muttaṣif ve muştahir*"] (VGM162.33).

In these two appointments, the letters specified criteria outside family connection, supporting the appointment of a certain person: competence, character, and duration of experience in the position. The last criterion, experience, represents an official sanctioning an ongoing performance of a task and finds echo in various parts of the law. For instance, the

[31] BOA.I.MVL.371/16311
[32] The memory of Sufi practices in Beirut seems to have been completely eradicated, and made the exclusive realm of more "Islamic" cities like Tripoli and Damascus. The history of these practices, reference to which abound in the Ottoman archive, and their eradication from practice and memory remains to be written and unfortunately falls outside the realm of this dissertation.
[33] Al-Wali mentions that al-Yāfī was mufti for a short period and moved in his later years to Damascus. This opens the question of offices becoming in practice mere rights to revenue without the performance of the duties associated with the position. Given the long petition for giving al-Yāfī the position however, it seems unlikely that he would be an "absentee" office-holder. After all, absenteeism could be a cause for dismissal from office, in fiqh discussion (Ibn Abidīn, *Hāshiya* 1966 IV:: 382). At the same time, the transfer of the office to Fākhūrī and not the son of al-Yāfī might imply that actually Fākhūrī had been holding the professorship in practice.
[34] Here again the letter does not describe how this incompetence was diagnosed.

continuous cultivation of land endows one with rights to the land. The latter, referred to as *mashadd al-maska*, arises from labor invested in the land, and gives a certain security on *miri* land, or quasi proprietary rights: "a person who cultivated without legal challenge and paid tax/rent on land for ten consecutive years acquired rights that prevented an administrator from transferring his lot to another person" (Mundy and Smith 2007: 29). To return to the offices of the ʿUmarī mosque, sheikh Muḥyiddīn al-Yāfī was favored because he had been teaching for some time. While he had no qualified or suitable sons, the person appointed after him was the person who occupied the same position of mufti. Other appointment letters often refer to the length of service, office-holders having served "for a long time" [*müdde medîdeden berî*] in the case of the imam (VGM299.340), "a period longer than thirty years" and "for a while" [*zamândan berî*] in the case of the *türbedâr* (VGM883.54).

Following length of service, the second criterion mentioned in the appointment letters is a demonstration of ethical behavior. These letters discuss the uprightness, righteousness, and integrity of the office-holder, and hence operate on an appraisal of his moral character. This concern constitutes a common theme in Islamic Law that is dealt with extensively for witnesses[35] and is discussed for jurists and judges. "The human links involved in witnessing also are comparable to those in the transmission of hadiths, the traditions of the Prophet. Both represent crucial types of knowledge (…)," whose trustworthiness depends on the "integrity of the transmission links, represented by the human relayers" (Messick 2002: 232). Even if a person had witnessed certain events, their testimony's acceptance ultimately depends on their moral character; hence, the determination of that character is a crucial factor for the judges. In the case of jurists, their authority derives as much from the qualifications of their knowledge (epistemic

[35] In Islamic law, in the rules of evidence, testimony stands primary, an "embodiment of 'presence,' of the testifying human witness, [that] stood opposed to the dangerously open interpretability, and the human absence and alienation of the written text" (Messick 1993: 205).

authority) as their moral character (moral authority) (Hallaq 2009). Knowledge of the law cannot be separated from the embodiment of the values it advocate. Knowledge is tied to its carrier. *'Adāla* [rectitude or justness] and the importance of "instilling a deep sense of morality" emphasized a sense of knowledge as embodiment of the ethics of the law. "[P]iety itself [is] an integral part of this [legal]knowledge, for piety dictated behavior in keeping with the Quran and the good example of the predecessors' *sunan*" (Hallaq 2009: 44). The assessment of the rectitude and moral character of candidates for offices reflects their responsibilities in transmitting and performing the knowledge they possess.

Finally, the most recurring criterion supporting appointments, mentioned in almost every appointment letter or summary, is competence [*ahliyya*]. The appointment of sheikh Ḥāmid to the Ḥanafī professorship in 1908 [1326] when the previous office-holder and his son had passed away, was justified by his success at an examination of his proficiency.[36] Sheikh 'Abd al-Raḥmān al-Naḥḥās's "competence at service [orating] was proven in an exam"[37] in 1851 [1268]. Muhammad Khatīb, the son of the second *türbedâr* was found to be incompetent [*nā ahl*], instead, his successor 'Abd al-Ghanī bin 'Abd al-Rahmān al-Bindāq (1890 [1308]) was chosen because his "competence and capability were evident."[38] What type of aptitude is required for office and how it is determined become crucial questions as they provide insight into which types of knowledge were privileged and how these were assessed. From the example mentioned, it appears that determining competence does not rely on education or the holding of *ijāzāt* [licenses to teach/recite/transmit], but rather on the results of examination. A testing system appears in place as early as 1851, nearly two decades prior to the passage of the Appointment to Offices Regulations (1870). After the Law passed however, there was a clear systematization of

[36] VGM892.33.1795
[37] VGM299.340
[38] VGM883.54.508

the protocol for testing competence. Article 8 of the Appointment to Offices Law draws a distinction between scholarly offices (professorship, imam-ship, and oration) and physical/manual offices (caretakers of the mosques). For the former, examination determines competence; for the latter proficiency is determined by measuring bodily capacity [*vucûdca iqtidâr*]. Both types of offices require a declaration from those responsible for the waqf about the competence of the future holders, and this brings us back to the primacy of testimony as evidence in the *fiqh*. Examinations, like written evidence, can be falsified, while testimony of competence from the knowledgeable and the upright carries with it the moral and epistemic authority of the testifier.

II. Nineteenth-Century Modernization
Shifting Priorities in the Logic of Appointment

As I have pointed out in chapter 2, the increased state control of waqf revenues, the creation of the Waqf Ministry and the ensuing accounting reforms brought the systematization of accounting and also of appointment to offices. The latter came to be regulated by a state law, the Appointment to Offices Regulations [*Tevcîh-i Cihât Nizâmleri*] of 1870 [8 Za 1286]. Yet even here, the Regulations confirm the logic of family in appointments to offices, with continuity and competence as supporting criteria. The first Article states: "When the holder of an office pertaining to a *maẓbūṭ* [controlled] or *mulḥaq* [appended] waqf dies, his son whose competence and capacity are confirmed is appointed to this office." In the basic case of an office holder dying and leaving a competent son, the rule of transmission apparent in the records—the competent son inherits his father's positions—is enshrined in the Law. In the more complicated cases, the law unsettles the priority of the family in the logic of office transmission. To whom is an office

transmitted when the office-holder dies without sons? Or what if he only leaves minor sons?[39] What if his sons are incompetent? Article 10 of the Regulations crystallizes the new priorities in the logic of transmission in its ruling on office transmission in the absence of heirs. Among eligible candidates, the most competent man receives the office. In the case that many candidates are equally competent, the law first gives priority to the "near of kin" of the deceased office-holder [*müteveffâya qarâbatî olân*]. In the second degree, the law gives priority to candidates who do not hold any other office, and thirdly to candidates found to be poor [*fuqr ḥâlı bulunân*]. As a last resort, if none of the candidates is of kin, free of other offices, or poor, a draw determines the new office-holder. This Article clearly delineates the beginning of the change from priority in appointments based on family ties toward appointments based on a new abstract meritocratic ethic of competence.

The shift from family towards competence cannot be abstracted from larger changes in the judiciary system and the education structure of the *ilmiyye* class, described in the introduction and chapter 1. The adoption of new codes as the exclusive law of the state rendered the knowledge and possible independent reasoning efforts [*ijtihād*] of legal scholars much less crucial and directly effective in the domains now regulated by state law. In addition, the founding of new schools that familiarized the bureaucrats, lawyers and judges-to-be with the new codes (Akiba 2003) made the traditional madrasa education irrelevant. The financial and social prospects for ulema became bleak, and they soon realized that they were better off familiarizing themselves and especially their children with the new codes and new employment opportunities offered by the modern state apparatus. Therefore, many of the sons of members of the *ilmiyye* class, which constituted the backbone of the office-holders discussed here, were not sent to the

[39] Islamic Law defines a minor [*ṣaghīr*] in terms of biological maturity, but distinguishes biological maturity from mental maturity [*rushd*].

classical madrasa system but to the new schools (Hallaq 2009: 417). With the sons of office-holders not receiving an education in the Islamic sciences, the question of their competence must have arisen, if it did not create a crisis.[40]

The Appointment to Offices Regulations [*Tevcîh-i Cihât Nizâmleri*] witnessed many revisions (1875 [1290]) altering the priority of family and competence in appointments. In its final version of August 1913 [2 N 1331]. When the family was still present in the logic of appointment, it was now a secondary factor. The priority previously accorded to family was superseded by the criteria of competence. Where the earlier version of the law (and common practice) gave preference to the son of the deceased office-holder, upon confirmation of his competence through a qualifying examination,[41] the revised law extended the eligibility to take the examination to *whoever* wished to compete for the office. The successful candidate was simply the one who showed the best competence. Only in the case of a tie, between two or more applicants of equal competence, who included a son of the former office-holder would that son be given priority to the office. Thus, family remained an operative principle in determining appointments to office, although its former centrality was supplanted by that of competence as the foundations of the ethics of meritocracy were being slowly but surely laid.[42]

The discussion of appointments to offices in the nineteenth century codified waqf manuals of our library echoes the commentaries of the post-classical period in our library; the manuals include discussions of the stipulations of beneficiaries with a nineteenth century twist..

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[40] Another reason for the question of competence to arise is that many such positions were actually farmed (Cuno 1999).

[41] The creation of standardized admission exams administered by the state is a modernizing trend par excellence, but I do not have space to go into it right now.

[42] A final caveat is in order here: the Law of Appointment of Offices in its multiple versions applies only to regulated offices held without a stipulation of the founder. When the founder stipulated that a particular person and/or his descendants should be the holders of a certain office [*meşrûṭiyyet vechle taṣarruf olunan cihetler*], the state did not intervene. Such appointments followed the older criteria of "family before competence," since the stipulations of the founder retained the same force of law that it has in waqf doctrine, as in the dictum discussed in Chapter 2, "the stipulation of the founder has the force of a text of law" [*sharṭ al-wāqif ka-naṣṣ al-shāri'*].

Both Ömer Ḥilmī and Qadri Pasha discuss stipends [*waẓā'if*] along their discussions of stipulations of administrators. Both administrators and stipend-holders [*arbāb al-waẓā'if*] indeed share an important characteristic in terms of their relation to the revenues of the waqf: they receive a certain amount from the revenues either against services or as entitlements. Therefore, they mostly appear in discussions of who can appoint them, and how they can transmit their entitlements. The logic of the family appears in appointments of administrators, wherein if there is no stipulation of the founder, the judge can appoint the administrator but in case the founder has family members, they have the right of priority for receiving the administration over any "stranger/foreigner" [*ajnabī*] (Ömer Ḥilmī Article 296) (echoed in Qadrī Pasha's Article 161). However, Qadrī Pasha does not discuss how the administrator or the qadi is to appoint the stipend holders (in line with post-classical manuals). One of his later articles (528) actually notes that courts should accept Sultanic *barā'āt* [Arabic of *berat*] and what is noted in the real-estate registry as proof for offices. The article in reality addresses what is acceptable as evidence in court cases, because courts privileged oral testimony and written evidence was less reliable because of the possibility of its forging.[43] Nonetheless, it does highlight the fact that the process of nomination to offices could occur from the central state, and that the absence of a discussion reveals a deferral to the state-sanctioned Law of Appointments to Offices.

Contrary to Qadrī Pasha, Ömer Ḥilmī includes a discussion of appointments to offices, and echoes very much the position of the Law of Appointments to Offices. He dedicates two sections totaling eleven articles to offices [*jihāt*]. These sections follow a section on stipends [*waẓā'if*], which might be surprising to Arabic speakers, since stipends [*waẓā'if*] actually include any stipend (Qadrī Pasha for instance does not use the word *jiha* for office. According to Ömer

[43] Messick (2002) provides a fascinating analysis of the type and use of evidence at court in the context of Zaydī Yemen.

Ḥilmī, stipends are amounts of money (or in-kind) dedicated to certain persons from the revenues of a waqf whether for services rendered or not (Article 359). Offices [*jihāt*] are a particular type of stipends for services, those in "*charitable foundations* like imam-ships, oratorships, professorships" (Article 375). The distinction he creates enshrines a distinction between these offices and the rest of stipends, and may reflect their different jurisdiction. As with the Law of Appointments to Offices, Ömer Ḥilmī affirms merit as the first condition for appointment. Article 376 affirms that "it is illegal to appoint to an office someone who does not have the competency for the position." Again, like in the postclassical manuals, there is no discussion of how administrators or judges should test competence, which suggests that this may have been a preogrative of the state. A few articles down the code, Ömer Ḥilmī again echoes Appointment to Offices Regulations and re-inscribes the logic of the family. Article 378 plainly states, If an office holder dies leaving a mature competent child, he should be the recipient of the office. Ömer Ḥilmī seems therefore to echo the shifting of prioritization from the logic of family to the ethic of merit that the Appointment to Offices Regulations introduced.

While the ethic of merit started to take precedence over the logic of family, particularly in these offices that were now under the administration of the Waqf Ministry, none of the manuals openly questioned or defended the charity of dedicating waqfs to family members, be they particular individuals or the founder's family. However, here, the inclusion of the family in discussions of beneficiaries that could invalidate the waqf point to possible debates around that question, while affirming the charitable character of these family waqfs. For Qadrī Pasha, the fixing of the family as a charitable beneficiary occurs in discussions of stipulations of founders for beneficiaries. While postclassical commentaries, discussed the self, the rich, and the non-Muslim only as potentially uncharitable beneficiaries before arriving at the conclusion that these

did not invalidate waqfs, here the family is included in these questionable charitable purposes that need to be specified. Therefore, Qadrī Pasha opens his first article of the section on stipulations of beneficiaries by stating that stipulating some or all of the waqf's revenue to the founder *and his family* is a valid stipulation. In earlier discussions, it would have just been a discussion of stipulating some or all of the waqf's revenue to the founder. In addition, sometimes, but not systematically, Qadrī Pasha refers to these waqf as family waqfs. For instance, Article 108 begins by a hypothetical "If the founder establishes his waqf as a familial one" [*idhā insha'a al-wāqif waqfahu ahliyyan*]. This marks some cordoning off of family waqfs as necessitating their own rules. Ömer Ḥilmī raises the validity of family beneficiaries in his discussion of stipends of beneficiaries. When a *poor* beneficiary receives waqf revenues as an allocation and not for services, it is by waqf of *ṣadaqa*. If the beneficiary is rich, it is by way of generosity and perpetuating family relations [*ṣila*]. Ömer Ḥilmī here reaffirms the value and validity of the ethic of family in charitable endeavors.

III. French Mandate Debates
Waqf: Religion or Economy?

The privileging of on an ethic of merit over the logic of family in the now public offices of charitable works reflected and embodied the concept of good administration, as elaborated in chapter 2. The French Mandatory powers that succeeded the Ottomans in Beirut in 1920 had had a different experience with waqf (Chapter 1), and with an explicit program of "modernization" of waqfs and other institutions. Nevertheless, this did not deter them from subjecting the validity of family waqfs to debate. Indeed, as the French High Commissioner reported to the League of

Nation, a legislative organ of the state [the Supreme Waqf Council][44] had carried out some studies "with the aim to modernize as much as possible, and to adapt to needs, the very special law of waqf" (106). These studies aimed, among others, to "make disappear certain institutions like the family waqfs." In its "needs" to govern, and to govern waqf in particular, the colonial state, I will illustrate in this section, subjected waqf to new understandings of religion and economy.

However, was waqf an area that the French colonial power could claim to modernize? As I discussed in chapter 2, the charter of the Mandate distinguished between "personal status" (marriage, divorce, inheritance), the realm of religion where the various religious traditions had legal sovereignty, and "real status," the realm of the economy regulated by state law. To be modernized, then, to be subjected to the laws of economy, waqfs, or some of them, had to be stripped of the "religious element" as J.N.D. Anderson termed it in the 1952 article I discussed at the beginning of this chapter and as Decree 753 termed these waqfs (religious property, see chapter 2). Therefore, the project of modernizing waqfs involved two interrelated processes: the categorization of waqfs dedicated to mosques, Sufi lodges, and education (so-called "charitable waqfs") as "religious" and the categorization of waqfs dedicated to families (the so-called family waqfs) as non-religious, and therefore abolishable as waqfs. The French High Commissioner's reports to the League of Nation articulated an argument paralleling this approach. The legality of the abolition of family waqfs, he claimed, can only be decided by Muslim jurists, among whom, he is pleased to report, there is a group arguing for this abolition from within the Islamic tradition. That would be no small feat, as these reforms would "bring into the domain of civil law, and with the approval of the highest religious council under the mandate, rules considered

[44] The archives of the heir of the Supreme Waqf Council, the Supreme Legal Islamic Council, along with a survey of the newspapers of the time would be a great source to elaborate on this debate further. I have unfortunately not had the time to go into these.

up to this day as intangible and forming an integral part of Muslim religious law" (Rapport 1926: 109).

In French Mandate Lebanon and Syria, what spearheaded the debate on family waqfs was a proposal for their abolition forwarded to the Parliament on December 21, 1937. The author of the proposal was then Director of Directorate of Muslim Waqfs, Hassan al-Ḥakīm. Al-Ḥakīm[45] was a staunch anti-colonialist (he joined the anti-French Syrian Revolt of 1925-27), leading the French to sentence him to death. He consequently left for Egypt and Palestine, then on to Iraq. He eventually returned to Damascus in 1937 after the French-Syrian treaty of independence, and occupied various posts in the government, before becoming Prime Minister. It would not be unreasonable to suggest that his presence in Egypt in the mid and late 1920s, at the very time when similar debates about the abolition of family waqfs were happening (Baer 1958), might have influenced his proposal. The bill elicited very strong reactions. The main voice of those who opposed the bill and wanted to preserve family waqfs, or the conservationists, came from the "Scholars' Association in Damascus" [*jamʿiyyat al-ʿulamā' bi-dimashq*]. The most vocal supporter of the bill, or the abolitionists, was sheikh Rāmiz al-Malak, a scholar from Tripoli and graduate of Egypt's al-Azhar.[46] In printed and circulated epistles, as well as in newspaper articles, arguments were fleshed out and decorticated, borrowing from arguments developed in Egypt (through the circulation of people and newspapers mostly, as discussed in chapter 1, and as the trajectories of both al-Malak and al-Ḥakīm illustrate).

Some might argue that abolitionists were "co-opted" collaborators seeking personal profits. However, thinking of them, here again, as "conscripts of modernity" avoids assumptions about the intent of these scholars and focuses on the consequences of their actions. Many were

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[45] He was born in 1888 and lived long (died in 1982). He was part of the Arab government of King Faysal.
[46] Al-Malak (1903-1989) was born in Tripoli, studied first at a French missionary school before reaching al-Azhar. From there, he received a degree and license to teach [*ijāza*] the shariʿa and the Islamic sciences.

state employees, and appealed to "modernity" and "progress" in their claims. They have been conscripted by the same notion of progress of the French colonialists. For instance al-Malak argues "today, minds are enlightened, and the previous dark ages are bygones" (al-Malak n.d: 1).This is no surprise but it was a confluence of reasons that worked for the French stated aim of "modernizing" waqfs. It is important to note that even conservationists who wanted to preserve family waqf, argued that certain aspects of waqf needed to be "reformed." They argued that a supervision system that held administrators accountable was necessary for the maintenance and well-being of the waqfs, family or otherwise. Does that mean that they were also conscripted by the same notion of progress characteristic of modernity? I would like to suggest that their pleas follow very much pleas for waqf reform that are actually internal to the Islamic tradition. Whether through advices to princes, or through historical accounts, the themes of "corrupt administrators" and the necessity of their more systematic supervision form a very common line of argument (as I described in chapter 2), and these conservationists argued along these lines, without subjecting the shariʿa to the laws of the economy.

The argument for the modernization of waqfs included three moves, which did not go uncontested, each of which formed a space of debate between scholars. First was the extraction of waqfs from the sphere of religion: certain Muslim reformers argued that waqfs dedicated to the families of founders, like that of Mustafa agha, did not belong to the sphere of religion and concluded that these waqfs did not need therefore to follow "religious law." Instead, and that was the second move, family waqfs were to follow the new laws of the economy. Based on these laws, family waqfs appear to cause harm to the economy, because of their inalienability and their dismemberment of property. Finally, these reformers argued, the shariʿa should prohibit family waqfs in order to avoid harm, because the shariʿa itself contains legal principles exhorting that

harm should be avoided. That was the third and last step in the “modernization” of family waqf, which involved the limitation or even the eradication of family waqf. It is important to note that the clarity of this argument and the three moves I define were not articulated as such in the arguments of family waqf opponents. Their arguments constituted a field of debates that crossed national borders and continued on newspapers, with scholars referencing each other and contributing to the controversy various arguments. The construction of the three moves is, I propose, implicit in the unfolding of the argument for the reform of family waqf.

Extracting Family Waqf from Religion

To support the claim that family waqfs were not a matter of religion, abolitionists presented many arguments that both reflected and advanced an understanding of shariʿa as entexted, univocal, and centered around belief (Hallaq 2005-2006). As one such an author ponders: “waqf is not part of religion because it is not mentioned either in the text of the Quran or in a sound hadith” (Makhlūf 1932: 16). To untrained ears, this statement might seem uncontroversial. However, in Islamic legal theory, which includes the sources of the law and the methodology for extrapolating rules from revelation,[47] the sources of the law go beyond the Quran and the Sunna (the Prophet’s exemplary life and his sayings). While these are the first to be consulted (and in that order) when elaborating rules, when they are silent on cases, the consensus of scholars follows as a source of deriving law, followed by analogy. These four methods became uncontroversial sources of deriving rules, making them the four most widely accepted sources of the law. When advancing that waqf is not present in the Quran and the sayings of the Prophet, the abolitionists were redefining what counted as a valid source of law. With this, the two latter sources of the law, the consensus of scholars and the deductions through

[47] Hallaq (1997: vii) and Calder, N. "Uṣūl al-Fiḳh." *Encyclopaedia of Islam, Second Edition*.

analogy, became irrelevant. "All legal doctrines elaborated by the jurists, whether positive or theoretical, were to be completely set aside" (Hallaq 1997: 215). An advocate speaking for family waqf beneficiaries and preaching the abolition of waqf simply dismissed the authority of the schools and their various scholars. He wrote: "many a scholar has declared the invalidity of family waqfs and its annulment basing his research on the legal sources of the shariʿa and not the opinions of Frick or Frack" [*lā ʿalā ra'y fulān wa ʿiltān*] (al-Sammān n.d.b). In this turn of phrase, major scholars, the famous founders of schools, were reduced to an "opinion," stripped of their authority—Frick or Frack.

Based on the primacy now given to the Quran and hadith, the interpretation of Quranic inheritance injunctions took a new import in the re-imagined legal edifice. In the modern understanding of law, a new norm and discourse of consistency and predictability replaced the *raḥma* of multiplicity of opinions and curtailed a space for debate. It was not enough that there were hadiths that supported waqf; now, it also had to withstand the law of inheritance. Indeed, abolitionists argued that since family waqf contradicted the laws of inheritance, it was a legal ruse that should be abolished. It is important to note that this was not the first times that the relationship between waqf and the laws of inheritance had surfaced. Even in the early doctrine of waqf, such debates are reported among supposedly contradictory hadith: one supporting the creation of waqfs and the other arguing that there is no "*ḥabs*" contrary to the laws of inheritance. Indeed, in the Mālikī tradition, a waqf that excludes legal heirs and changes proportions in the inheritance was considered invalid (Layish 1983, Powers 1993). However, the Malikī subordination of family waqfs to the law of inheritance differs very much from the argument that abolitionists advanced. Abolitionists took the supposed contradiction to the law of succession to argue that the institution itself should be abolished, while the Malikīs targeted

those waqfs that deprived heirs. Abolitionists were rethinking the whole edifice of waqf, in a place where Malikīs took for granted the validity of family waqfs, and harmonized them with the law of inheritance.

Furthermore, abolitionists claimed that it was not enough for the waqf to be based in the Qur'an and Prophet's Sunna for it to be "religious." It has to have an "imperative character, that is, it has to impose itself on all believers and constitute a part of their belief upon which the Prince cannot intervene" (Saad 1928: 55). Even though he argued that Islam does not distinguish between "law" and "religion," the author is here subscribing to a particular understanding of religion: one that puts its essence in belief. By emphasizing the necessity of their "imperative character," the author is also favoring a univocal core Islam rather than emphasizing the debates within the tradition. It is also a renegotiation of the power to decide on what "law" is between the scholars' and the state/political authority, in the person of the author's "prince. The "religious" becomes restrained to the domain of belief and falls in the purview of "religious law." Political authority in that way takes over legislation and control what becomes "inessential" and divorced from religion-as-belief, the sphere of the economy. It is a limitation of being Muslim to just believing certain things, while the tradition involves doing and living a certain way and forging a certain character, which are also and crucially sustained in the domains of the "economic and social."

Conservationists counter-attacked, emphasizing a very different understanding of the shariʿa. They argued that Islamic Law did not distinguish between family waqfs and charitable waqfs in terms of the laws they followed. All were charitable endeavors and they followed the same laws for founding, exchange, rent, etc. In addition, while the Qur'an did not mention waqf

per se, it encouraged acts of charity [*ṣadaqāt*], as a way to please God. Therefore, waqf should be understood as being in the domain of religion.

Assessing Waqf According to the Laws of the Economy

The abolitionists' argument continued, however, and they proposed that since waqf was not religion, it should not follow religious law but economic law. In the words of a French Orientalist expert on waqf, "The sphere from which to decide whether the waqf should be maintained or abolished is the economic and social sphere" (Zaki 1928: 121). According to economic reason, waqf was harmful for the country's economics ["*aḍarra fī iqtiṣādiyyāt al-bilād.*"] for two reasons. First, because it was inalienable, it prohibited the freedom of circulation and the operation of the invisible hand of the free market . Second, because it was dismembered, it could not be used as collateral.

With regard to the first sub-argument, the abolitionists argued that "waqf stood in the way of the freedom of transaction" (al-Sammān n.d.a: 3). Because they could not be commonly sold, they were constructed as "immobilized." As the French referred to them, they were mortmain: signifying the grip of the "dead" on the land. On the other hand, these abolitionists advocated, "free property is active, alive, fertile; it changes hands; it can easily find its most suitable owner, the one who will know best how to fructify it" (Zaki 1928: 76). In this understanding of property and the market, free circulation of assets is the basis of economic progress (Zaki 76), because it is only through circulation that the land will find its fittest owner, the one who can fructify it best. We find here echoes of the free market ideology, whose arguments are still in use today.

The argument for the freedom of circulation and alienability had also moral and evolutionary undertones that will be very familiar to historians of European capitalism. Restoring the freedom to dispose of patrimony, argue abolitionists, will push beneficiaries “who have been used to idleness and indolence to labor and responsibility, and striving to improve their lot of waqf lands and to increase its revenues (…). This will turn these beneficiaries into an active productive useful organ in the body of their nation after being paralyzed and decayed” (al-Sammān n.d.a: 2-3).This concern for constant improvement and always increasing accumulation runs very much counter the pre-modern logic of waqf exchange (and administration in general). Classical waqf legislation seeks to preserve the waqf as its founder created and imagined it. The point was not to make the waqf even more fruitful, or to generate ever more money to fulfill the aims of the waqf. Waqf exchange was made as exceptional as possible through restrictions. Therefore, one could not affect an exchange of a fruitful waqf for one that is better, because an increase in yields is not the dominant logic of waqf administration; rather, its dominant logic is its preservation according to the will of its founders. This particular pre-capitalist logic of the waqf is interpreted by Orientalists as a characteristic of “the Muslim spirit and the Arab conception of wealth. The Arab does not seek to create; for him, political economy is but the art of conserving natural wealth” (Terras 1899: 16-17). Rather than seeing ever-expanding accumulation and the desire of the ever-more as a characteristic of modern capitalism, the pre-modern conservation is relegated to the “Arab mind.”

The other main economic critique to waqf came from the point of view of property rights. Indeed, waqf separated the right of use, the right of usufruct, and the right of alienation. If the reader remembers Mustafa agha’s waqf, as discussed at length in chapter 1, the right of alienation was foregone to God, and beneficiaries had rights of usufruct and/or use. These in turn

were many times given in long leases that were almost equivalent to sales. In Mustafa agha's case, the right of alienation was foregone to God, and his daughter Aisha (in one case) had the right to usufruct. She could build whatever she pleased on the land and it would be hers, specified the founder Mustafa agha. The daughter herself sold this right of usufruct to her husband in exchange for a 99-year rent. Aisha's husband therefore built houses on the waqf-land, and these were his "private property." And one day, he himself decided to make the houses themselves into waqf. In one piece of land, there were two different waqfs: the land, whose rent went to Aisha and her descendants, and the house, whose revenues supported the husband's family. Opponents of family waqfs argued that because beneficiaries only had usufruct rights they would not care for the waqf, but would seek to maximize their benefit, not caring for future generations, since they would not be able to transmit them to their heirs. In addition, they claimed, when people are only usufructories, they cannot borrow money using the waqf as collateral (waqfs could not be pawned). For abolitionists, this decreased the total "credit" of the country.

The main argument of conservationists regarding the subjection of waqfs to the laws of the economy challenged the attempt to restrict the shariʿa to a particular sphere of religion. They argued that even if waqf were not religion, even if it were a civil system, it would still need to follow the shari'a because the shari'a engulfs all of a Muslim's life. Even the sphere of transactions among men, which are common to the nation, from sales to purchases, to leases, to donations and wills are still acts of a legally responsible Muslim and cannot be changed except based on rules of the shariʿa [*aḥkām al-dīn*]. The shariʿa, they argued, "took care of the organization of all human acts, be they individual or collective, domestic or civil."An author then proceeds to describe various sciences within the shari'a and the various sides of human life that

they guided. The argument here stands against the limiting of the shariʿa to one sphere, and brings an understanding of the Islamic tradition as a way to live the good life in all its aspects.

Reforming the Shariʿa based on the Laws of the Economy

We have this far covered the first two arguments that abolitionists presented: that family waqf did not belong to religion and was not to be assessed according to religious law, and that it brought economic harm. The family waqf's continued existence – and the legislation that would manage it – were now called into question. Civil law could actually abolish family waqf, as had happened in Algeria (and would happen in Egypt and Syria). However, because the scholars were actually arguing from within the tradition, they were concerned with reforming the shariʿa itself, and therefore in reforming the family waqf based on arguments from the shariʿa. It was an argument that attempted to bring parts of the shariʿa onto the realm of the economy, to assess shariʿa rules and legal determinations based on the laws of the economy, but then, argued for the necessity of the reform of the shariʿa based on arguments from the Islamic tradition. They proposed that the shariʿa itself requires the abolition of harm. They took the legal maxims like "Do no harm and accept no harm" [*lā ḍarara wa lā ḍirār*] and the "bringing benefit and fending off harm" in order to argue that the harms of the waqf should be fended off, benefit brought, through the abolition of family waqf.

However, as I described in chapter 3, the concept of *benefit* crystallized in Islamic legal theory is a very technical concept, not to be confused with a more pedestrian understanding of interest. It is the "embodiment of the purpose of the law" (Opwis 2005: 183), the preservation of *the purpose of the shariʿa*, which is maintaining religion, life, mind/reason, lineage/progeny/offspring, and property of humans (Ghazālī, *al-Mustaṣfā*, 1997: 417). Working

outside of this very structure, the abolitionists argued that waqf needed to be reformed in order to fulfill benefit, because "the legislator is responsible for realizing interest [*taḥqīq al-maṣlaḥa*]" (al-Ḥakīm 1938: 2). Preserving interest becomes the driving force of the legislation rather than a controversial and exceptional source of law that is ultimately supposed to ensure the *purposes* of the shariʿa. Here it provides an independent measure to assess harm. Such reasoning echoes what Wael Hallaq terms "religious utilitarianism" (1997: 214). Represented by Rashīd Riḍa, religious utilitarianism "amplified the concept of public interest to such an extent that it would stand on its own as a legal theory and philosophy." It reflected an idea of pure Islam, that present in the Qur'an, the Sunna of the Prophet, and the very early consensus of doctrine arrived at by the Companions.

Such utilitarianism was not adopted by all Muslim scholars, as the conservationists' defense shows. Their first counterargument was that the existence of harms that waqf causes does not justify changing its legal norm from recommended to prohibited or reprehensible. Second, they rejected the use of benefit as the ultimate measuring stick for assessing the validity of acts, arguing that it had to be coupled with analogy. The first argument of conservationists against the use of an argument of harm to abolish family waqfs was that the harms ascribed to waqf are inessential and accidental. They do not affect the nature of waqf and its legality. It was not about waqf, but about the individuals who cared for them. How else could one explain the longevity of waqfs? How many families would have lost everything had they not had waqfs? In Islamic law, having harms is not seen as absolutely unacceptable. Based on their proofs [*adilla*], acts are deemed necessary or recommended not merely if they have no harm, but also if their benefits exceed their harms, and not that they have no harms (ex: praying in a violated space). In addition, conservationists argued that a common benefit alone does not provide grounds for

analogy; it has to be coupled with a common *ratio legis* that forms the basis upon which the legal rule is derived. A conservationist used the example of facilitations of rules of prayers and fasting given to travelers. Here the benefit is to fend off difficulty. However, one cannot extend such exceptions to a resident encountering difficulty. A resident belongs to a different category and does not share the *ratio legis* of travel, which is what allows the change in the legal rule.

In this debate, at first sight, the clear winners were the abolitionists, whose thesis ultimately formed the basis of colonial and postcolonial legislation on family waqf. It was the state's adoption of the abolitionists' argument and its implementation through legislation encouraging their sale that actually allowed the heirs of Mustafa agha to sell his waqf like any piece of land, oblivious to its pious purpose. These legislations enshrined the hegemony of the discourse that limited religion to belief and creed, and claimed that economy and its laws should govern other domains. However, I will show in the following section that the adoption of the abolitionists' opinion and its enshrining as state law may have silenced the debate, but it did not eradicate the ethic of the family that I described above. It survives in discourses on family care, in embodied carriers, and in family waqfs that have survived mostly through disputes and lawsuits. The waqf of Mustafa agha has not ultimately reverted to "private property." It is still the object of contestations among the family of the founder, and the Directorate General of Islamic Waqfs.

IV Post-Colonial Continuities and Ruptures

It was not until after independence that a law reforming family waqfs was actually ratified in Parliament. Conceptually, as I discussed in the first section of this chapter,[48] the 1947 Family Waqf Law solidified the modern grammar of family waqf and charitable waqf through the superposition of these two categories onto different legislations. In addition, the law affected not only future family waqf foundation, but also existing family waqfs. Concerning new family waqfs founded after its promulgation, the law's main innovation was to restrict the perpetuity of family waqfs, their irrevocability, and the percentage of his possessions that a founder could actually make into a family waqf. The foundation of perpetual family waqfs became invalid. They could only be founded for two generations (Article 8). After that, the family waqf reverted to the ownership of the founder or his heirs (Article 10). Regarding existing waqfs, the law allowed their consensual subdivision [*qisma*] among beneficiaries (Article 17), dictated the forced subdivision of some family waqfs, and permitted the liquidation [*taṣfiya*] of ruined family waqfs.

Consensual subdivision, forced subdivision, and liquidation of family waqfs entail different jurisdictions and end-products in terms of "ownership." In the case of a consensual subdivision of a family waqf, the waqf does not cease to exist. Instead of having beneficiaries divide the fruits of the waqf-ed objects (say, the revenues of a building), they subdivide that object according to their shares. This way, there would be no need for an administrator to manage and fructify the waqf, but each beneficiary would be the administrator of his or her own share. For the forced subdivision and liquidation of family waqfs, the waqfs cease to exist and revert to the

[48] In the subsection on early waqf manuals and their discussion of the distinction between family and charitable waqfs.

private property of the beneficiaries, in exchange for a lump sum paid for the ownership of the *raqaba* [right of alienation, *abusus* in Roman Law] (Article 20). In terms of jurisdiction, forced subdivision joins consensual subdivision under the auspices of the DGIW. Civil courts have jurisdiction over the liquidation of family waqfs. If the reader recalls the introduction of this chapter, the Qabbānī waqf dispute over its reversion to private property revolved exactly around jurisdiction.

The law was effective in "modernizing" family waqf, or to be more accurate in almost eradicating the foundation of any new family waqfs. By eliminating the perpetuity of family waqf and allowing its subdivision and revocation, the particularity of waqf as practiced in Beirut (and the Ḥanafī Ottoman Empire at large) was completely obliterated. Compared to the waqf's purpose to create rewards in eternity for the founder, the re-invented family waqf, dismantle-able after two-generations, was unrecognizable, an altogether different concept. It now almost became a bequest, except that it was executable the moment it was drafted rather than upon the death of the founder. From the day that the law was promulgated and up until the late 2000s, no new family waqfs were founded. Suddenly, three new family waqfs appear on record, one in June 2006, the other two in 2009. These are too insignificant to form a trend and to be read as the fruition of the efforts of some Muslim organizations to revive waqf as a practice, since their efforts were not targeted at family waqf to start with. I would propose rather that they form continuities, from individuals for whom the practice of family waqf remained alive for a variety of reasons. While these might be numerically insignificant, and do not at all represent a "revival" of family waqfs, they do provide nonetheless a lens to examine the actualization of the 1947 family waqf law as well as the discourse on the logic of family.

The Law attempted to foreclose certain possibilities, such as the foundation of perpetual family waqfs. However, the text of the law points to the debates around such a decision, and the possibility of a contestation of such a law. Article 6 specifies: "Shariʿa judges are prohibited from hearing a deposition for the creation of a new family waqf that would be contrary to the provisions of this law." Having an article prohibiting shariʿa judges from founding waqfs against this state law, based on the *fiqh* rulings that family waqfs could be perpetual, the article actually acknowledges its contested and contestable nature. How did shariʿa judges relate to the state-issued 1947 Family Waqf law? How did they reconcile their role as interpreters of the shariʿa when confronted with the authority of a state-issued law that restricted their role as scholars? How did they negotiate their location in the state and the authority it afforded to them but also its requirement of loyalty and submission to certain of its rules along with their training and authority as religious scholars? Clarke (2012) argues that these two diverging roles of the judge create him as a tragic hero and discusses strategies of different judges for negotiating these two opposite roles. It is usually one or the other that they choose, through, for example, temporal distinction between these two roles (112). Two of the new family waqfs present a good illustration of this negotiation, in addition to providing some insights on the tensions and anxieties around the logic of family.

The first family waqf consists of three apartments on the fifth, sixth, and seventh floors of a building in one of the most expensive stretches in Beirut, with unobstructed sea views, close to the American University. The founder preserved the right of usufruct during his lifetime, then transferred that of the fifth floor apartment to one of his sons and one of his daughters, that of the sixth floor to two other sons, and the seventh floor to another daughter. Subsequently, their respective heirs would inherit that right of usufruct. The deed then specifies that after ninety-nine

years from the date of foundation, the waqf would revert to the Directorate General of Islamic Waqfs. The deed therefore falls within the limitation to two-generations set forth by the 1947 Family Waqf law (Article 7). It concurs with the state-issued law in that the waqf does not support the family until its extinction, but for a limited period. However, instead of reverting the ownership of the waqf to the founder and his heirs after that period, the waqf turns into a "charitable" waqf under the DGIW, in perpetuity.

Judge Muhammad al-ʿAssāf , being the judge having jurisdiction over waqf at the time,[49] drafted the waqf deed. He had studied at the Beirut Shariʿa College and written his thesis on the exchange of waqf. He also taught there, on the Personal Status Code that formed the basis of most deeds and judgments in the court. Being a waqf expert, Qadi ʿAssāf had strong opinions about waqf related legislation and processes. For instance, he argued that all waqf-exchanges that have happened (particularly in downtown Beirut) are illegal because they were not authorized by a judge, as per the shariʿa requirements. Instead of the two-generation waqf reverting to the ownership of the founder and his heirs, which the 1947family waqf law requires, Qadi ʿAssāf reconciled the demands of the law for a non-eternal family waqf and the shariʿa's requirement for an eternal waqf and pious purpose. Instead of allowing the reversion to private property, which would be against the dominant view on waqf (as seen in chapter 1), Qadi ʿAssāf fit the desires of the founder to found a family waqf into a common sharʿī practice: *al-waqf al-munqaṭiʿ al-waṣaṭ*, or the waqf that had specific beneficiaries before reverting to the general charitable purpose. He therefore reconciled the demands of the state-issued 1947 Family Waqf Law with the shariʿa's. One should note, however, that Qadi ʿAssāf's solution is not a generalized one, as it actually also worked for the benefit of the DGIW, a gesture that other judges or founders might

[49] Judges have specialized jurisdictions: some do inheritances, other marriages, etc…

not be very keen on.[50] His way around state-issued legislation represents the continuing debates about orthodoxy and the proper and most authoritative views on waqf founding, exchange, administration, and more general practices.

Like Qadi ʿAssāf, other judges in the court engaged with the 1947 family waqf law, particularly around the contested opinion adopted that allowed the reversion of a (family) waqf to the ownership of the founder and his or her heirs. While Qadi ʿAssāf avoided the state-issued rule against perpetuity by making the waqf a charitable one at the end, other judges adopted more ambiguous stances. The second family waqf only specified the first generation of beneficiaries, making one wonder what would happen after that. It was an unusual waqf in many ways. In addition to only specifying one beneficiary, the founder's sister, it did not include a specific object, like a certain lot or an amount of money. What was waqf-ed was the "contents of the Fransabank account" of the founder. Finally, it did not elaborate on the ways the money should be fructified, or even mention a clause saying that only the profits accrued could be spent, in order to ensure the perpetuity of the waqf. On a less unusual note, it was framed as a will [*waṣiyya*[51]]. Indeed, in addition to the performative utterances that make waqf, and the most common expression of verbs used in waqf deeds (if the reader remembers from chapter one) "I waqf-ed, confined, and perpetuated" [*waqftu, ḥabastu, abbadtu*], this waqf deed started with "I willed [*awṣaytu*]."

While hinging the waqf on the fulfillment of a future condition [*taʿlīq*] (for instance, if I have a boy, I will waqf) or specifying a future time when the waqf will become effective, invalidates the waqf, founding a waqf as part of one's will is the only case where the *fiqh* allows

[50] One should remember here the competition between Dār al-Fatwā/the DGIW and the courts that I discussed in chapter 2.
[51] Again, translating *waṣiyya* as will does not render its particularities in Islamic Law: that it is restricted to one third of one's possessions, that it cannot be done for a heir, etc.

such a hinging. However, in this case, the waqf is considered part of the bequest, and follows the stipulations of wills.[52] The 1947 Family Waqf Law blurred the distinctions between waqfs and bequests. It introduced one of the legal determinations governing bequests (that a bequest cannot exceed the third of one's possessions), but it left the freedom to the founder to choose beneficiaries for this third (contra the rule of bequests that there is "no bequest for an heir—except with the approval of all heirs"). However, the same attempt to "ensure the fair treatment of heirs" (in the reformer's justifications) or to govern family or to apply a textual interpretation of the inheritance verses is at play, it manifests itself in opposite stipulations. While bequest rules prohibit giving to heirs, the new family waqf legislation prohibits the exclusion of heirs beyond the third of the founder's possessions. "An owner can make into a waqf no more than a third of his possessions, whether on his heirs, or other people, or on a charitable purpose" (Article 37). For anything that exceeds the third, the following article specifies, the offspring of the founder, his wife, and his parents need to receive shares from the waqf in accordance to the inheritance law.

The founder of this family waqf was a faculty member of the Shariʿa College in Beirut. I had met the professor-founder early on during my research, because I asked permission from him to enroll in some of the classes at the Shariʿa College. I had discussed my project with him in order to explain why I wanted to audit these classes. When, in the course of my research in the court records, I encountered the waqf that he had founded, I was puzzled. He had not mentioned that he founded such a waqf. I set up a meeting with him. Although he was gracious and answered my questions, he was not keen on discussing the waqf. Our meeting was short. He thought about his sister after the death of his brother, he explained. "In our society, a woman

[52] I have used wills for expediency, the translation again here obscures the distinctions between these two instruments as I will note shortly below.

suffers if she does not have money or property." So he decided to dedicate a waqf to her, so she could live 'in dignity'. Although he couches the reasons behind his waqf in social analysis in the place of women in society, the responsibility that the founder expresses towards his sister embodies the injunctions discussed earlier in the chapter to be charitable to one's family — after all, he did not found a waqf to support aging women.

While the founder elaborated his foundation in terms of care for his sister, he brought up, unsolicited, the issue of bequests, inheritance, and waqf: anxieties about the charitable character of such a waqf (and questions about its contradicting the law of inheritance) surfaced. After answering my question about the particular form [*ṣīgha*] of the waqf deed, he explained the socio-economic and moral basis behind his urge to care for his sister, but then went on what seemed to me, back then, a proof of his familiarity with the law of waqf. He exclaimed: "Anyone who is sane of mind can make all of his possessions into waqf." While this statement does indeed show the founder's familiarity with the law of waqf, the way he volunteered it points to the contested nature of his foundation under the current legal regime of waqf. He was challenging the restriction of the 1947 Law on the amount of possessions that could be made into waqf but also justifying the validity of his endeavor. The running arguments, embodied in the 1947 Family Waqf Law, about the contradictions between founding a family waqf and the laws of inheritance brought anxieties about endeavors of family waqf making as a charitable endeavor. The founder also brought up a piece of land that he owned in an upscale "modern" neighborhood, and said that he was thinking of making it into a mosque. It was as if he felt the need to assert his "charitablity," which can only take the form of a mosque.

The ethic of the family and the anxieties around it appear not only in subjects familiar with the practice of family waqf, as I witnessed during my work at the archive of the shariʿa

court with the very valuable help of Abu Ali, the court's archivist. Abu Ali has occupied this position for some 25 years. He remembers when the court was in a different location, and the various makeovers at the current location. Abu Ali ranted regularly about a particular aspect of the last renovation that Saudi Prince al-Walīd bin Ṭalāl sponsored in 2007: it had robbed him of his metal shelving system, and replaced it with cheap particleboard shelves that were like cardboard, which broke and harbored insects and roaches. During my last visit in the summer of 2011, Abu Ali's pleas had been answered and new metal-frame shelves filled the three-meter by four-meter room. This was *his* archive, these were *his* registers. He knew it inside out. Abu Ali acted as a combination of help desk, gossip central, and memory of the court. As the sole guardian of the archive, he could make the life of a lawyer or a party in a lawsuit hell. The inexperienced who did not or could not hire a lawyer, and those who did not have the knowledge and access to the knowledge of someone seasoned in the ways of the court, could suffer. What they did not know is that each type of paperwork had its standard tip. While his base salary had not kept up with living wages, the tips made up the difference. Abu Ali explained that logic to me in a very matter-of-fact manner. He needed to send his kids to school, and if the court had kept up with salaries, the practice would not have been necessary. For lawyers and the *habitués* of the court, the tip was part of the court fees. To expedite things, a larger tip would help, but the tips were standardized to such a degree that they were normalized. And indeed, the salaries of the functionaries were so pitiful, it almost felt just.

Abu Ali was going to retire soon, and was expecting his son to take over his office. Ali, the son in question, was a gym-going handsome nineteen-year old attending college, or so was I told, but clearly not very invested in the project. He harbored dreams of going to Australia, where a girlfriend's family could help him to enroll at a university or make a living. In front of

me, Abu Ali always sang his son's praises: how fast he had learned about the archive, how good a son he was. However, when I was working in the back, I could catch glimpses of Abu Ali gently rebuking him, as he seemed not to be able to stay put: a cigarette break here, going to buy stamps there, or hanging out with some of the court functionaries, in general.

One day, as I was close by the door making some copies, I witnessed a conversation between Abu Ali and a lawyer. She stood up straight at the side of the doorway as she engaged in small talk with Abu Ali, inquiring with the standard questions about his health and family. She wore make-up, the court-mandated scarf nonchalantly thrown over her head, half-covering her fresh coiffe. When Abu Ali started explaining that he was about to retire, but that his son was most likely going to be taking over his position, she interjected: "What's wrong with that?!" But nobody had said that there was anything wrong with that. In her defending outburst, the lawyer indexed the association of nepotism with the logic of family in public office. Her father had passed away as she had been completing her compulsory training before the bar examination. He was a famous lawyer who had important clients. After he passed away, many of them trusted her and tried her despite her young age and lack of experience. She worked very hard, she explained, and was able to prove her skills and retain all of the clients. The lawyer drew a parallel between herself and Ali, without distinguishing between the public nature of the office and her private law practice. While her father had helped her, she could not have been a successful lawyer without her competence. In her argument, we see enacted the very logic of family that was at work in the transmission of offices: that family privilege had to be accompanied and confirmed by merit.

Such moments, the "so what" moment, however, remain as such, fleeting moments in a legally-enshrined association of corruption with the privileging of family in public office. In that legal discourse, Abu Ali's attempt to place his son is evidence of corruption and not care of one's family The discourse of corruption reverberated and became more pronounced the higher up the socio-economic ladder the people in question were; in fact, even the mufti of the Republic was not spared. It was a hot day in Ramadan of 2009, and I had been interviewing a prominent member of the Supreme Islamic Legal Council. We had chatted about the difference between a waqf and an NGO, Decree 18/1955, the building of the Amīn mosque in downtown Beirut and had broached the relation of the head of the shariʿa courts to the mufti, as these had been tense because the former had been eying the latter's position. As I was leaving, the secretary brought him a fax that just arrived. He turned to me and said, "So you were asking about the mufti, here you go!" The fax was an angry letter from a certain Muhammad Rashīd Qardūḥī who was refusing to attend any Ramadan Iftār where the mufti would be present because the mufti "has signed some documents for his son, whom he calls sheikh Rāghib (may God bless…), and these documents prove the embezzlement of the funds of Islamic foundations." Ten documents followed the title page. The first document shows the connection of a certain company that goes by the name "G(5) Trade and Consultants" to the aforesaid son. The following documents are contracts from Dar al-Fatwa contracting mostly restoration work of waqf buildings and lots to G(5), for a total of around $300,000. "These documents prove how the father signs for his son (may God bless…)," the cover letter continues.

The scandal of the mufti's nepotism reverberated far and wide, and was exacerbated by the mufti's silence on the topic. It occupied newspapers, the web, and the various members of the Sunni community. It elicited an open letter from ex-Prime Minister Salīm al-Ḥoṣṣ, urging the

mufti to either sue the authors of tracts for defamation or step down. An auditor was set up to examine the accounting of the transactions. The mufti dealt with the crisis through a silence that infuriated the community. “You had to respond to these hideous [*shanīʿa*] accusations (…) and if you do not provide a potent retort [*al-radd al-mufḥim*], then people will rightly see that the silence about these accusations for all of this time is a proof of their accuracy and truth,” wrote al-Ḥoss (Al-Akhbar, Tuesday 2 February 2010). The scandal is not “just” about nepotism, it stands in the line of a long-time relation and conflict between the mufti and the author of the tract, Qardūḥī (and various opponents of the mufti). However, the fact that one of Qardūḥī’s most effective attacks, which almost cost the mufti his position, came to be couched in such terms shows the potency of this discourse.

CONCLUSION

In this chapter, in the first part of the investigation of the relation of family to charity, I described pre-modern understandings and practices of charity privileging the family and anchored in the Islamic tradition. This approach to charity favored the family as the primary recipient of charity, as appears in the prevalence of waqf foundations for the family. Even more, this family-centered-charity, I showed, was pervasive even in those waqfs that had “public” beneficiaries, like mosques, as their personnel and administrators held offices transmitted through families. However, I argued that this logic of the family did not stand in contradiction to the logic of abstract merit and individualism. I described some of the intricacies of this pre-modern logic of “the family,” and illustrated how the primacy of family in appointments was nonetheless conditional on merit, character, and experience. It enacted therefore a completely different logic based on certain ideals of knowledge and social relations, rather than just a

"blind" favoring of the family. I then traced the beginning of the transformation of this approach to charity through the legislative efforts of the modernizing Ottoman State. The primacy of the family over merit started to be reversed with state legislations on appointments to offices. With a new education system in place, exams and tests became primary for the assessment of candidates—the family only factoring in to separate equal candidates. Eventually, these two logics came to be enshrined in the law as mutually exclusive, ending in the association of a privileging of the family in public realms with nepotism—an obstacle to modernization and development.

I then followed the devaluing of the family as a legitimate recipient of charity, through debates between Muslim reformers of various trends and new legislation. The debate happened during the French Mandate and centered on whether family waqfs were really part of religion, as opposed to the true charitable waqfs dedicated to mosques and other charitable works [*khayrāt*]. As the newly created Lebanese state took over the legislation on family waqfs, as part of its claim to sovereignty, family waqfs were deemed not to be "really charitable" through an understanding of charity that privileged "public", rather than family, recipients. New family waqfs were limited to two generations and old ones could be divided among beneficiaries as private property. In that way, most of the waqfs were relegated to the sphere of the economy and only "truly charitable endowments" that privileged public good, were deemed to belong to the sphere of religion. This division of waqfs into "religious" and "economic" subsumed waqfs to the new architecture of the modern state, with its separation of the spheres of religion and economy. However, the tension between these two approaches to the family persists today. Drawing on narratives of contemporary family waqf founders and the discourse around the support of one's family read against the recent scandal of the nepotism of the Lebanese Sunni

mufti the last section showed how the discourse of the "care of the family" and the ethic of merit are re-articulated in the post-colonial moments of the modern state. The ethic of the family came to be limited to the "private," even if disrupted very fleetingly.

The logics of family and merit I described here still constitute the idiom of political discussion and academic analysis on state-formation in Lebanon and the Middle East. Reflecting assumptions of modernization theory, some social scientists and the media often present "family and sectarian identities" hand in hand and in opposition to modern ideals of democracy and representation based on merit. Of late, scholarship has started to interrogate the assumptions of these claims and the work they do (Joseph 1997, Makdisi 2000, Obeid 2011). Makdissi (2000), for instance, showed how "sectarian identities" were very much modern constructs, rather than reflections of primordial identities that stood in the way of forging national identities and building "functional" states. In a recent article describing municipal elections in a border village in Lebanon, Obeid (2011) throws into question the argument that family connection stands in the way of democratization. She shows how "the idiom of ʿā'ila [family] is malleable and shaped and reshaped by the sociopolitical environment in which it is embedded, allowing it to be unifying, divisive, or a principal idiom of democracy" (254). By discussing the workings of the logic of family, this chapter stands in such a lineage of research, outlining the various articulations of family and merit, rather than assuming a progressive move from family to merit.

CONCLUSION

In a recent attempt to understand the “long divergence” between the West and the Muslim world, historical economist Timur Kuran (2011, and earlier 2001) argues that institutions of Islamic law hindered the development of the Muslim world.[1] He points to contract law, the inheritance system, the prohibition of usury, and the death penalty for apostasy as the key institutions that delayed the Muslim world. These institutions, he claims, did not allow for the concentration and the mobilization of capital on a large scale and over long periods outliving the original founders of the business, thus prohibiting the large ventures, long-term profitability, and economies of scale that capitalism allowed.

Above all, Kuran asserts, waqf stands as the epitome of such a missed possibility of development because it could have allowed for all of the above. In this narrative, Western capitalism, “superior” and desirable, is the aim of history and development, and waqfs—because shariʿa requires the administrators to follow the stipulations of the founder—lacked the flexibility to grow into corporations with legal personality that could give rise to capitalistic entrepreneurship. The Muslim world failed because Islamic law did not allow for the development of institutions similar to those of Western capitalism.

In addition to Kuran’s idealization of the fruits of Western capitalism, he does not engage with the many bodies of literature that have dealt with the very problem of capitalism and its others. In the first place in his admiration he does not—cannot?—acknowledge the global

[1] He remains hopeful however because these regions adopted Western legal forms and institutions early on and they now almost appear “indigenous.”

economic crisis and massive global destruction unfolding as he wrote. But what is more he sidesteps well-known arguments the development of the West might hinge on the underdevelopment of the rest of the world (Gunder Frank 1966, Rodney 1974) or that it articulated with pre-capitalist modes of production (Wolfe 1980 et passim) or that it constantly creates within it areas appearing to be outside of it[2] (Mitchell 2002, Harvey 2003). These hypotheses do not seem to deserve discussion or refutation. More specifically, regarding the relation of Islamic pre-capitalist formations, Kuran does cite Rodinson's classic *Islam and Capitalism* (1974). However, he fails to note that Rodinson's main contribution was to show that one cannot draw a direct relation between Islam and capitalism—one one cannot say that Islam either favored or hindered or influenced or gave birth to a particular kind of capitalism.[3] Despite a vulgar Marxist leaning that treats Islam as class ideology, Rodinson's argument is historical and traces the development of the capitalist sector in Muslim countries, showing that such a sector had existed in Medieval Islam, but did not give birth to a capitalist socio-economic formation. By drawing parallels with other parts of the world, he shows that such a

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[2] This idea of capital and the global market as having an outside and an inside is a recurrent one, whether in discussions of waqf or the so-called informal economy being "outside the market," which then need to be brought inside, development discourse proposes. Mitchell argues that the "quality of being outside is what makes this accumulation possible. It is an outside on which the so-called inside depends. (…) But this exteriority is an effect, something manufactured as part of the machinery of the transfer of wealth" (26). The argument echoes Marx's theory of primitive accumulation and Harvey's more recent discussion of primitive capitalist accumulation as a continuous process of accumulation by dispossession—as a constant creation and recreation of an outside of and inside of capital. For Mitchell, development discourse discursively creates the outside: "These books and proposals create the effect of an outside" (25). On the other hand, for Harvey, there seems to be some actual outside, for instance, in the form of "pre-capitalist skills, social relations, knowledges, habits of mind, and belief" (Harvey 2003:146) which are coerced as much as co-opted in the process of proletarianization. Whether the outside is literal or discursive, the same dispossession described by both authors is real and is the consequence of the 'bringing' of assets from the outside to the inside of the market.

[3] Rodinson argues that one cannot draw direct connections between the precepts of Islamic law, taken from the Qu'ran, the sunna, or *fiqh*, and the practices in Muslim countries. For instance, he describes the variety of legal fictions used to circumvent the ban on usury, whereby interest-bearing loans were indeed very common (see for instance Ghazzal 2007 and Rafeq 1994 and 1999). The argument still supposes a rift between theory and practice, but it does show that Kuran does not elucidate his understanding of Islamic law (theory, practice, Qur'an, sunna, *fiqh*).

transformation did not occur, not because of Islam, but because of historical material conjunctures.

However, Kuran's narrative—as well as Rodinson's along with the arguments from the 1970s and 1980s mentioned above—rests on a linear conception of history and thus assumes a narrative with a single subject (Escobar 1995, Ferguson 1998, Pursley 2012). Here, history is a movement toward increasing complexity beginning with pre-capitalist formations and ending with capitalist modernity. When a society does not demonstrate having reached this end, it would have to be *failure*, because it is the target of the process of history that would not have been met. And this, for Kuran, is the story of Muslim society in the twenty-first century.[4]

While dealing with the encounter between Islamic law and capitalism (or in the terminology I have used, the encounter between Islamic law and the modern capitalist state) I have adopted a very different approach. Instead of providing a single narrative (of a doomed decline) because of a single cause (capitalism), this dissertation has highlighted the complexity of both the Islamic tradition and the modern capitalist state, and that of their encounter. I do not narrate this story through successes and failures; it is not an assessment of the Islamic tradition as a "pre-modern formation" carrying the seeds of modernity. Instead, my project has been to analyze it in its own right, as a tradition with a particular grammar of charity, family, religion, and economy.

Kuran describes the transformation of Islamic law from the standpoint of economy: waqf stands as a way to provide public goods in lieu of the state, but mostly as a failure to create

[4] Kuran has also a fallacy in his theory of explanation, in attempting to analyze why Muslim societies did *not* develop into an indigenous capitalism. One can explain what happened by describing causes, however, but to explain what did not happen in the same way is a fallacy of reasoning because history is not linear and does not have particular expected outcomes. One might explain the causes that lead it to take a particular turn or path, but to explain why a certain transformation did not occur would be impossible given the infinity of events and paths that could be history.

corporations and (therefore) capitalism.[5] To the contrary, in this dissertation I portray waqf in a more complicated encounter between the Islamic tradition and the modern capitalist state, both understood as in a state of flux and process and involving different conceptions of the human and of the good life of humankind. Viewed as such the outcomes of the encounter are not as clear as Kuran presents them. Indeed, the commitment to revive waqf among both new founders and revivalists demonstrates that one cannot simply discern the appeal of waqf on economic grounds.

As I have shown, Islamic law in general and waqf in particular are much more than the institutional framework that economically underdeveloped the Muslim world.[6] Waqf's appeal stems from being anchored in the shariʿa; it represents a way of life and its revival an attempt to engage with Islamic law. Therefore, I place the transformation of waqf beyond a transformation in property regimes to larger transformations of the ways Muslims who see themselves as part of the Islamic tradition understand and act in relation to society, to God, to their families, their neighbors, their community, and to the state.

In utilizing the lens of waqf to shed light on the Islamic tradition as it encountered the modern capitalist state, I have carried out a "sectoral" analysis of the law. Waqf constitutes but one chapter in Islamic legal manuals, and in the present work I have used this chapter (in conjunction with other material, as I discuss below) to draw the logic of the law in general.

Moving from a particular to the general such an approach differs from prevalent approaches to the study of Islamic law and waqf. Bernard Weiss for instance attempts to uncover "*The spirit of Islamic law*" from the literature of *uṣūl al-fiqh*, or legal theory, rather than manuals of law, which he approaches as elaborations of rules. He focuses on legal theory because it is in this body of literature that jurists "systematically address (…) questions relating to the nature of

[5] I will not engage with Kuran's assumption that the corporation is the cornerstone of capitalism.
[6] Another assumption of Kuran is the law is determinative of change in the economy. The development of an "Islamic banking and Islamic finance is proof that the law is much more flexible and adapts to the needs of capital.

law and the law's authority, the sources of the law, the values enshrined in the law, and the religious underpinnings of the law" (2006 [1998]: xii). Messick (forthcoming) carries out a much more expansive analysis of the law, dealing with different chapters from legal manuals: from waqf, to sales, to marriage, homicide, and inheritance. Nonetheless, each chapter of the legal manuals, I propose, carries with it logics of arguments and embodies the logic of the law. I therefore highlighted the way the way in which legal theory unfolds in the derivation of rules: what allows cases to be comparable, the sources supporting an argument, etc.

Each of these approaches brings with it opportunities and limitations. Focusing on a single chapter might not allow one to encounter all of the logics at play in the law (for instance, gender distinctions), but it allowed for a variety of methodological tools that opened the doors for teasing out grammar in use. In addition, the particular position of waqf, both as a charitable act and an economic endeavor opens the door to an analysis of a multiplicity of relations that a chapter centered on acts of worship alone or economic transactions alone would tackle more tangentially. Let me elaborate on these last two points.

As I discussed at length in the introduction, methodologically, I brought together documents from the library and from the archive, Islamic legal texts and court documents, family archives and stories. Furthermore my approach to and reading of these documents centered on cases that most starkly demonstrated the grammar of waqf, and derived from hours of reading hundreds of documents, the process of transcription, and the development of my understanding documents as types with formats and logics in dialogue with the law. The type of analysis I did is facilitated by the work of social historians, in the case of Beirut, Aurore Adada (2010), who answers many of the more pragmatic questions relating to context: were founders mostly men or women? What did they endow and for whom? Whom did they name as administrators? Such

reading comes through a compilation of series, extracting data from documents and analyzing them in order to paint a social and economic history. My approach to these documents is quite different. While I did read many of the same waqf-founding documents I read them against and in conjunction with legal manuals, and for a very different purpose. I also read them in conjunction with appointments to offices, demands of extensions of debt deadlines, sales and exchanges. Finally, and crucially, I read them against contemporary documents and waqf manuals. I read these for logic and grammar, rather than content.

Because I approach grammar in the Wittgenstinian tradition, rather than the Saussurian one, I derive the grammar of waqf, that is the constellation of concepts around it, from particular cases. I determined a grammar of waqf by examining the weft of legal texts, legal theory, and court documents *in use*. It is a grammatical investigation of concepts, institutions, and practices: I do not analyze simply language (and texts) but also practices that were tied to institutions (courts, schools, offices). Thus, instead of equating pre-modern waqf with our modern common usage of charitable foundations—and taking for granted the architecture of economy, religion, family, and state that it supposes—I have analyzed what the term waqf meant and with what network of concepts and vocabulary it was used in pre-reform Ottoman Beirut and at various moments of modernization. I have shown how the modern capitalist has restructured waqf and charitable giving to its grammar, and how while certain terms like family waqf or public/common interest continue to be used, they have transformed to follow the grammar of modernity. More specifically, I showed that there was a rupture between the pre-modern and the modern grammar of waqf, and that the dominant modern grammar was that instituted by the modern state. However, I also argued that the pre-modern grammar of waqf and Islamic law continues to live in and be sustained by some practitioners of the tradition.

I have therefore attempted to contribute to the ways one can understand change and continuity within the tradition, as that is what allows a tradition to maintain a certain identity with itself but also the capacity for change. In their encounter with a different tradition, how did the authorized speakers, elaborators, and practitioners of the Islamic tradition understand and reinterpret it in light of their own historical realities, with the similar and enduring problems of being human and Muslim living in society (Agrama 2010:14, and 8-9) and the very different modern conditions under which we live? These conditions include the modern state, its claim to a monopoly over the production and administration of law, and its ties to capital. I have attempted to answer the question of how the grammar of the Islamic tradition was re-articulated with the grammar of the modern state. I have argued that while pre-modern waqf was anchored in "private property," it still embodied a grammar different from that of capitalism: where profit was not necessarily the ultimate motive, where public benefit was limited by stipulations of founders, where family and state did not sit squarely with private and public.

Waqf brings together worship (relations between humans and God) and pecuniary transactions (relationships among humans). It joins the aims of getting close to God with and through building relations with family and community involving material wealth. Like Mauss's gift, waqf is a total social fact: "it expresses at the same time and all at once all sorts of institutions: religious, juridical, and moral (and these are concurrently political and familial), and economical (supposing certain forms of production and distribution). Such facts also lead to aesthetic phenomena and the institutions they reflect have morphological manifestations" (Mauss 2003[1923-24]:147). Pre-modern waqf therefore represents a practice and moment where economy and religion had not been yet constructed as separate spheres. The subjection of this grammar to that of modern capitalism echoes the rupture that Karl Polanyi famously described in

The Great Transformation (2001 [1944]). The modern separation of waqfs constructed as real-estate wealth from those constructed as "religious waqfs" recalls the making of the fictitious commodities of land, labor, and capital through their separation from other types of social relations that Polanyi described. However, unlike Polanyi my exploration remains centered on the ways the Islamic tradition has been made and remade under these new conditions.

There remains a major thread that warrants further exploration. I have not yet given full attention to the question of the relation of the founder to his or herself, and related to that how the state and the shariʿa understood founders and their subjectivities, and if/how state and law could reach them and evaluate them. From my preliminary observations, prior to the rise of capitalism and modern states, Islamic courts did not utilize legal mechanisms to examine intent outside of its embodiment in action and expression, as God was to judge it on the Day of Judgment. In order to assess whether endowments were valid both as transfers of property and as charitable acts, judges examined whether charitable beneficiaries were specified and would continue to exist as long as the endowment did, whether the founder was sane, and the object owned by the founder. When indebted individuals created endowments, these were legally valid. Therefore, endowments stood in the way of foreclosures arising with the expanding accumulation of capital. This caused Ottoman governors pressured by debtors to ask the highest legal authority in Istanbul: "Are endowments made with the intent to escape the sale of these properties in fulfillment of debts legally valid?" In such queries, endowments were interrogated as *charitable acts* by separating intention from action and making it a distinct object of inquiry accessible to the "legal psychologist" (Messick 2001:177). With this conception of intent, attempting to uncover the "real intent" of endowment founders became both imaginable and

intelligible. Evidence suggests that scrutinizing charitable intent both favored a new type of subjectivity ultimately answerable to the state rather than to God and restricted endowments that were slowing foreclosures and the accumulation of capital. A further investigation of the relation between debt regimes and waqf practices would allow to further uncover how conceptions of the self, interiority, exteriority, and intent might also be closely related to property regimes.

BIBLIOGRAPHY

Archival Sources

1. *Başbakanlık Oslmanlı Arşiv*i (BOA): Prime Ministry Archives, Istanbul
    a. *Evkaf Defterleri* (EV), waqf registers, particularly waqf accounting documents sent to the Waqf Ministry
    b. *İradeler* (I), imperial decrees, and in particular those of the *Meclis-i Vala* (MVL), the High Council.
    c. *Cevdet*, the collection compiled by Cevdet effendi, particularly about waqfs [Evkaf (EV)]
    d. *Şura-i Develet,* Council of State

2. *Vakıflar Genel Müdürlüğü* (VGM): Directorate General of Waqfs, Ankara
    a. Muhasebe Defterleri
    b. Muhasebe Tafsilleri
    c. Hulasalar
    d. Esas Defterleri

3. *Al-Maḥkama al-Sharʿiyya fī Beirūt* (MSB) Beirut Shariʿa Court Records
    a. Ottoman *Sijillāt al-Maḥāḍir, al-Hujaj w-al-Daʿāwā* (S)
    b. Ottoman *Jarā'id al-Ḍabṭ* (D)
    c. Contemporary *Sijillāt al-Hujaj* (H): by year, then by case number [*asās*].

4. Private Archive of the Qabbānī family

When referencing documents from the BOA, I indicate in the following manner: Archive(BOA).Collection.Sub-collection. Box Number/Document Number / Page number.
For the VGM, registers/ documents have serial numbers, referencing them becomes slightly different Archive(VGM)/Register Number /Page Number/Case Number.
For the MSB, its Archive(MSB).Collection Register Number/Page/Case number if the cases are numbered. In the contemporary registers, page number is omitted because the archive is organized serially by case number. Page numbers are irrelevant.

Published Primary Sources

1. Islamic Jurisprudence

al-'Aynī, Badr al-Dīn Maḥmūd ibn Ahmad (1982), *Ramz al-ḥaqāʾiq fī sharḥ Kanz al-daqāʾiq,* 2 vols. (Sakkhar: al-Maktabah al-Nūrīyah al-Riẓvīyah)

al-Shaykh Niẓām wa-jamā'ah min 'ulamā' al-Hind (1310 [1893]), *Fatāwá al-Hindīyah fī madhhab al-Imām Abī Ḥanīfah al-Nu'mān*, vol.III (Būlāq, Egypt: Al-Maṭbaʿa al-Kubrā al-Amīriyya)

Ali, Haydar (1922 [1340]), *Tertîbü'ş-Şunûf Fî Ahkâmi'l-Vukûf*

Ali, Efendi (1995), *Şeyhulislam fetvaları*, ed. İbrahim Ural (Istanbul: Fey Vakfı)

al-Khaṣṣāf, Aḥmad ibn ʻAmr al-Shaybānī (1999), *Kitāb Aḥkām al-Awqāf* (Beirut: Dār al-Kutub al-ʻIlmīyah)

Ghazālī, Abou Hamid (1997), *al-Mustasfa min ilm al-usul* (Bayrut: Muassasat al-Risalah).

Hilāl ibn Yaḥyá al-Raʾy al-Baṣrī (1936), *Kitāb aḥkām al-waqf* (Ḥaydarābād: Maṭbaʻat Majlis Dāʾirat al-Maʻārif al-ʻUthmānīyah)

Ibn ʻĀbidīn, Muḥammad Amīn ibn ʻUmar (1300 [1882]), *al-ʻUqūd al-durrīyah fī tanqīḥ al-fatāwī al-Ḥāmidīyah* (Būlāq [al-Qāhirah]: al-Maṭbaʻah alʻĀmirah al-Mīrīyah)

Ibn ʻĀbidīn, Muḥammad Amīn ibn ʻUmar (1966), *Ḥāshiyat Radd al-Muḥtār ʻalā al-Durr al-Mukhtār*, vol IV (Egypt: al-Bābī al-Ḥalabī)

Ibn Nujaym, Zayn al-Dīn ibn Ibrāhīm (1915 [1334]), *al-Baḥr al-rāʾiq, sharḥ Kanz al-daqāʾiq*, vol. V (Egypt: Dār al-Kutub al-Gharbīyah al-Kubrā)

Ibn Nujaym, ʻUmar ibn Ibrāhīm (2002), *al-Nahr al-fāʾiq : sharḥ Kanz al-daqāʾiq*, 3 vols. (Beirut, Lebanon: Dār al-Kutub al-ʻIlmīyah)

Muslim, Abū al-Ḥusayn ibn al-Ḥajjāj al-Qushayrī (1972), *Ṣaḥiḥ Muslim* (Damascus, Beirut: al-Maktab al-Islāmi, Dār al-ʻArabīyah)

Nasafī, ʻAbd Allāh ibn Aḥmad (2005), *Kanz al-daqā'iq* (Sidon abd Beirut, Lebanon: Al-Maktaba al-ʿaṣriyya)

al-Shaykh Niẓām wa-jamāʻah min ʻulamā' al-Hind (1310 [1893]), *Fatāwá al-Hindīyah fī madhhab al-Imām Abī Ḥanīfah al-Nuʻmān*, vol.III (Būlāq, Egypt: Al-Maṭbaʿa al-Kubrā al-Amīriyya)

al-Ramlī, Khayr al-Dīn (1300 [1882]), *al-Fatāwa al-Khayriyya* (Būlāq, Egypt)

Ṭarābulusī, Ibrāhīm ibn Mūsá (2005), *Kitāb al-Isʻāf fī Aḥkām al-awqāf* (Cairo, Egypt: Al-Maktaba al-Azhariyya l-il-Turāth)

2. Collection of tracts and pamphlets on family waqf from the Institut Français du Proche-Orient, Damascus

Jamʿiyyat al-ʿulamā' bi-dimashq (1938a [29 Za 1356]) *Naqḍ jamʿiyyat al-ʿulamā' bi-dimashq libayān mudīriyyat al-awqāf ḥawl bayʿa al-waqf al-dhurrī* No.3 (Damascus : Maṭbaʿat al-Taraqqī).

——— (1938b [5 M 1357]) *Ta'yīd Shaykh al-Islām ṣāḥib al-faḍila shaykh al-jāmiʿ al-Azhar li-mashrūʿiyyat al-waqf al-dhurrī wa taḥrīm bayʿih.* No.4 (Damascus : Maṭbaʿat al-Taraqqī).

——— (1938c [25 M 1357]) Risālat jamʿiyyat al-ʿulamā’ bi-dimashq fī ibṭāl risālat al-ustādh al-shaykh Rāmiz al-Malak fī jawāz ḥall al-awqāf al-dhurriyya No.6. (Damascus : Maṭbaʿat al-Taraqqī).

al-Malak, Rāmiz. n.d. *Risāla fī ḥall al-awqāf al-dhurriyya* (Tripoli: Maṭbaʿat al-Liwā’)

——— (1938 [12 Z 1356]) *Risāla ḥawla irjāʿ al-awqāf al-dhurriyya milkan*. (Tripoli : Maṭbaʿat al-Liwā’).

——— (1939a [8 M 1357]) *Naẓra fīmā jā’ fī naqḍ jamʿiyyat al-ʿulamā’ bi-dimashq libayān mudīriyyat al-awqāf ḥawl bayʿa al-waqf al-dhurrī*. (Tripoli : Maṭbaʿat al-Liwā’).

——— (1939b [1 Ra 1357]) *Ra’y faḍilat shaykh al-Azhar fī al-awqāf al-dhurriyya*. (Tripoli : Maṭbaʿat al-Liwā’).

al-Sammān, Ḥamid (n.d.a.) *Nidā’ li-nuwwābinā al-kirām bi-sha’n al-tashrīʿ bi-mshrūʿ ilghā’ al-awqāf al-dhurriyya*

——— (n.d.b) *Bayān ḥaqiqat mashrūʿ ilghā’ al-awqāf al-dhurriyya wa ḍarūriyyatihi l-il-bilād.*

3. Diplomatic Documents

France. Haut-commissariat en Syrie et au Liban (1922) *La Syrie et le Liban en 1922* [online text], Emile Larose, <http://catalog.hathitrust.org/api/volumes/oclc/22564818.html>

France. Ministère des affaires étrangères (1867), *Documents diplomatiques*, (Paris: Imprimerie impériale)

——— (1922-1936), 'Rapport à la société des nations sur la situation de la Syrie et du Liban', (Paris: Imprimerie nationale)

Haut Commissariat de la République française en Syrie et au Liban (1927), *La Syrie et le Liban sous l'occupation et le mandat français 1919-1927* (Nancy: Berger-Levrault)

Periodicals

Annahar
Al-Akhbar
Salname-i Beirut
'Revue algérienne et tunisienne de législation et de jurisprudence'

Reference Works

Encyclopaedia of Islam, Second Edition. Brill Online, 2012.

'İslâm ansiklopedisi', (Üsküdar, İstanbul: Türkiye Diyanet Vakfı)

Fīrūzābādī, Muḥammad ibn Yaʻqūb (1863[1280]), *al-Qāmūs al-muḥīṭ*, 4 vols. (al-Qāhirah: al-Maṭbaʻah al-Kustalīyah)

Sâmî, Şemseddin (1900[1317]), *Kamus-u türkı; kâffe-i lûgāt-i türkiye ile lisan-ı türkı'de müstamel kelimat ve ıistıila-hat-ı arabiye ve farisiye ve ecnebiyeyi cami olarak lisanımızın mükemmel lûgat kitabıdır* (Deri-Saadet: İkdam Matbaası)

al-Zabīdī, Murtaḍá (1965), *Tāj al-ʻarūs min jawāhir al-qāmūs* (al-Kuwayt: Maṭbaʻat Ḥukūmat al-Kuwayt)

Other Published Texts

Abū Zahrah, Muḥammad (2005 [1959]), *Muḥāḍarāt fī al-Waqf* (al-Qāhirah: Dār al-Fikr al-ʻArabī).

Abu-Manneh, Butrus (1994), 'The Islamic Roots of the Gülhane Rescript', *Die Welt des Islams,* 34 (2), 173-203.

Abu-Odeh, Lama (2004), 'Modernizing Muslim Family Law: The Case of Egypt', *Georgetown Law Faculty Publications and Other Works,* Paper 38.

Adada, Aurore (2009), 'Réseaux socioculturels et économiques à Beyrouth Ottoman (1843-1909) à travers les waqfs', Thèse de Doctorat (Université de Provence).

Agamben, Giorgio and Heller-Roazen, Daniel (1998), *Homo sacer. Sovereign power and bare life* (Stanford, Calif.: Stanford University Press).

Agrama, Hussein Ali (2010), 'Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa', *American Ethnologist,* 37 (1), 2-18.

Akiba, Jun (2003), 'A New School for Qadis: Education of the Sharia Judges in the Late Ottoman Empire', *Turcica,* 35, 125-63.

Akiba, Jun (2004), "From Kadi to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period", in Colin Imber and Keiko Kiyotaki (eds.), *Frontiers of Ottoman Studies, 1* (London: I.B. Tauris & Co.).

al-Ḥūt, ʿAbd al-Raḥmān (1984), *Al-Awqāf al-Islāmiyya fī Lubnān* (Beirut: ʿAbd al-Raḥmān al-Ḥūt).

Amīn, Muḥammad Muḥammad (1980), *Awqāf wa-al-ḥayāh al-ijtimāʻīyah fī Miṣr, 648-923 A.H./1250-1517 A.D. : dirāsah tārīkhīyah wathāʼiqīyah* (al-Qāhirah: Dār al-Nahḍah al-ʻArabīyah).

Anderson, J.N.D. (1951), 'The Religious Elements in *Waqf* Endowments', *Royal Central Asian Journal,* XXXVIII (4), 292-99.

Anidjar, Gil (2006), 'Secularism', *Critical Inquiry,* 33 (1), 52-77.

Ariès, Philippe and Duby, Georges (1987), *A history of private life, vol. 1-5* (Cambridge, Mass.: Belknap Press of Harvard University Press).

Arnaud, Jean-Luc (2001), 'La population de Damas à la fin de la période ottomane ', *Annales de démographie historique* 101, 177-207.

Asad, Muhammad (1964), *The message of the Qurʾān* (Mecca, Zürich: Muslim World League; European representative, Islamic Foundation).

Asad, Talal (1983), *The Idea of an Anthropology of Islam* (Washington, D.C: Georgetown University Center for Contemporary Arab Studies).

——— (1987), 'Are There Histories of Peoples without Europe? A Review Article', *Comparative Studies in Society and History,* 29 (3), 594-607.

——— (1992), 'Conscripts of Western Civilization', in Christine W. Gailey (ed.), *Dialectical Anthropology: Essays in Honor of Stanley Diamond, vol. 1: Civilization in Crisis: Anthropological Perspectives* (Tallahassee: University of Florida Press).

——— (1993), *Genealogies of religion : discipline and reasons of power in Christianity and Islam* (Baltimore: Johns Hopkins University Press).

——— (2003), *Formations of the secular : Christianity, Islam, modernity* (Stanford, Calif.: Stanford University Press).

——— (2006), 'Responses', in David Scott and Charles Hirschkind (eds.), *Powers of the secular modern : Talal Asad and his interlocutors* (Stanford, Calif.: Stanford University Press).

Ashtīyah, Muḥammad Salīm (2001), *Iqtiṣādīyāt al-waqf al-Islāmī fī arāḍī al-Sulṭah al-Waṭanīyah al-Filasṭīnīyah : dirāsah taḥlīlīyah* (Jerusalem: Dāʾirat al-Siyāsāt al-Iqtiṣādīyah).

Assaf, Muhammad Ahmad (2005), 'al-Waqf inshā'uhu wa istibdāluhu: Dīrāsa muqārana', (Jāmiʿat Bayrūt al-Islāmiyya).

Austin, J. L. (1962), *How to do things with words* (The William James lectures,; Oxford,: Clarendon Press).

Axel, Brian Keith (2002), 'Introduction: Historical Anthropology and Its Vicissitudes', in Brian Keith Axel (ed.), *From the margins : historical anthropology and its futures* (Durham [N.C.]: Duke University Press).

Badr, 'Adnān Aḥmad (1992), *al-Iftā' wa-al-awqāf al-Islāmīyah fī Lubnān : māḍiyan wa-ḥāḍiran wa-mustaqbalan* (Bayrūt: al-Mu'assasah al-Jāmi'īyah lil-Dirāsāt wa-al-Nashr wa-al-Tawzī').

Baer, Gabriel (1958), 'Waqf reform in Egypt', *Middle Eastern Affairs,* 1, 61-76.

Baker, Gordon P. and Hacker, P. M. S. (1985), *Wittgenstein: rules, grammar, and necessity* (An analytical commentary on the Philosophical investigations; Oxford, OX, UK ; New York, NY, USA: Blackwell).

Bardawil, Fadi A. (2010), 'When All this Revolution Melts into Air: The Disenchantment of Levantine Marxist Intellectuals', Ph.D. (Columbia University).

Barnes, John Robert (1986), *An introduction to religious foundations in the Ottoman Empire* (Leiden: E.J. Brill).

Behrens-Abouseif, Doris (2009), 'The Waqf: A legal personality?', in Astrid et al. Meier (ed.), *Eigentum für alle Zeiten? Islamische Stiftungen von den Anfängen bis zur Gegenwart* (Berlin: Akademie-Verlag).

Belin (1853), 'Extrait d'un Mémoire sur l'Origine et la Constitution des Biens de Main-Morte en Pays Musulman', *Journal Asiatique,* 5 (II), 377-427.

Benton, Lauren A. (2002), *Law and colonial cultures : legal regimes in world history, 1400-1900* (Studies in comparative world history; Cambridge ; New York: Cambridge University Press)

Berkes, Niyazi (1998 [1964]), *The development of secularism in Turkey* (Montreal: McGill University Press).

Beyhum, Nabil (1995), *al-Iʻmār wa-al-maṣlaḥah al-āmmah fī al-ijtimāʻ wa-al-thaqāfah : maʻná al-madīnah sukkānuhā* (Bayrūt: Muʾassasat al-Abḥāth al-Madīnīyah : Dār al-Jadīd : Muʾassasat Fūrd).

Bidair, A Shoukry (1924), 'L'institution des biens dits "habous" ou "wakf" dans le droit de l'Islam', (Université de Paris).

Bīlānī, Bashīr (1971), *Qawānīn al-aḥwāl al-shakhṣīyah fī Lubnān* (al-Qāhirah: Maʻhad al-Buḥūth wa-al-Dirāsāt al-ʻArabīyah, Qism al-Buḥūth wa-al-Dirāsāt al-Qānūnīyah wa-al-Sharʻīyah).

Bonner, Michael David (2003), 'Poverty and Charity in the Rise of Islam', in Michael David Bonner, et al. (eds.), *Poverty and charity in Middle Eastern contexts* (Albany: State University of New York Press).

Bowen, John Richard (1993), *Muslims through discourse : religion and ritual in Gayo society* (Princeton, N.J.: Princeton University Press).

Brown, Nathan J. (1995), 'Retrospective: Law and Imperialism: Egypt in Comparative Perspective', *Law & Society Review,* 29 (1), 103-25.

Burak, Guy (2012), 'The Abu Hanifah of His Time: Islamic Law, Jurisprudential Authority and Empire in the Ottoman Domains (16-17 centuries)', Ph.D. (New York University).

Buzov, Snjezana (2005), 'The Lawgiver and His Lawmakers: The Role of Legal Discourse in the Change of Ottoman Imperial Culture', Ph.D. (University of Chicago).

Cannon, Byron D. (1982), 'The Beylical Habus Council and Sub-Urban Development: Tunis, 1881-1914', *The Maghreb Review,* 7.

Çelik, Zeynep (1986), *The remaking of Istanbul : portrait of an Ottoman city in the nineteenth century* (Seattle: University of Washington Press).

Çelik, Kurşat (2010), 'Osmanlı Hâkimiyetinde Beyrut (1839-1918)', Ph.D. (Fırat Üniversitesi).

Chatterjee, Partha (1993), *The nation and its fragments : colonial and postcolonial histories* (Princeton, N.J.: Princeton University Press).

——— (2000), 'Two poets and death: On civil and political society in the non-Christian world', in Timothy Mitchell (ed.), *Questions of modernity* (Minneapolis: University of Minnesota Press).

Çizakça, Murat (2000), *A history of philanthropic foundations : the islamic world from the seventh century to the present* (Istanbul: Bogaziçi University Press).

Clarke, Morgan (2012), 'The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts', *American Ethnologist,* 39 (1), 106-21.

Clavel, Eugène (1896), *Droit musulman; le wakf ou habous, d'après la doctrine et la jurisprudence (rites hanafite et malékite)*, 2 vols. (Le Caire,: Imprimerie Diemer).

Cohn, Bernard S. (1959), 'Some Notes on Law and Change in North India', *Economic Development and Cultural Change,* 8 (1), 79-93.

——— (1987), *An anthropologist among the historians and other essays* (Delhi ; New York: Oxford University Press).

——— (1987 [1981]), 'Anthropology and History in the 1980s: Toward a Rapprochement', in Bernard S. Cohn (ed.), *An anthropologist among the historians and other essays* (Delhi ; New York: Oxford University Press).

Cotta, A. (1926), 'Le régime du wakf en Egypte'.

Cuno, Kenneth M. (1995), 'Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Hanafi School', *Studia Islamica,* (81), 121-52.

Dallal, Ahmad (2004), 'The Islamic Institution of Waqf: A Historical Overview', in Stephen P. Heyneman (ed.), *Islam and social policy* (1st edn.; Nashville, Tenn.: Vanderbilt University Press).

Davison, Roderic H. (1954), 'Turkish Attitudes Concerning Christian-Muslim Equality in the Nineteenth Century', *The American Historical Review,* 59 (4), 844-64.

Deguilhem, Randi (2004), 'On the nature of waqf. Pious foundations in contemporary Syria: A break in the tradition', in Randi Deguilhem and Abdelhamid Hénia (eds.), *Les Fondations pieuses (waqf) en Méditerranée : enjeux de société, enjeux de pouvoir* (Koweït: Fondation publique des awqaf du Koweït).

Delavor, Youssef Mohamed (1926), *Le Wakf et l'utilité économique de son maintien en Egypte* (Paris: Marcel Vigné).

Deringil, Selim (1998), *The well-protected domains : ideology and the legitimation of power in the Ottoman Empire, 1876-1909* (London; New York; New York: I.B. Tauris ; In the U.S.A. and in Canada distributed by St. Martin's Press).

——— (2003), '"They Live in a State of Nomadism and Savagery": The Late Ottoman Empire and the Post-Colonial Debate', *Comparative Studies in Society and History,* 45 (2), 311-42.

DGIW [Mūdīriyyat al-awqāf al-islāmiyya al-ʿāmma] (1959), 'Majmūʿat qawānīn', in Mūdīriyyat al-awqāf al-islāmiyya al-ʿāmma (ed.), (Beirut).

Dirks, Nicholas B. (2001), *Castes of mind : colonialism and the making of modern India* (Princeton, N.J.: Princeton University Press).

——— (2002), 'Annals of the archive: Ethnographic notes on the sources of history', in Brian Keith Axel (ed.), *From the margins: historical anthropology and its futures* (Durham [N.C.]: Duke University Press).

Donzelot, Jacques (1979), 'The poverty of political culture.', *Ideol. Conscious,* 5, 73–86.

Doumani, Beshara (1998), 'Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860', *Comparative Studies in Society and History,* 40 (1), 3-41.

Dumper, Michael (1994), *Islam and Israel : Muslim religious endowments and the Jewish state* (Washington, D.C.: Institute for Palestine Studies).

Eddé, Carla (2009), *Beyrouth, naissance d'une capitale : 1918-1924* ([Paris]; Arles: Sindbad ; Actes sud).

Eldem, Edhem (1999), 'Istanbul from Imperial to Peripheralized Capital', in Edhem et. al Eldem (ed.), *The Ottoman City between the East and West* (Cambridge: Cambridge University Press).

Engels, Friedrich and Leacock, Eleanor Burke (1972), *The origin of the family, private property, and the state, in the light of the researches of Lewis H. Morgan* (New York: International Publishers)

Escobar, Arturo (1995), *Encountering development : the making and unmaking of the third world* (Princeton, N.J.: Princeton University Press).

Ewald, François (1990), 'Norms, Discipline, and the Law', *Representations,* (30), 138-61.

Eyssautier, L.A. (1898), '"La Propriété Indigène en Algérie: Le Habous"', *Revue algérienne et tunisienne de législation et de jurisprudence*, http://gallica.bnf.fr/ark:/12148/cb32856287z/date.

Fawaz, Leila Tarazi (1983), *Merchants and migrants in nineteenth-century Beirut* (Harvard Middle Eastern studies ; 18; Cambridge, Mass.: Harvard University Press).

Feldman, Noah (2008), *The fall and rise of the Islamic state* (Princeton: Princeton University Press).

Ferguson, James (1990), *The anti-politics machine : "development," depoliticization, and bureaucratic power in Lesotho* (Cambridge England ; New York: Cambridge University Press).

Findley, Carter V. (1999), 'A quixotic author and his great taxonomy: Mouradgea d'Ohsson and his tableau général de l'empire Othoman', *19th International Congress of Historical Sciences* (Oslo)

——— (2005), *The Turks in world history* (New York: Oxford University Press).

Foucault, Michel (1972), *The archaeology of knowledge* (1st American edn., World of man; New York,: Pantheon Books).

——— (1991), 'Governmentality', in Michel Foucault, et al. (eds.), *The Foucault effect : studies in governmentality : with two lectures by and an interview with Michel Foucault* (Chicago: University of Chicago Press).

Frank, Andre Gunder (1966), 'The development of underdevelopment ', *Monthly Review,* 18.

Gatteschi, D (1884), *Real property, mortgage and wakf according to Ottoman law* (London: Wyman & Sons).

Gaudiosi, Monica M. (1988), 'The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College', *University of Pennsylvania Law Review,* 136 (4), 1231-61.

Gerber, Haim (1985), *Ottoman rule in Jerusalem : 1890-1914* (Berlin: K. Schwarz).

Ghazzal, Zouhair (2005), 'The 'Ulama: Status and Function', in Youssef M. Choueiri (ed.), *A companion to the history of the Middle East* (Malden, MA: Blackwell Pub.).

——— (2007), *The grammars of adjudication : the economics of judicial decision making in fin-de-siècle Ottoman Beirut and Damascus* (Beyrouth: Institut Français du Proche-Orient).

Gibb, H. A. R. and Bowen, Harold (1957), *Islamic society and the West, part II* (London, New York: Oxford University Press).

Goody, Jack (1997), 'Histoire et anthropologie: Convergences et divergences', *Ethnologie française,* 27 (3), 282-93.

Guha, Ranajit. (1987), 'Introduction', in Bernard S. Cohn (ed.), *An anthropologist among the historians and other essays* (Delhi; New York: Oxford University Press).

Guha, Ranajit (1988), *An Indian historiography of India : a nineteenth-century agenda and its implications* (Calcutta: Published for Centre for Studies in Social Sciences, Calcutta, by K.P. Bagchi & Co.).

Gupta, Akhil (2006), 'Introduction', in Aradhana Sharma and Akhil Gupta (eds.), *The anthropology of the state : a reader* (Malden, MA; Oxford: Blackwell).

Haarmann, Ulrich W. (1988), 'Ideology and History, Identity and Alterity: The Arab Image of the Turk from The Abbasids to Modern Egypt', *International Journal of Middle East Studies,* 20 (02), 175-96.

Hacking, Ian (1986), 'The Archaeology of Foucault', in David Couzens Hoy (ed.), *Foucault : a critical reader* (Oxford, UK; New York, NY, USA: B. Blackwell).

——— (1990), *The taming of chance* (Cambridge [England]; New York: Cambridge University Press).

Hallaq, Wael B. (1984), 'Was the Gate of Ijtihad Closed?', *International Journal of Middle East Studies,* 16 (1), 3-41.

——— (1997), *A history of Islamic legal theories : an introduction to Sunni usul al-fiqh* (Cambridge; New York: Cambridge University Press).

——— (1998), 'The "qāḍī's dīwān (sijill)" before the Ottomans', *Bulletin of the School of Oriental and African Studies, University of London,* 61 (3), 415-36.

——— (2005-2006), 'What is Shari'a?', *Yearbook of Islamic and Middle Eastern Law, 2005–2006,* 12, 151-80.

——— (2009), *Sharī'a: theory, practice, transformations* (Cambridge, UK ; New York: Cambridge University Press).

Hann, C. M. (1998), 'Introduction: The Embeddedness of Property', in C. M. Hann (ed.), *Property relations : renewing the anthropological tradition* (Cambridge ; New York: Cambridge University Press).

Hanssen, Jens (1998), '"Your Beirut Is On My Desk:" Ottomanizing Beirut under Sultan Abdulhamid II', in Peter G. Rowe and Hashim Sarkis (eds.), *Projecting Beirut : episodes in the construction and reconstruction of a modern city* (Munich ; New York: Prestel).

Harvey, David (2003), *The new imperialism* (Oxford ; New York: Oxford University Press).

——— (2012), *Rebel cities : from the right to the city to the urban revolution* (New York: Verso).

Haskins, George L. (1977), 'Extending the Grasp of the Dead Hand: Reflections on the Origins of the Rule against Perpetuities', *University of Pennsylvania Law Review,* 126 (1), 19-46.

Hénia, Abdelhamid (2004), 'La géstion des *waqf khayri* en Tunisie à l'époque coloniale: du monopole privé au monopole public', in Randi Deguilhem and Abdelhamid Hénia (eds.), *Les Fondations pieuses (waqf) en Méditerranée : enjeux de société, enjeux de pouvoir* (Koweït: Fondation publique des awqaf du Koweït).

Henry, Jean-Robert and Balique, François joint author (1979), *La doctrine coloniale du droit musulman algérien : bibliographie systématique et introduction critique* (Cahiers du C.R.E.S.M. ; 10, 10; Paris: Éditions du Centre national de la recherche scientifique).

Heyd, Uriel (1961), 'The Ottoman 'Ulema and Westernization in the Time of Selim III and Mahmud II', in Uriel Heyd (ed.), *Studies in Islamic history and civilization* (Jerusalem: Magnes Press, Hebrew University).

Heyworth-Dunne, J. (1939), 'Rifā'ah Badawī Rāfi' aṭ-Tahṭāwī: The Egyptian Revivalist', *Bulletin of the School of Oriental Studies, University of London,* 9 (4), 961-67.

——— (1940), 'Rifā'ah Badawī Rāfi' aṭ-Ṭahṭāwī: The Egyptian Revivalist (Continued)', *Bulletin of the School of Oriental Studies, University of London,* 10 (2), 399-415.

Hilmi, Ömer and al-Ḥalabī, Muhammad al-Ghazzī (1909 [1327]), *İtḥâfü'l-Akhlâf fî Mushkilâti'l-Awqâf* (Aleppo: Maṭbaʿat al-Bahā').

Hirschkind, Charles (2006), *The ethical soundscape : cassette sermons and Islamic counterpublics* (Cultures of history; New York: Columbia University Press).

Hobsbawm, Eric (1983), 'Introduction: Inventing Traditions', in E. J. Hobsbawm and T. O. Ranger (eds.), *The Invention of tradition* (Cambridge [Cambridgeshire]; New York: Cambridge University Press).

Hodgson, Marshall G. S. (1974), *The venture of Islam : conscience and history in a world civilization*, 3 vols. (Chicago: University of Chicago Press)

Hoexter, Miriam (1997), 'Adaptation to Changing Circumstances: Perpetual Leases and Exchange Transactions in Waqf Property in Ottoman Algiers', *Islamic Law and Society,* 4 (3), 319-33.

——— (1998), *Endowments, rulers, and community : Waqf al-Haramayn in Ottoman Algiers* (Leiden; Boston: Brill).

Humphrey, Caroline and Verdery, Katherine (2004), 'Introduction: Raising Questions about Property', in Katherine Verdery and Caroline Humphrey (eds.), *Property in question : value transformation in the global economy* (English edn.; Oxford, UK ; New York, NY, USA: Berg).

Ḥūrī, Tawfīq (n.d.), 'Al-Mu'assasāt al-waqfiyya… min minẓār ḥadīth-qadīm'.

Hüsnü, Hüseyin (1892 [1310]), 'Aḥkâmü'l-Evkâf'.

Jackson, Sherman A. (1996), *Islamic law and the state : the constitutional jurisprudence of Shihab al-Din al-Qarafi* (Leiden; New York: E.J. Brill).

Johansen, Baber (1988), *The Islamic law on land tax and rent : the peasants' loss of property rights under the Hanafite doctrine* (Exeter Arabic and Islamic series; London ; New York: Croom Helm).

——— (1999), *Contingency in a sacred law : legal and ethical norms in the Muslim fiqh* (Studies in Islamic law and society,; Leiden ; Boston: Brill).

Joseph, Suad (1997), 'The Public/Private: The Imagined Boundary in the Imagined Nation/State/Community: The Lebanese Case', *Feminist Review,* (57), 73-92.

——— (1999), 'Descent of the Nation: Kinship and Citizenship in Lebanon', *Citizenship Studies,* 3 (3), 295.

Kabbani, Oussama (1992), *The reconstruction of Beirut* (Oxford England: Centre for Lebanese Studies).

Kassir, Samir (2003), *Histoire de Beyrouth* (Paris: Fayard)

Khalaf, Samir and Khoury, Philip S. (1993), *Recovering Beirut : urban design and post-war reconstruction* (Leiden ; New York: Brill).

Khayat, Habeeb Albert (1962), 'Waqfs in Palestine and Israel from the Ottoman reforms to the present',

Khoury, Philip S. (1987), *Syria and the French mandate : the politics of Arab nationalism, 1920-1945* (Princeton, N.J.: Princeton University Press).

Klat, P. J. (1961), 'Waqf, or mortmain, property in Lebanon', *Middle East Economic Papers*, 34-44.

Knost, Stefan (2006), 'The Waqf in Court: Lawsuits over Religious Endowments in Ottoman Aleppo', in Muhammad Khalid Masud, Rudolph Peters, and David Stephan Powers (eds.), *Dispensing Justice in Islam. Qadis and their Judgments* (Leiden ; Boston: Brill).

——— (2006), 'The Alienation of Waqf Property between Shari`a and Local Custom: A Comparative Study of Ottoman Aleppo, Damascus and Jerusalem (18th c.)', *The Law of Waqf: Origins to Ottoman-Era Maturity Conference* (Islamic Legal Studies Program, Harvard Law School).

Kogelmann, Franz (2005), 'Legal Regulation of Moroccan Habous under French Rule: Local Practice vs. Islamic Law?', in W; Kraus Dostal, W. (ed.), *Shattering Tradition: Custom, Law and the Individual in the Muslim Mediterranean* (London: I. B. Tauris).

Koselleck, Reinhart (2004), *Futures past : on the semantics of historical time* (New York: Columbia University Press).

Kozlowski, Gregory C. (1985), *Muslim endowments and society in British India* (Cambridge [Cambridgeshire]; New York: Cambridge University Press).

Kupferschmidt, Uri (2008), 'The illusion of British and French waqf control: some comparisons between the mandates for Palestine and Syria-Lebanon', *The law of waqf: Modern state control and nationalization* (Harvard Law School, Cambridge: Islamic Legal Studies Program).

Kuran, Timur (2001), 'The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System', *Law & Society Review,* 35 (4), 841-98.

——— (2011), *The long divergence : how Islamic law held back the Middle East* (Princeton: Princeton University Press).

Layish, Aharon (1983), 'The Mālikī Family "Waqf" according to Wills and "Waqfiyyāt"', *Bulletin of the School of Oriental and African Studies, University of London,* 46 (1), 1-32.

Leeuwen, Richard van (1999), *Waqfs and urban structures : the case of Ottoman Damascus* (Leiden; Boston: Brill).

Lévi-Strauss, Claude (1983), *Structural anthropology* (University of Chicago Press edn.; Chicago, Ill.: University of Chicago Press).

Lewis, Bernard (1961), *The emergence of modern Turkey* (London, New York: Oxford University Press)

Longrigg, Stephen Hemsley (1958), *Syria and Lebanon under French mandate* (London, New York: Oxford University Press).

Lowie, Robert Harry (1912), *Social life of the Crow Indians* (New York: The Trustees).

Luccioni, Joseph (1982), *Les fondations pieuses "Habous" au Maroc : depuis les origines jusquà 1956* (s.l.: s.n.).

Mahmood, Saba (2005), *Politics of piety : the Islamic revival and the feminist subject* (Princeton, N.J.: Princeton University Press).

Makdisi, George (1981), *The rise of colleges : institutions of learning in Islam and the West* (Edinburgh: Edinburgh University Press).

Makdisi, Ussama Samir (2000), *The culture of sectarianism : community, history, and violence in nineteenth-century Ottoman Lebanon* (Berkeley, Calif.: University of California Press).

Makdisi, Ussama (2002), 'Ottoman Orientalism', *American Historical Review,* 107 (3), 768-96.

Makhlūf, Muḥammad Ḥasanayn al-ʿadwī al-mālikī (1932 [M1351]), *Manhaj al-yaqīn fī bayān anna al-waqf al-ahlī min al-dīn* (Egypt: Mustafa al-Bābī al-Ḥalabī wa awlādihi).

Manāṣifī, Īmān Muḥyī al-Dīn (2008), *al-Shaykh ʻAbd al-Qādir al-Qabbānī wa-jarīdat Thamarāt al-funūn : dirāsah* (Bayrūt: I.M.al-D. al-Manāṣifī).

Mandaville, Jon, E. (1966), 'The Ottoman Court Records of Syria and Jordan', *Journal of the American Oriental Society,* 86 (3), 311-19.

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

Mango, Tamam (2004), 'Solidere : the battle for Beirut's Central District', M.A, Thesis (Massachusetts Institute of Technology).

Marcus, Abraham and Columbia University. Middle East, Institute (1989), *The Middle East on the eve of modernity : Aleppo in the eighteenth century* (New York: Columbia University Press).

Marino, Brigitte and Okawara, Tomoki (1999), *Catalogue des registres des tribunaux ottomans conservés au Centre des archives de Damas* (Damas: Institut français d'études arabes de Damas).

Massouda, Abbas Yaphet (1925), 'Contribution à l'étude du "Wakf" en droit égyptien', Thèse de Doctorat (Université de Paris).

Masud, Muhammad Khalid, Messick, Brinkley Morris, and Powers, David Stephan (1996), *Islamic legal interpretation : muftis and their fatwas* (Cambridge, Mass.: Harvard University Press).

Mattson, Ingrid (2003), 'Status-Based Definitions of Need in Early Islamic *Zakat* and Maintenance Laws', in Michael David Bonner, Mine Ener, and Amy Singer (eds.), *Poverty and charity in Middle Eastern contexts* (Albany: SUNY Press).

Mauss, Marcel (2003 [1923-1924]), 'Essai sur le Don. Forme et Raison de l'Echange dans les Sociétés Archaïques', *Sociologie et anthropologie* (Paris: Quadrige, Presses universitaires de France).

McChesney, Robert D. (1991), *Waqf in Central Asia : four hundred years in the history of a Muslim shrine, 1480-1889* (Princeton, N.J.: Princeton University Press).

Meier, Astrid (2001), '"Only good work remains." Waqf and the memory of families, Damascus in the 17th and 18th centuries', in Angelika Neuwirth and Andreas Pflitsch (eds.), *Crisis and memory in Islamic societies : proceedings of the third summer Academy of the Working Group Modernity and Islam held at the Orient institute of the German Oriental Society in Beirut* (Würzburg: Ergon).

——— (2005), '"Le plus avantageux pour le waqf:" Villages, fondations et agents fiscaux aux environs de Damas dans la première moitié du 18e siècle', in Mohammad Afifi, et al. (eds.), *Sociétés rurales ottomanes* (Cairo: Institut français d'archéologie orientale), 47-64.

Mercier, Ernest (1895), 'Le Habous ou ouakof : Ses règles et sa jurisprudence', *Revue algérienne et tunisienne de législation et de jurisprudence*.

——— (1897), 'Deuxième étude sur le habous', *Revue algérienne et tunisienne de législation et de jurisprudence*.

——— (1899), *Le code du Hobous ou Ouakf, selon la législation musulmane* (Constantine Algeria: Impr. nationale).

Merryman, John Henry (1969), *The civil law tradition; an introduction to the legal systems of Western Europe and Latin America* (Stanford, Calif.,: Stanford University Press).

Messick, Brinkley Morris (1993), *The calligraphic state textual domination and history in a Muslim society* (Comparative studies on Muslim societies ; 16; Berkeley: UC Press).

Messick, Brinkley (2002), 'Evidence: From Memory to Archive', *Islamic Law and Society,* 9 (2), 231-70.

Mintz, Sidney Wilfred (1985), *Sweetness and power : the place of sugar in modern history* (New York, N.Y.: Viking).

Mitchell, Timothy (2000), 'Introduction', in Timothy Mitchell (ed.), *Questions of modernity* (Minneapolis: University of Minnesota Press).

——— (2002), *Rule of experts : Egypt, techno-politics, modernity* (Berkeley: University of California Press).

——— (2006 [1999]), 'Society, Economy, and the State-Effect', in Aradhana Sharma and Akhil Gupta (eds.), *The anthropology of the state : a reader* (Malden, MA; Oxford: Blackwell Pub.).

Morand, Marcel (1904), *Étude sur la nature juridique du hobous* (Alger,: Typographie A. Jourdan).

Mouradgea d'Ohsson, Ignatius (2001[1788]), *Tableau général de l'empire Ottoman : divisé en deux parties, dont l'une comprend la législation mahométane, l'autre, l'histoire de l'empire Ottoman* (Istanbul Les Éditions Isis).

Mundy, Martha and Smith, Richard Saumarez (2007), *Governing property, making the modern state : law, administration and production in Ottoman Syria* (Library of Ottoman studies ; v. 9; London ; New York: I.B. Tauris).

Murphy, Edward et al. (ed.), (2011), *Anthrohistory : unsettling knowledge, questioning discipline* (Ann Arbor: University of Michigan Press).

Obeid, Michelle (2011), 'The “Trials and Errors” of Politics: Municipal Elections at the Lebanese Border', *PoLAR: Political and Legal Anthropology Review,* 34 (2), 251-67.

Opwis, Felicitas (2005), 'Maṣlaḥa in Contemporary Islamic Legal Theory', *Islamic Law and Society,* 12 (2), 182-223.

Öztürk, Nazif (1995a), *Türk yenileşme tarihi çerçevesinde vakıf müessesesi* (1. baskı. edn., Türkiye Diyanet Vakfı yayınları; Ankara: Türkiye Diyanet Vakfı)

——— (1995b), 'Giriş', *Elmalılı M. Hamdi Yazır gözüyle vakıflar : Ahkâmu'l-evkaf* (1. baskı. edn.; Ankara: Türkiye Diyanet Vakfı).

Polanyi, Karl (2001 [1944]), *The great transformation : the political and economic origins of our time* (Boston, MA: Beacon Press).

Poovey, Mary (1998), *A history of the modern fact : problems of knowledge in the sciences of wealth and society* (Chicago: University of Chicago Press).

Pouyanne, Maurice (1900), 'Au sujet d'un "Essai sur les biens habous" en Algérie et en Tunisie', *Questions Diplomatiques et Coloniales,* IX, 94-99.

Powers, David S. (1989), 'Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India', *Comparative Studies in Society and History,* 31 (3), 535-71.

——— (1992), 'On Judicial Review in Islamic Law', *Law & Society Review,* 26 (2), 315-41.

Pursley, Sara (2012), 'Race against Time: Governing Femininity and Reproducing the Future in Revolutionary Iraq, 1945-63', Ph.D. (The Graduate Center. CUNY).

Qadrī, Muḥammad, et al. (1942), *Code annoté du wakf* (Paris: Librairie G.P. Maisonneuve).

Qadrī, Muḥammad, Jumʻah, ʻAlī, and Sirāj, Muḥammad Aḥmad (2006), *Qānūn al-ʻadl wa-al-inṣāf fī al-qaḍāʼ ʻalá mushkilāt al-awqāf* (al-Qāhirah: Dār al-Salām).

Rabbat, Idmun (1973), *La formation historique du Liban politique et constitutionnel : essai de synthèse* (Beyrouth: [Université libanaise] : distribution, Librairie orientale).

Rabinow, Paul (1989), *French modern : norms and forms of the social environment* (Cambridge, Mass.: MIT Press).

Radin, Paul (1926), *Crashing thunder: the autobiography of an American Indian* (New York & London)

Rafeq, Abdul Karim (1994), 'The Syrian Ulama, Ottoman Law and Islamic Shari'a', *Turcica* 24, 9–32.

——— (1999), 'Relations between the Syrian ʿulamāʼ and the Ottoman state in the eighteenth century', *Oriente Moderno,* 18 (79) (1), 67-95.

Reiter, Yitzhak (1995), 'Family Waqf Entitlements in British Palestine (1917-1948)', *Islamic Law and Society,* 2 (2), 174-93.

——— (1996), *Islamic endowments in Jerusalem under British mandate* (London; Portland, OR: F. Cass).

——— (2007), '"All of Palestine is Holy Muslim Waqf Land" – A Myth and Its Roots'', in Aharon Layish and Ron Shaham (eds.), *Law, custom, and statute in the Muslim world : studies in honor of Aharon Layish* (Leiden; Boston: Brill).

Robinson, Chase F. (2003), *Islamic historiography* (Cambridge; New York: Cambridge University Press)

Rodinson, Maxime (1974), *Islam and capitalism* (New York,: Pantheon Books).

Rodney, Walter (1974), *How Europe underdeveloped Africa* (Washington, DC: Howard University Press).

Rose, Nikolas, O'Malley, Pat, and Valverde, Mariana (2006), 'Governmentality', *Annual Review of Law and Social Science,* 2 (1), 83-104.

Rowe, Peter G. and Sarkis, Hashim (1998), *Projecting Beirut : episodes in the construction and reconstruction of a modern city* (Munich ; New York: Prestel).

Rubin, Avi (2006), 'Ottoman modernity: The Nizamiye courts in the late nineteenth century', Ph.D. (Harvard University).

Ruedy, John and California. University. University at Los Angeles. Near Eastern Center. [from old catalog] (1967), *Land policy in colonial Algeria; the origins of the rural public domain* (Berkeley,: University of California Press).

Saad, Ahmed Zaki (1928), 'Le "wakf" de famille étude critique', (Université de Paris).

Saidouni, Maaouia (2008), 'The complex evolution of French waqf legislation in Algeria (1830-1870)', *The law of waqf: Modern state control and nationalization* (Harvard Law School, Cambridge: Islamic Legal Studies Program).

Sautayra, Édouard ; Cherbonneau, Eugène (1873-74), *Droit musulman* (Paris: Maisonneuve et cie).

Sawalha, Aseel (2010), *Reconstructing Beirut : memory and space in a postwar Arab city* (1st edn., Jamal and Rania Daniel series in contemporary history, politics, culture, and religion of the Levant; Austin: University of Texas Press).

Sayyid, Ridwan (1986), *al-Ummah wa-al-jama`ah wa-al-sultah* (Bayrut: Dar Iqra).

Schacht, Joseph (1964), *An introduction to Islamic law* (Oxford: Clarendon Press).

Scheper-Hughes, Nancy and Wacquant, Loïc J. D. (eds.) (2002), *Commodifying bodies* (London ; Thousand Oaks, Calif.: Sage Publications).

Schmid, Heiko (2002), 'The Reconstruction of Downtown Beirut in the Context of Political Geography', *Arab World Geographer,* 5 (4), 232-48.

Scott, David (1999), *Refashioning futures : criticism after postcoloniality* (Princeton studies in culture/power/history; Princeton, N.J.: Princeton University Press).

Shaham, Ron (1991), 'Christian and Jewish Waqf in Palestine during the late Ottoman period', *Bulletin of the School of Oriental and African Studies,* 54 (3), 460-72.

Sharārah, Waḍḍāḥ (1975), *Fī uṣūl Lubnān al-ṭā'ifī : khaṭṭ al-yamīn al-jamāhīrī* (Bayrūt: Dār al-Ṭalī'ah).

Sharp, Lesley Alexandra (2006), *Strange harvest : organ transplants, denatured bodies, and the transformed self* (Berkeley: University of California Press).

Shaw, Stanford J. (2000 [1968]), 'Some aspects of the aims and achievements of the nineteenth-century Ottoman reformers ', *Studies in Ottoman and Turkish history : life with the Ottomans* (Istanbul: Isis Press).

Shaw, Stanford J. and Shaw, Ezel Kural (1976), *History of the Ottoman Empire and modern Turkey*, 2 vols. (Cambridge ; New York: Cambridge University Press).

Shibārū, ʻIṣām Muḥammad (2000), *Jamʻīyat al-Maqāṣid al-Khayrīyah al-Islāmīyah fī Bayrūt, 1295-1421 H/1878-2000 M* (Bayrūt: Dār Miṣbāḥ al-Fikr lil-Ṭibāʻah wa-al-Nashr).

Simpson, J. A., Weiner, E. S. C., and Oxford University, Press (1989), 'The Oxford English dictionary', (Oxford; Oxford; New York: Clarendon Press ; Oxford University Press).

Singer, Amy (2002), *Constructing Ottoman beneficence : an imperial soup kitchen in Jerusalem* (SUNY series in Near Eastern studies; Albany: State University of New York Press).

Sirāj, Muḥammad Aḥmad (2006), 'Muqaddimat al-Taḥqīq', *Qānūn al-ʻadl wa-al-inṣāf fī al-qaḍāʼ ʻalá mushkilāt al-awqāf* (. Silsilat taqnīn aḥkām al-fiqh al-Islāmī; al-Qāhirah: Dār al-Salām).

Smith, Joan and Wallerstein, Immanuel Maurice (1992), *Creating and transforming households : the constraints of the world-economy* (Cambridge [England]; New York, NY, USA; Paris: Cambridge University Press ; Editions de la Maison des Sciences de l'homme).

Stillman, Norman A. (2000), 'Waqf and the ideology of charity in medieval Islam', in Clifford Edmund Bosworth, Ian Richard Netton, and Carole Hillenbrand (eds.), *Studies in honour of Clifford Edmund Bosworth* (Leiden ;Boston: Brill).

Stoler, Ann Laura (1995), *Race and the education of desire : Foucault's History of sexuality and the colonial order of things* (Durham: Duke University Press).

Strathern, Marilyn (1999), *Property, substance, and effect : anthropological essays on persons and things* (London; New Brunswick, NJ: Athlone Press).

Tābit, Jād (1996), *al-Iʻmār wa-al-maṣlaḥah al-ʻāmmah : fī al-turāth wa-al-ḥadāthah, madīnat al-ḥarb wa-dhākirat al-mustaqbal* (Beirut?: Muʾassasat al-Abḥāth al-Madīnīyah : Dār al-Jadīd : Muʾassasat Fūrd).

Tarabulsi, Fawwaz (2007), *A history of modern Lebanon* (London; [Ann Arbor, MI]: Pluto).

Terras, Jean (1899), *Essai sur les biens habous en Algérie et en Tunisie : étude de législation coloniale* (Lyon: Imprimerie et Lithographie du salut public).

Thompson, Elizabeth (2000), *Colonial citizens : republican rights, paternal privilege, and gender in French Syria and Lebanon* (New York: Columbia University Press).

Tilloy, René (1889), *Répertoire alphabétique de jurisprudence, de doctrine et de législation algériennes et tunisiennes* (Alger: Impr. administrative Gojosso).

Trouillot, Michel-Rolph (2001), 'The Anthropology of the State in the Age of Globalization: Close Encounters of the Deceptive Kind', *Current Anthropology,* 42 (1), 125-38.

Valverde, Mariana (1998), *Diseases of the will : alcohol and the dilemmas of freedom* (Cambridge; New York: Cambridge University Press).

Walī, Ṭāhā (1993), *Bayrūt fī al-tārīkh wa-al-ḥaḍārah wa-al-ʻumrān* (Bayrūt: Dār al-ʻIlm lil-Malāyīn).

Waqf al-Markaz al-Islāmī l-il-Tarbiya (1989), 'Al-Waqf al-Khayrī Al-Islāmī'.

Weintraub, Jeff (1997), 'The Theory and Politics of the Public/Private Distinction', in Jeff Weintraub and Krishan Kumar (eds.), *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy* (Chicago: The University of Chicago Press).

Weiss, Bernard G. (1998), *The spirit of Islamic law* (Athens: University of Georgia Press).

Weiss, Max (2010a), *In the shadow of sectarianism : law, Shi'ism, and the making of modern Lebanon* (Cambridge, Mass. [u.a.]: Harvard University Press).

——— (2010b), 'Practicing Sectarianism in Mandate Lebanon: Shici Cemeteries, Religious Patrimony, and the Everyday Politics of Difference', *Journal of Social History,* 43 (3), 707-33.

Williams, Raymond (1976), *Keywords : a vocabulary of culture and society* (New York: Oxford University Press).

Winter, Michael (2009), ''Ulama' between the State and the Society in Pre-modern Sunni Islam', in Meir Hatina (ed.), *Guardians of faith in modern times : `ulama in the Middle East* (Leiden; Boston: Brill).

Worms, Mayer-Gondchaux (1846), *Recherches sur la constitution de la propriété territoriale dans les pays musulmans, et subsidiairement en Algérie* (Paris: A. Franck).

Yakan, Zuhdī (1963), *al-Tanẓīm al-idārī : tanẓīm al-idārah al-markazīyah wa-al-maḥalliyah* (Bayrūt: Dār al-Thaqāfah).

Yayla, Hilmi Erdoğan (2011), 'Operating regimes of the government: Accounting and accountability changes in the Sultan Süleyman Waqf of the Ottoman Empire (The 1826 Experience) ', *Accounting History,* 16 (1), 5-34.

Yazbak, Mahmoud (2010), 'The Islamic Waqf in Yaffa and the Urban Space: From the Ottoman State to the State of Israel', *Makan, Adalah's Journal for Land, Planning and Justice,* 2, 23-46.

Yazır, Elmalılı Muhammed Hamdi and Öztürk, Nazif (1995), *Elmalılı M. Hamdi Yazır gözüyle vakıflar : İrşâd'ül-akhlâf fi ahkâm'ül-avkâf* (Türkiye Diyanet Vakfı yayınları; Ankara: Türkiye Diyanet Vakfı).

Young, George and Turkey (1905), *Corps de droit ottoman; recueil des codes, lois, règlements, ordonnances et actes les plus importants du droit intérieur, et d'études sur le droit coutumier de l'Empire ottoman* (Oxford: The Clarendon Press).

Zahraa, Mahdi (1995), 'Legal Personality in Islamic Law', *Arab Law Quarterly,* 10 (3), 193-206.

Zaki, Ahmed Saad (1928), 'Le Wakf de famille', (Université de Paris . Faculté de droit et des sciences, économiques).

Zaman, Muhammad Qasim (2002), *The ulama in contemporary Islam : custodians of change* (Princeton, NJ: Princeton University Press).

Zilfi, Madeline C. (1988), *The politics of piety : the Ottoman ulema in the Postclassical Age (1600-1800)* (Studies in Middle Eastern history; Minneapolis, MN, U.S.A.: Bibliotheca Islamica).

Ziyādah, Khālid (1997), *Bawwābāt al-madīnah wa-al-sūr al-wahmī* (Bayrūt: Dār al-Nahār lil-Nashr).