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In the Shadows of the Sacred

The Waqfs of Jerusalem and Their Role in Safeguarding Real Property Ownership

Professor Musa Sroor

إرث فلسطين
THE LEGACY OF PALESTINE

In the Shadows of theSacred

The Waqfs of Jerusalem and Their Role in Safeguarding Real Property Ownership

Authored by: Professor Musa Sroor

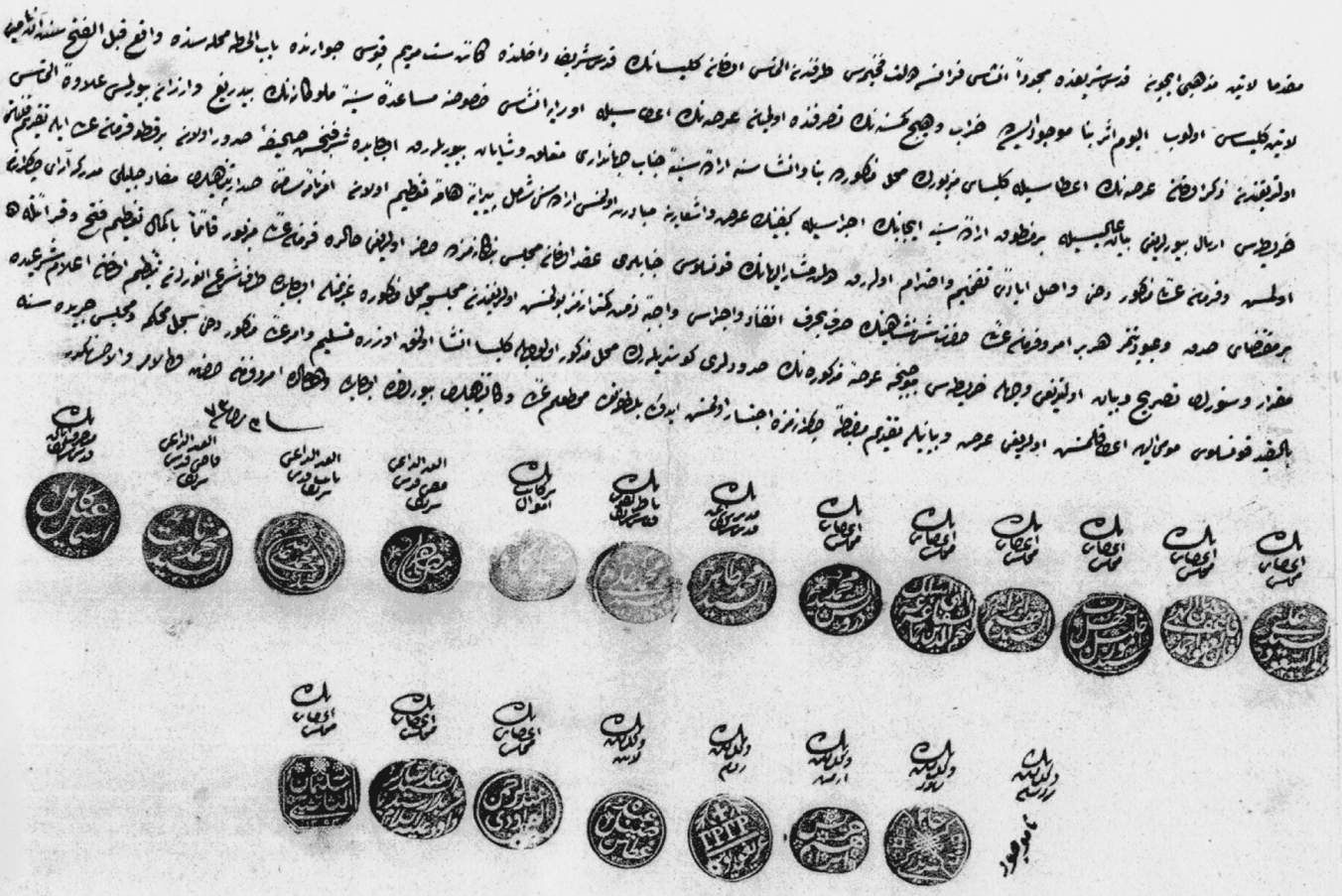
Translated by: Bahaa Isayed

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Rights do not lapse with the passage of time, however long or short. A person who holds a right against another does not lose that right through the passage of a period of time, whether the right concerns the usufruct of real property or its corpus. And just as a right does not lapse with time, so prescription is not, in the eyes of Islamic law, a means of acquiring ownership.[1]

1 **Muhammad al-Kubaysi.** *Aḥkām al-Awqāf fī al-Sharī'a al-Islāmiyya* **[Rules of Waqfs in Islamic Law]. Baghdad: Maṭba'at al-Irshād, 1977, p. 307.**

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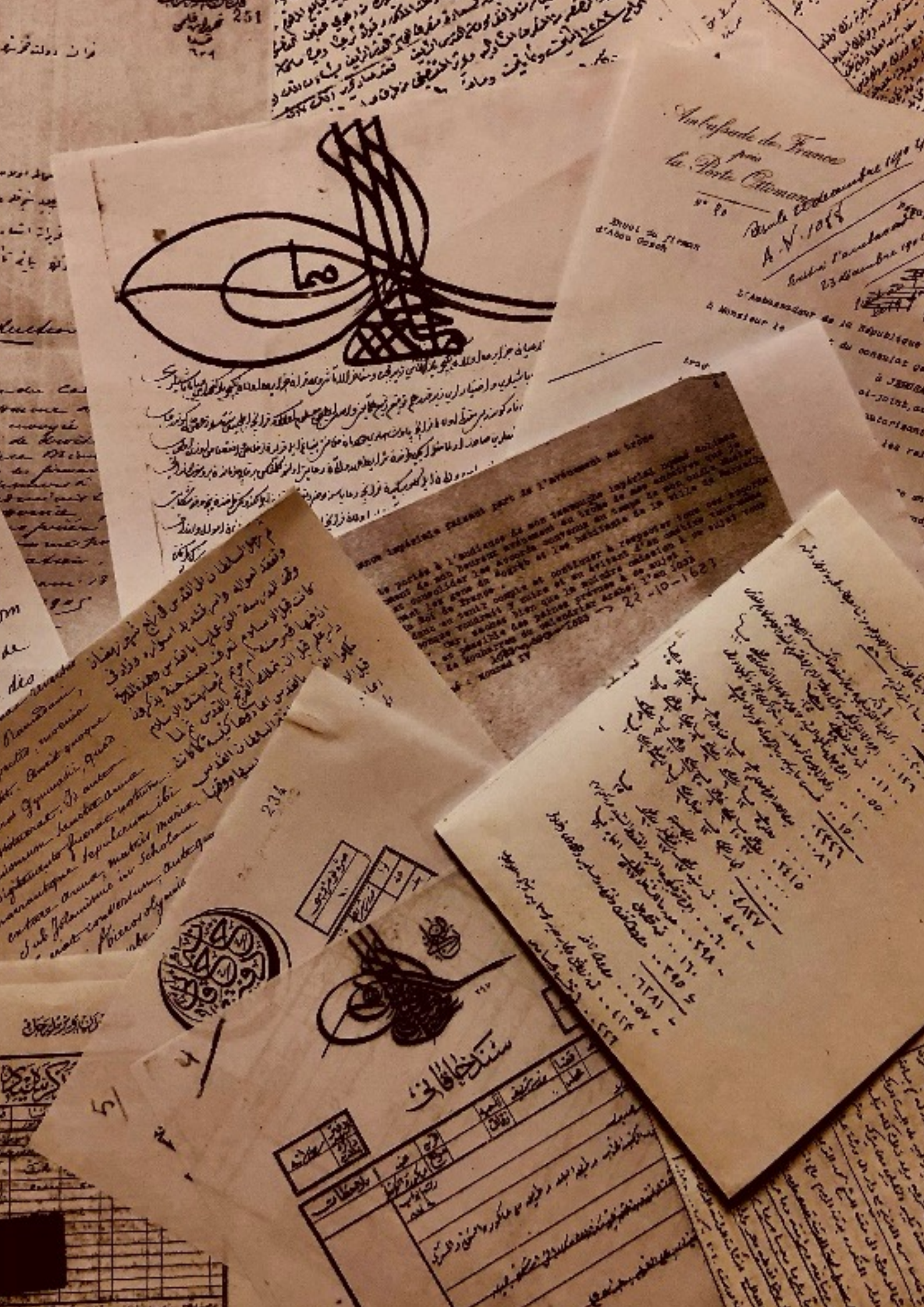
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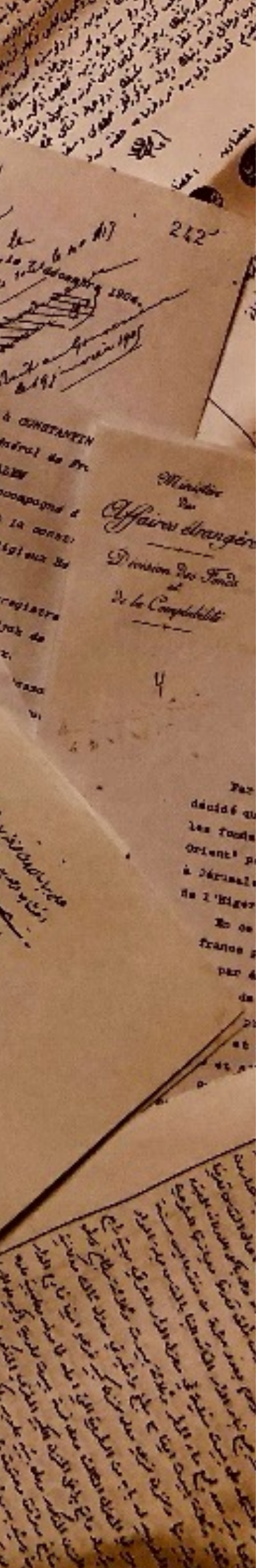
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Introduction

> "This is because the Turkish amirs in their state feared that their sultan might proceed against their offspring, in as much as they were his slaves or of clientage, and because calamities and confiscation are always to be feared from royal authority. Therefore, they built madrasas (colleges), zāwiyas (hermitages) and ribāṭs (monasteries) in great number, and endowed them with revenue-yielding endowments. They saw to it that their children would participate in these Waqfs (endowments), either as superintendents or by having some other share in them and there was in most of them, besides, an inclination to do good deeds and piety and a seeking of reward in their aims and deeds. Therefore, endowments multiplied and their revenues and benefits grew great. Students and teachers increased in numbers, students of knowledge and their teachers increased in number because of the abundance of their stipends from said endowments, and people traveled there (to Egypt from the `Iraq and the Maghrib) for their sake.[2]"

In the passage quoted above, ʿAbd al-Rahman ibn Khaldun (d. 1406) distills three points of the first importance about the waqf system and how it worked. The first is motive: amirs and sultans in particular founded Waqfs to protect their real property from the violence of those who hold power (*aṣḥāb al-shawka*) once their own influence had waned and their

2 Ibn Khaldun. *al-Muqaddima*. Cairo: Dār al-Fajr lil-Turāth, 2004, p. 524. English wording after Franz Rosenthal (trans.), The Muqaddimah: An Introduction to History (Princeton University Press, 1958; 2nd ed. 1967), vol. 2, ch. VI, §7.

rule had passed, and to secure its benefit to their descendants generation after generation.

These are the worldly motives, and they come before the religious and charitable ones, which Ibn Khaldun does not overlook. The second point he brings out is the part the waqf plays in the intellectual development of societies: madrasas (colleges) spread, and scholarship grows and flourishes with them. The third, no less important, is the wide reach of the waqf system across the Islamic world, in its institutions and in the properties assigned to support them, which provided fixed and sustainable revenues and so met the waqf's own conditions of permanence and survival, whatever the succession of generations and the turnover of rulers. Which raises the question: why did Ibn Khaldun focus on the waqf's part in the flourishing of scholarship and culture as the consequence of the amirs' policy of converting their property into Waqfs?

In this connection it must be noted that the waqf worked as a comprehensive system in the absence of state institutions that would found schools and universities, care for the poor, and bring about cultural development in society.

To grasp Ibn Khaldun's meaning fully, one has to remember that before the rise of modern states, and until the national and territorial states took shape at the end of the nineteenth century, the Islamic state and its institutions did not sponsor education. The state did not open schools, fund them or supervise them, and it did not impose curricula or a centralized educational system that regulated its policies and orientations. All of this was left to "people of charity and almsgiving," to those who wished to offer a perpetual charity (*ṣadaqa jāriya*) or to perpetuate their own memory through the institution known, in history and in jurispru-

dence alike, as the waqf.[3] Rulers, amirs and holders of capital from every social stratum turned to it in a personal capacity, since it counted as a perpetual charity and an act of devotion to Allah Almighty. Thanks to the capital they controlled, waqf institutions took charge of many of society's vital activities. They paid for the religious and spiritual establishment (mosques, khānqāhs (Sufi hospices), zāwiyas (Sufi lodges), ribāṭs (hospices) and the like), for education (madrasa (college)s, zāwiyas, Qurʾān and ḥadīth schools, libraries, study circles and so on), and for health, in the form of the bīmāristāns (hospitals). Through institutions such as the takiyyas (soup kitchens and hospices) they also did much for community welfare, fighting poverty and narrowing the gap between rich and poor. It should be borne in mind that every one of these institutions was founded as a waqf, with no connection to the state.[4] The Waqfs even appointed the teachers in their own madrasas: the endower's waqfiyya (waqf deed) laid down not only how the madrasa was to run, what it would teach and how it would be funded, but also how its teachers were to be appointed, what qualifications they needed, and what they would be paid.[5]

The location of endowed property contributed to creating a web of social relations between those who ran and administered the waqf institutions and their beneficiaries on one side, and the communities living around the properties on the other, whatever their races or religions. This holds for the quarters of Jerusalem in general and for Ḥārat al-Naṣārā (the Christian Quarter) in particular.

3 **On the waqf in Sharia and law, see for example: Muhammad Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf lil-Qaḍāʾ ʿalā Mushkilāt al-Awqāf* **[The Law of Justice and Equity for Resolving the Problems of Waqfs]. Cairo: Maktabat al-Ahrām, 1928; Ahmad ʿAli al-Khatib.** *al-Waqf wa-l-Waṣāyā* **[Waqf and Bequests]. Baghdad: University of Baghdad, 1978; Burhan al-Din al-Tarabulusi al-Hanafi.** *Kitāb al-Isʿāf fī Aḥkām al-Awqāf* **[The Book of Assistance on the Rules of Waqfs]. 2nd ed. Cairo: Maṭbaʿa Hindiyya, 1902; Zuhdi Yakan.** *al-Waqf fi al-Sharīʿa wa-l-Qānūn* **[Waqf in Sharia and Law]. Beirut: Dār al-Nahḍa al-ʿArabiyya, 1388 AH; Muhammad Asʿad al-Husayni.** *al-Manhal al-Ṣāfī fī al-Waqf wa-Aḥkāmih* **[The Clear Source on Waqf and Its Rules]. Jerusalem: Wikālat Abu ʿArafa, n.d.; Sami al-Salahat.** *al-Waqf bayna al-Aṣāla wa-l-Muʿāṣara: Dirāsa Mutakhaṣṣiṣa fī Raṣd al-ʿAmal al-Waqfī al-Muʾassasī* **[Waqf between Authenticity and Modernity: A Specialized Study of the Record of Institutional Waqf Work]. Beirut: al-Dār al-ʿArabiyya lil-ʿUlūm Nāshirūn, 2014; Walid Ramaḍān ʿAbd al-Tawwab.** *al-Waqf Sharʿan wa-Qānūnan* **[Waqf in Sharia and in Law]. 2nd ed. Cairo: Dār Shādī lil-Mawsūʿāt al-Qānūniyya, 2009; ʿIsa Buras.** *Tawthīq al-Waqf al-ʿAqārī fi al-Fiqh al-Islāmī wa-l-Qānūn al-Jazāʾirī: Waqf Sīdī Bannūr Namūdhaj Taṭbīqī* **[Documenting Real Property Waqf in Islamic Jurisprudence and Algerian Law: The Waqf of Sidi Bannūr as an Applied Case]. Algiers: Jamʿiyyat al-Turāth, 2012; ʿUbayd Budawud.** *al-Waqf fi al-Maghrib al-Islāmī wa-Dawruh fi al-Ḥayāt al-Iqtiṣādiyya wa-l-Ijtimāʿiyya wa-l-Thaqāfiyya* **[Waqf in the Islamic Maghrib and Its Role in Economic, Social and Cultural Life]. Algiers: Maktabat al-Rashād lil-Ṭibāʿa wa-l-Nashr, 2011; Mustafa Binʿalla.** *Tārīkh al-Awqāf al-Islāmiyya bil-Maghrib fī ʿAṣr al-Saʿdiyyīn min khilāl Ḥawālāt Tārūdānt wa-Fās* **[The History of Islamic Waqfs in Morocco in the Saʿdian Era through the Ḥawālāt Registers of Taroudant and Fez]. Rabat: Ministry of Awqaf, 2007; ʿAbd al-Razzaq Subayhi.** *al-Ḥimāya al-Madaniyya lil-Awqāf al-ʿĀmma bil-Maghrib* **[Civil Protection of Public Waqfs in Morocco]. Rabat: Ministry of Awqaf, 2009; Abdelhamid Henia. « Pratique habous, mobilité sociale et conjoncture à Tunis à l›époque moderne (XVIIIe-XIXe siècles) «.** *Dans Le Waqf dans l›espace islamique outil de pouvoir socio-politique*. **Randi Deguilhem (organisation et présentation). Damas : Institut Français de Damas, 1995, p. 71100- ; Miriam Hoexter.** *Endowments, Rulers and Community: Waqf al-Haramayn in Ottoman Algiers*. **Leiden: Brill, 1998; Randi Deguilhem. «On the Nature of the** *Waqf*. **Pious Foundation in Contemporary Syria: a Break in the Tradition,» dans (R.) Deguilhem et (A.) Henia (coord.).** *Les fondations pieuses (waqf) en Méditerranée : enjeux de société, enjeux de pouvoir.* **Koweït : la Fondation Publique des Awqaf du Koweït, 2004, p. 395431- ; Randi Deguilhem. «Ottoman** *Waqf* **Administrative Reorganization in the Syrian Provinces: the case of Damascus,»** *Arab Historical Review for Ottoman Studies*, **vol. 51992) 6/), p. 3039-.**

4 **Musa Sroor.** *Fondations pieuses en mouvement : de la transformation du statut de propriété des biens waqfs à Jérusalem 18581917-*. **Damas : Ifpo et IREMAM, 2010, p. 17.**

5 **Ekmeleddin İhsanoğlu (ed. and intro.).** *al-Dawla al-ʿUthmāniyya: Tārīkh wa-Ḥaḍāra* **[Arabic translation of** *History of the Ottoman State, Society and Civilisation*, **IRCICA]. Istanbul: IRCICA (Research Centre for Islamic History, Art and Culture), 1999, vol. 1, p. 292.**

What set the Christian Quarter apart from the rest of the city, especially in the Ottoman period, and still does, is how closely the social and economic lives of the adherents of the revealed religions, specifically Christianity and Islam, were interwoven, and how closely the Christian denominations were bound up with one another. The root of these entanglements was real property ownership in the quarter and the real estate market that grew from it, a market that cut across sectarian and confessional lines and answered to material interest.[6] Waqf property made up a large share of what was owned in the quarter, and so played a large part in that market. It was only natural, then, that waqf property, Muslim and Christian alike, should be caught up in economic and social movement and in changes of ownership.

The waqf became widespread in Islamic history, in the Ottoman period as in the periods before it, above all the Mamluk period (1256 to 1517), through its attention to a broad range of social services. It became the principal vehicle of social philanthropy, founding a social order built on bonds shared between the elite and the common people.[7] Education was one of its pillars, and the educational institutions of the waqf were among the most visible forms of charitable work.

All of this, however, collided with the ideology of "the sultanic state in the age of modernity," which rested on the state's monopoly of capital. That state saw waqf institutions as competitors that weakened its hold over local communities and their religious and social elites, quite apart from the large revenues it lost to waqf land. For the waqf funded institutions of public benefit of every kind, including some with a political dimension: mosques, madrasas and institutions of higher learning, jurists and scholars, and wide segments of local society. The abundance of waqf revenue and the density of charitable waqf property in Islamic cities, Jerusalem among them, in turn tempted those of weak character to exploit that revenue and property for their own benefit by unlawful means, though they knew such acts to be forbidden, waqf property being held sacred. For when a person converts his assets, movable and immovable, into Waqfs, their ownership passes to Allah Almighty. That is why the word waqf carries, in Sharia and in custom alike, the mark of sanctity and the prohibition of any unlawful interference with waqf assets.

On the other hand, waqf lands and institutions were vast, and they remained independent of the state and its organs (institutions and bodies) until 1826, the year

6 **On this question see: Musa Sroor. «The Real Estate Market in Jerusalem between Muslims and Christians (1800-1810).»** *Oriente Moderno*, **Brill, 93, 2013, pp. 593608-.**

7 **Miri Shefer-Mossensohn.** *al-ʿIlm ʿinda al-ʿUthmāniyyīn: al-Ibdāʿ al-Thaqāfī wa-l-Tabādul al-Maʿrifī* **[Arabic translation of** *Science among the Ottomans: The Cultural Creation and Exchange of Knowledge*, **2015]. Translated by Muhammad Shaʿbān Sawwan. Algiers: Ibn al-Nadīm lil-Nashr wa-l-Tawzīʿ, 2019, p. 210.**

the Ottoman Imperial Ministry of Waqfs was founded; and the state wished to extend its centralization and its influence over society and the economy. It therefore enacted laws and regulations to curb the influence of waqf institutions and of those who ran them, to contain them, and to take possession of their properties. It did so in a way that preserved a minimum of the waqf's sanctity and immunity and respected the basic rules of waqf law in Sharia and jurisprudence, while abrogating the new legislation that earlier periods had introduced in answer to the ambitions and dictates of amirs and sultans, particularly since the Mamluk period (1256 to 1517), such as the creation of what is called the sultans' waqf, known in jurisprudence as *waqf al-irṣād* (allocation waqf) or *takhṣīṣāt* (assignments/allocations).[8]

From 1858 onward, Ottoman policy toward charitable Waqfs, and particularly toward those founded by amirs and sultans, ran directly counter to what Ibn Khaldun had described: amirs endowing their assets precisely to keep them out of the hands of those who hold power. How did this come about? How did those who hold power dare to seize the sacred, the waqf, the property of Allah Almighty? How did the waqf resist their ambitions and policies, and the designs of all who coveted control of its property? What led Ibn Khaldun to the firm belief that converting personal real property into waqf protected it from the ambitions of the powerful? In other words, what is the latent force in the waqf that confronts anyone who encroaches on its property? These questions are the subject of this book. It approaches them through analysis, critique and deconstruction, by way of jurisprudence and law, and it draws on the many cases in which the waqf succeeded in resisting attempts to seize real property in Jerusalem from the late Ottoman period to the present day.

The book also offers a new way of looking at the waqf in Jerusalem, as it adopts a deconstructive strategy, structural critique and the fragmentation of meaning; it reads the rules of waqf and their application in Jerusalem critically and analytically through a new "micro-historical" lens; and it takes apart the historical narratives on the subject, which treat the waqf on the one hand as a body of jurisprudential rules and on the other as nothing more than heritage, and which never put that heritage and those rules to work, or interrogate them afresh, in the service of the Palestinian cause in general and of real property ownership in Jerusalem in particular. The need is all the more pressing because the rules of Waqfs and the Ottoman legislation that grew up around them remain in force in

8 **These are the Waqfs founded by amirs or sultans out of the funds of the Muslim public treasury (*bayt māl al-muslimīn*) rather than from their private property, for the benefit of charitable purposes. This will be explained in detail in the body of the book.**

the Palestinian judiciary today, and because the waqf, as religious property, has a standing of its own in international law, above all in what governs occupied territories and time of war.

The study therefore hypothesizes that the legal and jurisprudential status of the waqf, in Islamic law and in international law alike, not only protects real property against encroachment and attempts at unlawful acquisition and ownership but can also be used to recover property that has been unlawfully seized.

The book presents many issues and cases in which Jerusalem's waqf properties were subjected to attempts at unlawful acquisition, and in which many of the cases succeeded in vindicating the Waqfs and restoring rights to their owners. It studies these cases within the framework of the rules of Waqfs and their legal application. The aim throughout is to address the study's problem and hypothesis by interrogating what history has silenced and forgotten, and by establishing the facts through archival excavation and identification. That excavation is the fruit of more than twenty-five years of continuous research in local, regional and international archives written in Arabic, Ottoman Turkish, French, English and German. Foremost among them are the registers of the Jerusalem Sharia Court and the records of the Jerusalem Waqf Department across its various periods, preserved in the archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq) in Abu Dis, now under the Palestinian Ministry of Waqfs and Religious Affairs. These records reveal a great many cases concerning the seizure of Jerusalem's waqf property and the waqf's role in resisting it. The Tapu registers (*dafātir al-ṭābū*) and the Ottoman land registers are likewise fundamental for establishing the origins of waqf property in Jerusalem. To these must be added the foreign archives: the French diplomatic archives, the French colonial archives, and the archive of the German Foreign Ministry. They reveal much of what has been silenced and forgotten about the changes in ownership of Jerusalem's waqf property and the cases surrounding them.

The importance of this study lies, first, in restoring the standing of the waqf and its rules as an integrated system, practiced for many centuries, which preserved real property through changes of regime, shifts of policy and countless individual attempts at seizure; and, second, in drawing attention to the need to revive that system and put its rules back to work in preserving what remains of waqf real property in Jerusalem, and to the jurisprudential and legal principles that would allow those responsible for the Palestinian Waqfs to recover everything that has been taken, whether openly or under the table. The study shows how the waqf confers immunity on real property; that the waqf and its cases are not subject to the laws of prescription; and that there exist, and are available, legal and histori-

cal documents which cannot be forged, which establish the waqf's ownership of real property, and which civil and Sharia law undertake to uphold and to protect against encroachment.

The study is important in a further way: it offers a new perspective on the study of the waqf and its institutions in Jerusalem. There is a vast literature on the subject,



9 **Among them: Nazmi al-Juʿba.** *al-Quds fī al-ʿAṣr al-Mamlūkī* **[Jerusalem in the Mamluk Era]. Vol. 2. Jerusalem: Welfare Association (Muʾassasat al-Taʿāwun), 2024; Kamil Jamil al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis* **[Institutions of Learning in Jerusalem]. Amman: Jamʿiyyat ʿUmmāl al-Maṭābiʿ al-Taʿāwuniyya, 1981; Sami Muhammad al-Salahat.** *al-Awqāf al-Islāmiyya fī Filasṭīn wa-Dawruhā fī Muwājahat al-Iḥtilāl al-Isrāʾīlī* **[Islamic Waqfs in Palestine and Their Role in Confronting the Israeli Occupation]. Beirut: Markaz al-Zaytūna lil-Dirāsāt wa-l-Istishārāt, 2011; Sami Muhammad al-Salahat. «al-Awqāf al-Maqdisiyya fī al-ʿĀlam wa-Dawruhā fī Daʿm Madīnat al-Quds» [The Waqfs of Jerusalem Worldwide and Their Role in Supporting the City], in** *Waqāʾiʿ al-Muʾtamar al-Akādīmī al-Rābiʿ 1415- Tammūz 2018 ḥawla al-Waqf al-Islāmī fī al-Quds* **[Proceedings of the Fourth Academic Conference, 1415- July 2018, on the Islamic Waqf in Jerusalem], ed. ʿAziz al-ʿAṣā et al. Jerusalem: Supreme Islamic Council, 2018, pp. 1853-; al-Madani, Ziyad.** *Awqāf al-Quds fī al-Qarn al-Sābiʿ ʿAshar al-Mīlādī* **[The Waqfs of Jerusalem in the Seventeenth Century CE]. Amman: Ministry of Culture, 2018; al-Madani, Ziyad.** *Awqāf al-Quds fī al-Qarn al-Thāmin ʿAshar al-Mīlādī* **[The Waqfs of Jerusalem in the Eighteenth Century CE]. Amman: Ministry of Culture, 2011; al-Muhtadi, ʿAbla.** *Awqāf al-Quds fī Zaman al-Intidāb al-Barīṭānī* **[The Waqfs of Jerusalem in the Time of the British Mandate]. Amman: Dār Majdalāwī lil-Nashr wa-l-Tawzīʿ, 2005; al-ʿAṣā, ʿAziz et al. (eds.).** *Waqāʾiʿ al-Muʾtamar al-Akādīmī al-Rābiʿ 1415- Tammūz 2018: al-Waqf al-Islāmī fī al-Quds* **[Proceedings of the Fourth Academic Conference, 14-15 July 2018: The Islamic Waqf in Jerusalem]. Jerusalem: Supreme Islamic Council, 2018; al-Bakhit, Muhammad ʿAdnan.** *al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām 1014- Aylūl 2006: al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn* **[The Seventh International Conference on the History of Bilād al-Shām (Greater Syria/Levant), 1014- September 2006: Awqāf in Bilād al-Shām from the Arab Islamic Conquest to the End of the Twentieth Century]. Amman: University of Jordan, 2009; al-Khatib, Muhammad.** *al-Awqāf al-Islāmiyya fī Filasṭīn fī al-ʿAṣr al-Mamlūkī* **[Islamic Waqfs in Palestine in the Mamluk Era]. Unpublished PhD dissertation, Yarmouk University, 2007; al-Juburi, Jasim ʿAziz ʿAli.** *Awqāf al-Muslimīn fī al-Quds al-Sharīf* **[The Waqfs of the Muslims in Noble Jerusalem]. Amman: Dār al-Ḥāmid lil-Nashr, 2017; Sulayman, Haytham Farid Ahmad.** *Awqāf Qaḍāʾ ʿAkkā 19221948-: Dirāsa Wathāʾiqiyya* **[The Waqfs of the Acre Sub-District, 19221948-: A Documentary Study]. Unpublished MA thesis, An-Najah National University, Nablus, 2008; Fashafsha, Radi Ahmad Dhib.** *Awqāf Qaḍāʾ Ḥayfā khilāl Fatrat al-Intidāb al-Barīṭānī (19221948-): Dirāsa Wathāʾiqiyya* **[The Waqfs of the Haifa Sub-District during the British Mandate (19221948-): A Documentary Study]. Unpublished MA thesis, An-Najah National University, Nablus, 2010; al-Ashqar, Hanadi Rashad Mustafa.** *Awqāf Qaḍāʾ al-Nāṣira khilāl Fatrat al-Intidāb al-Barīṭānī 19221948-* **[The Waqfs of the Nazareth Sub-District during the British Mandate, 19221948-]. Unpublished MA thesis, An-Najah National University, Nablus, 2011; Michael Dumper.** *Islam and Israel: Muslim Religious Endowments and the Jewish State*. **Washington, D.C.: Institute for Palestine Studies, 1994; Yitzhak Reiter.** *Islamic Endowments in Jerusalem under British Mandate*. **London: Frank Cass, 1996; Amy Singer.** *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*. **Albany: State University of New York Press, 2002; Sroor.** *Fondations pieuses en mouvement*. **Damas: Institut Français du Proche-Orient / Aix-en-Provence: IREMAM, 2010.**

Chapter One

In God's Ownership

> "... it has become a confirmed waqf and a perpetual ḥabs (allocation), freed and rightly directed, that may not be owned, nor given in alms or charities, nor donated, nor pledged, nor exchanged for money, nor compensated for, nor taken away; and it is not lawful for anyone who believes in God and the Last Day, and knows that he will return to his mighty Lord, whether amir or subordinate or unjust holder of power, to annul this waqf or any part of it, or to alter it, or to let any part of it lapse, or to impugn it or any part of it, or to seek its annulment or the annulment of any part of it ..."[10]

Before the modern nation-states and territorial states took shape, all peoples, before Islam and after it, knew the waqf as a set of civil institutions and as a social, charitable, developmental and economic system working toward comprehensive and sustainable social development. It did so where the state and its official institutions were largely absent from a whole range of sectors: the religious and spiritual (mosques, zāwiyas (Sufi lodges), khānqāhs; the scholarly (madrasas (colleges), students of knowledge, ḥadīth (and Qurʾān schools, and, in our own time, universities); public services (roads, bridges, citadels and forts); the social and humanitarian (takiyyas (soup kitchens and hospices), the poor and the destitute, and so on); health (hospitals); and even the military (ribāṭs (hospices), citadels, forts, weapons and so on). To keep these institutions running, endowers took care to secure permanent sources of income for them: agricultural land, in the form of farms and villages, and economic facilities, in the form of markets, shops, warehouses, khāns (caravanserais), bathhouses and dwellings. Benefactors converted such property into waqf so that its yield could be spent on the waqf institutions, or on purposes of the endowers' own choosing, laid down in what waqf law calls the endower's stipulations (*shurūṭ al-wāqif (endower)*).

This arrangement gave rise to a humane dimension without parallel. It strength-

10 The waqf instrument of Abu Madyan al-Ghawth of 1320, comprising the waqf of the village of Ein Karem: French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.

ened the cohesion of society across all its groups, not only by redistributing wealth between rich and poor, but also by breaking the monopoly on knowledge that the educated held over the uneducated: every segment of society could gain access to learning, free of charge, by joining the study circles in the mosques or studying in the waqf madrasas. It raised the dignity of the poor, sparing them from begging for their daily bread from the rich, through the food and shelter it provided to this marginalized group. It also created a network of economic relations between the center, the waqf institution, and the periphery, the properties endowed for its benefit: land, villages, farms, markets and khāns, some of them far away. And it devised bonds of social and administrative relationship between the users of waqf property, that is, its tenants, and the administrators (*mutawallūn*) who supervised the institutions and their properties, collected their revenues and spent them on the institutions' needs: staff wages, sundry expenses, upkeep, construction and repair. All of this contributed to the economic development of cities. Jerusalem, for instance, is distinguished not only by the number of its waqf institutions but by the density of the economic facilities, inside the city and outside it, endowed for their benefit. The revenues of these properties, in money or in kind (crops), were brought in from the periphery to Jerusalem, which helped make the city a commercial market working for the waqf institutions: the produce of waqf land was sold and the proceeds spent on the institutions' needs, or their properties were leased out and the rents spent as required, on foodstuffs or otherwise.[11]

From the Endower's Ownership to God's Ownership

The waqf, in sum, is a charitable act in which the property itself (*al-ʿayn*, the real estate) is detained (*ḥabs*) and its fruits are dedicated (*tasbīl*): the usufruct of the waqf is assigned to a charitable purpose with a religious and spiritual aim, the seeking of God Almighty's pleasure. This is what is known as the charitable waqf (*waqf khayrī*). A person (the endower) may also assign part of the revenue of his waqf to his own maintenance or to members of his family whom he names, on condition that, when his line dies out, the revenue passes to a charitable purpose that does not lapse, such as the poor or the mosques. This kind of waqf is known as the *waqf dhurrī*, the family or private waqf.[12]

The jurists differ on some questions concerning the waqf in Islamic law, but they agree that the waqf enjoys immunity under the Sharia. When real property becomes a waqf it leaves the ownership of the endower (the owner) and passes into

11 **Sroor.** *Fondations pieuses en mouvement*, **p. 146.**
12 **al-Salahat.** *al-Waqf bayna al-Aṣāla wa-l-Muʿāṣara: Dirāsa Mutakhaṣṣiṣa fī Raṣd al-ʿAmal al-Waqfī al-Muʾassasī*, **p. 17.**

the ownership of Allah Almighty. The endower retains no right of ownership in it, for it has become something sacred: it belongs to God and can therefore enter into no one's ownership. Here lies the status of the waqf in Islamic law. Under that law the waqf may not be sold, inherited or given to anyone; the endowed property may not be returned to its original condition; and consequently, it may not be plundered or encroached upon. In short, a waqf may not be converted into private property. The endowers themselves were unanimous on this; in the stipulations they wrote into their waqfiyyas (Waqf deeds).[13]

This immunity under the Sharia, which keeps the waqf beyond the reach of the covetous and greedy, the despot and the ruler, was a principal motive for the wealthy to convert their real property into Waqfs, and they had several reasons for doing so. First, to prevent its being encroached upon or confiscated by the ruling power, as Ibn Khaldun affirmed. Second, to prevent the fragmentation of the fortune or the property under the Islamic law of inheritance. Third, to ensure that the endower and his descendants benefited from its revenue generation after generation. Fourth, to give the endower the say in deciding the course his fortune would take after his death, who would benefit from it and who would be excluded, independently of the Islamic law of inheritance. And finally, the religious factor: a perpetual charity through which the endower earns recompense and reward.

Islamic law thus granted religious property and the Waqfs, Muslim and non-Muslim alike, immunity from the encroachments of local and colonial authorities, since waqf property enjoyed the attribute of "sanctity." This immunity and sanctity were the principal incentive for the wealthy to convert their real property into Waqfs and so protect it from the violence and aggression of those who hold power.[14]

Indeed, the settled belief and religious faith of those who converted their property into Waqfs led them to close their waqfiyyas with a reminder that the endower's stipulations may not be changed or altered, and with a warning of the divine punishment awaiting anyone who encroached on the waqf, changed it, altered it, neglected it or helped others to lose it. The Sharia judge (al-ḥākim al-sharʿī) (Sharia judge)[15*], Sultana Roxelana (Hürrem Sultan), wife of Sultan Suleiman the Magnificent (r. 1520 to 1566), closed the waqfiyya of her takiyya (soup kitchen and

13 **Sroor.** *Fondations pieuses en mouvement*, **pp. 1920-.**

14 **Musa Sroor. «al-Waqf ka-Adāt Muqāwamat al-Istiʿmār: Qaryat Ein Karem al-Maqdisiyya Anmūdhajan» [The Waqf as an Instrument of Resistance to Colonialism: The Jerusalem Village of Ein Karem as a Case Study].** *Majallat al-Maqdisiyya*, **year 4, no. 13, winter 2022, p. 121.**

15 * **"Qadi" is kept throughout for the judge of the Sharia court, so that the qadi of Jerusalem is not indistinguishable from the judges of the Mandate's Land Court and the Israeli magistrates who appear in the same chapters. [Translator's note]**

hospice) in Jerusalem,[16] which she founded in 1557, by declaring that her waqf instrument and the signature of its administrator constitute: "... a clear proof, whereby the validity of these Waqfs and their binding force have been adjudged, on the stipulations set down for them in particular and in general, according to the opinion of those among the rightly guided imams, may God be pleased with them all, who hold that view, by a valid judgment under the Sharia and an explicit, duly observed ruling; so that it has become a binding, registered waqf that may not thereafter be changed or altered: 'But whoever changes the will after hearing it, the blame will only be on those who made the change. Indeed, Allah is All-Hearing, All-Knowing' [Q. 2:181].[17] Sultan Suleiman himself affirms the same stipulations, and the same warning of sin to whoever annuls this waqf, converts it or alters it, in his own waqf instrument appended to the waqfiyya of his wife Roxelana. His instrument affirms: "... the binding force of the waqf by the strength of its proof and evidence ... and its validity and binding force were adjudged, with all its stipulations and provisions, in full knowledge of the point of disagreement among the imams, the foremost of the eminent scholars of the community, by a valid, decisive judgment under the Sharia and an explicit, duly observed and manifest ruling; so that it has become a binding, registered waqf that may not thereafter be altered or converted, nor annulled or suspended: 'But whoever changes the will after hearing it, the blame will only be on those who made the change. Surely Allah is All-Hearing, All-Knowing' [Q. 2:181]; and whoever changes it is 'condemned by Allah, the angels, and all of humanity' [Q. 2:161]."[18]

These texts, with which the qadis closed the waqf instruments of sultans such as Suleiman the Magnificent and his wife in accordance with the endower's stipulations, attest to an absolute conviction that it is forbidden for those who hold power, in days and ages to come, to change or alter the endower's stipulations or to cancel or annul the waqf. Their insistence that the waqf is valid by the consensus of the leading scholars and jurists, despite the differences among them, was no accident. It was meant to block, in advance, any future fatwa, court ruling or

16 **On the Takiyya of Khassaki Sultan in Jerusalem, see: Ghassan Muhaybish.** *Waqfiyyat Khassaki Sultan: Dirāsa wa-Taḥlīl [The Waqfiyya of Khassaki Sultan: A Study and Analysis]*. **Unpublished PhD dissertation, Ain Shams University, 2004; Kamil Jamil al-ʿAsali.** *Min Āthārinā fi Bayt al-Maqdis* **[Our Monuments in Jerusalem]. Amman: Ministry of Culture, 2009, pp. 2829-; pp. 940-; Khalil Shawka.** *Tārīkh Bayt Laḥm fi al-ʿAhd al-ʿUthmānī* **[The History of Bethlehem in the Ottoman Period]. Bethlehem, 2000; David Myres. «al-ʿImara al-ʿAmira: The Charitable Foundation of Khassaki Sultan (9591552/),» in Sylvia Auld (ed.),** *Ottoman Jerusalem: The Living City, 15171917-*. **London: Altajir World of Islam Trust, 2000, vol. 1, pp. 539-583; Amy Singer. «The Mülknâmes of Hürrem Sultan›s** *waqf* **in Jerusalem,» in Gülru Necipoğlu (ed.),** *Muqarnas: An Annual on the Visual Culture of the Islamic World*. **Leiden: Brill, 1997, pp. 96102-; Amy Singer.** *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*. **Albany: State University of New York Press, 2002; Amy Singer. «The Privileged Poor of Ottoman Jerusalem,» in Jean-Paul Pascual (dir.),** *Pauvreté et richesse dans le monde musulman méditerranéen*. **Paris: Maisonneuve et Larose, 2003, pp. 257269-; Oded Peri. «***Waqf* **and Ottoman Welfare Policy: The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem.»** *Journal of the Economic and Social History of the Orient*, **vol. 35, part 2, 1992, pp. 167185-; Sroor.** *Fondations pieuses en mouvement*; **St. H. Stephan. «An Endowment Deed of Khâsseki Sultân, Dated the 24th May 1552.»** *The Quarterly of the Department of Antiquities in Palestine*, **vol. 10, 1944, pp. 170194-.**

17 **Jerusalem Sharia Court Register (***Sijill***) 270, mid-Shaʿbān 964 AH / 13 June 1557, p. 24.**

18 **Jerusalem Sharia Court Register (***Sijill***) 270, late Shawwāl 967 AH / 24 July 1560, p. 26.**

opinion of a scholar or jurist that might permit the alteration of the waqf's stipulations or its annulment. This accords with, and confirms, what Ibn Khaldun said in the passage quoted earlier.

Nor were these warnings confined to amirs and sultans. Endowers of every kind and of every religious and social group threatened anyone who changed, altered or annulled their Waqfs, or stole their revenue, with sin and with the curse of God, His angels and all mankind, the waqf being sacred property. Consider, in this context, the waqf instrument of the Algerian scholar Abu Madyan,[19] dated 1320, more than 250 years before the waqf of Suleiman the Magnificent and his wife. The instrument converts the ownership of the village of Ein Karem, near Jerusalem, into a waqf for the benefit of his zāwiya (Sufi lodge) in Jerusalem and of the Maghrebis living in the city or coming to it in every age. It closes as follows: "... This blessed waqf has been completed with all its stipulations and elements, in accordance with its rules and with the soundness of its structure; its ruling has been executed and it has been concluded, having been made by one entitled to make it, in its proper place and in the approved manner, being lawful and permissible and free of anything that would lead to its annulment or dissolution; for it has become a confirmed waqf and a perpetual ḥabs, freed and rightly directed, that may not be owned, nor given in alms, nor donated, nor pledged, nor exchanged for money, nor compensated for, nor taken away.

It is not lawful for anyone who believes in God and the Last Day, and knows that he will return to his mighty Lord, whether amir or subordinate or unjust holder of power, to annul this waqf or any part of it, or to alter it, or to let any part of it lapse, or to impugn it or any part of it, or to seek its annulment or the annulment of any part of it, whether openly or by insinuation, by fatwa or by counsel, or by the contrivance of any stratagem, for 'Allah ˹even˺ knows the sly glances of the eyes and whatever the hearts conceal' [Q. 40:19]. Whoever does so, or assists in it, God Most High is his pursuer and his reckoner; He will call him to account for his deed and requite him for his act, and he shall meet God Most High while He is wrathful with him and not pleased with him, 'the Day when every soul will be

19 **On this waqf see: Abu al-Qasim Saʿd Allah. «al-Dīn wa-l-Wiṣāya fī Waqf Abi Madyan bil-Quds» [Religion and Tutelage in the Waqf of Abu Madyan in Jerusalem].** *Muʾtamar al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn* **[Conference on Waqfs in Bilād al-Shām from the Islamic Conquest to the End of the Twentieth Century]. Amman: University of Jordan, 2008; ʿAbd al-Hadi al-Tazi. «Ḥayy al-Maghāriba bil-Quds» [The Maghāriba Quarter in Jerusalem].** *Majallat al-Dirāsāt al-Filasṭīniyya*, **vol. 1, 1972; Nazmi al-Juʿba.** *Ḥārat al-Yahūd wa-Ḥārat al-Maghāriba fī al-Quds al-Qadīma: al-Tārīkh wa-l-Maṣīr mā bayna al-Tadmīr wa-l-Tahwīd* **[The Jewish Quarter and the Maghāriba Quarter in the Old City of Jerusalem: History and Fate between Destruction and Judaization]. Beirut: Institute for Palestine Studies, 2019; Musa Sroor. «al-Waqf ka-Adāt Muqāwamat al-Istiʿmār: Qaryat Ein Karem al-Maqdisiyya Anmūdhajan» [The Waqf as an Instrument of Resistance to Colonialism: The Jerusalem Village of Ein Karem as a Case Study].** *Majallat al-Maqdisiyya*, **year 4, no. 13, winter 2022, pp. 121159-; L. Massignon. «Documents sur certains** *waqf*s **des lieux saints de l›Islam : principalement sur le** *waqf* **Tamimi à Hébron et sur le waqf tlemcénien Abû Madyan à Jérusalem.»** *Revue des Études Islamiques*. **Paris: Librairie Orientaliste Paul Geuthner, 1952; Musa Sroor. «Le contentieux franco-israélien à propos des biens** *waqf*s **maghrébins à Jérusalem 19481967-.»** *Annuaire Droit et Religions*, **Université d›Aix-Marseille, vol. 9, 2018; A. L. Tibawi.** *The Islamic Pious Foundations in Jerusalem: Origins, History and Usurpation by Israel*. **London: The Islamic Cultural Centre, 1978.**

presented with whatever good it has done. And it will wish that its misdeeds were far off. And Allah warns you about Himself. And Allah is Ever Gracious to ˹His˺ servants' [Q. 3:30].

Whoever contravenes this has turned from the command of his Lord and rebelled against Him, has made plain His threat against himself, and has brought upon himself what is decreed for the transgressors: they 'will be condemned by Allah and ˹all˺ those who condemn' [Q. 2:159], and their reward is to be 'condemned by Allah, the angels, and all of humanity' [Q. 2:161]. Woe, then, to whoever contravenes and transgresses it, according to the word of the Most High: 'But whoever changes the will after hearing it, the blame will only be on those who made the change. Surely Allah is All-Hearing, All-Knowing' [Q. 2:181]."[20]

Abu Madyan's warning to anyone who encroached on his waqf and tried to change it, alter it, cancel it or seize it, whether ordinary individuals, amirs and sultans, or those who hold power, threatening them with a great punishment from God, shows his settled belief that the sanctity of the waqf, respect for the endower's stipulations and fear of God's punishment would together give his waqf immunity against attempts to seize it and to encroach on its revenue.

It is one of history's strange ironies that this waqf, endowed by an ordinary man with no political influence or office, has had its stipulations respected throughout history. It was never subjected to the policies and legislation of the Ottoman state, and even the colonial powers recognized its special character. Those same Ottoman laws, meanwhile, did not respect the stipulations and warnings of the greatest of the Ottoman sultans, Suleiman the Magnificent, and his wife, as later chapters will demonstrate.

At this point one must hear what the jurists say about the endower's stipulations and whether they must be respected, so that one understands fully why endowers took such care to include their stipulations in their waqf instruments. The founder of a waqf must lay down their own stipulations; the jurists refer to these as "the ten stipulations," though the founder has the right to choose only some of them, or all. They are normally appended to every founding document of a waqf, which is called sometimes the waqfiyya and sometimes the waqf instrument (*kitāb al-waqf*).

Granting and depriving *(*al-iʿṭāʾ wa-l-ḥirmān*):* The endower may name new beneficiaries not mentioned in the original waqf deed and exclude one or all of the existing beneficiaries. The administrator of the waqf (the mutawallī) may like-

20 The waqf instrument of Abu Madyan al-Ghawth of 1320, comprising the waqf of the village of Ein Karem: French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.

wise add beneficiaries other than those named by the founder, and exclude beneficiaries according to set criteria.[21]

Admitting and excluding (al-idkhāl wa-l-ikhrāj): The founder may add new beneficiaries under the principle of expansion. He may also remove beneficiaries, all or some of them, from the list of those entitled to his waqf's revenue, meaning that he can withdraw income from named beneficiaries, whether during the founding period or after it.[22]

Changing and altering (al-taghyīr wa-l-tabdīl): The founder may amend the provisions of the waqf and lay down new ones; that is, he may change the condition of the waqf's assets, converting a shop into a house and so on. This stipulation is broader than the preceding ones and must be applied in full.[23] It is noted that most waqfiyyas stipulate that no alteration or change in the waqf is permitted.

Increasing and decreasing (al-ziyāda wa-l-nuqṣān): The founder may increase one beneficiary's share of the waqf's income and reduce another's. Some may thus be favored over others by being assigned additional shares when the produce is distributed, or by a permanent supplement to their shares, at the expense of the remaining beneficiaries.[24]

Exchange and substitution (al-ibdāl wa-l-istibdāl): The endower, or founder, may decide to replace an endowed property with another, acquired property; the new property then becomes itself the object of a waqf in place of the other. The jurists have used the term istibdāl for the sale of waqf property, whether real estate or a financial conversion, and the purchase with the proceeds of other property which in turn becomes waqf property, taking the place of what was sold. This may involve the exchange of one property for another, or a substitution in which a property is bought with the proceeds of the exchange and the new property is converted into a waqf.[25]

It should be noted that these stipulations are, in principle, to be applied and observed in full, even after the endower's death. The jurists have indicated, however, that they may be set aside in some cases where doing so benefits the waqf and serves its preservation and optimal development. It is also worth remembering that these standards were laid down by the jurists, and that their application often differed from one jurist to another and from one period to another.

21 **Muhammad Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf lil-Qaḍāʾ ʿalā Mushkilāt al-Awqāf*. **Cairo: Maktabat al-Ahrām, 1928, pp. 5559-; Mustafa al-Zarqa.** *Aḥkām al-Waqf* **[The Rules of Waqf]. Damascus: Maṭbaʿat al-Jamʿiyya al-Sūriyya, 1947, p. 133; Ahmad ʿAli al-Khatib.** *al-Waqf wa-l-Waṣāyā*. **Baghdad: University of Baghdad, 1978, p. 114.**

22 **ʿAbd al-Jalīl ʿAshshub.** *Kitāb al-Waqf* **[The Book of Waqf]. 2nd ed. Cairo: Maṭbaʿat al-Rajāʾ, 1935, p. 81; Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf*, **p. 54.**

23 **ʿAshshub.** *Kitāb al-Waqf*, **pp. 9495-; al-Zarqa.** *Aḥkām al-Waqf*, **p. 137.**

24 **al-Khatib.** *al-Waqf wa-l-Waṣāyā*, **pp. 113114-; al-Zarqa.** *Aḥkām al-Waqf*, **p. 135; ʿAshshub.** *Kitāb al-Waqf*, **pp. 7980-.**

25 **Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf*, **p. 67; ʿAshshub.** *Kitāb al-Waqf*, **p. 87.**

The Hanafi school identified seven cases in which the endower's stipulations need not be observed:[26][27*]

> I: where the endower stipulated that no alteration would be accepted.
>
> II: where the founder stipulated that the qadi may not relieve the waqf's administrator of his duties.
>
> III: where the land may not be leased for more than a year, and may not be leased to anyone unwilling to take a yearly lease.
>
> IV: where the founder stipulated prayer at his grave; this stipulation became unacceptable because prayer at graves is considered reprehensible.
>
> V: where the founder asked that the surplus of the produce be distributed to the poor at a mosque he designated.
>
> VI: where the founder stipulated that bread and meat be distributed daily to the needy; in this case the administrator may pay the equivalent in cash, and the needy decide for themselves what they want.
>
> VII: the qadi may increase the administrator's salary if it is shown to be insufficient and he is a righteous scholar.[28]

The endower's stipulations, as set down in their waqf instrument, must therefore be respected, and the qadi must supervise their execution. The cases in which the qadi may depart from them all serve the interest of the waqf and of the endower, in this world and the next, in the sense that they spare them from falling into disobedience to the Almighty Creator.

26 **Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf*, **pp. 99103-; ʿAshshub.** *Kitāb al-Waqf*, **pp. 142145-.**

27 * **The seven cases are stipulations that a founder may have set and that the Hanafi jurists allow the qadi to set aside where the waqf's interest requires it; the first, a stipulation that no alteration be accepted, is itself one of the stipulations that may be set aside. [Translator's note]**

28 **Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf*, **pp. 99103-; ʿAshshub.** *Kitāb al-Waqf*, **pp. 142145-.**

Waqf Documents and Proof of Title

Waqf documents[29] are legal documents. They were not written, in the first instance, as a historical source but as instruments recording the rights of individuals and regulating their affairs within inherited legal frameworks. They, therefore, contain no points of view and express no positions, tendencies or ideologies, as travel literature, biographies and memoirs, or the press do; nor do they contain the decisions of a state or express its policy in theory and practice, as the documents of foreign consulates or local government institutions do. This gives them credibility greater than that of other archival documents. They are also, in general, hard to lose or destroy. Jerusalem's Waqfs of every kind, for example, did not, overall, suffer damage or loss in the catastrophes that befell Palestine, or through neglect and lack of care on the part of official or local bodies. From the time it took control of the Arab provinces, including Jerusalem in 1516, the Ottoman administration re-registered the pre-Ottoman waqfiyyas and waqf properties in special registers, as it did other forms of property. This multiplied the places and registers that record the origins of these documents and gave them, if one might say, a kind of immortality. Copies survive in the registers of the Sharia courts; other copies in the official registers of the state, such as the Tapu registers and the registers of the Waqfs and land departments; and still others, as "family papers," in the hands of those groups of Jerusalem society that dealt with waqf institutions over the centuries, whether by holding the right to administer these Waqfs or the right to benefit from them, or by holding deeds establishing their right to exploit them by one of the many modes of exploitation, such as lease (*ijāra*) or ḥikr (long lease on waqf land). Waqf documents are thus distinguished by the multiplicity of their copies and of the places where they are found, which is not the case

29 By waqf documents we mean the documents concerning the affairs of the Waqfs. They begin, fundamentally, with what is known as the waqfiyya or the waqf instrument (*kitāb al-waqf*), and they include everything that branches from that waqfiyya in the form of other contracts and deeds: deeds of appointment as administrator (*tawliya*); leases (*ijāra*) of their various kinds; *istibdāl* (substitution); *ḥikr* (ground lease); *khulū* (key money); the lawful *marṣad* (a lessee›s recognized charge on the waqf for outlays advanced); *muqāṭaʿa* (fixed-sum lease); *shadd al-maska* (customary tenancy right); *kirdār* (a tenant›s right in his improvements); *musāqāt* (irrigation-sharing contract); *mughārasa* (planting contract); *muzāraʿa* (sharecropping); statements of waqf income and expenditure; encroachments and complaints; sultanic firmans concerning waqf affairs; and others. These documents are registered in the registers of the Sharia courts, and the Sharia qadi is the official chiefly responsible, after the administrators, for issuing them and for following up on their affairs. The registers of the Sharia qadi, that is, the registers of the Sharia courts, are therefore the principal repository of these documents. Waqf documents contain detailed information about the waqf property: its founding, management, use and preservation; any procedures affecting it, whether concerning the inheritance of usufruct or the modes of its exploitation; the endower›s stipulations and aims; and encroachments on its revenues and properties. This is what gives the waqf its permanence and the continuity that guarantees its survival, and what makes it necessary to preserve it and to carry out the endower›s stipulations, however long the time and however many the generations. Waqf documents also identify the endower, male or female, and the beneficiaries of the waqf. They describe the endowed property, its kinds, its location and boundaries, and how it came into the endower›s possession. They further contain the stipulations and legal procedures required by judicial rulings, drafted according to whichever school of jurisprudence the endower chose. Some contain information and facts on the exploitation of the waqf property, and other information on its restoration and revenues. For more on waqf documents see: Musa Sroor. «Naḥwa Ruʾya lil-Khurūj min ‹al-Mīkrū-Tārīkh› ilā ‹al-Mākrū-Tārīkh›: Wathāʾiq Awqāf al-Quds bi-Waṣfihā Maṣdaran Tārīkhiyyan Anmūdhajan» [Toward a Vision for Moving from «Micro-History» to «Macro-History»: The Waqf Documents of Jerusalem as a Historical Source, a Case Study]. *Majallat Usṭūr lil-Dirāsāt al-Tārīkhiyya* [Ostour Journal of Historical Studies], no. 12, July 2020, pp. 214232-.

with other documents. This, in itself, posed a challenge for the researcher, but it helps preserve the documents from loss. Nor do the function and validity of these documents end with the event that occasioned their writing. They acquire permanence, because they attest to the continuing effect of the event for which they were created, and their existence guarantees its continuation. Their existence binds past to present and future, which cannot be said of other documents of limited validity, because waqf documents are tied, on the one hand, to a physical space, real estate and the like, and on the other to a human succession of administrators and beneficiaries.

It is also very important to note that waqf documents are hard to forge, although some documents have been forged or tampered with for various reasons. The reason is that a waqf document is never a single document that could be forged in isolation: hundreds of other waqf documents may branch from a single one, written and registered at different times and covering many aspects and subjects. The dispersal and ramification of the subjects and registration dates of these documents is an important factor in protecting them from tampering and forgery. And if forgery does occur, it is easily detected, especially as these documents are tied to architectural evidence and facts on the ground that are hard to erase together.

The Sultans' Waqfs between the Jurisprudence of Irṣād (Takhṣīṣāt) and the Ottoman Land Code of 1858

Waqf institutions, whether educational, medical or social, needed sustainable funding, and their founders had no choice but to secure fixed and lasting incomes for them, either by converting the revenues of large tracts of land into Waqfs or by building markets and endowing those. The difficulty that confronted amirs and sultans was that, by the consensus of the jurists, a waqf is valid and lawful only if the endower owns the land he converts into waqf for the benefit of the institutions bearing his name. The endower must hold the endowed property as private property, because the waqf is a perpetual charity, and charity cannot be given out of what belongs to others, that is, out of what the giver does not own. The relationship of some amirs and sultans to state funds and state lands was problematic, particularly from the Mamluk period (1256 to 1517) onward, and there was no distinction between the sultan's private purse and the state treasury, particularly where the founding of charitable and community projects was concerned. Many of the amirs and sultans of the Mamluk state therefore converted state land into Waqfs to support the charitable institutions that bore their names, and the sultans of the House of Osman followed in their footsteps. The step contravened

Islamic jurisprudence, so they needed a legal and Sharia-compliant way out to legitimize their endowments: fatwas from the religious scholars and the jurists of the schools. The jurists supplied it with a fatwa permitting a sultan or amir to endow land whose ownership lay with the state treasury, that is, mīrī (state) land, on two conditions: that it be endowed for an Islamic charitable purpose, and that the purpose be one of the categories already entitled to support from the Muslim public treasury (*bayt al-māl*) or the state treasury. The jurists distinguished this new arrangement, for which they coined a new juristic term, *waqf al-irṣād* or *waqf al-takhṣīṣāt*, in which ownership of the endowed property remains with the state rather than passing to the endower, from the waqf as commonly understood, which rests on the endower's ownership of the endowed property. And to forestall a later sultan from cancelling such Waqfs and returning their properties to the state treasury, whether in good faith or out of vengeance against his predecessors and a wish to confiscate their wealth, as Ibn Khaldun described, the jurists stipulated that the sultans must respect this type of waqf, and that it could not be cancelled or its properties and lands returned to the Muslim public treasury or the state treasury.[30]

Sultans, their jurists and their chief muftis (*shaykh al-islām*) went on respecting this new type of waqf from the early Mamluk period (remains unknown under which sultan exactly) until 1858.

In 1858, as part of its reform policy, the Ottoman state issued the Land Code, also known as the Tapu Law, followed by supplementary laws that clarified it and closed its gaps. The Code was meant to legitimize the state's policy and the measures it had taken against the properties of waqf institutions founded by amirs and sultans throughout the preceding five centuries and more. The Ottoman legislator, who would certainly respect the sanctity and legitimacy of the waqf, could not abolish it outright and confiscate its lands and properties by legal and Sharia means. He, therefore, looked for legal loopholes through which to carry out his policy of undermining the waqf system and taking control of its property, and found what he wanted in *waqf al-irṣād*, the *takhṣīṣāt*, or the "sultans' waqf." He stripped the waqf character from every waqf founded by amirs, sultans and their entourages whose personal ownership of the land could not be proved. In other words, every waqf established by an amir or sultan out of mīrī land, that is, out of the land of the state and its treasury, was confiscated as an unlawful, non-true waqf. This amounted to annulling the fatwa of the Mamluk jurists, and it disregarded the respect the Ottoman scholars themselves had shown those fatwas,

30 **On this question see: Muhammad As'ad al-Husayni.** *al-Manhal al-Ṣāfī fī al-Waqf wa-Aḥkāmih*. **Jerusalem: Wikālat Abu 'Arafa, 1982, pp. 2127-; 'Ashshub.** *Kitāb al-Waqf*, **p. 24; al-Zarqa.** *Aḥkām al-Waqf*, **pp. 7577-.**

and acted upon, before 1858.

The purpose of this juristic and legal step was to take possession of the largest tracts of fertile waqf land in the Ottoman cities and provinces, Palestine among them. More than 300 villages and farms in Palestine were placed under this classification and stripped of their waqf character, as the examples below will show.

The state, as a dominant power, could violate the sanctity of the waqf and use its influence to seize its most important properties, but it could not abolish the waqf altogether: that would have created a legal, religious and social dilemma. It looked instead for legal ways out, relying on the jurisprudential foundations of the waqf and cancelling every innovation that did not serve its interests and policies.

Article 1 of the Land Code divided the lands of the Ottoman state into five categories: freehold (*mulk*) land, state (*mīrī*) land, endowed (*mawqūfa*) land, communal [or abandoned] (*matrūka*) land and waste (*mawāt*) land.[31] In the English of the Code's first translator, F. Ongley (1892):

"Land in Turkey is divided into five classes: i. Arazi Memluke. Lands held in fee simple, freehold lands. ii. Arazi Mirie. Crown lands, belonging to the state exchequer. iii. Arazi Mevkufe. Lands possessed in mortmain, but tenanted by a kind of copyhold. iv. Arazi Metruke. Lands abandoned without cultivation or ostensible owner. v. Arazi Mevat. Dead lands, uncultivated and unappropriated."*

Article 4 defined what was meant by endowed land:

> "Arazi Mevkufe is of two classes: i. Is land which while being really Arazi Memluke has been made Vakf in accordance with the Sheri. The servitude and all the rights of possession of this kind of Arazi Mevkufe being that which concerns the Vakf, the provisions of the law do not apply to it; and as it is necessary that they should be treated in accordance with the conditions, whatever they may be, of the bequeather only, this class of Arazi Mevkufe will not be treated on in this law.
>
> ii. Is land separated from Arazi Mirie which has been made Vakf by the Sultans or by others with the permission of the Sultan. As the Vakfiet of this kind of land only means that the Government revenues, such as the tithes and taxes, of a piece of land separated from Arazi Mirie have been assigned to some object by the Sultan, this

31 The Ottoman Land Code of 1858, Article 1.

* Source of the two Land Code passages: F. Ongley (trans.), The Ottoman Land Code (London: W. Clowes and Sons, 1892), Articles 1 and 4, pp. 13-; HathiTrust osu.32437122293281.

> kind of Arazi Mevkufe is not real Vakf (Evkaf Sahiha). Most of the Arazi Mevkufe in the Imperial dominions is of this category; and the servitude of this Takhsisat category of Arazi Mevkufe, like simple Arazi Mirie, being that which concerns the Beit ul Mal, the legal procedure which will be explained and stated hereafter will be carried out entirely regarding it."[3233*]

From this article emerged what are called the true waqf (*waqf ṣaḥīḥ*) and the non-true waqf (*waqf ghayr ṣaḥīḥ*). A waqf whose corpus originally belonged to the endower is a true waqf: it keeps its waqf character, the new land laws do not apply to it, and it is governed by the endower's stipulations as set out in the waqf instrument. A waqf endowed by the sultans, whose corpus belongs to the public treasury, is a non-true waqf: its waqf character is cancelled and it reverts to the ownership of the Muslim public treasury, that is, to the ownership it had before its conversion into waqf, and the rules governing mīrī land apply to it. As soon as the Code was issued these concepts began to be applied on the ground, and the process neither stopped nor ended with the end of Ottoman rule in Palestine. It continued through the Mandate, Jordanian and Israeli periods.

The Jurisprudence of Prescription

The divergent approaches of Ottoman legislation to charitable and family Waqfs, and the ways it was applied, produced contradictory and conflicting interpretations from one qadi to another and from one period to another, as happened with Article 4 of the 1858 Land Code. The application to certain waqf cases of the articles of the *Mecelle*, the Ottoman civil code promulgated in 1876, had the greatest effect of all in legitimizing encroachments on waqf property and its seizure. The matter is important enough to be set out here.

The *Mecelle* (*Majallat al-Aḥkām al-ʿAdliyya*) is a legal code issued by the Ottoman state in 1876. It consists of 1,851 articles, divided into a general introduction of one hundred articles, the first defining the science of jurisprudence and its divisions and the rest setting out the general principles known as the universal maxims (*al-qawāʿid al-kulliyya*), and a second part, Articles 101 to 1851, divided into sixteen books dealing with various questions of jurisprudence.

Islamic jurisprudence is a ramified science with several schools; the Ottoman

32 Ibid.

33 * Articles 1 and 4 are quoted from F. Ongley (trans.), The Ottoman Land Code (London: W. Clowes and Sons, 1892), pp. 13-. [Translator's note]

state had adopted the Hanafi school as its official school; and within that school the jurists who came after Abu Hanifa and his disciples had differed in their interpretations. The state therefore saw the need to codify the rules of civil law according to the Hanafi school, so that they could be consulted with ease. It appointed a committee of seven scholars to compose a book on transactions (*muʿāmalāt*) aimed at codifying Islamic legislation as found in the jurisprudence of Imam Abu Hanifa. The result was what is called the Ottoman Civil Code, or the *Mecelle*.

A study of the registers of the Jerusalem Sharia Court, particularly for the last quarter of the nineteenth century, shows that the qadis of Jerusalem relied on the articles of the *Mecelle* in issuing their rulings, or in justifying them.

To show how the practical application of these articles in the Ottoman courts affected the ownership of waqf property and its revenues, turn to two cases recorded in the registers of the Ottoman Sharia Court of Jerusalem. The first shows how certain provisions of the *Mecelle* were applied to legitimize and justify encroachment on waqf property. The second sets the articles of the *Mecelle* against the decisions of some qadis in Jerusalem who relied on them, in order to see how far the rulings of the qadis agreed with, or contradicted, the provisions on which they were based.

Two articles of the *Mecelle* are relevant here, Articles 1660 and 1661.[34] They concern what is known as prescription (*taqādum*): the expiry of the legal period within which a claim may be brought before the qadi.

- **Article 1660** provides: "A claim concerning endowed real property which does not go to the origin (*aṣl*) of the waqf shall not be heard after it has been left for fifteen years."
- **Article 1661** provides: "A claim by the administrator (*mutawallī*) concerning the origin of the waqf shall be heard for up to thirty-six years and shall not be heard after thirty-six years have passed. For example, if a person has disposed of real property as an owner for thirty-six years, and the administrator of a waqf then claims that it is one of the properties of his waqf, his claim shall not be heard."

It must be stressed in this context that the jurists agree that rights do not lapse with the passage of time, however long or short. A person who holds a right against another does not lose that right through the passage of a period of time, whether the right concerns the usufruct of real property or its corpus. Moreover, just as a right does not lapse with time, so prescription is not, in the eyes of Islamic law, a means of acquiring ownership.[35]

The justification on which the jurists relied in issuing these provisions is that if

34 **The *Mecelle* (*Majallat al-Aḥkām al-ʿAdliyya*), 1876.**
35 **Muhammad al-Kubaysi. *Aḥkām al-Awqāf fī al-Sharīʿa al-Islāmiyya*. Baghdad: Maṭbaʿat al-Irshād, 1977, p. 307.**

the holder of a right stays silent for a long period and does not claim it, though able to do so and though no lawful impediment prevents him, his silence is evidence that he has abandoned the right.

A claimant who watches his adversary hold his land for a long period and dispose of it as an owner disposes of his own property, by building, leasing, cultivating or planting, or by attributing it to himself, while no lawful impediment prevents him from objecting or claiming his right, does not deserve that property.

On this basis the jurists decided that where a right has grown old, and a long time has passed without its holder claiming it, though able to do so and though nothing prevented him, the claim shall not be heard against the defendant, by reason ofprescription.[36]

In the jurists' view, the refusal to hear a claim does not mean that the right lapses; a right does not lapse by prescription. If the defendant acknowledges the right, he is bound by it, and the qadi may not refuse to rule in the claimant's favor on the pretext of the passage of time. What lapses is the claimant's right to prove his claim by evidence or to demand that his opponent take the oath.

Thus, if the defendant denies the claim and pleads prescription, the claimant cannot produce his evidence, it will not be heard, and he has no right to put his opponent on oath. But if the defendant acknowledges the claim, the Qadi must rule against him on the strength of his acknowledgment.[37]

The wisdom behind the jurists' position is to push the holder of a right to claim it, so that no right is lost through the loss of evidence and the forgetfulness of witnesses.

The Maliki jurists and the later Hanafis agreed on barring the hearing of claims by prescription, but they did not agree on the period sufficient to extinguish a claimant's right to bring his claim; their views and interpretations diverged. The divergence reflects their different conceptions of the nature of the various rights, the circumstances surrounding them, and the relationship between claimant and defendant.

The Malikis held several views on the length of the period; the most prominent is that of Imam Malik himself, who held that it should not be fixed in a set number of years but left to the judgment of the judge.[38]

What concerns us in the Maliki position on waqf claims is that the Malikis hold

36 **al-Kubaysi.** *Aḥkām al-Awqāf fī al-Sharīʿa al-Islāmiyya*, **p. 307.**
37 **Ibid.**
38 **Ibid.**

that prescription never runs against Waqfs, however long the time, because judgment on them is obligatory and the ruling binding. The Hanafis, by contrast, held three views on the period that bars the hearing of a claim: one group fixed it at thirty-six years, a second at thirty years, and a third at thirty-three years.

Where the Hanafi jurists fixed the period as described, the Ottoman caliphs found it too long and reduced it to fifteen years. Sultan Suleiman the Magnificent (r. 1520 to 1566) issued an order forbidding the qadis to hear any claim that the claimant had left for fifteen years without excuse, but excepted waqf and inheritance, for which he kept the period at thirty-three years.[39]

Returning to Articles 1660 and 1661 of the *Mecelle*, it is noted that they defined the qadi's authority to issue Sharia rulings on waqf-related complaints by reference to the sources of jurisprudence, that is, Islamic jurisprudence. More than that, they served to overturn certain rulings by qadis on such complaints where those rulings had not observed the articles of the *Mecelle*. In many cases those accused of usurping Waqfs, or of acting contrary to the rules of waqf, brandished these articles as a weapon against claimant and qadi alike, wresting rulings from the qadis that barred the hearing of the complaints against them, on the pretext that the period allowed for hearing waqf-related complaints had expired.

I offer two examples: the first concerns the Quwaydar waqf in Jerusalem, the second the al-ʿAnbusi and Hindiyya waqf, also in Jerusalem.

On 7 Muḥarram 1331 (17 December 1912), Musa ibn Muhammad Quwaydar, administrator of the waqf of Muhammad ibn Ibrahim Quwaydar in Jerusalem, rejected the qadi's decision of 29 Dhū al-Ḥijja 1330, which had removed him from office for proven breach of trust: he had altered the press belonging to the waqf, converting it into a large warehouse and a bakery, without lawful justification or the qadi's permission. The decision also ordered the bakery and warehouse closed, the keys handed to the court, and another administrator appointed. The administrator argued that neither Shaykh ʿAbd al-Qadir Efendi nor his clients had any right to bring this complaint against him, and that the qadi had no right to hear it, on the ground that he had held and disposed of this waqf, he and his brother before him and the other administrators before them, for a period reaching seventy years, without objection or dispute from anyone. He stated that under Articles 1660 and 1661 of the *Mecelle* (explained above) the complaint could not be heard because the legal period for hearing such a complaint had expired. In his words: "These complainants may not challenge me now, after all this time, when they

39 **Khayr al-Din al-Ramli.** *al-Fatāwā al-Khayriyya li-Nafʿ al-Bariyya* **[The Beneficent Fatwas for the Good of Mankind]. Beirut: Dār al-Maʿārif, 1974, vol. 1, p. 48; al-Kubaysi.** *Aḥkām al-Awqāf fī al-Sharīʿa al-Islāmiyya*, **p. 312.**

had no impediment or lawful excuse to prevent them from claiming before now, and when they have kept silent until today though they saw with their own eyes how I and those before me disposed of the waqf and never lifted a finger. Had they any right, they would not have kept silent all this time." Following the case through the file, one observes that the qadi ruled in favor of the administrator, that is, of the party encroaching on the waqf, and refused to hear the complaint because the period allowed for hearing it under Articles 1660 and 1661 of the *Mecelle* had expired.[40]

The second example, also from the registers of the Ottoman Sharia Court of Jerusalem, shows how some holders of administrative and social influence in Jerusalem exploited their position to take control of waqf property unlawfully. This is the case of the al-ʿAnbusi and Hindiyya waqf in Jerusalem.

The al-ʿAnbusi and Hindiyya waqf is one of the family Waqfs of Jerusalem. It was founded in Rabīʿ al-Awwal 1186 AH / 1772 CE and consists of a plot of land planted with olive trees and carrying buildings, on the Bāb al-Khalīl (Jaffa Gate) side, outside the walls of Jerusalem. The waqf is in two parts: eighteen qīrāṭ belong to the waqf of Shaykh Taqi al-Din, known as al-ʿAnbusi, who had endowed it on his children and descendants; the remaining quarter, six qīrāṭ, belongs to the waqf of Muhammad Bey ibn Ahmad Bey Hindiyya, who had likewise endowed it on his descendants. Until 1296 AH / 1879 CE the land remained in the hands of the administrators, generation after generation.

The case brought before the qadi of Jerusalem on 10 Rabīʿ al-Awwal 1298 (10 February 1881) and 6 Jumādā al-Ūlā 1327 (26 May 1909) shows that in 1296 AH / 1879 CE the mayor of Jerusalem, ʿUmar Efendi ibn ʿAbd al-Salam Efendi al-Husayni, usurped (the documents use the word usurpation, *ightiṣāb*) a plot of 600 cubits (*dhirāʿ*) on the eastern side of the al-ʿAnbusi and Hindiyya waqf land, beside the road, and built six shops on it with money from the municipal treasury, without obtaining the permission of the waqf's administrators. The administrators at the time were Shaykh Asʿad Efendi ibn Muhammad Salih Efendi al-Imām, administrator of the waqf of his paternal grandfather al-ʿAnbusi, and Shaykh ʿUmar Bey ibn ʿUmar Bey Hindiyya, administrator of the waqf of his paternal grandfather Hindiyya. The mayor's justification was that the land was part of the public road and not part of the waqf.

The administrators responded by bringing an action against the municipality and its mayor in the Jerusalem Sharia Court on 10 Rabīʿ al-Awwal 1298, corresponding to 10 February 1881. The deputy qadi of Jerusalem at the time, Muhammad Fawzi,

40 **Jerusalem Sharia Court Register (*Sijill*) 391, 17 Shawwāl 1316 / 28 February 1899, p. 140.**

issued a ruling based on Article 906 of the *Mecelle*, ordering the mayor to pay rent for the usurped land on which the six shops stood, from the municipal treasury to the account of the waqf, in the amount of one thousand piasters (qirsh) a year. Following the ruling, the administrative council of the Jerusalem municipality resolved that the municipality would pay the agreed rent to the waqf.[41]

But when circling back to the text of Article 906, it is noticed that it does not support the ruling. It provides that the building must be demolished, or that the waqf may take ownership of the building at the lowest price if its demolition would damage the land.[42]

Following the case further through the registers of the Jerusalem court, it is observed that Qadi Muhammad Fawzi's decision encouraged the representatives of other government institutions in Jerusalem to usurp another plot of this waqf, measuring 3,960 square cubits, and to build on it without the administrators' permission. This is what ʿArif Hikmat Bey ibn Musa al-Husayni, director of the Department of Education in Jerusalem, did in 1307 AH / 1889 CE.

The act provoked the protest of the waqf's administrators, who lodged a complaint with the court on 6 Jumādā al-Ūlā 1327 (26 May 1909). On re-examining the case, the qadi held that the earlier ruling of Qadi Muhammad Fawzi was mistaken and that the provision on which it rested, Article 906, did not support it. He issued a new ruling, contrary to that of Muhammad Fawzi, ordering the building demolished in its entirety. The director of Education rejected the ruling as unlawful, relying on Article 1660 of the *Mecelle* and arguing as follows: the building had been erected on the land in 1307, and it was now 1327, so twenty years had passed since the building; complaints concerning the usurpation of real property are not heard after fifteen years, all the more so since the Department of Education had exercised full lawful disposal over the buildings, by building, demolishing and using them, without objection from anyone and without any lawful excuse preventing a complaint during that period.

The qadi thereupon withdrew his ruling, and the Department of Education kept control of the property of the al-ʿAnbusi and Hindiyya waqf.[43] Here one sees how Ottoman legislation was exploited to justify the seizure of waqf property and its conversion into private property, by legal and Sharia means, at the hands of the influential and the powerful.

These Ottoman enactments, foreign to the rules of waqf in Islamic jurisprudence,

41 **Jerusalem Sharia Court Register (*Sijill*) 402, 25 Dhū al-Ḥijja 1326 / 18 January 1909, pp. 300310-; Jerusalem Sharia Court Register (*Sijill*) 403, 17 Shaʿbān 1327 / 3 September 1909, pp. 4758-.**

42 **The *Mecelle*, 1876, Article 906.**

43 **Sroor.** *Fondations pieuses en mouvement*, **pp. 320324-.**

did not originate as a justification for the appropriation of waqf property and its revenues by those who benefited from them. They were, fundamentally, a means of preserving waqf property and preventing encroachment on it, and of compelling those responsible for administering Waqfs, charitable and family alike, not to stay silent about encroachments on waqf property and not to wait for years before bringing complaints and actions against the unlawful seizure of waqf property. It must be stressed here that the articles of the Ottoman civil code cited above concern only the barring of claims in the courts; they give usurpers no right whatever to the ownership of waqf property.[44] The ownership of the waqf is established, first, by its documents; second, by its rights; and third, by the unlawfulness of any transfer of waqf ownership, however long the time.

In another respect, the articles of the Ottoman civil code, the *Mecelle* (Articles 1660 and 1661),[45] which remain in force in Palestinian law today, make the barring of a claim conditional on the absence of any lawful, legal or justifiable impediment that prevented those responsible for the waqf from bringing actions against the seizure of waqf property throughout the period the articles prescribe.

International Law

As is well known, Palestine has been subject, since the end of the Ottoman period in 1918, to British colonial rule and then to Israeli settler-colonial occupation, and the courts operating in Palestine have been the courts of the colonial authorities. This colonialism has been accompanied by the displacement of the population, the occupation of the land, and the seizure of property, waqf and non-waqf alike, which has prevented the holders of rights from bringing their claims before an impartial national or international judiciary. That fulfills the condition under which, in the Ottoman civil code, a claim may not be barred. Quite apart from this, international legislation and international law do not recognize colonial policies. On 26 November 1968 the United Nations General Assembly adopted a convention, in force from 11 November 1970, entitled the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, whether committed in time of war or in time of peace. Article I provides: "No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: (a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by

44 **On this question see: Husayn al-ʿĪsa. «Waḍʿ al-Yad bi-Murūr al-Zaman wa-Atharuhu ʿalā Daʿwā al-Milkiyya al-ʿAqāriyya fī al-Tashrīʿāt al-Filasṭiniyya» [Adverse Possession by Lapse of Time and Its Effect on Claims to Real Property Ownership in Palestinian Legislation].** *Majallat al-Dirāsāt al-Fiqhiyya wa-l-Qānūniyya* **[Journal of Jurisprudential and Legal Studies], no. 8, October 2021, pp. 214265-.**

45 **The** *Mecelle* **(***Majallat al-Aḥkām al-ʿAdliyya***), 1876.**

resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the 'grave breaches' enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims; (b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed."[46] [47*]

In the same context, the principles of international law applicable to occupation affirm that an occupying power is forbidden to make radical changes to private or public property in the territory it occupies that do not benefit the local population; and the leading authorities on international law affirm that "the authority of the occupant in occupied territory is not sovereign authority."[48] This legal status of the waqf drove the colonial authorities to look for ways around the "immunity" that the waqf guarantees to endowed real property.

Here one witnesses how the waqf, by its legal status, became an instrument of resistance to encroachment and to policies of seizure, whether by local parties or by intruding colonial ones. The question that presents itself is this. If the safe way to prevent the encroachments of the state, in its Islamic dimension, and the injustice of its rulers against people's property and wealth was to convert that property into Waqfs, how did the colonial states deal with Islamic waqf property and institutions in the countries they colonized? Did they respect the immunity of these Waqfs under the Sharia, or not? Did they treat Waqfs as they treated non-waqf property, or did waqf property receive special treatment on account of its special standing in the Sharia? To answer these questions, the book shall take apart two colonial cases: the Algerian case, that is, French colonial policy in Algeria, and the Palestinian case, that is, the policy of the Zionist occupation state in Palestine. The two cases overlap and resemble each other, particularly in certain waqf cases in Jerusalem such as that of the Waqfs of the village of Ein Kar-

46 al-Qaddumi, ʿIsa Sawfan. «Sijillāt al-Arshīf al-ʿUthmānī wa-Dawruhā fī Ḥifẓ wa-Istirdād al-Awqāf al-Maslūba (Waqfs al-Quds Anmūdhajan)» [The Registers of the Ottoman Archive and Their Role in Preserving and Recovering Plundered Waqfs (The Awqāf of Jerusalem as a Case Study)]. *Majallat Awqāf* [Waqfs Journal]. Kuwait Awqaf Public Foundation, Kuwait, no. 47, year 24, December 2024, pp. 111145-.

* Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, UN General Assembly resolution 2391 (XXIII), annex, 26 November 1968, Article I; text as reproduced by OHCHR

47

48 Ibid.

em, which belong to the waqf of the Algerian Abu Madyan al-Ghawth referred to above.

In neither case did the waqf institution remain beyond the reach of the colonial state's authority and the force of its laws. From the moment the French colonizer set foot on Algerian soil, and from the moment the Zionist colonizer proclaimed his state, the relationship between the waqf and the state, in its general and historical sense, changed from one of complementarity to one of collision and competition. In the colonial case, the colonial state regarded the waqf as depriving it of important sources of income on the one hand, and as weakening its domination over local society, elites and marginalized alike, on the other. It set out to turn the mosque, the school, and the religious and social elites who ran and benefited from waqf institutions into tools in the hands of its colonial administration. It also regarded waqf land as an existential challenge that undermined its settlement and colonial projects, because it could not buy waqf land or acquire it in the normal way without provoking a broad social reaction, given the waqf's religious immunity and its social and spiritual sanctity.

These colonial states therefore enacted a great deal of legislation, not only to strip the waqf and its institutions of their immunity, but also to devise "lawful" pretexts permitting them to seize waqf funds and properties. These policies produced radical changes in the ownership of charitable Waqfs, and their effect was felt not only in the existence of these Waqfs as waqf institutions but in their functions and purposes, which throughout the preceding historical periods had done so much to provide a range of community services in the absence of the state and its social responsibilities.

In Algeria, from the moment the French colonizer set foot on its soil, they saw the Waqfs as an obstacle to their expansion, because said Waqfs were independent of the state and its organs. The colonizers saw these endowments as a fundamental support of Algerian society and its Islamic identity, and as a fundamental factor in steadfastness and resistance, since an Algerian who lived on the yield and bounty of the Waqfs in every sphere of his life had no need of the colonizer or their state. The colonizers saw those Waqfs as an instrument of resistance to his policies of Frenchifying Algerian society and erasing its Arab and Islamic identity, because the educational waqf institutions worked against those policies and preserved that identity, all the more so since their administration and funding were independent and beyond the reach of the colonial state. The Waqfs also bound the Algerian closely to the wider Arab and Islamic world, since their revenues reached the Two Holy Sanctuaries and the poor of the Arab and Islamic

world.[49] Also, these Waqfs stood in the way of settler expansion and the colonial policies bound up with it.[50]

France accordingly saw the need to subjugate the waqf system, to demolish and liquidate it by undermining its foundations, Frenchifying its property, and taking direct control of Islamic religious observance. This step, in its view, would make France the party responsible for building and restoring mosques, for supervising the waqf schools, and for appointing their staff and paying their wages, and so would make it the controller of religious affairs and of the elites who ran them: local leaders, scholars and the shaykhs of the Sufi orders. The same policies would strip Algerians, above all the poor and the destitute, of the means of their existence, impoverishing them and keeping them in ignorance, and so make it easier to detach them from their social environment.[51]

Since the waqf was immune and the colonizer could not easily take control of its properties and institutions, he resorted to a policy of deception and false promises, his commanders affirming that France guaranteed freedom of religious observance and would not interfere with the freedom, beliefs or property of the inhabitants. After he had occupied Algiers, the French General de Bourmont gave his word of honor to Dey Husayn, the Ottoman governor of Algiers, at the signing of the convention of surrender on 4 July 1830. Within two months he had broken it. On 8 September 1830 he issued an ordinance confiscating the Waqfs and taking them over as property under the administration of the occupation, with the right to dispose of them. A day later he issued a second ordinance giving himself the right to dispose of, distribute and lease religious property, on the ground that the French government was the heir of the Ottoman government in the administration of waqf affairs and was responsible for them and for distributing their yield to those entitled. Yet, the waqf revenues were not handled as the general's ordinance provided; they were transferred to the French treasury instead, a step that was contrary to France's own laws, which "refuse the seizure of property that was in origin not the property of the Ottoman authority" but independent of it. France, by this policy, took control of the Waqfs and gathered the religious institutions and those who ran them into its grip, so that they became its employees, drawing their wages from it instead of from their waqf institutions.[52]

49 **Muhammad al-Hakim ibn ʿAwn. «Masʾalat al-Waqf fī al-Jazāʾir athnāʾ al-Iḥtilāl al-Faransī» [The Question of the Waqf in Algeria during the French Occupation].** *Majallat al-Maʿārif lil-Buḥūth wa-l-Dirāsāt al-Tārīkhiyya* **[al-Maʿārif Journal for Historical Research and Studies], vol. 3, no. 5, 2003, p. 217.**

50 **Nasir al-Din Saʿiduni.** *Dirāsāt fī al-Milkiyya al-ʿAqāriyya* **[Studies in Real Property Ownership]. Algiers: al-Muʾassasa al-Waṭaniyya lil-Kitāb, 1986, p. 252.**

51 **Ibn ʿAwn. «Masʾalat al-Waqf fī al-Jazāʾir athnāʾ al-Iḥtilāl al-Faransī,» p. 218.**

52 **Muhammad al-Bashir Maghli. «al-Takwīn al-Iqtiṣādī li-Niẓām al-Waqf al-Jazāʾirī» [The Economic Formation of the Algerian Waqf System].** *Majallat al-Maṣādir* **[al-Maṣādir Journal], vol. 4, no. 6, 2001, p. 169.**

France's hostile policy toward the waqf and its institutions did not stop there. Enactment followed enactment, giving France the power to seize waqf property and to dispose freely of its revenues and assets. On December 7th, 1830, an ordinance annexed waqf property to the property of the French state and gave it the right to distribute these properties to settlers, so as to drive French settlement forward and tighten control over the Algerians under various pretexts. The most important Waqfs of Algeria, those known as the Waqfs of the Two Holy Sanctuaries (Mecca and Medina), were confiscated on the ground that their properties were lost and their revenues spent on foreigners abroad. This new hostile policy met strong resistance from Algerian society, which forced France to reconsider, to retreat from its latest decisions, and to look for other methods and stratagems for taking over the Waqfs. These took the form of plans for organizing the Algerian waqf, submitted on 17 September 1835 by Girardin, director general of state property, which allowed the French administration to supervise the Waqfs directly through a committee of Algerian Muslims, under French supervision, to manage the income and expenditure of the Algerian charitable Waqfs.

In this way the Waqfs succeeded in resisting French colonial policy, but it was not the end. From that date onward, numerous successive decrees were issued to circumvent the waqf system and seize its property under various pretexts. Foremost among them was the ordinance of 1 October 1844, which stated in plain terms "that the waqf no longer enjoys immunity, whatever the institution to which it belongs," in order to bring it within French real property law "and devise new forms for the transfer of waqf land from Algerians to Europeans." A law of 30 October 1858 followed, subjecting Waqfs to the real property laws in force in France, "allowing Jews and some Muslims to own waqf property under the rules of private transactions," with the aim of liquidating the waqf institution.[53] In the same connection, the Algerian historian Muhammad al-Bashir Maghli quotes the French historian Christian, a contemporary of the French occupation of Algeria: "On the morrow of the occupation, once the French had established their footing in Algeria, a number of suspect deals were concluded which ended in the confiscation of Algerians' property on the pretext of conspiracy against the occupation forces."[54] This reveals other methods to which colonialism resorted in order to seize private and waqf property that it could not easily lay hands on.

For the same motives and reasons, and with the same policies under different names, the Zionist occupation state, from its proclamation on 15 May 1948, dealt with the waqf system in the areas of Palestine it occupied. This was despite the

53 Ibn ʿAwn. «Masʾalat al-Waqf fī al-Jazāʾir athnāʾ al-Iḥtilāl al-Faransī,» p. 225.
54 Maghli. «al-Takwīn al-Iqtiṣādī li-Niẓām al-Waqf al-Jazāʾirī,» p. 175.

fact that the United Nations partition resolution of 1947, which the leaders of the Zionist movement accepted, affirmed that "The family law and personal status of the various minorities and their religious interests, including endowments, shall be respected"* and despite the assurance of Ben-Gurion, the first head of the Israeli government, that his government was studying "means of resolving the questions on the basis of the laws of the Islamic waqf and the prevailing conditions." The concept of "prevailing conditions" here is vague and undefined, and it was used as a way of circumventing the laws of the Islamic waqf in the service of the "fabricated embryonic state."[55] [56*]

The Islamic Waqfs spread across Palestine posed a major dilemma for the Zionist occupation state, a state whose historical ownership did not reach 10 percent of the land it controlled by military force. To create a viable state, it had to take possession of the land it had seized militarily, including the waqf land under its control. To leave waqf land and its administration outside the political and judicial control of the Zionist state would have undermined the "embryonic state," its legitimacy, its geography, its economy and its policies, and would have granted the Islamic religious elites who controlled the waqf system a large measure of independence, stripping the occupation state of legitimacy in the eyes of its "Muslim citizens." For all these reasons it would have been dangerous for it to follow the path of the British Mandate, which had created an intermediary body, the Supreme Muslim Sharia Council formed in 1921, to supervise and administer religious affairs and the Islamic Waqfs in Palestine; it had to take direct control of the Islamic Waqfs and their administration. Yet, it was not easy to abolish the waqf system and its administrative structure, given that some 130,000 Palestinians, most of them Muslims, remained in the territory occupied in 1948 despite the policies of expulsion, killing and displacement aimed at emptying the country of its inhabitants. To win their loyalty, their submission to its policies and their acceptance of its existence, the Zionist state resorted to recognizing the Muslims' own independent interests, that is, the interests that guarantee the continued application of the Sharia in matters of personal status, mosques, cemeteries and religious property.[57]

55 **Michael Dumper.** *Siyāsat Isrāʾīl tujāha al-Awqāf al-Islāmiyya fī Filasṭīn* **[Arabic translation of** *Islam and Israel: Muslim Religious Endowments and the Jewish State*, **1994]. Beirut: Institute for Palestine Studies, 1992, p. 63.**
* **UN General Assembly resolution 181 (II), 29 November 1947, Part I, C, chapter 2, paragraph 4; text from the Avalon Project, Yale Law School. The author quotes it through Dumper's Arabic; the official English is substituted.**
56
57 **Dumper.** *Siyāsat Isrāʾīl tujāha al-Awqāf al-Islāmiyya fī Filasṭīn*, **p. 66.**



Chapter Two

From Civilizational Missions to Private Dwellings

Palestine knew the waqf before the rest of the Islamic world did, before Islam reached it, and before the Islamic world knew the waqf and its system. The promise the Prophet (peace be upon him) made to Aws ibn Tamim al-Dari and his descendants after him, granting them the lands of Hebron and the hills on which the city stands, such as al-Marṭūm, Bayt ʿAynūn and Bayt Ibrahim, was the first waqf known to Palestine and to the Islamic lands.[58] It was made before the Muslims conquered Palestine, most probably after the expedition to Tabūk in 9 AH / 630 CE.[59] To the Muslims of the time the promise was glad tidings of the coming conquest of Palestine. From that date this grant (*inṭāʾ*) has been regarded as a private waqf of the al-Dari family in Hebron, handed down within the family and respected by every political regime in Palestine to the present day.[60] It is striking that the Ottoman Tapu survey register (*daftar taḥrīr*) no. 522 describes this waqf as the waqf of the Prophet Muhammad (peace be upon him) on Tamim al-Dari al-Ansari and his descendants:[61] that is, as the waqf of the Prophet Muhammad himself, which would make it the first waqf in the history of Islam and the only waqf of the Prophet. The waqf scholar Sami al-Salahat, by contrast, traces the beginnings of the waqf in Palestine to "the miracle of the Night Journey and the Ascension, and the Prophet's assumption of the leadership of the prophets in prayer at Bayt al-Maqdis, and his receiving the banner of God's oneness and of the building and

58 **Yusuf al-Natsha. «Madīnat al-Khalīl al-Raḥmān: al-Madīna al-Muslima» [The City of Hebron: The Muslim City]. In** *Madīnat Khalīl al-Raḥmān: Dirāsa Tārīkhiyya Jughrāfiyya* **[The City of Hebron: A Historical and Geographical Study], ed. Taysir Jabara et al. Hebron: Research Center, University Graduates Union, n.d., p. 45.**

59 **The exact date of this grant is not known, but it was certainly after the Prophet›s emigration from Mecca to Medina, and most probably in the ninth year of the Hijra. See: Ayman Mahmud. «Wathīqat Fatwā al-Shaykh Hasan al-ʿAttar wa-l-Shaykh Ahmad al-Tamimi fī Waqf Tamim al-Dari bil-Khalīl fī ʿAṣr Muhammad ʿAli 1833» [The Fatwa Document of Shaykh Hasan al-ʿAttar and Shaykh Ahmad al-Tamimi on the Waqf of Tamim al-Dari in Hebron in the Era of Muhammad ʿAli, 1833]. In** *al-Awqāf al-Islāmiyya fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn: al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām, 1014- Aylūl 2006* **[Islamic Waqfs in Bilād al-Shām from the Arab Islamic Conquest to the End of the Twentieth Century: The Seventh International Conference on the History of Bilād al-Shām, 10-14 September 2006]. Amman: University of Jordan, p. 264.**

60 **See: Ayman Mahmud. «Wathīqat Fatwā al-Shaykh Hasan al-ʿAttar wa-l-Shaykh Ahmad al-Tamimi fī Waqf Tamim al-Dari bil-Khalīl fī ʿAṣr Muhammad ʿAli 1833.» In** *al-Awqāf al-Islāmiyya fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn: al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām, 1014- Aylūl 2006***. Amman: University of Jordan, pp. 263280-; Amin Abu Bakr.** *Qaḍāʾ al-Khalīl 18641918-* **[The Hebron Sub-District, 18641918-]. Amman: Committee for the History of Bilād al-Shām, University of Jordan and Yarmouk University, 1994, p. 157.**

61 *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn: fī Alwiyat Ghazza, al-Quds, Ṣafad, Nābulus, ʿAjlūn ḥasab al-Daftar raqm 522 min Dafātir al-Taḥrīr al-ʿUthmāniyya* **[Waqfs and Properties of the Muslims in Palestine: In the Districts of Gaza, Jerusalem, Safad, Nablus and ʿAjlūn according to Register no. 522 of the Ottoman Survey Registers], Mehmet İpşirli and Muhammad Dawud al-Tamimi. Istanbul: IRCICA (Research Centre for Islamic History, Art and Culture), 1982, p. 23.**

stewardship of the earth." But al-Salahat does not explain why he regards this as a waqf. Some Arab researchers go further and hold that the whole land of Palestine is "a waqf for all Muslims, being *kharāj* land which the Muslims took from the unbelievers as spoils of war, by force (*ʿanwatan*)."[62] Al-Salahat affirms this too, regarding the conquest of Palestine under ʿUmar as the formal inauguration of the waqf in Palestine,[63] but again without explanation and without tying the claim to the rules of waqf and its legitimacy in Islamic jurisprudence, so as to show that the endowment of all the land of Palestine as *kharāj* land, as they say, is valid.

A question presents itself. Palestine was part of Bilād al-Shām (Greater Syria) when the whole of Bilād al-Shām was conquered after the battles of Yarmūk and Ajnādayn in 636 CE, and it was not the only region conquered by force: Iraq and Mesopotamia were conquered by force as well, and the policies the second caliph, ʿUmar ibn al-Khattab, applied to the land of Palestine he applied to the whole of Mesopotamia and Bilād al-Shām. Why, then, is Palestine regarded as a waqf for all Muslims when the rest of Bilād al-Shām and Mesopotamia, and other lands conquered by force such as Egypt, North Africa and al-Andalus, are not? And if it has been a waqf since its conquest, is it lawful, in law and in Sharia, to endow it again, that is, to convert waqf land into new Waqfs, charitable or family, as in fact happened on the land of Palestine, as this study will show? Some sources indicate that the land of 340 villages in Palestine was endowed, wholly or in part, across the various historical periods, though without naming the villages, their endowers, or the proportion endowed. That number is a part of the land of Palestine, not the whole of it; another part, in other words, was classified as non-waqf land.[64]

It should be noted that, according to the 1998 statistics of the Department of Waqf Properties at the Palestinian Ministry of Waqfs and Religious Affairs, waqf land in the Palestinian territories occupied in 1967 (the West Bank and East Jerusalem) amounts to 152,919 dunums (a dunum is 1,000 square meters), and there are 1,892 waqf properties, comprising shops, schools, kindergartens, institutes and residential buildings. There are also 387 shrines (*maqāms*) and 597 cemeteries covering 2,577 dunums, and, as of the date of these statistics, 1,239 mosques.[65] In the Gaza Strip, according to the same source, there are 458 shops, 39 waqf schools, 9 health clinics, agricultural land estimated at 564,041 dunums, a further

62 *al-Waqf al-Islāmī fī Filasṭīn* **[The Islamic Waqf in Palestine]. Foundation for the Revival of Islamic Heritage and Research, Department for the Revival of Islamic Heritage, Jerusalem (Bayt al-Maqdis), 1984, p. 5; Sami al-Salahat.** *al-Awqāf al-Islāmiyya fī Filasṭīn wa-Dawruhā fī Muwājahat al-Iḥtilāl al-Isrāʾīlī*. **Beirut: Markaz al-Zaytūna lil-Dirāsāt wa-l-Istishārāt, 2011, p. 33.**

63 **al-Salahat.** *al-Awqāf al-Islāmiyya fī Filasṭīn wa-Dawruhā fī Muwājahat al-Iḥtilāl al-Isrāʾīlī*, **p. 19.**

64 **Sami Hadawi.** *Ḥaqāʾiq wa-Iḥṣāʾāt* **[Facts and Figures]. Jerusalem: Maṭbaʿat Dayr al-Rūm al-Urthūdhuks (Greek Orthodox Convent Press), 1957, p. 25; al-Salahat.** *al-Awqāf al-Islāmiyya fī Filasṭīn wa-Dawruhā fī Muwājahat al-Iḥtilāl al-Isrāʾīlī*, **p. 31.**

65 **Luʾayy ʿUmar.** *al-Awqāf al-Islāmiyya fī al-Ḍiffa al-Gharbiyya* **[Islamic Waqfs in the West Bank]. Ramallah: Palestinian Independent Commission for Citizens› Rights, 2002, pp. 1620-.**

1,000 dunums of plots classified as small, 408 mosques, 371 Qurʾān memorization schools, 124 residential properties and 49 properties classified as factories and garages.[66] As of the date of this study we have no comparable studies or statistics for the territory occupied in 1948.

The Palestinian historian Mahmoud Yazbak holds that Islamic charitable Waqfs in the territory occupied in 1948 exceeded 15 percent of all agricultural land within the borders of the "Zionist occupation state," at a time when Jewish and Zionist ownership of Palestinian land up to 1948 did not reach 10 percent. The occupation state seized this waqf land and diverted its yield to itself and its settlers.[67] Yazbak relies here on the findings of Michael Dumper. Also drawing on Dumper, Muhammad Nasir al-Din tells us that "the area of true waqf (*waqf ṣaḥīḥ*) in historical Palestine is estimated at 100,000 dunums, and that 12 to 18 percent of all agricultural land in Palestine, that is, between 965,280 and 1,447,920 dunums, is endowed mīrī (state) land, the tithes on which were paid in 1922 at 12.5 percent of agricultural produce."[68] Dumper in fact gives the range as 12 to 15 percent, not 18. This type of waqf was regarded as a non-true waqf under the definition of the Ottoman Land Code. Nasir al-Din also tells us, again citing Dumper but without references or evidence, that 33 percent of the land of the town of Ramla is waqf, that 90 percent of Acre is waqf, that 70 percent of all the shops of Jaffa are waqf, that the waqf land of Sayyidnā ʿAli ibn ʿUlayl in Jaffa amounted to 26,000 dunums, and that the waqf of the Mosque of Nabī Rūbīn in Ramla amounted to 32,000 dunums.[69]

In truth, we have no registers or documents on the Islamic Waqfs before the Ottoman period. Everything that survives goes back to what was documented and recorded in the early years of Ottoman rule in what are known as the land registers, or Tapu surveys (*taḥrīr ṭābū*), whose purpose was to enumerate agricultural land for tax collection, or to the Ayyubid and Mamluk waqfiyyas re-registered in the Ottoman Sharia court registers. The Ottoman surveys, land registers and waqfiyyas give no detailed information on the area of waqf land and do not specify the area of waqf villages and farms; they give only the percentage, in qīrāṭ (a twenty-fourth share), which makes it hard for us to calculate the area of waqf villages in dunums. A large share of the pre-Ottoman Islamic Waqfs of Palestine, moreover, has become defunct: we know that certain properties are waqf, but not who

66 ʿ**Umar.** *al-Awqāf al-Islāmiyya fī al-Ḍiffa al-Gharbiyya*, **pp. 2123-.**

67 **Mahmoud Yazbak. «al-Waqf al-Islāmī fī Yāfā min al-Dawla al-ʿUthmāniyya ilā al-Dawla al-ʿIbriyya» [The Islamic Waqf in Jaffa from the Ottoman State to the Hebrew State]. In** *al-Awqāf al-Islāmiyya fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn: al-Muʿtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām, 1014- Aylūl 2006***. Amman: University of Jordan, pp. 303343-; pp. 305306-.**

68 **Muhammad Ibrahim Nasir al-Din.** *Taḥlīl al-Īrādāt al-Māliyya li-Dāʾirat Awqāf al-Quds* **[An Analysis of the Financial Revenues of the Jerusalem Waqf Department]. Dār al-Fārūq lil-Thaqāfa wa-l-Nashr, 2000, p. 79.**

69 **Ibid.**

endowed them or who the beneficiary was.

The Waqf in Jerusalem: Roots and History

From the Islamic conquest of Palestine in the time of the caliph ʿUmar ibn al-Khattab in 638 CE, Jerusalem saw marked interest, among the city's Muslims and non-Muslims alike, in founding charitable waqf institutions in the Holy City. This was because the waqf was a form of perpetual and sustainable charity and a way of drawing near to Allah Almighty, particularly given the absence of any formal role of the state in many areas of civic life in Jerusalem: education, health, social services and religious affairs.

Anyone who follows the city's history since the Islamic conquest sees a succession of states and authorities, Islamic and non-Islamic, and that raises a central question about the legal status of Jerusalem's Waqfs through those periods and down to the present, in which the western part of the city has been under Zionist occupation since 1948 and the eastern part under the same occupation since 1967. What legal changes did the status of Jerusalem's Waqfs undergo in the periods before the Zionist occupation, and what is their legal status under it?

The rise of waqf institutions in Jerusalem went together with the formation of its Muslim community. The sources report that the caliph ʿUmar ibn al-Khattab built the first mosque in Jerusalem, the foundation of the present al-Aqsa Mosque. Jerusalem is a hill city short of water, and the caliph ʿUthman ibn ʿAffān supplied it by endowing the pool of Silwan on the poor of the city, between 644 and 656 CE, to ensure that the inhabitants received water free of charge and without interruption. This is regarded as the first Islamic waqf in Jerusalem.[70]

The great and rapid growth of waqf institutions in Jerusalem, however, came with the conquest of the city by Saladin (Salah al-Din al-Ayyubi) in 1187 CE, after the expulsion of the Crusaders. In this period Jerusalem underwent radical change in parts of its urban fabric and in the composition of its population, its administration and its social life. Waqf institutions played an important part in the Islamization of the city after its liberation from the Crusaders, and in its civilizational building. By the civilizational aspect we mean the whole process of development and building, not only material development, economic and architectural (buildings, markets, khāns, bathhouses and the like), but also the human and intellectual development of the city's society: education, madrasas (colleges), libraries,

70 ʿAbd al-ʿAziz al-Duri. «al-Quds fi al-Fatra al-Islāmiyya al-Ūlā min al-Qarn al-Sābiʿ ḥattā al-Qarn al-Ḥādī ʿAshar» [Jerusalem in the Early Islamic Period from the Seventh to the Eleventh Century]. In *al-Quds fi al-Tārīkh* [Jerusalem in History], ed. Kamil Jamil al-ʿAsali. Amman: University of Jordan, 1992, p. 135.

the Sufi movement, and the removal of class and economic disparities by supporting the poor and the destitute, feeding and housing them, treating the sick, and lodging travelers.[71]

The Mamluk sultans (1256 to 1517 CE) took the same course. Sultans and amirs competed to found waqf institutions in Jerusalem, educational ones above all, which contributed not only to the growth of scholarship and culture in the city but to its architectural development, in the buildings and markets they erected, which have left us an important architectural heritage. The development extended to the economy, not only through the building of markets, khāns, bathhouses and other economic facilities, but through the endowment of many villages, farms and agricultural lands across every region of Palestine, whose revenues were assigned to the upkeep of their waqf institutions in Jerusalem.[72]

Waqf institutions multiplied further in the Ottoman period (1516 to 1917), which was marked by the foundation of outstanding institutions, particularly under Sultan Suleiman the Magnificent (r. 1520 to 1566). He and his wife Roxelana had the largest part in building the most important charitable waqf institution in Jerusalem, al-ʿImāra al-ʿĀmira, known as the Takiyya of Khassaki Sultan, in 1557 CE. This vast charitable institution, with its great complex comprising a kitchen, two bathhouses, a madrasa (college) and fifty-five rooms, did away with poverty in Jerusalem throughout the Ottoman period, so great were the meals it served and so extensive the waqf lands assigned to its upkeep, which reached thirty-four villages and farms.[73]

The density of waqf properties and institutions in Jerusalem (mosques, madrasas, takiyyas (soup kitchens and hospices), khānqāhs (Sufi hospices), zāwiyas (Sufi lodges), hospitals, bathhouses, khāns, libraries, markets and dwellings), together with the vast extent of the endowed real property and agricultural land, which included the lands of entire villages and farms,[74] enhanced the sanctity of the city, turned most of its property into Waqfs, and left private ownership in it thin. That in turn placed the city's Waqfs under the influence of the policies of successive governments, and increased the interference of parties foreign to its local society, especially from the second half of the nineteenth century, when the Holy City saw a growing foreign presence and Zionist infiltration.

71 **Musa Sroor. «al-Awqāf al-Islāmiyya fī Ḥārat al-Naṣārā fī al-Quds wa-l-Taḥawwul ilā Milkiyya Masīḥiyya fī Awākhir al-ʿAhd al-ʿUthmānī» [The Islamic Waqfs of the Christian Quarter of Jerusalem and the Transition to Christian Ownership in the Late Ottoman Period].** *al-Majalla al-Tārīkhiyya al-ʿArabiyya lil-Dirāsāt al-ʿUthmāniyya* **[Arab Historical Review for Ottoman Studies], nos. 4142-, December 2010, p. 153.**

72 **Sroor, Musa. «Dawr al-Awqāf al-Islāmiyya fī al-Tanmiya al-ʿUmrāniyya fī al-Quds» [The Role of the Islamic Waqfs in the Urban Development of Jerusalem].** *Majallat Ḥawliyyāt al-Quds* **[Jerusalem Quarterly, Arabic edition]. Institute for Palestine Studies, no. 14, autumn 2012, p. 18.**

73 **Waqfiyya of Khassaki Sultan. Jerusalem Sharia Court Register (***Sijill***) 270, 964 AH / 1557 CE, pp. 1827-.**

74 **Sroor.** *Fondations pieuses en mouvement***, pp. 185192-.**

The Waqfs of Educational and Sufi Institutions

Before Ottoman rule, Palestine had inherited an educational system based on the mosques, the *kuttābs* (elementary Qurʾān schools), the Qurʾānic madrasas, the ḥadīth and Qurʾān schools, the zāwiyas, the takiyyas and the khānqāhs, which together formed institutes of higher learning in which jurisprudence was taught according to its various schools. That system remained in place, and prevailed, throughout Ottoman rule. The Ottoman state, in other words, left these educational institutions in Palestine alone. It did not disrupt or modernize their teaching, or interfere in their administration, funding or curricula, until the end of the nineteenth century.

Education in the Ottoman state before the first half of the nineteenth century, that is, before the Tanzimat, was thus conducted by the most common means of the time, the religious or semi-religious schools, the *kuttābs*. The word madrasa in this context meant "a particular kind of institute of higher instruction, reserved for students who had completed a stage of their *kuttāb* schooling,"[75] where the Qurʾān, arithmetic, reading, writing and chanting were taught.[76] The mosque, the libraries and self-instruction played a part no less important than that of the schools. Schooling in the *kuttāb* (in Arabic) or the *maktab* (in Ottoman Turkish) conventionally began at the age of seven and aimed at a basic education that instilled the knowledge and skills needed for an Islamic upbringing, Islam being a system of faith and worship. The greater part of instruction in these institutions was devoted to memorizing the Qurʾān and to teaching reading and writing, in the local language, together with Arabic, the language of Islam, in Arabic-speaking regions. Pupils also studied arithmetic, history and geography.[77] The content and level of instruction varied from one school and *kuttāb* to another. The state did not require them to apply a single educational system, and they lacked any coordination or standardization of content or any obligation to follow it. Each school "centered on the personality and authority of a principal teacher, and the level and content of instruction in each religious school were determined solely by the abilities of the teachers who worked there."[78]

The takiyyas and zāwiyas of the Ottoman period also carried on an educational activity inherited from earlier civilizations and periods, offering religious and

75 **Muhsin Yusuf. «Muqaddima fī Tārīkh al-Taʿlīm fī Filasṭīn mundhu al-Fatḥ al-Islāmī ḥattā al-Iḥtilāl al-Barīṭānī» [An Introduction to the History of Education in Palestine from the Islamic Conquest to the British Occupation]. In** *al-Taʿlīm al-Filasṭīnī Tārīkhan, Wāqiʿan wa-Ḍarūrāt al-Mustaqbal* **[Palestinian Education: History, Present and Future Necessities], ed. Ibrahim Abu-Lughod and Hammad Husayn. Birzeit University, 1997, (1345-), p. 21.**

76 **Muhammad al-ʿAmayira. «Ruʾya Jadīda li-Awḍāʿ al-Taʿlīm fī Filasṭīn khilāl al-ʿAhd al-ʿUthmānī» [A New View of the State of Education in Palestine during the Ottoman Period].** *Ṣāmid al-Iqtiṣādī*, **vol. 19, no. 109, 1997, p. 231.**

77 **Miri Shefer-Mossensohn.** *al-ʿIlm ʿinda al-ʿUthmāniyyīn: al-Ibdāʿ al-Thaqāfī wa-l-Tabādul al-Maʿrifī*. **Translated by Muhammad Shaʿbān Sawwan. Algiers: Ibn al-Nadīm lil-Nashr wa-l-Tawzīʿ, 2019, p. 101.**

78 **Ibid., p. 102.**

Sufi instruction, theoretical and practical. This kind of instruction played an important part in making Islam known and spreading its principles among the people.[79]

In the Islamic societies of the pre-Ottoman period there were no dividing lines between fields of knowledge; the sciences were interconnected and merged, a mixture of religious and rational sciences. Scholars did not know "single specialization" as it exists today; they were multidisciplinary. Some excelled in astronomy and astrology, others studied algebra and arithmetic alongside the religious sciences,[80] and these sciences were never far from the religious and jurisprudential ones: they mattered greatly, for example, to the law of inheritance under the Sharia. The Egyptian scholar Ahmad al-Damanhuri (d. 1778), for instance, wrote on jurisprudence, Qurʾānic exegesis, chemistry, philosophy, logic and medicine, though he held the post of Shaykh al-Azhar.[81]

Nonetheless, from the time it extended its rule over the Arab region the Ottoman state made attempts to organize education. From the sixteenth century, under Sultan Suleiman the Magnificent (r. 1520 to 1566), it issued a series of regulations (*kanunname*) for the scholars and their students, with the aim of developing and restructuring the governing institutions of the empire, including the religious establishment, which was called the "learned institution" (*ilmiye*). As a result the educational system became clearer than before, and fixed ranks, standards and curricula were set for each level "from the lowest point of entry upward. This included lists of the basic texts students had to read; they were forbidden to advance to the next stage before being examined on the required texts and receiving the *ijāza* (license) from the teacher, and the teacher of the next level was expected to verify that the student had in fact obtained the certificate of completion of the previous stage. Beyond that, the regulations declared that the schools were to be inspected and that teachers who did not abide by the regulations were to be dismissed. A sultanic *nişan (sultanic decree)* of Sultan Murad III in 1598 confirmed these regulations."[82] Their application, however, was confined to the capital, Istanbul.

Education in the waqf Qurʾānic madrasas of Jerusalem, of which there were more than seventy in the Ottoman period,[83] and in the mosques, met the needs of the "labor market" in our contemporary sense. These madrasas produced teachers,

79 **Ekmeleddin İhsanoğlu (ed. and intro.).** *al-Dawla al-ʿUthmāniyya: Tārīkh wa-Ḥaḍāra*. **Istanbul: IRCICA (Research Centre for Islamic History, Art and Culture), 1999, vol. 2, p. 475.**
80 **Ibid., vol. 2, p. 486.**
81 **Shefer-Mossensohn.** *al-ʿIlm ʿinda al-ʿUthmāniyyīn: al-Ibdāʿ al-Thaqāfī wa-l-Tabādul al-Maʿrifī*, **pp. 7173-.**
82 **Ibid., p. 106.**
83 **On these madrasas see: Sroor.** *Fondations pieuses en mouvement*, **pp. 158170-.**

imams, preachers, homilists and muftis, and so met the needs of the Ottoman authority of the time for clerks and preachers,[84] in the absence of a modern state. The sultanic state wanted nothing more in that period. Many of the educated in the Ottoman state looked on the madrasa as a place of vocational training, and training there was "a principal stage in two basic career paths: religious office, the most prestigious posts of which in the Ottoman state were teaching, the judiciary, the issuing of fatwas, and preaching in the mosques; and clerical work in the Ottoman administration. Both paths drew on interlocking fields of knowledge such as Qurʾānic exegesis, Sharia, ḥadīth, jurisprudence, Arabic and its grammar, and arithmetic."[85]

The traditional scholars' insistence that members of the community learn the matters of religion, and the reading, writing and arithmetic that went with them, was one of the main reasons why no civil schools appeared before the reform era of the nineteenth century; it reflected their negative view of the non-religious rational sciences. Some historians hold that this contributed to "the stagnation of scholarship and a frequent lack of creativity among students and teachers," stagnation, imitation and lack of creativity having been common in the societies of the Islamic world since the Middle Ages, when imitation and the absence of innovation spread, the windows were closed on thought and the non-religious sciences, and some sciences were actively opposed.[86] An example is the demand of the scholar Burhan al-Din al-Zarnuji (d. 591 AH), a Hanafi jurist born in what is now Turkestan, that scholars follow their predecessors in their sciences and not depart from them: "Hold to what is ancient and beware of innovations, and beware of occupying yourself with this barrenness that has appeared since the passing of the great scholars, for it distances the student from jurisprudence, wastes his life, and breeds estrangement and enmity."[87]

From Waqf Institutions to State Institutions

The "Qurʾānic madrasas and ḥadīth and Qurʾān schools" multiplied in the Islamic cities in general and in Jerusalem in particular. Islamic history knew this kind of school as founded, funded and administered by the waqf, far from the central-

84 **Muhammad al-ʿAmayira. «Ruʾya Jadīda li-Awḍāʿ al-Taʿlīm fī Filasṭīn khilāl al-ʿAhd al-ʿUthmānī,» p. 231.**
85 **Miri Shefer-Mossensohn.** *al-ʿIlm ʿinda al-ʿUthmāniyyīn: al-Ibdāʿ al-Thaqāfī wa-l-Tabādul al-Maʿrifī*, **p. 104.**
86 **Hamilton Gibb.** *al-Mujtamaʿ al-Islāmī wa-l-Gharb wa-Athar al-Ḥaḍāra al-Gharbiyya fī al-Fikr al-Islāmī fī al-Sharq al-Adnā* **[Arabic translation of Gibb and Bowen,** *Islamic Society and the West***]. Translated by ʿAbd al-Hamid al-Qaysi. Damascus: Dār al-Madā, 1997, vol. 2, pp. 168169-.**
87 **See: Muhammad al-ʿAmayira. «Ruʾya Jadīda li-Awḍāʿ al-Taʿlīm fī Filasṭīn khilāl al-ʿAhd al-ʿUthmānī,» p. 231.**

ism, authority and administration of the state.[88] This inherited and independent educational legacy made it possible to form not one educational system but several, differing with the aims and policies of the founder, the *wāqif*, or in today's terms the "patron." It was the endower who designed the educational regime of his institution, its curricula, its way of working and its rules, and who provided it with lasting sources of funding. The system rested on a triangle: the endower, with his regime and his stipulations; the student, whom the regime attracted and who proceeded according to its terms; and the teacher, or, in the language of the age, the *ʿālim* (scholar), who accepted employment in the endower's institution and undertook to abide by his stipulations. In this way the waqf educational system founded an education independent of the state and of its central and supervisory apparatus, and these institutions worked for centuries in complete independence and freedom, without hindrance from the sultanic state. The scholars stood in defense of the waqf as a charitable resource of the Muslim community, which no one, however great his power and influence, had the right to take from the community. The scholars of these institutions might hold juristic or doctrinal views at odds with the thought and school of the sultanic state. Madrasas of the other schools spread in Jerusalem: Shafiʿi ones such as al-Madrasa al-Ṣalāḥiyya, and Maliki ones such as al-Madrasa al-Afḍaliyya, or al-Mālikiyya, in the Maghāriba Quarter of Jerusalem;[89] and al-Madrasa al-Ashrafiyya, reserved for Hanbali jurisprudence, founded by the Mamluk sultan Qaytbay in 1472 CE[90]

Abdul-Karim Rafeq shows that although the Hanafi scholars of Jerusalem, the school of the Ottoman state, formed the majority of the city's scholars in the Ot-

88 **On the Waqfs of Jerusalem see, for example: ʿAziz al-ʿAṣā et al. (eds.).** *Waqāʾiʿ al-Muʾtamar al-Akādīmī al-Rābiʿ 1415- Tammūz 2018: al-Waqf al-Islāmī fī al-Quds*. **Jerusalem: Supreme Islamic Council, 2018; Muhammad ʿAdnan al-Bakhit.** *al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām 1014- Aylūl 2006: al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn*. **Amman: University of Jordan, 2009; Ziyad al-Madani.** *Awqāf al-Quds fī al-Qarn al-Thāmin ʿAshar al-Mīlādī*. **Amman: Ministry of Culture, 2011; ʿAbla al-Muhtadi.** *Awqāf al-Quds fī Zaman al-Intidāb al-Barīṭānī*. **Amman: Dār Majdalāwī lil-Nashr wa-l-Tawzīʿ, 2005; Musa Sroor. «al-Siyāsa al-Khārijiyya al-Faransiyya tujāha Awqāf al-Maghāriba fī al-Quds: Dirāsat Ḥālat Qaryat Ein Karem bayna ʿĀmay 19481962-» [French Foreign Policy toward the Maghāriba Waqfs in Jerusalem: A Case Study of the Village of Ein Karem, 19481962-]. In** *Waqāʾiʿ al-Muʾtamar al-Akādīmī al-Rābiʿ 1415- Tammūz 2018: al-Waqf al-Islāmī fī al-Quds*, **ed. ʿAziz al-ʿAṣā et al. Jerusalem: Supreme Islamic Council, 2018, pp. 323340-; Musa Sroor. «Dawr al-Awqāf al-Islāmiyya fī al-Tanmiya al-ʿUmrāniyya fī al-Quds.»** *Majallat Ḥawliyyāt al-Quds*, **no. 14 (autumn-winter 2012), pp. 6470-; Musa Sroor. «al-Awqāf al-Islāmiyya fī Ḥārat al-Naṣārā fī al-Quds wa-l-Taḥawwul ilā Milkiyya Masīḥiyya fī Awākhir al-ʿAhd al-ʿUthmānī.»** *al-Majalla al-Tārīkhiyya al-ʿArabiyya lil-Dirāsāt al-ʿUthmāniyya* **[Arab Historical Review for Ottoman Studies], year 21, nos. 4142- (December 2010), pp. 145207-; pp. 179181-; Michael Dumper.** *Islam and Israel: Muslim Religious Endowments and the Jewish State*. **Washington, D.C.: Institute for Palestine Studies, 1994; Yitzhak Reiter.** *Islamic Endowments in Jerusalem under British Mandate*. **London: Frank Cass, 1996; Amy Singer.** *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*. **Albany: State University of New York Press, 2002; Sroor.** *Fondations pieuses en mouvement*. **Damas: Institut Français du Proche-Orient / Aix-en-Provence: IREMAM, 2010; Musa Sroor. «Les juges et la privatisation des biens** *waqf***s à Jérusalem au XIXème siècle.»** *Arab Historical Review for Ottoman Studies*, **nos. 3738-, December 2008, pp. 329347-; Musa Sroor. «Le code civil ottoman et l›usurpation des biens waqfs : le cas de Jérusalem entre 18761914-,» in** *L›historien Nacerddine Saidouni précurseur des études ottomanes en Algérie*, **Ouddène Boughoufala (dir.). Mascara: Publications du laboratoire des recherches sociologiques et historiques, Université de Mascara, Algérie, 2014, pp. 530-; Musa Sroor. «The Waqf and Building the Cities: The Old City of Jerusalem as a Case Study,» in** *Comparative Study of the Waqf from the East: Dynamism of Norm and Practices in Religious and Familial Donations*, **Miura Toru (ed.). Tokyo: Toyo Bunko, 2018, pp. 2740-.**

89 **On the Maghāriba Quarter see: ʿAbd al-Hadi al-Tazi. «Ḥayy al-Maghāriba bil-Quds.»** *Majallat al-Dirāsāt al-Filasṭīniyya*, **vol. 1, no. 3, August 1972, pp. 735-.**

90 **Sroor.** *Fondations pieuses en mouvement*, **p. 164.**

toman period, especially in the eighteenth century, the Shafiʿi scholars formed the majority in the other towns of Palestine.[91]

Throughout the Ottoman period and before it, the waqf funded educational institutions effectively: mosques, madrasas, hospitals, charitable and social institutions and the rest. Historically the mosque was the first educational institution, before the appearance of the private, non-official Qurʾānic madrasas, independent of the mosque, which in today's terms would be called "specialized university colleges," funded by waqf and outside the state's institutions. This waqf funding provided lasting incomes not only for the running of instruction in these madrasas but for the decent living of their students and teachers, through services such as lodging, food and drink in return for their diligence in study. All of this was done according to the endower's stipulations, not the policies of the sultanic state and its institutions, which gave students from the poorer classes the chance to enroll without money standing in the way of their education.[92]

Jerusalem, small in area and population as it was, had the largest share of the attention of benefactors in founding madrasas or supporting existing madrasas and mosques, which made it a destination for those who aspired to learning, rivaling the metropolises and capitals of the successive Islamic states: Medina, Damascus, Baghdad and Cairo.[93]

Al-Madrasa al-Ṣalāḥiyya, founded in 1187 CE, was without exaggeration the spark that set off the building of madrasas and institutes of higher learning in Jerusalem[94] in the years that followed, particularly at the hands of amirs, rulers and the wealthy, who endowed much of their money and property on madrasas once they saw the brilliant success these madrasas had achieved.[95] Thanks to the number of its madrasas and to al-Aqsa Mosque, which became a celebrated seat of learning and a beacon attracting students and scholars from across the Islamic world, and thanks too to the climate of intellectual freedom the Ottoman state provided by its liberal policy toward education, Jerusalem drew students and scholars from every corner of the Islamic world. Among the most prominent scholars who shone as teachers at al-Aqsa Mosque in the nineteenth century was Shaykh Mu-

91 **Abdul-Karim Rafeq. «The ʿUlamāʾ of Ottoman Jerusalem (16th-18th Centuries),» in Sylvia Auld (ed.),** *Ottoman Jerusalem: The Living City, 15171917-*. **London: Altajir World of Islam Trust, 2000, vol. 1, pp. 4553-.**

92 **Sami Muhammad al-Salahat.** *al-Waqf bayna al-Aṣāla wa-l-Muʿāṣara*. **Beirut: al-Dār al-ʿArabiyya lil-ʿUlūm Nāshirūn, 2014, p. 84.**

93 **On this subject see: ʿAbd al-Karim Rafiq. «Filasṭīn fī ʿAhd al-ʿUthmāniyyīn min Maṭlaʿ al-Qarn al-ʿĀshir al-Hijrī ilā Maṭlaʿ al-Qarn al-Thālith ʿAshar al-Hijrī» [Palestine under the Ottomans from the Beginning of the Tenth Century AH to the Beginning of the Thirteenth Century AH].** *al-Mawsūʿa al-Filasṭīniyya* **[The Palestinian Encyclopaedia], Part 2, vol. 2. Beirut, 1990, (pp. 787809-); Abdul-Karim Rafeq. «The ʿUlamāʾ of Ottoman Jerusalem (16th-18th Centuries),» pp. 4553-.**

94 **On the madrasas of Jerusalem and its scholarly life see: Kamil Jamil al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*. **Amman: Jamʿiyyat ʿUmmāl al-Maṭābiʿ al-Taʿāwuniyya, 1981.**

95 **On this madrasa see: Hamad Ahmad Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis* **[Our Arab and Islamic Monuments in Jerusalem]. Ministry of Information, Palestine, 2010, pp. 125140-.**

hammad al-Budayri (d. 1805).[96] The Shafiʿi mufti of Jerusalem at the end of the nineteenth century and the beginning of the twentieth, Shaykh Tahir ʿAbd al-Qadir Abu al-Suʿud, also taught there; Abu al-Suʿud stood out among the scholars of al-Aqsa for his interest in astronomy, and left us a book entitled *Awqāt al-ʿIbādāt wa-Bayān Taqwīmāt* [The Times of Worship and an Exposition of Calendars].[97] There were many others among the scholars of the Jerusalem elite, such as Kamil al-Husayni.[98]

In this academic and educational climate, rich in the academic freedom the sultanic state provided and in independence of administration and funding, far from any influence of the successive political regimes, caliphs, sultans, amirs, governors and those who hold power, a generation of independent scholars emerged, working at their learning without social constraints or hindrances, who came to enjoy influence and authority among the common people and to be feared by the political order. As a result of these madrasas being tied to the Waqfs, learning, its acquisition and its funding were no longer bound to the institutions of the state and required no loyalty or subservience to the ruling political order. Thanks to the waqf system, many of these scholars became bolder in adopting positions opposed to the policies of caliphs and sultans, particularly on religious reform. The educational system that the Islamic waqf founded gave the scholar wide freedom to plant in the minds of his pupils not only his learning but his thought, his positions and his theories, which, under what was known as the "*ijāza* system," were handed down from generation to generation without pressure or hindrance from the ruling regime; the matter was left to the scholar himself, whether he was a critic of the sultan or one of his companions.[99] In these *ijāzas* "the teacher acknowledged and certified that the holder had studied a particular book or subject with him, and testified that the student had been diligent and industrious, had mastered the book, and was able to teach it"; hence a student would try to obtain as many *ijāzas* as he could, from different teachers and different educational institutions.[100] The table that follows shows the waqf madrasas of Jerusalem, their Waqfs, and the state to which they had come by the end of the Ottoman period. It shows how these madrasas declined, how many of them closed, and how some were turned into dwellings.

96 **Adel Manna.** *Aʿlām Filasṭīn fī Awākhir al-ʿAhd al-ʿUthmānī* **[Eminent Figures of Palestine in the Late Ottoman Period]. Beirut: Institute for Palestine Studies, 1997, p. 51.**
97 **Ibid., p. 23.**
98 **Kamil Jamil al-ʿAsali. «al-Fikr al-Dīnī: al-ʿUlūm al-Islāmiyya fī Filasṭīn» [Religious Thought: The Islamic Sciences in Palestine].** *al-Mawsūʿa al-Filasṭīniyya*, **Part 2, vol. 3. Beirut, 1990, p. 479.**
99 **Sami al-Salahat.** *al-Awqāf al-Islāmiyya fī Filasṭīn wa-Dawruhā fī Muwājahat al-Iḥtilāl al-Isrāʾīlī*, **p. 93.**
100 **Muhsin Yusuf. «Muqaddima fī Tārīkh al-Taʿlīm fī Filasṭīn mundhu al-Fatḥ al-Islāmī ḥattā al-Iḥtilāl al-Barīṭānī,» p. 30.**



Table of the Waqf Madrasas of Jerusalem and Their Waqfs at the End of the Ottoman Period

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
1	al-Naṣriyya / zāwiya (Sufi lodge)[101]	on the tower of Bāb al-Raḥma, on the wall of the Ḥaram	Shaykh Nasr al-Maqdisi	450 AH / 1058 CE	scholar	Shafiʿi	Defunct
2	al-Khatniyya / zāwiya[102]	outside the southern wall of al-Aqsa Mosque	Salah al-Din al-Ayyubi	587 AH / 1191 CE	sultan	Shafiʿi	A house in the Bāb al-Qaṭṭānīn (Cotton Merchants' Gate) quarter

101 **al-ʿAsali.** *Maʾāhid al-ʿIlm fi Bayt al-Maqdis*, **pp. 9698-; Muhammad Kurd ʿAli.** *Khiṭaṭ al-Shām* **[The Topography of Syria]. Damascus: Maktabat al-Nūr, 1925, vol. 6, p. 117; Kamil Jamil al-ʿAsali.** *Ajdādunā fi Tharā Bayt al-Maqdis* **[Our Ancestors in the Soil of Jerusalem]. Amman: Muʾassasat Al al-Bayt, 1981, p. 133; al-Hanbali, Mujir al-Din.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl* **[The Sublime Companion to the History of Jerusalem and Hebron]. Amman: Maktabat al-Muḥtasib, 1973, vol. 2, p. 34; Raʾif Najm.** *Kunūz al-Quds* **[Treasures of Jerusalem]. Amman: Muʾassasat Al al-Bayt, 1983, p. 415; ʿArif al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds. 3rd ed. Jerusalem: Maktabat al-Andalus, 1992* **[The Detailed History of Jerusalem], p. 240; ʿAbd al-Jalīl Hasan al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī: Dawruhā fī al-Ḥaraka al-Fikriyya* **[The Madrasas of Jerusalem in the Ayyubid and Mamluk Eras: Their Role in Intellectual Life]. Amman: Maktabat al-Aqṣā, 1981, vol. 1, pp. 356358-.**

102 **(Used as housing for the staff of al-Aqsa Mosque.) al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **pp. 426439-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
3	al-Ṣalāḥiyya[103]	near Bāb al-Asbāṭ (Lions' Gate)	Salah al-Din al-Ayyubi	588 AH / 1192 CE	sultan	Shafiʿi	Shops in Sūq al-ʿAṭṭārīn; the whole of the village and valley of Ein Silwan; 8 qīrāṭ (a twenty-fourth share) of the village of Naʿliya, dependent on Hebron; a garden at Bāb al-Maghāriba; the whole of the farm of Qastal, dependent on Jerusalem; a khān at Bāb Ḥiṭṭa (Gate of Remission); the whole of the garden of Bīr Ayyūb; a small garden at Bāb Ḥiṭṭa; the small market of Bāb Ḥiṭṭa, 12 doors; scattered houses in Jerusalem, 12 doors; halls in Jerusalem, 15 doors; 12 qīrāṭ of the shop known in the Bāb Dawud quarter; the whole of the plot of land of Gethsemane (al-Jasmāniyya) and its dependencies; the bathhouse of Bāb al-Asbāṭ in Jerusalem; the bathhouse of Zion (Ṣahyūn); a bakery, a walled garden, and the estate known as Ṣayd Hanna with the house south of it, the house adjoining it, the mill opposite it, the gardens, all the springs, and the small church known as al-Barbābkin beneath it
4	al-Naḥwiyya[104]	southwestern corner of the platform of the Dome of the Rock	al-Malik al-Muʿazzam ʿIsa	604 AH / 1207 CE	sultan	Hanafi	The village of Beit Liqya
5	al-Fakhriyya / khānqāh (Sufi hospice)[105]	near Bāb al-Maghāriba, inside the wall of the Mosque	Qadi Fakhr al-Din ibn Muhammad	c. 732	qadi (Sharia judge); superintendent of the armies (nāẓir al-juyūsh)	Shafiʿi	7 plots of land outside Jerusalem; a walled garden; ḥikr (long lease on waqf land) rents on rooms

103 **al-Subki.** *Fatāwā al-Subkī* **[The Fatwas of al-Subki], vol. 2, p. 126; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 121; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 236238-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 41; Najm.** *Kunūz al-Quds*, **pp. 102103-; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 181350-.**
104 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 240; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 34; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 351355-.**
105 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 246.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
6	al-Afḍaliyya[106]	Ḥārat al-Maghāriba (the Maghāriba Quarter)	al-Malik al-Afdal Nūr al-Din	c. 590 AH / 1194 CE	sultan	Maliki	The lands and dwellings surrounding al-Burāq; the Maghāriba Quarter (today defunct)
7	al-Tankiziyya[107]	near Bāb al-Silsila (Chain Gate)	Tankiz, viceroy of Syria	c. 1329 to 1336 CE	governor of Syria	Hanafi	The whole of the village of Ein Qiniya, dependent on Jerusalem; shops beside the madrasa (college) and in Sūq al-Qaṭṭānīn, 13 doors; shops at Maḥaṭṭat al-Qaṭṭānīn, 4 doors; shops near the madrasa, 9 doors; a two-storey shop above Daraj al-ʿAyn; 12 qīrāṭ of a bathhouse at Bāb al-Qaṭṭānīn; shops, 12 doors (in Sūq al-Qaṭṭānīn Tankiz built shops, buildings, a bathhouse and other structures). (The Turks turned the madrasa into a courthouse, and it remained one until shortly after the end of Ottoman rule, that is, a court for at least about 200 years, so that it came to be known as the Sharia Court. Under the British Mandate it became a dwelling again, occupied by the Mufti of Jerusalem and president of the Supreme Muslim Council, al-Hajj Muhammad Amin al-Husayni.)[108]
8	Dār al-Qurʾān[109] al-Sallāmiyya	south side of Bāb al-Silsila	Siraj al-Din al-Sallami	761 AH / 1360 CE	-	-	(Counted among the Waqfs of the Khalidi family since 1203 AH; before that it was under the administration of the Imām family. In that year Mustafa and Muhammad ʿArif, sons of Khalil al-Imām, ceded the offices of superintendence, administration and shaykhship of the house to the sons of ʿAli Efendi al-Khalidi.)

106 **Muhammad Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 122; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 46; al-ʿAsali.** *Ajdādunā fī Tharā Bayt al-Maqdis*, **p. 73; Najm.** *Kunūz al-Quds*, **p. 416; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 238239-; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 336339-.**

107 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 119133-; Najm.** *Kunūz al-Quds*, **pp. 185186-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 244245-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 35; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 3143-.**

108 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 130.**

109 **Najm.** *Kunūz al-Quds*, **p. 225; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 45; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 248; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 122; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 180183-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
9	al-Ṭashta-muriyya[110]	on the Bāb al-Silsila road	Amir Tashta-mur al-ʿAlāʾī	784 AH / 1382 CE	amir; viceroy of Damascus		Now a family waqf of the Imām family, occupied by Muhyi al-Din al-Imām
10	al-Kīlāniyya / turba (mau-soleum)[111]	north side of the Bāb al-Silsila road, oppo-site ʿAqabat Abi Madyan	Jamal al-Din al-Kilani	753 AH / 1352 CE	amir	-	(Now called Dār al-Danaf (al-Ansari); it is a waqf of that family and is occupied by seven families.) The Danaf family were superintendents and administrators of the madrasa's waqf
11	al-Ṭāziyya[112]	Bāb al-Silsila quarter	Amir Sayf al-Din Taz	763 AH / 1362 CE	amir; viceroy of Aleppo	Shafiʿi	The Mosque of al-Jūkandār and the village of al-Minya, dependent on the town of Safad
12	Dār al-Ḥadīth al-Hakkāri-yya[113]	north side of the Bāb al-Silsila road	Amir Sharaf al-Din Abu Muhammad ibn Kamil al-Kurdī al-Hak-kari	666 AH / 1268 CE	amir	-	(Today a dwelling, known as Dār al-Tūtunjī.) (Register 208, p. 45, for the year 1125 states that two rooms of the dār al-ḥadīth collapsed entirely that year, and that the two superintendents and reciters of the house, Shaykh Khalil and Shaykh Fayd Allah ibn Ṣunʿ Allah al-Khalidi, asked the qadi for permis-sion to lease the site of the two rooms by ḥikr to whoev-er wished to build on it as he pleased and pay the ḥikr rent each year to the waqf; this was done.) (ʿArif al-ʿArif says that members of the Khalidi family live in it.)
13	al-Jāliqiyya[114]	Bāb al-Silsila road	Rukn al-Din Baybars al-Jaliq	707 AH / 1307 CE	amir		Now known as Dār al-Bāsh-kātib, also called Dār al-Khalidi. The Khalidi family sold the rear part (on the Ḥammām al-ʿAyn road) to the Ghayth family; that part is at present occupied by Israeli forces, according to the sources of this study

110 **Najm.** *Kunūz al-Quds*, **p. 253; al-ʿAsali.** *Ajdādunā fī Tharā Bayt al-Maqdis*, **p. 65; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 45; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 9394-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 251.**

111 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 7482-; Najm.** *Kunūz al-Quds*, **pp. 208210-.**

112 **Najm.** *Kunūz al-Quds*, **p. 232; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 146148-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 45; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 249; al-ʿAsali.** *Ajdādunā fī Tharā Bayt al-Maqdis*, **p. 62.**

113 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 149150-; Najm.** *Kunūz al-Quds*, **p. 145; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 187190-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 44.**

114 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 152153-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 243.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
14	al-Baladiyya[115]	north of Bāb al-Sakīna	Amir Sayf al-Din Mankali Bugha al-Ahmadi	782 AH / 1380 CE	viceroy of Aleppo	Shafiʿi	Land of the village of Kūm al-Tujjār and the village of Ḥarastā in Egypt. (Shaykh al-Khalili taught here and was buried here after his death in 1147; the madrasa then passed to his descendants, and its ownership then passed to the Tarjuman family, who descend from Shaykh al-Khalili on the mother's side. Hasan Bey al-Tarjuman sold it to the Waqf Department. The madrasa is today a dwelling for several families, and part of it forms part of the al-Aqsa Mosque library.)
15	al-Ashrafiyya[116]	inside the Ḥaram, between Bāb al-Silsila and Bāb al-Muṭahhara	al-Malik al-Ashraf Qaytbay	887 AH / 1482 CE	sultan	Hanbali	1. Lands: shares of 28 villages, of which 22 dependent on Gaza, 2 on Ramla, 1 on Jerusalem, 3 on Hebron; 9 farms dependent on Gaza; 3 plots of land dependent on Gaza; two gardens in Gaza. 2. Buildings: a khān in the Dār al-Wakāla quarter near Sūq al-Turkumān; part of a bathhouse; shops; two presses in the Ḥaṣriyya quarter and the Sūq al-Ḥamīr quarter; halls, houses, mills, a bakery, a stable, vines and other trees of various kinds and fruits in Raml Ghazza. In all, 52 properties, in addition to the villages of Bayt Dajan and al-Safiriyya
16	al-ʿUthmāniyya[117]	at Bāb al-Mutawaḍḍaʾ, west of the Ḥaram esplanade	Isfahan Shah Khatun	840 AH / 1436 CE	-	Hanafi	The madrasa is today a dwelling, occupied by members of the Fityani family

115 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 154156-; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, p. 92; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 35; Najm.** *Kunūz al-Quds*, **p. 245; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 251; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 117; al-ʿAsali.** *Ajdādunā fī Tharā Bayt al-Maqdis*, **p. 48.**

116 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 158171-; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 117; Najm.** *Kunūz al-Quds*, **pp. 306307-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 255259-.**

117 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 176181-; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 118; al-ʿAsali.** *Ajdādunā fī Tharā Bayt al-Maqdis*, **p. 46; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; Najm.** *Kunūz al-Quds*, **pp. 284286-; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 130139-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 254.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
17	al-Khātūniyya[118]	between Bāb al-Ḥadīd (Iron Gate) and al-Qaṭṭānīn, west of the Ḥaram and immediately south of al-Madrasa al-Arghūniyya	Khatun (a Turkish word meaning «lady») bint Shams al-Din al-Baghdadiyya	755 AH / 1354 CE	-	-	One of three madrasas (colleges) endowed by women in Jerusalem, the other two being al-ʿUthmāniyya and al-Bārūdiyya (besides Khassaki Sultan, and Sitt Tashtaq al-Muzaffariyya, d. 789 AH, who built the great house known today as Dār al-Aytām al-Islāmiyya). The whole of the farm known as Ẓahr al-Jamal, and all the lands of the village of Deir Jarir in the environs of Jerusalem. The madrasa is known today as Dār al-Khatib, since members of that family live in it
18	al-Arghūniyya[119]	at Bāb al-Ḥadīd, west of the Ḥaram	al-Ashraf al-Sayfi Arghun al-Kamili	759 AH / 1358 CE	viceroy of Syria	Hanafi	Half of the village of Aʿnāz; the whole of the mill known as the Aʿnāz mill; three-fifths of the farm of al-Jandaliyya; all in Ḥiṣn al-Akrād in Syria. The madrasa building is known at present as Dār al-ʿAfifi, and members of that family live in part of it (the sons of ʿAbd al-Rahman al-ʿAfifi held the shaykhship of the madrasa in the late eighteenth century). The eastern īwān of the madrasa contains the tomb of King Husayn ibn ʿAli
19	al-Muzhiriyya[120]	at Bāb al-Ḥadīd, west of al-Madrasa al-Arghūniyya	Zayn al-Din ibn Muzhir al-Ansari	885 AH / 1480 CE	state official		Half of the village of Beit Sahour, in the district of Jerusalem. (Known today as Dār al-Shaʿbānī, because the Shaʿbānī family lived in it until 1933, when the Islamic Waqfs bought it from them; it is now a dwelling and part of it is in ruins.)

118 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 183186-; Najm.** *Kunūz al-Quds*, **p. 247; al-ʿAsali.** *Ajdādunā fī Tharā Bayt al-Maqdis*, **pp. 4345-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 250; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 118; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 6061-.**

119 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 188191-; Najm.** *Kunūz al-Quds*, **pp. 223224-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 247; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 6266-.**

120 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 150152-; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 193194-; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 118; Najm.** *Kunūz al-Quds*, **p. 301; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 37; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 255.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
20	al-Jawhariyya[121]	at Bāb al-Ḥadīd, on the left as one enters the Ḥaram	Jawhar al-Qunuqbaʾi al-Khazindar	844 AH / 1440 CE	state official	Hanafi	The village of Zaytun, dependent on Gaza; 9 qīrāṭ of the village of ..., dependent on Jerusalem; 10 qīrāṭ of the village of Kufiya, dependent on Gaza; 12 qīrāṭ of the village of Tulkarm, dependent on Qaqun. (The madrasa is now called Dār al-Khatib and is occupied by members of that Jerusalem family, according to ʿArif al-ʿArif.)
21	al-Ḥanbaliyya[122]	at Bāb al-Ḥadīd, west of the Jawhariyya and Muzhiriyya madrasas	Amir Baydamur al-Khwarizmi	781 AH / 1379 CE	viceroy of Syria	Hanbali (the second Hanbali madrasa in Jerusalem after al-Wajīhiyya)	Known today as Dār Quṭayna. Bought by Shaykh ʿAli al-Taziz in 1954
22	al-Raṣāṣiyya / ribāṭ (hospice)[123]	al-Wād quarter, south of al-Madrasa al-Badriyya	Bayram Jawish	947 AH / 1540 CE	-	-	-
23	al-Luʾluʾiyya[124]	al-Wād quarter, on the al-Qirami road, south of al-Madrasa al-Badriyya	Amir Luʾluʾ Ghazi	775 AH / 1373 CE	amir	-	The village of Sawur (Khirbat Bayt Sawur, between Jerusalem and Hebron near Birkat al-ʿArrūb). Occupied for decades by the Asmar family
24	al-Badriyya[125]	al-Wād quarter, west side of the al-Qirami road	Badr al-Din Muhammad al-Hakkari	610 AH / 1213 CE	amir	Shafiʿi	Demolished; its site has become a dwelling and has been sold
25	al-Jahārkasiyya[126]	Bāb al-Nāẓir	Amir Jaharkas al-Hanbali	before 791 AH / 1389 CE	amir	Hanbali	Defunct

121 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 254255-; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 140149-; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 195199-.**

122 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 200201-; Najm.** *Kunūz al-Quds*, **p. 240; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 122; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 44; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 250; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 8990-.**

123 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 202; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 118; Najm.** *Kunūz al-Quds*, **pp. 288290-.**

124 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, p. 91; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 46; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 205; Najm.** *Kunūz al-Quds*, **p. 241; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 250; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 122.**

125 **Najm.** *Kunūz al-Quds*, **p. 125; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 206; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 240;** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 47; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 359360-.**

126 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 207; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 122; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 44; Najm.** *Kunūz al-Quds*, **p. 421; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 251; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 98100-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
26	al-Manjaki-yya[127]	Bāb al-Nāẓir, on the wall of the Ḥaram	Amir Sayf al-Din Manjak	762 AH / 1361 CE	viceroy of Syria	Hanafi	A bathhouse in the town of Safad near its citadel; the shops known as al-Wakāla in Jerusalem, 13 doors; a hall, one qīrāṭ; the ḥikr of a plot of land in Jerusalem known by the endower's name; a plot of land known as Manjak, dependent on Jerusalem, with scrub, vines and trees; 6 qīrāṭ of the village of Beit Safafa
27	al-Ḥasani-yya[128]	Bāb al-Nāẓir	Amir Husam al-Din Hasan al-Kashkali	837 AH / 1434 CE	viceroy of Jerusalem	Shafiʿi	12 qīrāṭ of the village of Deir Dibwan, dependent on Jerusalem; 8 qīrāṭ of the village of Kafr Ṭūbī, dependent on Jerusalem; 16 qīrāṭ of the village of ʿInab, dependent on Jerusalem (the village of al-ʿInab is the modern Abu Ghūsh, west of Jerusalem); 6 qīrāṭ of the village of ..., dependent on Jerusalem; the whole of the farm of Maliha al-Kubrā in Jerusalem; 12 qīrāṭ of the village of ..., dependent on Hebron. Turned into a dwelling; part of its building was joined to al-Madrasa al-Manjakiyya so that the two madrasas became the seat of the Supreme Muslim Council, and afterwards the seat of the president of the Islamic Scholarly Council, the Jerusalem Waqf Department and the Mufti of Jerusalem. The other part is a dwelling
28	al-Qashta-muriyya[129]	Bāb al-Nāẓir	Amir Qashta-mur al-Sayfi	759 AH / 1358 CE	amir	-	Now a dwelling

127 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **pp. 208212-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 7682-; Najm.** *Kunūz al-Quds*, **p. 229; al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **pp. 248249-; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 118.**

128 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **pp. 213216-; al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 124129-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 43; al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **pp. 253254-; Najm.** *Kunūz al-Quds*, **p. 28.**

129 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 217; Najm.** *Kunūz al-Quds*, **p. 220; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 121; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 43; al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **p. 248; al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 6768-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
29	al-Bārūdiyya[130]	Bāb al-Nāẓir, near al-Ṭashta-muriyya	al-Hajja Safari Khatun, daughter of Sharaf al-Din al-Barudi	768 AH / 1367 CE	-	-	Now a dwelling
30	al-Wajīhiyya[131]	near Bāb al-Ghawān-ima	Shaykh Wajih al-Din ibn ʿUthman	c. 700 AH / 1301 CE	scholar	Hanbali	Now a dwelling
31	al-Jāwuliyya[132]	northwestern corner of the Ḥaram espla-nade	Amir ʿAlam al-Din Sanjar al-Jawuli	715 AH / 1315 CE	amir; viceroy of Jerusalem and Gaza	Shafiʿi	In the nineteenth century the building was the seat of government and was called the Old Saray. Under the Brit-ish Mandate the Supreme Muslim Council took it over as waqf property and made it the seat of Rawḍat al-Maʿārif al-Waṭaniyya College. During the 1936 revolt the British used it as a police station. In 1948 it was the headquarters of the Holy War Army (Jaysh al-Jihād al-Muqaddas)
32	al-Ṣubaybi-yya[133]	east of al-Madrasa al-Jāwuliyya, on the north side of the Ḥaram espla-nade	Amir ʿAlaʾ al-Din ibn Nasir al-Din Muhammad	800 AH / 1398 CE	amir; command-er of the citadel of al-Ṣubayba, between Bāniyās and Tibnīn, and viceroy of Jerusa-lem	-	In use; today part of the building of al-Madrasa al-ʿU-mariyya (formerly Rawḍat al-Maʿārif al-Waṭaniyya College). Its Waqfs have been consumed
33	al-Isʿirdiyya / khānqāh[134]	on the east side of al-Ma-drasa al-Ṣu-baybiyya	Majd al-Din al-Isʿirdi	770 AH / 1369 CE	merchant	-	Now a dwelling. Restored by the Supreme Muslim Council in 1927, which moved the al-Aqsa Mosque library into it

130 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 218; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 122; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 43; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, p. 88; Najm.** *Kunūz al-Quds*, **p. 420; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 250.**

131 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 1012-; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 220; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 42; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 121; Najm.** *Kunūz al-Quds*, **p. 418; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 243.**

132 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 221224-; Najm.** *Kunūz al-Quds*, **p. 179; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 119; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 243; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 1921-.**

133 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 225; Najm.** *Kunūz al-Quds*, **p. 274; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 252; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 119; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 109110-.**

134 **Najm.** *Kunūz al-Quds*, **p. 236; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 119; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 248; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 6970-; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 226227-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
34	al-Mālikiyya / al-Jūkandār[135]	adjoining al-Madrasa al-Isʿirdiyya on the east	Malik al-Jūkandār	741 AH / 1340 CE	state official	Maliki	The whole of the khān known as Khān al-Ḥabbālīn in Gaza, and the whole of the seven shops adjoining that khān on the east. Occupied by members of the Khaṭīb family
35	al-Fārisiyya[136]	north of the Ḥaram, west of Bāb al-ʿAtam (Gate of Darkness), between al-Madrasa al-Malikiyya to the west and al-Madrasa al-Amīniyya to the east	Amir Faris al-Baki	c. 750 AH / 1349 CE	viceroy of Gaza	Hanbali / Hanafi	Half the lands of the village of al-Shuwayka, Nablus sub-district. Now a dwelling, occupied by Shaykh Ibrahim al-ʿAwri and members of the Dajani family
36	al-Amīniyya[137]	Bāb al-ʿAtam (its modern name is Bāb Fayṣal; among its old names are Bāb al-Dawādāriyya and Bāb Sharaf al-Anbiyāʾ)	Amin al-Din ʿAbd Allah	730 AH / 1330 CE	scholar	Shafiʿi	Now a waqf of the Imām family, occupied by Shaykh Asʿad al-Imām
37	al-Dawādāriyya[138]	Bāb al-ʿAtam	Amir ʿAlam al-Din Abu Musa Sanjar al-Dawādār	695 AH / 1296 CE	scholar	Shafiʿi	The village of Bayt Nabala, of Jerusalem; the village of Ḥajlā, of Jericho; a bakery and a mill with a house above them in Jerusalem; a soap factory and six shops; a paper mill in Nablus; three shops and four mills in Baysān; the village of Tubras, of Qaqun; and the Ḥammām al-Malika in Nablus

135 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 4854-; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 228232-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 36; Najm.** *Kunūz al-Quds*, **pp. 204205-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 246.**

136 **al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 33; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 5559-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 247; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 233234-; Najm.** *Kunūz al-Quds*, **pp. 216218-.**

137 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 235237-; Najm.** *Kunūz al-Quds*, **pp. 188189-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 246; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 39; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 4447-.**

138 **Najm.** *Kunūz al-Quds*, **p. 155; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 238241-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 242243-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 39; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 59-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
38	al-Sallāmiyya[139]	north of al-Madrasa al-Dawādāriyya at Bāb al-ʿAtam	Majd al-Din Abu al-Fidāʾ al-Sallami	c. 740 AH / 1339 CE	merchant	Hanafi	6 qīrāṭ of the village of Niʿlin, dependent on Ramla; 4 qīrāṭ of the village of Jabaʿ, dependent on Jerusalem; 6 qīrāṭ of the village of al-Bireh; 16 qīrāṭ of the farm of Quds Sharīf; and the whole of the farm located in Jerusalem. Occupied by members of the Jār Allah family, who have held the administration of the waqf since the twelfth century AH
39	al-Bāsiṭiyya / khānqāh[140]	north of the Ḥaram, beside al-Madrasa al-Dawādāriyya	Zayn al-Din ʿAbd al-Basit al-Dimashqi	834 AH / 1431 CE	qadi; minister (superintendent) of the armies	Shafiʿi / Hanafi	18 qīrāṭ of the village of Sur Bahir, dependent on Jerusalem. Part of it occupied by the Jār Allah household
40	al-Awḥadiyya / turba[141]	east of al-Dawādāriyya and al-Bāsiṭiyya	al-Malik al-Awhad Najm al-Din Yusuf ibn al-Malik al-Nasir	697 AH / 1298 CE	scholar; superintendent of the Two Sanctuaries in Jerusalem and Hebron	-	Occupied by people from Hebron
41	al-Karīmiyya[142]	Bāb Ḥiṭṭa, north of the Ḥaram	al-Sahib Karim al-Din	718 AH / 1318 CE	agent (wakīl) of the sultan	Shafiʿi / Hanafi	Occupied by members of the Jār Allah family, who inherited the superintendence of the madrasa
42	al-Kāmiliyya[143]	Bāb Ḥiṭṭa, north of al-Madrasa al-Karīmiyya	al-Hajj Kamil al-Tarabulusi	c. 800 AH / 1398 CE	-	-	Today a waqf of the Jār Allah family, occupied by members of the Mūsūs family
43	al-Qarqashandiyya[144]	Bāb al-Asbāṭ	-	-	-	-	Defunct

139 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 242247-; Najm.** *Kunūz al-Quds*, **p. 163; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 243; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 42; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 1317-.**

140 **Najm.** *Kunūz al-Quds*, **p. 278; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 119; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 39; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 112118-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 253; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 248250-.**

141 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 251253-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 39; al-Mahdi, ʿAbd al-Jalīl Hasan.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī: Dawruhā fī al-Ḥaraka al-Fikriyya*. **Amman: Maktabat al-Aqṣā, 1981, vol. 1, p. 399.**

142 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 254257-; Najm.** *Kunūz al-Quds*, **pp. 182183-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 244; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 2230-.**

143 **Najm.** *Kunūz al-Quds*, **p. 277; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 121; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 42; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 252; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, p. 111; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 258.**

144 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 260; Najm.** *Kunūz al-Quds*, **p. 423.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
44	al-Ghādiriyya[145]	between Bāb Ḥiṭṭa and Bāb al-Asbāṭ	Khadija Khatun, wife of Amir Nasir al-Din Muhammad ibn Dulghādir	836 AH / 1433 CE	amir	Hanafi / Maliki	Khān al-Ghādiriyya in Sūq al-Qaṭṭānīn, Jerusalem, comprising an upper and a lower storey, warehouses, and six shops, upper and lower
45	al-Ṭūlūniyya[146]	between Bāb Ḥiṭṭa and Bāb al-Asbāṭ	Shihab al-Din Ahmad al-Tuluni	before 800 AH / 1398 CE	qadi	Hanafi / Shafiʿi	The whole of the four villages in the sub-district of Kütahya in the province of Germiyan, called Almā Aghājī, Āyina Ghazi, Salla Ūghlānī and Ūra Kīr. (No trace of it at present)
46	al-Fanāriyya[147]	east of al-Ṭūlūniyya	Muhammad Shah ibn Fanari al-Rumi	c. 800 AH / 1398 CE	scholar	Hanafi	Defunct and its building demolished
47	al-Ḥasaniyya[148]	near Bāb al-Asbāṭ	Shahin al-Hasani al-Tawashi	760 AH / 1359 CE	-	-	Its Waqfs have lapsed and passed in time to a group of Christians, we do not know how. The madrasa building no longer exists
48	al-Muʿaẓẓamiyya / al-Ḥanafiyya[149]	north side of the al-Mujāhidīn road	al-Malik al-Muʿazzam ʿIsa ibn al-Malik al-ʿAdil, brother of Salah al-Din al-Ayyubi	614 AH / 1217 CE	sultan	Hanafi	The whole of the village of Battir, dependent on Jerusalem; the village of Allar al-Fawqa, dependent on Jerusalem; the whole of the village of Allar al-Sufla, dependent on Jerusalem; the whole of the village of ..., dependent on Jerusalem; the whole of the farm of al-Salam, dependent on Jerusalem; the whole of the village of Rām. Once occupied by members of the Jār Allah family, then by the family of Muhammad Daʿsan al-ʿAjuli

145 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 261264-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 40; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 119123-; Najm.** *Kunūz al-Quds*, **p. 279; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 253; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 120.**

146 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 265268-; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 120; Najm.** *Kunūz al-Quds*, **p. 422; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 251252-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 40; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 101105-.**

147 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 269270-; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 120; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 40; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 106108-; Najm.** *Kunūz al-Quds*, **p. 422.**

148 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 249; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 40; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 7273-; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 371; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 120; Najm.** *Kunūz al-Quds*, **p. 419.**

149 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 272280-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 240, 248; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 42; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 361393-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
49	al-Maymūniyya[150]		Maymun al-Qasri	593 AH / 1197 CE	amir	Shafiʿi	The village of Bayt Dajan in Nablus, with the produce of the lands of al-Ḥamrāʾ, Qadash, Ṭurra, a farm, Jabal Shawka, Khirbat Qamās and Tall Wādī al-ʿĀṣiya. Among the administrators of its Waqfs in 1124 was Shaykh ʿAbd al-Rahman ibn ʿAbd al-Rahim Chalabi al-ʿAsali, and in the thirteenth century it became one of the Waqfs of the ʿAsalī family. In 1310, corresponding to 1892, the Turks made it a preparatory school (maktab iʿdādī), the first preparatory school in Jerusalem, and named it al-Maymūniyya
50	al-Shāfiʿiyya / Zāwiyat al-Darkāh[151]	al-Dabbāgha, beside the Ṣalāḥī Bīmāristān	Amir Ghazi ibn al-Malik al-ʿAdil ibn Ayyūb	between 600 and 615 AH / 1218 CE	amir	Shafiʿi	The building has disappeared
51	Abi ʿUqba[152]	near the Church of the Holy Sepulcher	Abu ʿUqba al-Hanafi	-	-	Hanafi	Defunct
52	al-Barqūqiyya[153]	-	Sultan Barquq?	-	sultan		Defunct
53	al-Duqmāriyya[154]	-	-	-	-	-	Defunct
54	al-Marmariyya[155]	-	-	-	-	-	12 qīrāṭ of the village of Shādūr al-Wādī, dependent on Jerusalem; 8 qīrāṭ of the farm of Ḥārat Banī Saʿd, dependent on Jerusalem; 8 qīrāṭ of a plot of land and farms in the environs of Jerusalem. Defunct
55	al-Farhādiyya[156]	Bāb al-Nāẓir	-	-	-	-	Defunct

150 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 281284-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 48; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 340342-; al-Ṣāliḥiyya, Muhammad ʿIsa.** *Sijill Arāḍī Alwiyat Ṣafad, Nābulus, Ghazza wa-Qaḍāʾ al-Ramla ḥasab al-Daftar raqm 312, Tārīkhuhu 1556* **[The Land Register of the Districts of Safad, Nablus and Gaza and the Sub-District of Ramla according to Register no. 312, dated 1556]. Amman: Yarmouk University, 1999, p. 54.**

151 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 285; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 397398-.**

152 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 286; Najm.** *Kunūz al-Quds*, **p. 416.**

153 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 287.**

154 **Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 120; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 288.**

155 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 288; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 125.**

156 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 288; Kurd ʿAli.** *Khiṭaṭ al-Shām*, **vol. 6, p. 125.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
56	al-Ḥakamiyya[157]	-	-	-	-	Hanafi	Defunct
57	al-Ṣāmitiyya[158]	Wādī al-Ṭawāḥīn, Jerusalem	-	-	-	-	Defunct
58	al-Ḥamrā'[159]	near the Ṣalāḥiyya Khānqāh					Taken as a dwelling by members of the ʿAlami family
59	al-Amjadiyya[160]	the Hanafi madrasa at the gate of the Ḥaram	al-Malik al-Amjad Hasan, brother of al-Malik al-Muʿazzam				Defunct
60	al-Ḥajrajiyya[161]	ʿAqabat al-Sitt	-	-	-	-	Defunct
61	al-Aḥmadiyya[162]	above the platform of the Dome of the Rock, on the east side					Had a waqf in the village of Silwan. Defunct
62	al-Jarkasiyya / zāwiya[163]	in the Wādī al-Ṭawāḥīn quarter, Jerusalem					Half of the village of Beit Sahour and the valley. Defunct
63	al-Dahriyya[164]	-	-	-	-	-	-
64	The Ṣalāḥī Bīmāristān[165]		Salah al-Din	583 AH / 1187 CE	sultan		The al-Dabbāgha area, on the Church of the Holy Sepulcher street. Comprises the place known as Sūq al-Bāzār (the Bazaar), the plot north of it, part of the land on which the German Church of the Redeemer (al-Dabbāgha) stands, and part of the land on which the Greek Orthodox Aftīmūs (Euthymios) market stands

157 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 289; al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **p. 248.**
158 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 289.**
159 **al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **p. 259; al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 290.**
160 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 291; Najm.** *Kunūz al-Quds*, **p. 417; al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 394395-.**
161 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 291.**
162 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 292.**
163 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 293.**
164 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **p. 293.**
165 **al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **pp. 294296-; al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **p. 178; al-Mahdi.** *al-Madāris fi Bayt al-Maqdis fi al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, pp. 343350-.**

No.	Madrasa	Location	Endower	Year (AH / CE)	Endower's office	School (madhhab)	Endowed properties and present state
65	al-Muḥaddithiyya[166]	near al-Wajihiyya, near Bāb al-Maghāriba	ʿIzz al-Din ʿAbd al-ʿAziz al-ʿAjami al-Ardabili	762 AH / 1351 CE	scholar of ḥadīth	-	Belongs to the Waqfs today; part of it was joined to al-Madrasa al-ʿUmariyya (al-Maʿārif al-Waṭaniyya College), and the other part is let and occupied by members of the Shihabi family
66	al-Mawṣiliyya[167]	Bāb Sharaf al-Anbiyāʾ, beside al-Aqsa Mosque	Abu Bakr al-Shaybani al-Mawsili	c. 790 AH / 1388 CE	scholar		Defunct
67	al-ʿIzziyya[168]		ʿIzz al-Din Aybak				Defunct
68	al-Abāṣīriyya / ribāṭ[169]	beside Bāb al-Nāẓir	ʿAlaʾ al-Din al-Abasiri	666 AH / 1268 CE			Used by the Ottoman state for the police guarding the gates of the Ḥaram, then turned into a prison at the end of the Ottoman period. Now occupied by members of the Khalidi family, according to ʿArif al-ʿArif
69	al-Ṭāziyya / turba[170]	the Bāb al-Silsila road, on the north	Amir Taz ibn Quṭghāj	763 AH / 1362 CE	amir	Hanafi	A dwelling occupied by members of the Hidāya household
70	al-Zamaniyya / ribāṭ[171]	west of the Ḥaram, above the īwān at Bāb al-Qaṭṭānīn	al-Khawajaki al-Shamsi Muhammad ibn al-Zamurrud Khān	881 AH / 1476 CE		Shafiʿi	Occupied by members of the ʿAfifi household; supervised by the Waqf authority
71	Dār al-Ḥadīth al-Tankiziyya[172]		Amir Sayf al-Din Tankiz	729 AH / 1329 CE	scholar		-

Waqf and Sufism

Jerusalem was one of the most important Arab and Islamic cities to which the great masters (aqṭāb) of Sufism and their disciples turned. Given the complementary relationship between the political order, represented by the sultans from the Ayyubid period to the Ottoman, and the Sufi masters, these rulers granted the

166 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, p. 71; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 43; Najm.** *Kunūz al-Quds*, **p. 227; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 249.**

167 **Najm.** *Kunūz al-Quds*, **p. 423; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 243; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 9597-.**

168 **Najm.** *Kunūz al-Quds*, **p. 423; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 1, p. 396.**

169 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 242.**

170 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 8387-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 250.**

171 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 255; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 153155-.**

172 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **vol. 2, pp. 191193-.**

leading figures of Sufi thought and its various orders (ṭuruq) standing and patronage, despite the considerable influence these masters held over the common people. The rulers did not see them as rivals or as a threat to their authority; they saw them as a functional instrument that completed the work of the state and served its aims, political, intellectual and existential.

Sufism and its orders played an important part in upbringing and education in the absence of a central state that would take upon itself the task of leading people from ignorance and illiteracy to knowledge, light and learning. This allowed the Sufi establishment in Jerusalem to occupy a position tinged with sanctity, respected and honored in the city's society, and over time, through the Ayyubid, Mamluk and Ottoman periods, it helped form a civilizational, spiritual and architectural heritage that as a whole became a fundamental part of Jerusalem's identity and civilizational history down to the end of the Ottoman period and the beginnings of modern Western colonialism, British and Zionist.

The Sufi orders also played an important part in preserving Arab Islamic identity, taking on the task of a central state preoccupied, since the Crusades, with confronting invading European powers. Their activity extended to spreading Islam by peaceful means among pagan peoples, and to *jihād* against invaders and against missionary and proselytizing movements. Many researchers have attributed the fierce resistance that met the French army[173] to the people's membership of these Sufi orders, which called for *jihād*, resistance and *ribāṭ* (garrison duty) on the frontiers in defense of the country against foreign invasion, fighting it inside Arab lands, as in Tunisia and Algeria, and *ribāṭ* in lands liberated from colonial rule, as in Jerusalem and Palestine after the liberation from the Crusader presence in the Ayyubid and Mamluk periods: the liberation of Jerusalem by the Ayyubids in 1187 CE and the liberation of Acre by the Mamluks in 1291 CE.

The zāwiyas, khānqāhs and madrasas of the Ottoman period also carried on an educational activity inherited from earlier civilizations and periods, offering religious and Sufi instruction, theoretical and practical. This kind of instruction played an important part in making Islam known and spreading its principles amongthepeople.[174]

From 1187 the history of Jerusalem has been bound up with the history of Sufism; the two have gone together as a shared existence and a memory of generations.

173 **Rashid Bakkari. «Shuyūkh al-Ṭuruq al-Ṣūfiyya fī al-Jazāʾir wa-Dawruhum fī Qiyādat al-Jihād ḍidda al-Istiʿmār al-Faransī min 1832 ilā 1916: Dirāsa Sūsyū-Tārīkhiyya» [The Shaykhs of the Sufi Orders in Algeria and Their Role in Leading the Jihād against French Colonialism, 1832 to 1916: A Socio-Historical Study].** *Majallat Dirāsāt* **[Dirāsāt Journal], Amar Telidji University of Laghouat, no. 32, 2014, p. 202.**

174 **Ekmeleddin İhsanoğlu (ed. and intro.).** *al-Dawla al-ʿUthmāniyya: Tārīkh wa-Ḥaḍāra*. **Istanbul: IRCICA (Research Centre for Islamic History, Art and Culture), vol. 2, 1999, p. 475.**

The Sufi presence in Jerusalem was never confined to a single order. Its orders were many and ramified, and they left an architectural and intellectual heritage of great variety, which enriched the city not only architecturally, through the number of its Sufi buildings, but intellectually, through the diversity of its orders and of their institutions and their sheer number. This made Jerusalem a destination for the Sufis of the Islamic world and a beacon of learning and of diverse doctrinal and Sufi thought. The orders and their institutions drew disciples, shaykhs and masters from every land of the Islamic world, from the farthest east to the farthest west: Maghrebi Sufis, eastern Sufis, Afghan Sufis, Indian Sufis, each with his own way of Sufism and his own retreat, khānqāh (Sufi hospice) or zāwiya (Sufi lodge).

Among these orders: the Rifāʿiyya, of Shaykh Ahmad ibn ʿAli Yahya al-Rifaʿi (d. 578 AH), whose lineage reaches back to Musa al-Kazim ibn Jaʿfar al-Sadiq ibn ʿAli ibn Abi Talib, and who was born and died in Iraq;[175] and the Naqshbandiyya, named after Shaykh Muhammad Bahaʾ al-Din al-Naqshbandi al-Bukhari (d. 1389 CE).[176]

The Shādhiliyya, or Wafāʾiyya, is named after Shaykh Abu al-Hasan ʿAli ibn ʿAbd Allah ibn ʿAbd al-Jabbar al-Shadhili al-Maghribi, a descendant of al-Hasan ibn ʿAli (d. 656 AH),[177] and branched into many orders, among them the ʿAlawiyya, the Darqāwiyya and the Shādhiliyya-Yashruṭiyya.[178] The French orientalist Louis Massignon observes that some of the Shadhili masters regard Abu Madyan Shuʿayb al-Ghawth, the Sufi of Tlemcen who died in 1197 at al-ʿUbbād on the outskirts of Tlemcen, as "one of the figures of the Appearance, that is, as Shuʿayb ibn Salih, who will carry the standard of the awaited Mahdi and prepare the way for his rule before the Hour, and who will at last be killed in the city of Jerusalem while leading the vanguard of the Mahdi's armies."[179]

There is also a presence of the Mawlawiyya, named after Jalal al-Din al-Rumi; the Bisṭāmiyya, after Abu Yazid Tayfur al-Bistami; and the Tījāniyya, after Abu al-ʿAbbas Ahmad ibn Muhammad ibn al-Mukhtar ibn Ahmad al-Sharīf al-Tijani, born in Algeria and died in the city of Fez in 1230 AH, whose order spread in North

175 **Muhammad Abu al-Rubb.** *al-Fikr al-Ṣūfī al-Ijtimāʿī ʿinda al-Ṭarīqatayn al-Ṣūfiyyatayn (al-Qādiriyya wa-l-Khalwatiyya): Dirāsa wa-Taḥlīl / Namūdhaj Muḥāfaẓat Jinīn* **[Social Sufi Thought in the Two Sufi Orders (the Qādiriyya and the Khalwatiyya): A Study and Analysis, the Case of Jenin Governorate]. Unpublished MA thesis, Al-Quds University, 2006, p. 26.**

176 **Ibrahim Rabayiʿa. «al-Khawāniq fī al-Quds khilāl al-ʿAhd al-ʿUthmānī» [The Khānqāhs of Jerusalem in the Ottoman Period].** *Majallat al-Jāmiʿa al-Islāmiyya* **[Journal of the Islamic University], vol. 18, no. 1, 2010, pp. 673674-.**

177 **Qasim Suhayr.** *al-Ṭuruq al-Ṣūfiyya wa-Turāthuhā fī Filasṭīn: al-Khalwatiyya, al-Naqshbandiyya wa-l-ʿAlāwiyya* **[The Sufi Orders and Their Heritage in Palestine: The Khalwatiyya, the Naqshbandiyya and the ʿAlāwiyya]. Unpublished MA thesis, Birzeit University, 2005, p. 57.**

178 **Muhammad Abu Rumman.** *Asrār al-Ṭarīq al-Ṣūfī: Mujtamaʿ al-Taṣawwuf wa-l-Zawāyā wa-l-Ḥaḍarāt fī al-Urdun* **[Secrets of the Sufi Path: The Society of Sufism, Zāwiyas and Ḥaḍras in Jordan]. Amman: Friedrich-Ebert-Stiftung, 2020, p. 139.**

179 **Louis Massignon.** *Wathāʾiq ʿan Awqāf al-Amākin al-Muqaddasa fī al-Islām: Waqf al-Tamīmī fī al-Khalīl wa-Abū Madyan fī al-Quds* **[Arabic translation of Massignon,** *Documents sur certains waqfs des lieux saints de l›Islam*]**. Translated by Mayy Mahmud. Italy: Manshūrāt al-Mutawassiṭ, 2015, p. 37.**

Africa and the Sudan.[180] There are other orders too, such as the ʿAlawiyya, the Tījāniyya, the Wafāʾiyya, the Qalandariyya and the Yūnusiyya.[181]

The Qādiriyya also had an important presence. The order is named after Shaykh ʿAbd al-Qadir al-Jilani (d. 1166 CE), who was born in Jīlān, south of the Caspian Sea, in 470 AH. He moved to Baghdad, where he took over the running of a small madrasa founded by Shaykh Abu Saʿid al-Mukharrimi in Bāb al-Azaj, one of the quarters of Baghdad, and developed it in its buildings and its functions on the strength of the properties endowed upon it; it became known as al-Madrasa al-Qādiriyya. This coincided with the Crusades, which drove many Palestinians to other parts of the Islamic world, Baghdad among them. The madrasa played an important part in receiving the sons of those who had fled the Crusader occupation of Palestine, educating them and preparing them to return to the battlefronts to resist the colonizer under Zangid leadership. Among them were Ibn Naja al-Waʿiz al-Dimashqi (d. 599 AH), who became a military adviser to Saladin; Musa, the son of Shaykh ʿAbd al-Qadir, who moved to Bilād al-Shām; and Muwaffaq al-Din, one of Saladin's advisers, and his kinsman al-Hafiz ʿAbd al-Ghani al-Maqdisi, who joined ʿAbd al-Qadir's madrasa after their families had moved to the village of Jammāʿīn[182*], one of the villages of Nablus, in 561 AH.[183]

All these orders contributed not only to spreading Sufi thought in Jerusalem in particular and Palestine in general, but to creating an enduring architectural heritage in Jerusalem, despite the attempts at erasure, Judaization and seizure. Each order had its inherited presence in the Holy City through its Sufi institutions, khānqāhs and zāwiyas, or through certain madrasas that played a double role, educational and Sufi at once, so that these institutions were sometimes called zāwiya and sometimes madrasa. As noted earlier, the tie between these institutions and a permanent source of funding, the revenues of waqf property, was the chief reason for their longevity, the continuation of their role and the preservation of their architectural heritage.

As also noted earlier, the roots of these institutions, khānqāhs, zāwiyas and ribāṭs (hospices), go back to the time of Saladin; the sources record no appearance of such institutions in Egypt and Bilād al-Shām before his reign.[184]

The zāwiya is an institution introduced later into Islamic society. Early Islamic so-

180 **Suhayr.** *al-Ṭuruq al-Ṣūfiyya wa-Turāthuhā fī Filasṭīn: al-Khalwatiyya, al-Naqshbandiyya wa-l-ʿAlāwiyya*, **p. 67.**
181 **Yusuf al-Natsha. «al-Ṣūfiyya fī al-Quds» [Sufism in Jerusalem].** *Shabakat Akhbār al-Balad* **[al-Balad News Network], website, 2014.**
182 * **The historical record has the Banu Qudama leaving Jammāʿīn for Damascus in 551 AH / 1156 CE. [Translator's note]**
183 **Abu al-Rubb.** *al-Fikr al-Ṣūfī al-Ijtimāʿī ʿinda al-Ṭarīqatayn al-Ṣūfiyyatayn (al-Qādiriyya wa-l-Khalwatiyya): Dirāsa wa-Taḥlīl / Namūdhaj Muḥāfaẓat Jinīn*, **pp. 7080-.**
184 **Tawfiq al-Tawil.** *al-Taṣawwuf fī Miṣr ibbāna al-ʿAṣr al-ʿUthmānī* **[Sufism in Egypt during the Ottoman Era]. Cairo: Maktabat al-Ādāb, 1946, p. 45.**

ciety did not know it: the mosque was the only religious institution, in which the rites, worship and devotional retreat (*iʿtikāf*) took place, and it served as an educational institution in place of the madrasa, and as a place for consultation and political decision. At a later stage, during the conquests and the defense of the frontiers, the creation of the *ribāṭ* had the greatest effect in turning it into a place of worship and seclusion as well as of garrison duty for *jihād* and frontier defense. As the conquests receded and the ribāṭs fell idle, the main impulse behind the appearance of zāwiyas and khānqāhs was their use as places of seclusion and withdrawal for the devout and the righteous; they also played an important educational role and served as a social refuge for travelers, before becoming places of veneration and visitation after the death of their founders and their burial within theprecincts.[185]

Architecturally, these institutions comprised a set of small rooms providing the Sufi with an atmosphere of "retreat," known as *khalāwī* or cells; a large hall where the Sufis gathered for *dhikr*, religious chants and Sufi sessions; in many cases a small mosque within the complex for prayer, supplication, teaching and preaching; a modest kitchen; in some cases the tomb of the founding shaykh; an open courtyard, part of which might be a small garden planted with trees and flowers; and finally a cistern for collecting water. A minaret was usually attached to the building, for its Islamic significance and for its importance in conveying the zāwiya's activity to the neighbors; it served the Sufi order as a means of announcement.[186]

The tables that follow give the names of the Sufi institutions of Jerusalem, khānqāhs and zāwiyas, that have existed in the city from Saladin's conquest in 1187 CE to the present day, together with the location of each, its founder, the date of its foundation, its financial revenues, and its present condition, particularly since the end of the Ottoman period and what has become of it today. Some, as we shall see, are still standing and in good architectural condition; others have lost their function and been turned into residential property; and others still have been effaced and replaced by other institutions.

185 **al-Tlili al-ʿAjili.** *al-Ṭuruq al-Ṣūfiyya wa-l-Istiʿmār al-Faransī bil-Bilād al-Tūnisiyya 18811939-* **[The Sufi Orders and French Colonialism in Tunisia, 18811939-]. Publications of the Faculty of Letters, Manouba, 1992, pp. 3435-.**
186 **al-Natsha. «al-Ṣūfiyya fī al-Quds.»**

Table of the Waqfs of the Zāwiyas of Jerusalem to the End of the Ottoman Period

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
1	The Zāwiya / Madrasa al-Khatniyya or al-Khathniyya[187]	beside al-Aqsa Mosque, outside the southern wall	Salah al-Din al-Ayyubi	1187 CE	unknown	Part of it was assigned as a madrasa (college) and another part as a zāwiya (Sufi lodge). Now in use	Endowed on Shaykh Jalal al-Din al-Shashi. Named after Shaykh al-Khatani
2	al-Zāwiya al-Jarrāḥiyya[188]	Shaykh Jarrāḥ	Amir Husam al-Din ibn ʿIsa al-Jarrahi, one of Saladin›s amirs, d. 1201 and buried in it	1178 CE	22 qīrāṭ of the village of Tab al-Sufla; a plot of land known as al-Jarrāḥiyya	In use. Consists of an open courtyard surrounded by rooms of various sizes, with a miḥrāb in the middle of the western wall	Has an imam and a muezzin appointed by the Waqfs
3	Zāwiyat al-Darkāh[189]	the Christian Quarter, beside the Ṣalāḥī Bīmāristān	Amir Ghazi ibn al-Malik al-ʿAdil, Saladin	1216 CE	unknown	Annexed to the German Church of the Redeemer	
4	Zāwiyat Abi Madyan al-Ghawth[190]	the Maghāriba Quarter	Abu Madyan al-Ghawth Shuʿayb al-Maghribi	1320 CE	the village of Ein Karem	Two storeys each with a number of rooms, and an open courtyard. Now in use	Assigned to the Maghrebi Sufi shaykhs
5	Zāwiyat al-Maghāriba[191]	the Maghāriba Quarter	Shaykh ʿUmar ibn ʿAbd Allah al-Maghribi al-Masmudi	1330 CE	unknown	Defunct	-
6	Zāwiya / Mosque of al-Azraq[192]	Ḥārat al-Sharaf	Shaykh Ishaq ibn Shaykh Ibrahim al-Azraq	1349 CE	unknown	Demolished; a Jewish hospital known as Misgav Ladach was built on its site in 1909[193]	

187 **Hamad Ahmad ʿAbd Allah Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fi Bayt al-Maqdis.* **2nd ed. Palestinian Ministry of Information and Ministry of Awqaf, 2010, pp. 289293-.**
188 **Sroor.** *Fondations pieuses en mouvement*, **p. 170; Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fi Bayt al-Maqdis*, **pp. 210-, pp. 311313-.**
189 **Yusuf. «al-Ṣūfiyya fi al-Quds,» p. 308.**
190 **Sroor.** *Fondations pieuses en mouvement*, **p. 171; Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fi Bayt al-Maqdis*, **pp. 210-, pp. 313315-.**
191 **Sroor.** *Fondations pieuses en mouvement*, **p. 170; Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fi Bayt al-Maqdis*, **pp. 210-, pp. 296297-.**
192 **Sroor.** *Fondations pieuses en mouvement*, **p. 171.**
193 **Sroor.** *Fondations pieuses en mouvement*, **pp. 289298-.**

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
7	al-Zāwiya al-Mihmāziyya[194]	north of the al-Mujāhidīn road, in the middle of the Bāb Ḥiṭṭa (Gate of Remission) quarter near al-Madrasa al-Ṣalāḥiyya	Shaykh Kamal al-Din al-Mihmazi	No exact date of foundation is known; what is known is the date of the tomb inside it of Shaykh Khayr al-Din Khidr al-Mihmazi, d. 1346 CE	the village of Beit Liqya	In use. Consists of an open courtyard surrounded by rooms	
8	al-Zāwiya al-Muḥammadiyya[195]	Bāb al-Nāẓir	Muhammad ibn Zakariyya al-Nasiri	1350 CE	a plot of land in Ramla; plantations on the land of al-Naʿja outside the Old City of Jerusalem	In use	At the end of the Ottoman period it was used by the Ottoman Ministry of Education
9	al-Zāwiya al-Adhamiyya[196]	outside the walls of Jerusalem, near Bāb al-Sāhira (Herod's Gate)	Built by Amir Manjak, viceroy of Syria	1359 CE	one-fifth of a bathhouse in Safad near the citadel, known as the New Bath; the farm of Wādī al-Ghazāla, Ramla district; another farm in Gaza; a plot of land in the village of Lifta; a plot of land in Jerusalem; a mill in the zāwiya itself; and a house in the Bāb al-ʿAmūd (Damascus Gate) quarter	In use; it is a cave in Jabal al-Sāhira, beneath the Bāb al-Sāhira cemetery	

194 **Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis*, **pp. 315316-.**
195 **Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 330/9/1,1/; Sroor.** *Fondations pieuses en mouvement*, **p. 172.**
196 **Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis*, **p. 317; Sroor.** *Fondations pieuses en mouvement*, **p. 171.**

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
10	al-Zāwiya al-Shaykhūniyya[197]	near al-Madrasa al-Ṣalāḥiyya	Amir Sayf al-Din	1360 CE	the village of Qalunya, Jerusalem sub-district	In use	Its revenues are disposed of by the Ottoman Treasury; the zāwiya is used as a dwelling by the Jār Allah family
11	al-Zāwiya al-Bisṭāmiyya[198]	the Bāb al-ʿAmūd quarter	Shaykh ʿAbd Allah ibn Khalil ibn ʿAli al-Asadabadi al-Bistami	c. 1368 CE	plantations of Karm al-Niʿāj outside the walls of Jerusalem; plantations on the land of al-Naqqāʿ outside the walls; the plot of land of al-Bisṭāmiyya east of the town of Ramla	In use. Consists of an open courtyard surrounded by rooms, a mosque and the tomb chamber	Endowed for the Sufi followers of the Bisṭāmī order
12	The Zāwiya / Madrasa al-Luʾluʾiyya[199]	Bāb al-ʿAmūd	Amir Badr al-Din Luʾluʾ Ghazi	1373 CE	all the lands of the village of Sawur	In use	Also known as the Mosque of Luʾluʾ
13	al-Zāwiya al-Qirāmiyya[200]	the al-Qirami quarter near the al-Wād quarter	Shaykh Shams al-Din ibn ʿUthman al-Turkumani, known as al-Qirami	Exact date of foundation unknown; its founder is known to have died in 1376 CE	unknown	In use. Consists of a prayer hall and a tomb chamber	
14	al-Zāwiya al-Qādiriyya / al-Afghāniyya[201]	the al-Wād quarter	ʿAbd al-Qadir al-Jawlani	1633 CE	unknown	In use	Founded for the Afghans, followers of the Qādirī Sufi order
15	al-Zāwiya al-Jahārkasiyya	north of al-Zāwiya al-Yūnusiyya	Amir Jaharkas	unknown	revenues unknown	In use	A dwelling for the Sharaf family

197 **Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 330/9/1,1/.**
198 **Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis*, **pp. 304307-.**
199 **Ibid., p. 311.**
200 **Ibid., pp. 307308-.**
201 **Ibid., pp. 326327-.**

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
16	al-Zāwiya al-Naqshbandiyya[202]	near Bāb al-Ghawānima	Shaykh Muhammad ibn Bahaʾ al-Din al-Naqshbandi al-Bukhari	Exact date of foundation unknown; expected to be the mid-fourteenth century CE	unknown	In use. Comprises a prayer hall and an open courtyard surrounded by rooms, with a miḥrāb in the southern wall	Founded by the founder of the Naqshbandī Sufi order to shelter strangers and feed the poor among the Muslims of Bukhara, Java and Turkestan. At the end of the Ottoman period it distributed farīka and kishk daily; 437 piasters (qirsh) in annual stipends were drawn from the Treasury for the performance of religious rites[203]
17	al-Zāwiya al-Wafāʾiyya[204]	near Bāb al-Nāẓir	Tāj al-Din Abu al-Wafaʾ Muhammad	unknown	a house known as Dār Shihab al-Din ibn al-Hāʾim, above the zāwiya	In use. Turned into a dwelling, now known as Dār al-Budayri. Two storeys: the first houses the Budayri family library, the second is the family›s residence	Bought by Abu al-Wafaʾ, the Sufi shaykh, in 1380 CE. It goes back to the Umayyad period, when it was known as Dār Muʿawiya ibn Abi Sufyan
18	Zāwiyat al-Hunūd (the Indians› Zāwiya)[205]	near Bāb al-Sāhira	unknown	date of foundation unknown	a waqf located in the Bāb Ḥiṭṭa quarter	Its buildings have been used since 1948 as offices of UNRWA (Wikālat al-Ghawth)	Assigned to the Rifāʿī Sufis; it was the seat of the Indian community and bore the name al-Zāwiya al-Rifāʿiyya after that community
19	al-Zāwiya al-Kubakiyya[206]	Mamilla cemetery	Amir ʿAlaʾ al-Din Aydughdi ibn ʿAbd Allah al-Kubaki	year of foundation unknown; the founder›s death is dated 1289 CE	unknown	In use. Consists of a square chamber with the tomb inside it	

202 **Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis*, **pp. 318320-; Sroor.** *Fondations pieuses en mouvement*, **p. 171.**
203 **Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 330/9/1,1/.**
204 **Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis*, **pp. 293296-.**
205 **Ibid., pp. 312322-.**
206 **Ibid., pp. 309310-.**

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
20	Zāwiya / Turba of Shaykh Ahmad al-Muthabbit[207]	near Khān al-Zayt	Shaykh Badr al-Din ibn ʿAli al-Muthab-bit al-Ansari al-Maqdisi	?	unknown	In use. Consists of an open court-yard surrounded by rooms, one of which contains the tomb of Shaykh al-Muthabbit; there is a miḥrāb on the southern side	

Table of the Sufi Institutions (Khānqāhs) of Jerusalem to the End of Otto-man Rule and What Became of Them[208]

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condi-tion	Notes
1	The Ṣalāḥiyya Khānqāh	the Chris-tian Quarter, beside the Church of the Holy Sepul-cher	Salah al-Din al-Ayyubi	1187 CE	the whole of Ḥammām al-Batrak (the Patriarch›s Bath); a group of shops adjoining the khānqāh (Sufi hospice); Birkat al-Batrak (the Patriarch›s Pool); Birkat Māmillā; the lands of al-Jūra al-ʿUlyā and al-Jūra al-Su-flā in Jerusalem; the land of al-Baqʿa beside the wall of Jerusalem; 64 shops in the Christian Quarter of Jerusalem; 4 shops near Bāb al-Khalīl (Jaffa Gate), one of the gates of Jerusalem	Consists of a mosque and 40 rooms	Nothing remains of it today except the mosque
2	The Dawādāri-yya Khān-qāh	near Bāb al-ʿAtam (Gate of Darkness)	Amir ʿAlam al-Din Sanjar al-Dawadari	1296 CE	unknown	Two storeys, com-prising a num-ber of rooms and an open court-yard	Endowed on a group of Sufis. Used as a dwelling by the Budayri family

207 Ibid., pp. 308309-.

208 This table was compiled from the information in the following sources and references: documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Palestinian Ministry of Awqaf, file nos. 33;0/9/1,1/13/327/15.3/3 ;13/3.313/11/3 ;13/307/10.3/3 ;13/918/18.3/2; al-ʿAsali. *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, pp. 330340-; Rabayiʿa. «al-Khawāniq fī al-Quds khilāl al-ʿAhd al-ʿUthmānī,» pp. 665688-, pp. 676683-; Sroor. *Fondations pieuses en mouvement*, pp. 166167-.

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
3	The Karīmiyya Khānqāh	near Bāb Ḥiṭṭa, north of al-Ḥaram al-Sharīf	Karim al-Din ibn ʿAbd al-Karim	1318 CE	unknown	Part demolished; the remaining part used as a dwelling	Used as a dwelling by the Jār Allah family
4	The Khānqāh / Madrasa al-Tankiziyya	part of the western wall of al-Ḥaram al-Sharīf	Amir Sayf al-Din Tankiz al-Nasiri	1329 CE	16 qīrāṭ (a twenty-fourth share) of the village of Ein Qiniya; 4 piasters (qirsh), the ḥikr (long lease on waqf land) share of Ḥammām al-ʿAyn; 135 piasters, the ḥikr of shops	In use	At the end of the Ottoman period it was used as the seat of the Sharia Court. The village was confiscated by the Ministry of Finance
5	The Fakhriyya Khānqāh	inside al-Ḥaram al-Sharīf near Bāb al-Maghāriba	Qadi Fakhr al-Din Abu ʿAbd Allah	1331 CE	Sūq al-Fakhriyya (al-Zayt); a plot of land on the western side of the Old City of Jerusalem; some houses and walled gardens in the villages of al-Ṭūr, Silwan and al-Maliha, and in Jerusalem within the walls	Three rooms and a mosque remain	Demolished in 1969 when the Zionist occupation demolished the Maghāriba Quarter. Used as a zāwiya (Sufi lodge) by the Abu al-Suʿud family
6	The Khānqāh / Zāwiya al-Mihmāziyya	the Bāb Ḥiṭṭa quarter	Shaykh Kamal al-Din al-Mihmazi	1331 CE	revenues unknown	In use	At the end of the Ottoman period it was used as a dwelling by the family of Naji Nusayba
7	The Manjakiyya Khānqāh	near Bāb al-Nāẓir	Amir Manjak, viceroy of Syria	1361 CE	6 qīrāṭ of the village of Beit Safafa; half of the village of Silwan; lands in al-Ṭūr and Sur Bahir; the ḥikr of three shops in Jerusalem	In use	In the late Ottoman period it was leased to the Ministry of Education
8	The Khānqāh / Madrasa al-Mawṣiliyya	near Bāb Sharaf al-Anbiyāʾ	al-Khawāja Muhyi al-Din al-Sallami al-Mawsili	1427 CE	its Waqfs unknown	In use	Used as a dwelling by the family of Naji Nusayba
9	The Khānqāh / Zāwiya al-Mawlawiyya	the al-Saʿdiyya quarter, one of the quarters of the Old City of Jerusalem	the commandant (qūmandān) of Jerusalem	1587 CE	unknown	In use	Founded for the followers of the Mawlawī (Mevlevi) Sufi order

No.	Institution	Location	Endower	Date of the waqf	Revenues / income / its Waqfs	Condition	Notes
10	The Asʿadiyya Khānqāh	Jabal al-Ṭūr (the Mount of Olives), outside the walls of Jerusalem	Shaykh al-Islām Asʿad Efendi ibn Hasan Jan al-Tabrizi	1624 CE	the land of al-Qaʿda, on which the Intercontinental Hotel now stands	In use	There is disagreement over the name: it also bears the name al-Isʿirdiyya after al-Khawāja Majd al-Din ʿAbd al-Ghani ibn Sayf al-Din Abi Bakr al-Isʿirdi, without a date of foundation[209]

Surveying the educational and Sufi institutions of Jerusalem and the properties endowed on them, which were the principal resource for funding them and gave them fixed and sustainable sources of income, we were able to count the villages and farms endowed for the benefit of these waqf institutions in Jerusalem. About 160 villages and farms were identified, as the following table shows, whose yield was assigned wholly or in part to the upkeep of these institutions.

Until the Ottoman state issued the Land Code of 1858, discussed above (and some of the cases in which that law created difficulties when applied to particular waqf institutions, such as the Khassaki Sultan Waqfs, will be set out below), the lands of these villages and farms were the principal source of funding for the waqf institutions of Jerusalem. From the moment the law was actually put into effect, the waqf institutions suffered a knockout blow: most of them ceased to perform the functions for which they had been founded. They stopped working, most of them closed, and the result was social harm, as the educational institutions ceased to function, al-Aqsa Mosque lost its leading religious and scholarly role, charitable institutions such as the Takiyya of Khassaki Sultan fell back from serving the poor and the destitute, and the educational institutions attached to them stopped.

What does land mean to a charitable waqf institution? The lands of the villages and farms, numbering in the hundreds and assigned to the upkeep of the charitable waqf institutions, were their principal tributary and the guarantee of their continued operation, in fulfillment of the condition of the waqf's validity, "permanence." Land is not merely real estate; it is the mainstay of the economy and of its development. Land is unlike other waqf property, such as roofed property, houses and shops, which is exposed to decay and collapse and constantly needs large sums for repair and restoration. Land produces continuously, at minimal cost, and meets the waqf institutions' need for financial resources. Land and the work of the land also create a close bond between those who work it, the tenants,

209 **Yusuf.** *Min Āthārinā al-ʿArabiyya wa-l-Islāmiyya fī Bayt al-Maqdis*, **p. 284; Sroor.** *Fondations pieuses en mouvement*, **p. 167.**

and those who administer the waqf institutions tied to it, a bond of great social and economic weight.

The Waqf Villages and Farms Endowed for the Benefit of Jerusalem and Its Waqf Institutions[210]

No.	Village / farm	Type	Province / sanjak	Waqf share (%)	Beneficiary of the revenues
1	Beitunia	village	Jerusalem	67	al-Ḥaram al-Sharīf
2	Lifta	village	Jerusalem	50	al-Ḥaram al-Sharīf
3	Ein Yabrud	village	Jerusalem	67	al-Ḥaram al-Sharīf
4	Ein Arik	village	Jerusalem	50	al-Ḥaram al-Sharīf
5	Beit Rima	village	Jerusalem	50	al-Ḥaram al-Sharīf
6	Qarawat Bani Zeid	village	Jerusalem	50	al-Ḥaram al-Sharīf
7	Arura	village	Jerusalem	42	al-Ḥaram al-Sharīf
8	Abu Qash	village	Jerusalem	50	al-Ḥaram al-Sharīf
9	Beit Hanina	village	Jerusalem	50	al-Ḥaram al-Sharīf
10	Kafr Ein	village	Jerusalem	50	al-Ḥaram al-Sharīf
11	al-Tayyiba	village	Jerusalem	37.5	al-Ḥaram al-Sharīf
12	Nuba	village	Jerusalem	100	al-Ḥaram al-Sharīf
13	Abwein	village	Jerusalem	67	al-Ḥaram al-Sharīf
14	al-Auja	village	Jerusalem	100	al-Ḥaram al-Sharīf

210 **This table was compiled from the following sources and references: Jerusalem Sharia Court Register (*Sijill*) 95, 18 Rabīʿ al-Thānī 981 AH / 27 August 1573, p. 424; Register 112, 4 Shawwāl 1036 AH / 18 June 1627, p. 364; Register 136, 6 Ṣafar 1056 AH / 22 March 1646, p. 69; Register 183, late Jumādā al-Ūlā 1091 AH / 26 June 1680, pp. 173175-; Register 270, 964 AH / 1557 CE, pp. 1827-; Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file nos. (13//1340;(0/57/1.35/10) ;(11/22/1.1/10) ;(0/22/1.3/10) ;(0?/26?1/10) ;(0/?/1.24/10) ;(15/3.0/4/70) ;(15/3.0/4/70) ;(44/21.1/0/38/1.17/2));** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn: fī Alwiyat Ghazza, al-Quds, Ṣafad, Nābulus*. **İpşirli, pp. 3057-;** *Sijill Arāḍī Liwāʾ al-Quds ḥasab al-Daftar 342, Tārīkhuhu 970 AH / 1562 CE, al-Maḥfūẓ fī Arshif Riʾāsat al-Wuzarāʾ bi-Isṭanbūl* **[The Land Register of the District of Jerusalem according to Register 342, dated 970 AH / 1562 CE, preserved in the Prime Ministry Archive in Istanbul]. Salihiyya, pp. 60153-;** *Liwāʾ al-Quds al-Sharīf: Daftar Mufaṣṣal Liwāʾ Ṣafad wa-Ghazza wa-l-Quds al-Sharīf, min Daftar Taḥrīr 427 T.D. (932 AH / 1525 CE to 934 AH / 15271528- CE)* **[The District of Noble Jerusalem: Detailed Register of the Districts of Safad, Gaza and Noble Jerusalem, from Survey Register T.D. 427]. Muhammad ʿAdnan al-Bakhit. Amman: al-Furqan Islamic Heritage Foundation, London, 2005;** *Liwāʾ al-Quds al-Sharīf min Daftar Taḥrīr 131 T.D. (932 AH / 1525 CE to 938 AH / 15311532- CE)* **[The District of Noble Jerusalem from Survey Register T.D. 131]. Muhammad ʿAdnan al-Bakhit and Nufan Rajā al-Sawariyya (study, translation, commentary and preparation). Amman / London: al-Furqan Islamic Heritage Foundation, 2007;** *Liwāʾ al-Quds al-Sharīf min Daftar Taḥrīr 1015 (945 AH / 15381539- CE)* **[The District of Noble Jerusalem from Survey Register 1015]. Muhammad ʿAdnan al-Bakhit. Amman / London: al-Furqan Islamic Heritage Foundation, 2008;** *Liwāʾ al-Quds al-Sharīf min Daftar Mufaṣṣal 516 li-Sanat 970 AH / 1562 CE* **[The District of Noble Jerusalem from Detailed Register 516 for the Year 970 AH / 1562 CE]. Muhammad ʿAdnan al-Bakhit (study, translation, commentary and preparation). Amman / London: al-Furqan Islamic Heritage Foundation, 2011; al-Khatib.** *al-Awqāf al-Islāmiyya fī Filasṭīn fī al-ʿAṣr al-Mamlūkī*, **pp. 97121-; al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **pp. 236238-; al-Hanbali.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*. **Amman: Maktabat al-Muḥtasib, 1973, vol. 2, p. 41; al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī*, **vol. 1, pp. 124350-; Mahmud Saʿid Ibrahim Musa.** *Shuʾūn al-Awqāf fī al-Quds fī Maṭlaʿ al-Qarn 18 al-Mīlādī min Sijillāt Maḥkamat al-Quds al-Sharʿiyya* **[Waqf Affairs in Jerusalem at the Beginning of the Eighteenth Century CE from the Registers of the Jerusalem Sharia Court], p. 117; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 272280-; Ziyad al-Madani. «Wilāyat Awqāf al-Quds fī al-Niṣf al-Awwal min al-Qarn al-Thāmin ʿAshar al-Mīlādī 17001750-» [The Administration of the Waqfs of Jerusalem in the First Half of the Eighteenth Century CE, 17001750-].** *Majallat al-Maqdisiyya*, **no. 10, spring 2021, pp. 3360-; Sroor.** *Fondations pieuses en mouvement*, **pp. 185194-.**

No.	Village / farm	Type	Province / sanjak	Waqf share (%)	Beneficiary of the revenues
15	al-Nuweiʿma	village	Jerusalem	100	al-Ḥaram al-Sharīf
16	al-Janiya	village	Jerusalem	100	al-Ḥaram al-Sharīf
17	Mazariʿ al-Nubani	village	Jerusalem	50	al-Ḥaram al-Sharīf
18	Aboud	village	Jerusalem	100	al-Ḥaram al-Sharīf
19	Ramallah	village	Jerusalem	50	al-Ḥaram al-Sharīf
20	al-Eizariya	village	Jerusalem	50	al-Ḥaram al-Sharīf
21	Sur Bahir	village	Jerusalem	25	al-Ḥaram al-Sharīf
22	Deir Dibwan	village	Jerusalem	50	al-Ḥaram al-Sharīf
23	Beit Anan	village	Jerusalem	100	al-Ḥaram al-Sharīf
24	Arāḍī al-Birak	village	Haifa	100	al-Ḥaram al-Sharīf
25	Anata	village	Jerusalem	100	al-Ḥaram al-Sharīf
26	Idhna	village	Hebron	100	al-Ḥaram al-Sharīf
27	Amioun	village	Tripoli (Lebanon)	100	Takiyyat Khassaki Sultan
28	Qayqabā	village	Tripoli (Lebanon)	100	Takiyyat Khassaki Sultan
29	Lydda	village / town	Ramla	100	Takiyyat Khassaki Sultan
30	Beit Iksa	village	Jerusalem	100	Takiyyat Khassaki Sultan
31	al-Kharrūba	farm	Jerusalem	100	Takiyyat Khassaki Sultan
32	Kafr Jinnis	village	Ramla	75	Takiyyat Khassaki Sultan
33	Kafr ʿAna	village	Ramla	100	Takiyyat Khassaki Sultan
34	Kafr Tab	farm	Gaza	100	Takiyyat Khassaki Sultan
35	Baqiʿ al-Daʾn	village	Jerusalem	100	Takiyyat Khassaki Sultan
36	Beit Liqya	village	Jerusalem	50	Takiyyat Khassaki Sultan
37	Nūshīf	farm	Jerusalem	100	Takiyyat Khassaki Sultan
38	Rakūbīs	farm	Jerusalem	100	Takiyyat Khassaki Sultan
39	Bethlehem	village / town	Jerusalem	75	Takiyyat Khassaki Sultan
40	Beit Jala	village / town	Jerusalem	75	Takiyyat Khassaki Sultan
41	al-Kanīsa	village	Ramla	100	Takiyyat Khassaki Sultan
42	Bir Maʿin	village	Ramla	100	Takiyyat Khassaki Sultan
43	Sabītāra	village	Ramla	50	Takiyyat Khassaki Sultan
44	Innaba	village	Ramla	100	Takiyyat Khassaki Sultan
45	al-Safiriyya	village	Ramla	87.5	Takiyyat Khassaki Sultan

No.	Village / farm	Type	Province / sanjak	Waqf share (%)	Beneficiary of the revenues
46	Kharbatha	village	Ramla	100	Takiyyat Khassaki Sultan
47	Jindas	village	Ramla	29.5	Takiyyat Khassaki Sultan
48	Yazur	village	Ramla	100	Takiyyat Khassaki Sultan
49	al-Yahudiyya	village	Ramla	100	Takiyyat Khassaki Sultan
51	Bayt Dajan	village	Ramla	75	Takiyyat Khassaki Sultan
52	Bayt Shanna	village	Ramla	100	Takiyyat Khassaki Sultan
53	Rantiya	village	Ramla	100	Takiyyat Khassaki Sultan
54	Niʿlin	village	Ramla	75	Takiyyat Khassaki Sultan
55	Qaqun	village	Nablus	100	Takiyyat Khassaki Sultan
56	Dayr Salim	farm	Nablus	100	Takiyyat Khassaki Sultan
57	Ḥīthān al-Jammāsīn	farm	Nablus	25	Takiyyat Khassaki Sultan
58	al-Jib	village	Jerusalem	100	Takiyyat Khassaki Sultan
59	Ḥāra	village	Sidon	100	Takiyyat Khassaki Sultan
60	Kanīsa	farm	Sidon	80	Takiyyat Khassaki Sultan
61	Ṣūfiyā	farm	Sidon	100	Takiyyat Khassaki Sultan
62	Jalyūbā	farm	Sidon	100	Takiyyat Khassaki Sultan
63	Silwan	village	Jerusalem	75	al-Madrasa al-Ṣalāḥiyya
62	Qastal	farm	Jerusalem	50	al-Madrasa al-Ṣalāḥiyya
64	Naʿliya	village	Gaza	33.33	al-Madrasa al-Ṣalāḥiyya
65	Bayt Dajan	village	Nablus	50	al-Madrasa al-Maymūniyya
66	Beit Liqya	village	Jerusalem	50	al-Madrasa al-Badriyya
67	Battir	village	Jerusalem	100	al-Madrasa al-Muʿaẓẓamiyya
68	Allar al-Fawqa	village	Jerusalem	100	al-Madrasa al-Muʿaẓẓamiyya
69	Allar al-Sufla	village	Jerusalem	100	al-Madrasa al-Muʿaẓẓamiyya
70	al-Ram	village	Jerusalem	100	al-Madrasa al-Muʿaẓẓamiyya
71	Salām	farm	Jerusalem	100	al-Madrasa al-Muʿaẓẓamiyya
72	Qalqilya	village	Nablus	67	al-Madrasa al-Muʿaẓẓamiyya
73	Bayt Nabala	village	Jerusalem	100	al-Madrasa al-Dawādāriyya
74	Hajla	village	Jerusalem	100	al-Madrasa al-Dawādāriyya
75	Tubras	village	Jerusalem	100	al-Madrasa al-Dawādāriyya
76	Ein Qiniya	village	Jerusalem	100	al-Madrasa al-Tankiziyya
77	Niʿlin	village	Ramla	25	al-Madrasa al-Sallāmiyya
78	Jabaʿ	village	Jerusalem	16.66	al-Madrasa al-Sallāmiyya
79	al-Bireh	village	Jerusalem	25	al-Madrasa al-Sallāmiyya

No.	Village / farm	Type	Province / sanjak	Waqf share (%)	Beneficiary of the revenues
80	Shuweika	village	Nablus	50	al-Madrasa al-Fārisiyya
81	Deir Jarir	village	Jerusalem	100	al-Madrasa al-Khātūniyya
82	Ẓahr al-Jamal	farm	Jerusalem	100	al-Madrasa al-Khātūniyya
83	ʿAnāz	village	Syria	100	al-Madrasa al-Arghūniyya
84	al-Jandaliyya	farm	Syria	60	al-Madrasa al-Arghūniyya
85	Beit Safafa	village	Jerusalem	25	al-Madrasa al-Manjakiyya
86	Silwan	village	Jerusalem	25	al-Madrasa al-Manjakiyya
87	al-Minya	village	Safad	100	al-Madrasa al-Ṭāziyya
88	Sawur	village	Jerusalem	100	al-Madrasa al-Luʾluʾiyya
89	Kūm al-Tujjār	village	Egypt	100	al-Madrasa al-Baladiyya
90	Ḥarastā	village	Egypt	100	al-Madrasa al-Baladiyya
91	Shādūr	village	Jerusalem	50	al-Madrasa al-Marmariyya
92	Ḥārat Bāb Saʿd	farm	Jerusalem	33.33	al-Madrasa al-Marmariyya
93	Beit Sahour	village	Jerusalem	50	al-Madrasa al-Jarkasiyya
94	Balmā Aghājī	village	Anatolia / Kütahya	100	al-Madrasa al-Ṭūlūniyya
95	Sallāt Ughlānī	village	Anatolia / Kütahya	100	al-Madrasa al-Ṭūlūniyya
96	ʿAynā Ghazi	village	Anatolia / Kütahya	100	al-Madrasa al-Ṭūlūniyya
97	ʿAwrā Kīr	village	Anatolia / Kütahya	100	al-Madrasa al-Ṭūlūniyya
98	Sur Bahir	village	Jerusalem	70	al-Madrasa al-Bāsiṭiyya
99	Deir Dibwan	village	Jerusalem	50	al-Madrasa al-Ḥasaniyya
100	Kafr Ṭūbī	village	Jerusalem	33.33	al-Madrasa al-Ḥasaniyya
101	al-ʿInab / Abu Ghūsh	village	Jerusalem	66.66	al-Madrasa al-Ḥasaniyya
102	al-Maliha	farm	Jerusalem	100	al-Madrasa al-Ḥasaniyya
103	Tulkarm	village / town	Nablus	50	al-Madrasa al-Jawhariyya
104	Bayt Dajan	village	Nablus	50	al-Madrasa al-Ashrafiyya
105	al-Safiriyya	village	Ramla	12.5	al-Madrasa al-Ashrafiyya
102	al-Zaytun	village	Gaza	100	al-Madrasa al-Jawhariyya
106	al-Kufiya	village	Gaza	25	al-Madrasa al-Jawhariyya
107	Kasan	village	Gaza	100	al-Madrasa al-Ashrafiyya
108	al-Naḥābī	village	Gaza	12.5	al-Madrasa al-Ashrafiyya

No.	Village / farm	Type	Province / sanjak	Waqf share (%)	Beneficiary of the revenues
109	Burayr	village	Gaza	21	al-Madrasa al-Ashrafiyya
110	Julis	village	Gaza	?	al-Madrasa al-Ashrafiyya
111	Dimra and Najd	village	Gaza	10	al-Madrasa al-Ashrafiyya
112	Fawqaʿā	village	Gaza	8	al-Madrasa al-Ashrafiyya
113	al-Kufiya	village	Gaza	75	al-Madrasa al-Ashrafiyya
114	Bayt ʿAffa	village	Gaza	11.5	al-Madrasa al-Ashrafiyya
115	Qatra	village	Gaza	75	al-Madrasa al-Ashrafiyya
116	Balsiyya	village	Gaza	75	al-Madrasa al-Ashrafiyya
117	Bahlīn	farm	Gaza	12.5	al-Madrasa al-Ashrafiyya
118	Marṭ al-Sayl	farm	Gaza	8	al-Madrasa al-Ashrafiyya
119	Ḥūr	village	Gaza	25	al-Madrasa al-Ashrafiyya
120	ʿAjlān	village	Gaza	6	al-Madrasa al-Ashrafiyya
121	Juhtayn	village	Gaza	75	al-Madrasa al-Ashrafiyya
122	Danā	farm	Gaza	25	al-Madrasa al-Ashrafiyya
123	Bayt Māmīn	farm	Gaza	23	al-Madrasa al-Ashrafiyya
124	ʿAmūdat Banī ʿĀmir	village	Gaza	25	al-Madrasa al-Ashrafiyya
125	ʿIrāq Abu Ḥardān	village	Gaza	8	al-Madrasa al-Ashrafiyya
126	al-Dāyis	village	Gaza	19	al-Madrasa al-Ashrafiyya
127	Arza	farm	Gaza	12.5	al-Madrasa al-Ashrafiyya
128	Judayda	village	Gaza	17	al-Madrasa al-Ashrafiyya
129	Sukkariyyat al-Qāḍī	village	Gaza	25	al-Madrasa al-Ashrafiyya
130	Barītā al-Ḥarādīn	village	Gaza	25	al-Madrasa al-Ashrafiyya
131	Shams	village	Gaza	25	al-Madrasa al-Ashrafiyya
132	Sinnāra	village	Gaza	6	al-Madrasa al-Ashrafiyya
133	Manṣūra	farm	Gaza	8	al-Madrasa al-Ashrafiyya
134	Fātūn	farm	Gaza	37.5	al-Madrasa al-Ashrafiyya
135	Tulayl	farm	Gaza	37.5	al-Madrasa al-Ashrafiyya
136	Dawādī	village	Gaza	100	The maktab of Amir Manjak
137	Khirba	village	Gaza	21	al-Nasiri Muhammad ibn Bahaʾ al-Turi
138	Dāris	village	Gaza	4	The descendants of Amir ʿAli ibn al-Ayugha

No.	Village / farm	Type	Province / sanjak	Waqf share (%)	Beneficiary of the revenues
139	Ṭūr Zaytā	village	Jerusalem	100	The descendants of Shaykh Abi Bakr al-Hakkari
140	Kharāb Bāb al-Wād	village	Jerusalem	100	The descendants of Shaykh ʿAbd al-ʿAziz Timas, and the Dome of the Rock
141	Ṣāṣil	village	Jerusalem	12.5	The descendants of Ahmad al-Shihabi
142	Najm	village	Jerusalem	33.33	The turba (mausoleum) and mosque of Sultan Qānṣūh al-Ghawri in Cairo
143	Beit Taʿmir	village	Jerusalem	50	The descendants of Shaykh Burhan ibn Sharīf al-Maqdisi
144	Umm Tuba	village	Jerusalem	50	The descendants of Husam al-Nasiri
145	Bayt Māsīn	village	Jerusalem	100	The descendants of Muhibb al-Din ibn al-Wasi
146	Beit Sahour	village	Jerusalem	50	al-Madrasa al-Muzhiriyya
147	Deir Ibziʿ	village	Jerusalem	100	Deir Ibziʿ
148	Qalunya	village	Jerusalem	100	al-Madrasa al-Shaykhūniyya
149	Tab al-Sufla	village	Jerusalem	91	al-Zāwiya al-Jarrāḥiyya
150	Ein Karem	village	Jerusalem	100	Zāwiyat Abi Madyan al-Ghawth
152	Beit Liqya	village	Jerusalem	50	al-Zāwiya al-Mihmāziyya
153	al-Ghazāl	farm	Ramla	100	al-Zāwiya al-Adhamiyya
154	Beit Safafa	village	Jerusalem	75	al-Zāwiya al-Adhamiyya
155	Ẓaʿn al-Asmar	village	Nablus	33.33	al-Ribāṭ al-Manṣūrī
156	Jamla	village	Nablus	12.5	al-Ribāṭ al-Manṣūrī
157	ʿAshīra	village	Nablus	33.33	al-Ribāṭ al-Manṣūrī
158	Baʿāra	village	Nablus	33.33	al-Ribāṭ al-Manṣūrī
159	Raʾs	village	Safad	33.33	al-Ribāṭ al-Manṣūrī
160	ʿAṭā	village	Safad	33.33	al-Ribāṭ al-Manṣūrī
161	Bayt Saqāyā	village	Jerusalem	25	The turba of ʿAlaʾ al-Din al-Basiri

Transformations in Ownership and Function

The Land Code's great effect on the privatization of most of the village and farm lands listed in the table above, and the stripping of their waqf character, did more than cause the waqf institutions tied to them to decline or cease functioning. It

profoundly altered the built fabric of Jerusalem on one side, and on the other the social landscape of the city to this day, together with the functional transformation of these institutions. With no sources of funding, there was no money to restore and repair the buildings of waqf institutions that were hundreds of years old, the Ayyubid and Mamluk foundations above all, and in particular the madrasa buildings such as those surrounding the Ḥaram. Many of these historic buildings, which had once shaped the urban landscape of Jerusalem, fell into ruin or changed function: most of the Mamluk madrasas of Jerusalem became dwellings for the Jerusalem families that had monopolized the right of superintendence and administration over them for centuries. There were many attempts to turn these ancient waqf institutions into private dwellings and private property for those families, even though generation after generation of them knew perfectly well that these properties were Islamic Waqfs.

It should be noted here that because of the waqf's immunity, and because its status was established beyond doubt in documents, in custom, in the community and in the very inscriptions on the buildings of these institutions, every attempt to take ownership of these waqf properties and turn them into the private property of Jerusalem families failed, even though the families lived in them. Here the waqf's capacity to withstand every form of unlawful appropriation appears in its finest form, and the matter is important enough to be set out in some detail.

According to our documents, which include reports and correspondence between the Ottoman Jerusalem Waqf Department and the Imperial Ministry of Waqfs,[211] a number of buildings belonging to waqf-funded institutions in Jerusalem were converted into dwellings for their occupants. Our research documents thirty-one religious madrasas, five zāwiyas, two cemeteries and one ribāṭ that were turned into dwellings. The beneficiaries were the families that had inherited the administration of these Waqfs. They claimed that the Waqfs had ceased to operate because their sources of funding had dried up, and converted them into private residences, even though these educational and religious institutions had been closed against the wishes of their founders. Among the families that treated the Waqfs they administered as private property was one Jerusalem family that took possession of al-Madrasa al-Zamaniyya and al-Ribāṭ al-Zamanī.

What, then, was the position of the Ministry of Waqfs, and how did it react to the families' dominance? The answer lies in a letter from Muhammad Munir, adviser to the Minister of Waqfs, to the governor (*wālī (governor)*) of Jerusalem, no. 95023, dated 16 March 1332 *mālī* / 1916. In it the minister's adviser held the occupation of

211 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file nos. 331913 ,13/843/22.2/33 ;1911 ,13/330/17/10 ;1907 ,13/325/2.6/3 ;1899 ,13/317/9.2/3 ;1896 ,13/314/3.35/3 ;1882 ,13/300/2.1/.

madrasa buildings and their conversion into dwellings to be unlawful and unacceptable, and asked the governor of Jerusalem to do everything in his power to remove the families from the madrasas.[212]

The families rejected the Ministry's decision and signed the following petition: "We, the families residing in Jerusalem beside the Ḥaram, testify that our families include many children and elderly people, that we occupy our houses by order of the sultans, and that we hold legal documents inherited from our fathers and grandfathers that prove it. The Ministry of Waqfs now claims that our houses are religious madrasas and demands our eviction under threat of police intervention, without verifying the legal documents in our possession; this procedure is contrary to the orders, decrees and laws."

The Waqf Department replied: "Ten years ago, by decision of the Ministry of Waqfs, a committee was formed to enumerate the existing charitable Waqfs, assess their condition in use, and record their location, their real property, and the names of their founders and of the families residing in them. After this survey a schedule of the properties was drawn up, approved by the council of the Jerusalem governorate and forwarded to the Ministry of Waqfs, which replied by letter no. 95024/3, dated 26 March 1332 mālī / 1916. The letter conveyed the view of the Sultan's Chancery (dīwān), which held the use of the religious madrasas of Jerusalem near al-Ḥaram al-Sharīf as private dwellings, and in some cases as prisons, to be unacceptable. On that basis a sultanic firman ordered them vacated. We informed the residents, advised them to take the legal steps, and granted them until the end of November. The police administration received a copy of the list for the purpose of evicting the families."[213]

To assess the damage to waqf property, a committee was formed of the Sharia Court, the Waqf Department, the Land Registry Office and the municipality, to conduct a full investigation and report to the municipality, then to the Council of State, and finally to the Sultan's Chancery for decision. After its investigation the committee asked that the legal status of the waqf property be protected and the necessary repairs made, then appealed to the Council of State and the Sultan's Chancery to proceed with the eviction of the residents, who had been granted a period of grace by formal notice; the committee then referred the matter to the police administration and the Waqf Department.[214]

212 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 3313/332/22.2/.
213 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 2913/332/2.5/.
214 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 2913/332/2.5/.

Three days before the legal deadline for the eviction of the residents of the religious madrasas expired, the director of Waqfs in Jerusalem, ʿArif Hikmat, noted that the residents had not complied with the Ministry's decision. He wrote to the Ministry asking for instructions on how to proceed in the face of the residents' refusal to leave the madrasas, and asked specifically whether, in these circumstances, the Ministry's earlier decision requiring the residents to vacate within the set period should be carried out, or whether further investigation was needed. He added that he awaited the Ministry's decision.[215]

Take the example of al-Madrasa al-Jawhariyya, near Bāb al-Ḥadīd (Iron Gate), one of the gates of al-Ḥaram al-Sharīf, founded by Jawhar al-Qunuqbaʾi in Rajab 844 AH / 1440 CE. To secure the continuity of his mission, the founder endowed several villages on the madrasa, among them the villages of Zaytun and Kūbnā in the Gaza governorate and Taqūʿ in the Hebron governorate[216]. The documents of the Ottoman Ministry of Waqfs in Jerusalem show that in the second half of the nineteenth century this madrasa served as the residence of one of Jerusalem's influential families, which had held the sole right of superintendence over the madrasa's waqf since the seventeenth century. On 5 Shawwāl 1328 AH / 1910 CE the accounts department of the Ministry of Waqfs ordered the residents of al-Madrasa al-Jawhariyya evicted forthwith so that it could be restored. The decision was referred to the Ministry of War, the Jerusalem Waqf Department and the Ministry of Finance.[217]

The decision was endorsed by the deputy minister of Waqfs in Istanbul, Muhammad Jamil, in a letter from the director of Waqfs in Jerusalem, no. 9465, dated 22 Shawwāl 1328 AH / 1910 CE. It was also referred to the adviser to the Ministry of Waqfs, Muhammad Munir, in a letter to the governor of Jerusalem, no. 95024, dated 1 Rajab 1333 AH / 15 May 1915.[218]

The Ministry of Waqfs did everything it could to carry out the decision to evict this family from al-Madrasa al-Jawhariyya, and the other families that had made the madrasas of Jerusalem their homes: those living in al-Madrasa al-Karīmiyya, those living in al-Madrasa al-Khātūniyya, and the family that had turned the building of al-Madrasa al-Jahārkasiyya into its private residence.[219]

The families mobilized. In 1913 Shaykh ʿArif al-ʿAfifi, representing forty families

215 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 2913/332/2.5/.
216 al-Hanbali, Mujir al-Din. *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, vol. 2, p. 37.
217 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.
218 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.
219 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/300/1.

living in the waqf madrasas of Jerusalem, petitioned the Ministry of War against the forced-eviction order. Citing legal documents, he asked that the order be suspended until the case was decided, and appealed to the Ottoman authorities to consider the large number of children, women and elderly people living in these madrasas.[220]

The Jerusalem family living in al-Madrasa al-Jawhariyya went on occupying it after the dissolution of the Ottoman state. In 1933 a member of the family, acting for his brothers, tried to register the waqf madrasa as the family's private property. In response, the adviser to the president of the Supreme Muslim Council wrote to the director of the Tapu Department (letter no. 242, 14 August 1933) ordering that the application to register al-Madrasa al-Jawhariyya as the family's private property be refused, because it was a religious waqf.[221]

Another member of the same family objected to the application to register the madrasa in the family's name, and wrote to the Waqf Department on 31 October 1933 acknowledging that the madrasa was a waqf and not the family's private property.[222] Despite this objection, his brother went on claiming that the madrasa had been the family's private property, inherited from its ancestors, for more than 200 years. The legal documents produced by his opponents (his brother Ibrahim and the Supreme Muslim Council) established that the madrasa was a religious waqf and not private property.[223]

The Waqf Department succeeded in proving that the madrasa was an Islamic waqf by a letter of 23 June 1933 from Muhammad ʿAwad, director of the Waqf Department, to the Land Registry (Tapu) Department, accompanied by the documents proving the madrasa's waqf status. Even so, the Waqf Department took no decision to expel the family from the madrasa. On 25 July 1935 the director of Jerusalem Waqfs wrote to the director of the Land Registry Department (letter no. 1408) asking to be kept informed of developments in the case of al-Madrasa al-Jawhariyya.[224]

The madrasa remained occupied by the same family until 16 June 1981, when the family leased it to the Jerusalem Waqf Department for use as the headquarters of the Department of Islamic Antiquities. The Waqf Department nonetheless

220 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.
221 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.
222 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.
223 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.
224 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.

went on paying rent to the family until 1995, when Muhammad ʿAzzam, assistant director of the Jerusalem Waqf Department, wrote to the Secretary General for Jerusalem Affairs and the director of the Jerusalem Waqf Department (letter no. 11/1995) refusing to pay the family rent for the madrasa. Whatever the mismanagement of the previous Waqfs administration, he wrote, his administration would no longer bear this responsibility, since the madrasa was a waqf and one of the most important historic sites in Jerusalem.[225]

Here we see that, for all this Jerusalem family's control of the building of al-Madrasa al-Jawhariyya and its repeated attempts to appropriate it, it could never obtain a legal document establishing its ownership of the property, and could never strip the madrasa of its waqf character. This is the immunity of the waqf, and its resistance to attempts at private appropriation, made concrete.

It should be noted that the buildings of the waqf Qurʾānic madrasas of Jerusalem are still inhabited by the same families to this day, owing to the political upheavals that have swept Palestine since the outbreak of the First World War: the Ottoman state's preoccupation with the war and its failure to enforce the orders it had issued, the fall of Ottoman rule that followed, and Jerusalem's subjection to British occupation and then to Jordanian and, later, Israeli rule.

The presence of these families in the waqf madrasas is regarded today as a means of protecting and maintaining them in the absence of funding to restore and maintain this historic architecture, and as a means of protecting them from Judaization and seizure by settlers, particularly since the Israeli occupation of East Jerusalem in 1967.

The waqf character of these buildings prevented, first, the families from turning them into private property despite their use of them for very long periods, exceeding a hundred years. It prevented, too, anyone in Jerusalem society from selling or bequeathing these properties, to local or foreign parties, because the families held no legal title deeds on the one hand, and because the waqf status of the properties was established beyond doubt on the other. The waqf character of these properties is the fundamental guarantee against their leakage to private, and above all foreign, parties. The legal status of waqf property remains an obstacle to every attempt to abolish waqf ownership and to acquire waqf property unlawfully, however long that property has been held, as the example of the waqf madrasas shows, and as many other cases in the chapters that follow will show.

225 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. 33-2/13/843/22.



Chapter Three

The Waqfs of Salah al-Din al-Ayyubi and the Generosity of Sultans

Jerusalem did not become an Arab city in its architecture after the Muslim takeover of 638 CE, nor after its recovery in 1187 CE, nor in the Crusader period between. The Byzantine plan of the city and its Christian buildings stayed as they were, though the city was ruled by another people and another religion, and nowhere more so than in the Christian Quarter. Despite the Muslim presence in Jerusalem, the features of the "Christian Quarter" were left untouched; nothing changed in the civilizational landscape of the quarter until the Ayyubid period, with the exception of the reign of the Fatimid caliph al-Hakim (996 to 1021 CE), who ordered the churches and synagogues of Jerusalem demolished, and under whom the Church of the Holy Sepulcher was destroyed in 1009.[226] Late in his reign al-Hakim changed course, and in 1020 he allowed Jews and Christians to return to their religions and rebuild the demolished synagogues and churches.[227] Even with the help of the Byzantine emperors, the Christians of Jerusalem could not rebuild the Church of the Holy Sepulcher until 1048, while other churches, such as St. Anne's near Bāb al-Asbāṭ, remained under Muslim control and were converted into Islamic madrasas (colleges).[228]

The part the Christians of Jerusalem played in the campaign organized by the Fatimid rulers from 1033 to restore and fortify the city walls earned them the right to a fortified quarter of their own, running from Bāb al-Khalīl (Jaffa Gate) in the west to Bāb al-ʿAmūd (Damascus Gate) in the north[229], the quarter later known as "Ḥārat al-Naṣārā," the Christian Quarter. Before that date the sources make no mention of a quarter reserved for Christians and bearing their name, so the

226 Shlomo Goitein. «al-Quds fī al-Fatra al-ʿArabiyya 6381099-» [Jerusalem in the Arab Period, 6381099-]. In *al-Quds: Dirāsāt fī Tārīkh al-Madīna* [Jerusalem: Studies in the History of the City], ed. Amnon Cohen, trans. Salman Masalha. Jerusalem: Yad Izhak Ben-Zvi, 1990, p. 23; al-Hiyari. «al-Quds taḥta Ḥukm al-Ṣalībiyyīn 10991187-» [Jerusalem under Crusader Rule, 10991187-], p. 169; ʿAbd al-ʿAziz al-Duri. «al-Quds fī al-Fatra al-Islāmiyya al-Ūlā min al-Qarn al-Sābiʿ ḥattā al-Qarn al-Ḥādī ʿAshar.» In *al-Quds fī al-Tārīkh*, ed. Kamil Jamil al-ʿAsali. Amman: University of Jordan, 1992, p. 146.
227 Ibid., p. 146.
228 al-Hiyari. «al-Quds taḥta Ḥukm al-Ṣalībiyyīn 10991187-,» p. 169; Goitein. «al-Quds fī al-Fatra al-ʿArabiyya 638-1099,» p. 23.
229 Goitein. «al-Quds fī al-Fatra al-ʿArabiyya 6381099-,» p. 24.

mid-eleventh century can be taken as the birth of the Christian Quarter, when it was officially recognized by the ruling Muslim authorities as the Patriarch's Quarter. The money the Christians of Jerusalem put up came from the Byzantine emperor, and it led to an agreement between the Fatimid caliph and the Byzantine emperor Constantine under which the emperor undertook to fund the building of that part of the wall of Jerusalem adjoining the Christian churches, or more precisely surrounding the Christian Quarter, on condition that the quarter be reserved for Christian inhabitants, that no non-Christian live among them, and that it be placed under the authority of the patriarch. Before this agreement, as is well known, the Muslims, Christians and Jews of Jerusalem lived intermingled, their houses side by side, with no quarters reserved for any of them. From this date the residential map of Jerusalem changed, dividing into quarters reserved for the adherents of the three heavenly religions. Under the agreement, "the Muslims were compelled, by order of the Fatimid caliph, to move to other parts of Jerusalem and leave the quarter to the Christians alone." [230] The Christian Quarter thus took shape within the following limits: "The outer boundary is formed by the city wall running from the western gate, or Bāb Dawud, past the tower at the corner and on to the northern gate (Bāb al-ʿAmūd). The inner boundary of the quarter is formed by the main street running from Bāb al-ʿAmūd (the street of St. Stephen in the Crusader period) to the money-changers' tables, and from there back to the westerngate."[231]

To consolidate Christian influence in the newly named and newly formed[232*] Christian Quarter, on the eve of the Turkmen takeover of Jerusalem in June 1073 the caliph al-Mustansir granted the European merchants of the Italian city of Amalfi a plot of land in the quarter on which to build a center where they could stay while in Jerusalem. On it the merchants built a monastery known as St. Mary of the Latins, a convent of St. Mary Magdalene and a church known as St. John's, together with a hostel that later became the Hospital of St. John.[233] During the Crusader occupation of Jerusalem (1099 to 1187 CE), when the city was the capital of the Latin Kingdom in the East, the Christian presence in the Patriarch's Quarter (the Christian Quarter) grew, and the Latins settled there for good, while the Eastern Christians "settled" in a quarter known as al-Mashāriqa, in the area between Bāb al-Asbāṭ on the east and Bāb al-ʿAmūd on the north, the northern city wall

230 **al-Hiyari. «al-Quds taḥta Ḥukm al-Ṣalībiyyīn 10991187-,» p. 171.**
231 **William of Tyre.** *A History of Deeds Done Beyond the Sea*. **New York, 1976, vol. 1, p. 407; al-Hiyari. «al-Quds taḥta Ḥukm al-Ṣalībiyyīn 10991187-,» p. 172; Adrian Boas.** *Jerusalem in the Time of the Crusades: Society, Landscape and Art in the Holy City under Frankish Rule*. **London and New York: Routledge, 2001, p. 84.**
232 * **The Seljuk commander Atsız took Jerusalem from the Fatimids in 1073; the Fatimids recovered it in 1098, a year before the Crusaders. [Translator's note]**
233 **al-Hiyari. «al-Quds taḥta Ḥukm al-Ṣalībiyyīn 10991187-,» p. 172.**

formingitsboundary.[234]

The sources indicate that the period of Crusader control saw the "settlement" of many national and religious groups, which built monasteries and churches: Greeks, Bulgarians, Germans, Hungarians, Scots, Navarrese, Bretons, English, Armenians, Jacobites, Syrians, Indians, Nabataeans and many others.[235]

The Waqfs of Saladin and the Islamization of Crusader Jerusalem

The great transformation of the Christian Quarter in particular, and of the Muslim quarter of Jerusalem in general, in demographic composition and in the institutional and architectural functions of the buildings that had stood in the Crusader period, came with the Muslim recovery of Jerusalem by Saladin in 1187. Once his rule in Jerusalem was secure he set about laying the foundations of his political and administrative government and, at the same time, erasing every trace the Crusaders had left in Jerusalem that recalled their era and bore their mark. The changes Saladin made to the architectural and functional identity of Jerusalem's institutions, religious and other, went beyond removing the marks the Crusaders had left on the city's Islamic monuments; they changed the identity of the Crusader institutions themselves, "Islamizing" them, especially once the Crusaders had left Jerusalem and the Christian Quarter above all. The quarter now stood demographically empty, and Saladin used the vacuum to "Islamize" some of its recent monuments and to change its demographic composition, so that residence in it was no longer confined to Christians and the city was freed from the agreements the Fatimids had made with the emperor of Byzantium barring non-Christians from living there.

The crown of this policy was Saladin's work to entrench and consolidate the Muslim presence in the Christian Quarter by founding institutions of the first importance for the local community, providing major services to the Muslims of Jerusalem and to those who came to the city. A large hospital was established to treat the population and to serve as a teaching institution in medicine.[236] The sources indicate that a Crusader hospital had stood on the same site, the al-Dabbāgha area; Saladin, that is, built his medical institution on the ruins of the Crusader hospital.[237]

234 **Ibid., p. 180.**
235 **al-Hiyari. Ibid., p. 181.**
236 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 501; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 296.**
237 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 296.**

Sultan Saladin also founded a large institution for the Sufis, known as the khānqāh (Sufi hospice), as a place of residence, worship and instruction for the Sufis living in Jerusalem and those who came to it.[238] He founded this khānqāh as the first Sufi institution in Jerusalem, on the site known historically, and particularly in the Crusader period, as the "House of the Patriarch," adjoining the Church of the Holy Sepulcher. The khānqāh's boundaries, as fixed by its waqfiyya, lie between the Church of the Holy Sepulcher on the south and the street that bounds it on the north, now known as al-Khānqāh Street.[239] According to the Jerusalem historian ʿArif al-ʿArif, the site Saladin converted into a waqf had originally been the residence of the Greek Orthodox patriarchs and a house for the priests before the Crusader occupation of Jerusalem in 1099. The Crusaders took it from them; Saladin later restored it to them, but cut off part of it and converted that part into a khānqāh comprising a mosque and a ribāṭ for Sufi scholars, later known as Dār al-Mujāhidīn. The ʿAlami family, one of the families of Jerusalem, held the administration and supervision of this Sufi waqf institution. To secure its continued operation, many properties were endowed upon it, which will be discussed below.[240]

Saladin's waqfiyya for this important Sufi institution, as recorded in Tapu survey register 522, states that he endowed the whole of the khānqāh, formerly known as the House of the Patriarch, on the Sufi shaykhs and on the elders, the mature and the young, the married and the single, Arab and non-Arab. He assigned the house as a ribāṭ for them and as a residence for teachers and for Sufis coming to it from every part of the Islamic lands. To secure its operation regardless of the attention or neglect of amirs and sultans, Saladin endowed many properties on the institution. The waqfiyya lists the following: "the cistern adjoining the khānqāh; a vault and houses adjoining the bakery; a large vault known as the Patriarch's Stable; a house north of the stable; a bathhouse known as the Patriarch's; the vault and the shops adjoining that bathhouse; the pool known as the Patriarch's Pool; the cistern adjoining the Patriarch's Pool; the pool known as Mamilla; the plot of al-Jūra al-ʿUlyā, which is the northernmost; a plot of land known as al-Jūra al-Suflā,, which is the southernmost; the plot of land of al-Baqʿa, dependent on Noble Jerusalem, in its entirety; the plot of land of al-Baqʿa, dependent on Noble Jerusalem, in its entirety; two plots of land outside Noble Jerusalem known as Raʾs al-Ḥayūs and Marj Ishkinar, in their entirety; houses, 18 doors; half of a mill vault in the Jewish Quarter; a walled garden in the hands of Abu Bakr al-Juʿaybi; a walled garden in the hands of Khidr al-Rumi; a walled garden in the hands of al-Kurji the Christian in the Christian Quarter; a walled garden adjoining the pool of the Pa-

238 **See: al-Duri. «al-Quds fī al-Fatra al-Islāmiyya al-Ūlā min al-Qarn al-Sābiʿ ḥattā al-Qarn al-Ḥādī ʿAshar,» p. 146.**
239 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **pp. 330331-.**
240 **al-ʿArif.** *al-Mufaṣṣal fī Tārīkh al-Quds*, **p. 501; al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 334.**

triarch's Bath; the ruined and demolished houses facing the said bathhouse; the ruined house above the said bathhouse."[241]

This Sufi institution was the first Sufi institution in Jerusalem and the first khānqāh founded in Palestine. It was also the most important of the khānqāhs (Sufi hospices) and the one that played the largest part in the intellectual life of Noble Jerusalem. The scholars and shaykhs of the institution did not confine themselves to Sufi activity in learning and conduct; they radiated intellectual and scholarly influence through the Holy City by serving as teachers, judges and preachers, and the khānqāh also housed the jurists and students of al-Madrasa al-Ṣalāḥiyya. The shaykhship of the Ṣalāḥiyya Khānqāh was counted among the high offices of Jerusalem; its shaykh was appointed by firman directly from the sultan until the end of the Ottoman period,[242] which reflects the importance the sultans of the Ayyubid, Mamluk and Ottoman states attached to the Sufis and their institutions in Jerusalem.

Anyone who follows these events and considers their consequences will notice that, for all the tolerance Saladin showed in his dealings with his Crusader enemies, their institutions in Jerusalem received no share of it. Although the city in general, and the Christian Quarter in particular, had open ground on which new institutions could have been built on sites with no earlier buildings, Saladin built his institutions on the ruins of the earlier Crusader ones[243]. The site of the Ṣalāḥiyya Khānqāh had originally been the house of the Latin patriarch of Jerusalem, itself built on a site that recalled the traces of the early Christian presence in the city[244], and Saladin turned the Hospitaller complex, which had comprised a hospital and a church, into a bīmāristān (hospital) bearing his name. Beyond that, he chose a house in this quarter, known as Bayt al-Aqissā' (the house of the priests), as his residence during his stay in Jerusalem in 1191, and from there he supervised and followed the "re-Islamization of Jerusalem," its refortification and the restoration of its walls and towers.[245]

Saladin's choice of residence near the Church of the Holy Sepulcher rather than near al-Aqsa Mosque may be seen as an imitation of the caliph ʿUmar ibn al-Khattab, who performed his first prayer near the Church of the Holy Sepulcher, and may also be explained by a wish to pursue a policy of rapprochement, tolerance

241 **Tapu survey register 522, in Muhammad İpşirli, n.d., pp. 3132-.**
242 **al-Mahdi.** *al-Madāris fī Bayt al-Maqdis fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī*, **pp. 403426-; Mahmoud Hawari.** *Ayyubid Jerusalem (11871250-).* **England: Chivington Digital, 2007, pp. 3545-.**
243 **Boas.** *Jerusalem in the Time of the Crusades*, **p. 82.**
244 **Boas.** *Jerusalem in the Time of the Crusades*, **p. 84.**
245 **See: al-ʿAsali.** *Maʿāhid al-ʿIlm fi Bayt al-Maqdis*, **pp. 330331-; al-ʿArif.** *al-Mufaṣṣal fi Tārīkh al-Quds*, **p. 501; al-Hiyari. «al-Quds taḥta Ḥukm al-Ṣalībiyyīn 10991187-,» p. 190; Donald Little. «al-Quds taḥta Ḥukm al-Ayyūbiyyīn wa-l-Mamālīk 11871516-» [Jerusalem under the Ayyubids and Mamluks, 11871516-]. In** *al-Quds fī al-Tārīkh*, **ed. Kamil Jamil al-ʿAsali. Amman: University of Jordan, 1992, pp. 207208-.**

and integration between Muslims and Christians, erasing the topographic and demographic barriers and boundaries that had prevailed in Jerusalem through three successive periods, Fatimid, Turkmen and Crusader. Some, however, may read it as the completion of his policy of "Islamization" and the resettlement of Muslims in the quarter, with Saladin himself as the example for others to follow in living in the quarter and settling in its houses, particularly once they had been emptied of their owners and occupants. The quarters, markets, shops and houses of the Latins stood empty after their inhabitants left under the terms of the surrender agreement, while thousands of Muslims returned to Jerusalem after the Crusaders had driven them out. Muslims were resettled in Jerusalem again after the exodus that accompanied the demolition of the city walls and the handing over of the city to the Crusaders by al-Malik al-Muʿazzam ʿIsa al-Ayyubi in 1219,[246] the walls remaining in ruins until the Ottoman sultan Suleiman the Magnificent (r. 1520 to 1566) rebuilt them.[247]

The historical sources record many Islamic foundations for which the Christian Quarter was chosen as the site. In 613 AH / 1216 CE al-Malik al-Muzaffar Shihab al-Din Ghazi, son of Sultan al-Malik al-ʿAdil al-Ayyubi, converted a house beside the Ṣalāḥī Bīmāristān into a zāwiya (Sufi lodge) known as al-Darkāh and made it a waqf. A church near the citadel, which Mujir al-Din al-Hanbali says was built by the Byzantines (al-Rūm), was converted into a zāwiya known as the Zāwiya of Shaykh Yaʿqub al-ʿAjami. Another zāwiya, known as al-Ḥamrāʾ, was founded near the khānqāh, and a Hanafi madrasa (college) near the Church of the Holy Sepulcher.[248]

Saladin also founded the most famous madrasa in the history of Jerusalem for the teaching of Shafiʿi jurisprudence, built on the ruins of the Church of St. Anne in 1192 CE and named after him: al-Madrasa al-Ṣalāḥiyya. The madrasa owed its fame to its standing as the seat of the school of jurisprudence that prevailed in Jerusalem in both the Ayyubid and Mamluk periods, the Shafiʿi school, and many properties were endowed upon it as well.[249]

From that time Jerusalem, with its scholarly and Sufi institutions, became a beacon drawing scholars, jurists, masters of the Sufi orders and ascetics from Egypt, Syria and the Maghrib, and al-Aqsa Mosque became an Islamic university, an ex-

246 On this subject see: Joseph Drory. «al-Quds fī ʿAṣr al-Mamālīk» [Jerusalem in the Mamluk Era]. In *al-Quds: Dirāsāt fī Tārīkh al-Madīna*, ed. Amnon Cohen. Jerusalem: Yad Izhak Ben-Zvi, 1990, p. 104.
247 On this subject see: Kamil Jamil al-ʿAsali. «al-Quds taḥta Ḥukm al-ʿUthmāniyyīn 15161831-» [Jerusalem under the Ottomans, 15161831-]. In *al-Quds fī al-Tārīkh*, ed. Kamil Jamil al-ʿAsali. Amman: University of Jordan, 1992, pp. 233234-.
248 al-Hanbali. *Tārīkh al-Quds wa-l-Khalīl*, pp. 9899-; al-Duri. «al-Quds fī al-Fatra al-Islāmiyya al-Ūlā min al-Qarn al-Sābiʿ ḥattā al-Qarn al-Ḥādī ʿAshar,» p. 148.
249 Donald Little. «Jerusalem under the Ayyūbids and Mamlūks 11871516- AD.» In *Jerusalem in History*, edited by K. J. Asali. New York: Olive Branch Press, 1990, p. 180.

pressionofcivilizationandthought.[250]

The sources and the architectural evidence also record that a number of Ayyubid sultans (1187 to 1250) contributed many waqf buildings in Jerusalem, mosques and madrasas among them. Saladin's eldest son, al-Malik al-Afdal, built and endowed a madrasa bearing his name for the teaching of Maliki jurisprudence in 1194. It was built in the "Maghāriba Quarter," where the Maghrebi immigrants to Jerusalem lived, since most Maghrebis followed the Maliki school.[251] It was the same king who converted this quarter into a waqf for the benefit of the Maghrebi immigrants, the quarter known as "Ḥārat al-Maghāriba (the Maghrebi Quarter)." Its boundaries, as given in the waqf document, are: on the south the city wall, on the east the wall of al-Ḥaram al-Sharīf, on the north the Bāb al-Silsila (Chain Gate) road leading to the Ḥaram, and on the west Ḥārat al-Sharaf. This waqf is accordingly regarded as the first of the Waqfs endowed on the Maghrebis in Jerusalem.[252] The waqf documents record many other waqf institutions and properties endowed by Maghrebis in their quarter of Jerusalem, including mosques, zāwiyas (Sufi lodges), dwellings and shops, such as those endowed by Shaykh ʿUmar al-Masmudi; by 1967 these foundations numbered about 140 properties.[253]

From its liberation from the Crusaders, Jerusalem was a destination for Muslims from the farthest east to the farthest west, for pilgrimage, visitation and ribāṭ, and the Maghrebis had a distinctive presence in it. For the Muslims of North Africa, Jerusalem was not merely an Islamic city like the other cities of the Islamic world; it was the city of ribāṭ and pilgrimage, and for them the rites of the pilgrimage to Mecca were not complete unless they journeyed on to Jerusalem before returning home. Nor was Jerusalem for them a city like others, to be visited for rest and recreation; they came for ribāṭ, to stay near al-Aqsa Mosque, whose surroundings God has blessed, to defend it and Jerusalem and Palestine against the external dangers surrounding them, and out of love of learning in its precincts. The vanguard of the Maghrebis came to Jerusalem in search of learning before its fall to the Crusaders in 1099 CE, among them the qadi (Sharia judge) Abu Bakr ibn al-ʿArabī of Seville, of al-Andalus (Muslim Spain), and others.[254] Their journeys resumed as *mujāhidīn* and conquerors in the company of the leader of the second liberation of Jerusalem, Saladin, in 1187 CE. Their task did not end with service in

250 See: ʿAbd al-Mahdi ʿAbd al-Jalīl. «al-ʿUlūm al-Dīniyya wa-l-Lisāniyya fī Ẓill al-Masjid al-Aqṣā fī al-ʿAṣrayn al-Ayyūbī wa-l-Mamlūkī» [The Religious and Linguistic Sciences in the Shadow of al-Aqsa Mosque in the Ayyubid and Mamluk Eras]. *al-Muʾtamar al-Duwalī al-Thālith li-Tārīkh Bilād al-Shām (Filasṭīn - al-Quds)* [The Third International Conference on the History of Bilād al-Shām (Palestine - Jerusalem)], vol. 1. Amman: University of Jordan, 1983, pp. 141203-.

251 Little. «Jerusalem under the Ayyūbids and Mamlūks 11871516- AD,» p. 180.

252 Abd al-Latif Tibawi. *The Islamic Pious Foundations in Jerusalem: Origins, History and Usurpation by Israel*. London: The Islamic Cultural Centre, 1978, p. 13.

253 Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, file no. (1313/5.28/1272/).

254 al-Juʿba. *Ḥārat al-Yahūd wa-Ḥārat al-Maghāriba*, p. 153.

Saladin's army of liberation; they chose to stay in Jerusalem in ribāṭ rather than return home, like the Sufi scholar Abu Madyan ibn Shuʿayb of Tlemcen and his grandson: the grandfather a *mujāhid* and liberator, the grandson the funder and supporter of the caravans of *murābiṭūn* in Jerusalem down the ages, Maghrebis in general and Algerians in particular, through the conversion of his property in the village of Ein Karem, near Jerusalem, into a waqf for them generation after generation. Jerusalem had become a magnet and a place of ribāṭ for them, and they chose to stay rather than return home, which led al-Malik al-Afdal, son of Saladin (1160 to 1196), to set aside a place for them to live in Jerusalem and convert it into a waqf for their benefit, later known as the Maghāriba Quarter, on the southern side of the city wall. With its Maghrebi inhabitants, this quarter formed one of the architectural and human components of the Holy City down the ages.[255]

The Mamluk sultans (1256 to 1517) followed the same strategy. Sultans and amirs competed to found waqf institutions in Jerusalem, educational ones above all, which contributed not only to the growth of scholarship and culture in the city but to its architectural development, in the buildings and markets they erected, which have left us an important architectural heritage. The development extended to the economy, not only through the building of markets, khāns, bathhouses and other economic facilities, but through the endowment of many villages, farms and agricultural lands across every region of Palestine, whose revenues were assigned to the upkeep of their waqf institutions in Jerusalem. The Mamluks built twenty-seven waqf madrasas, most of them concentrated on the western and northern sides of the Ḥaram, for the teaching of jurisprudence and the Islamic subjects connected with it, and for the care of the Sufis. To keep these institutions working they endowed hundreds of shops, houses and agricultural lands on them, inside Jerusalem and outside it.[256]

Here we see how Sufism was used by the sultans of the Ayyubid state, from Sultan Saladin onward, and by the Mamluk and Ottoman sultans after them, as a functional instrument for the demographic and intellectual rehabilitation of Jerusalem after its liberation from the Crusaders, and for the new necessities created by the demographic vacuum that followed the expulsion of the Muslims from Jerusalem during the Crusader invasion, the departure of the colonizer after eighty-eight years in the city, and the erasure of its Arab and Islamic identity. These sultans saw in Sufism the ideal instrument: first, for its aptitude for ribāṭ and the defense of the country against foreign invasion; second, for preserving

255 See: al-Tazi. «Ḥārat al-Maghāriba,» pp. 735-.
256 See: Burgoyne, M. H. *Mamluk Jerusalem: An Architectural Study*. Jerusalem: The British School of Archaeology, 1987, p. 282.

Arab Islamic identity, erasing what Crusader colonialism had done to Jerusalem architecturally and intellectually, and preserving the identity of Jerusalem and its Arab Islamic heritage.

Saladin's Waqf Institutions in International Relations

It is striking, when one speaks of Saladin's waqf institutions in Jerusalem, that their waqf properties and lands, such as the village of Silwan south of the walls of Jerusalem, were not subjected to the Ottoman Land Code discussed above, nor to the policies of the Ottoman state, which treated the Waqfs founded by amirs and sultans as non-true waqf and accordingly confiscated their properties and transferred them to the state treasury. The Ottoman state treated Sultan Saladin's Waqfs as exempt from its policies, that is, as true Waqfs, unlike the Waqfs of the Mamluk and Ottoman sultans. This classification rests, first, on the historical sources' affirmation that Saladin bought the properties of his waqf from the state treasury with his own money; and second, on the fact that his Waqfs were founded before the appearance of the new legislation on the sultans' waqf that allowed sultans to found Waqfs bearing their names out of state (mīrī (state)) land. After the Ottoman Land Code, therefore, Saladin's Waqfs were treated as true waqf, like the family Waqfs and the non-Islamic Waqfs, and the special character of their waqf status as true Waqfs was respected. Yet the sultans of the House of Osman did not respect the legal and jurisprudential particularity that Ottoman legislation had granted Saladin's Waqfs, nor the sanctity of their waqf status as waqf property, that is, the property of God, as explained above. Some Ottoman sultans treated Saladin's waqf institutions in Jerusalem as their private property and presented them as gifts to foreign states, at a time when Saladin's institutions in Jerusalem were the target of certain Catholic Western states, France, Germany and Italy among them. The question is how this came about, and that is what follows.

In the nineteenth century Jerusalem was the focus of the European states' efforts to gain a foothold in the Holy Land in general and in Jerusalem in particular. This took the form of attempts by these states to acquire real property in Jerusalem, whether by direct purchase, by lease in its various forms, or by grants and gifts made directly by the Ottoman sultans in the light of political or religious relations.

The basis of European penetration in Palestine in the nineteenth century lay in the principle that supervision of the Holy Land should not be confined to a single European state. Each of these states coveted a presence in Palestine and sought to build and reinforce it by peaceful means: religious and cultural penetration, and the protection of religious minorities. They therefore strongly encouraged the missionary, charitable and cultural activities of their subjects, and the reach

of each foreign state can be measured by the religious and charitable institutions founded so densely in Jerusalem in the nineteenth century: schools, hospitals, monasteries, churches and the rest.[257]

The beginning of foreign influence in Jerusalem can be dated to the French campaign in Palestine of 1799, which alerted the other European states, Britain above all, to the need to penetrate and control the Holy Land. This Western interest coincided with the policy of openness followed by Muhammad ʿAli Pasha and his son Ibrahim during their control of Palestine from 1831 to 1840, when the first foreign consulate in Jerusalem, the British consulate, was opened in 1838. After recovering Palestine the Ottoman state followed the same policy toward the subjects of the European states as Muhammad ʿAli had. This coincided with the Ottoman Tanzimat (the Ottoman reform era, 1839 to 1876), beginning with the Gülhane Rescript (*Khaṭṭ-i Sharīf*) of 1839 and the Imperial Rescript (*Khaṭṭ-i Hümayun*) of 1856, and then with the law on foreign ownership of 1867.

The period saw a great influx of foreign subjects into the Holy City, for temporary or permanent stays, which drove property rents and prices sharply upward. Although the Rescript of 1856 gave foreigners the right to own property on condition that they obtain permission from the Sublime Porte, the Ottoman state in this period did not allow foreigners to own property without prior permission. This meant that foreign states and their subjects had to submit applications to the Sultan's Chancery and the Prime Ministry in Istanbul through the government of the *mutaṣarrifiyya* of Jerusalem, or else renounce their foreign nationality and enter Ottoman subjecthood in order to be entitled to own property.[258]

It should be noted, too, that the Ottoman state was slow to grant foreigners formal approval to own property; it delayed consideration of applications for long periods, sometimes years. The French consul's application to buy a plot of land in the village of Ein Karem near Jerusalem, to build a house for French nuns, took a full year to consider (all the land of this village being waqf of the Zāwiya of Abu Madyan al-Ghawth in Jerusalem). The correspondence between Istanbul and Jerusalem shows this: the first letter, submitting the application to buy, is dated 1 Muḥarram 1281 / 15 June 1864, and the second, conveying approval, 30 Muḥarram 1282 / 25 June 1865. The Jerusalem government's procedures for surveying the land and registering the deed of sale in the court then took about another year

257 **Roger Heacock. «La Palestine dans les relations internationales (17981914-),» dans Dominique Trimbur et Ran Aaronsohn (dir.).** *De Bonaparte à Balfour, la France, l›Europe occidentale et la Palestine 17791917-*. **Paris : CNRS Éditions, 2001, pp. 3641-.**

258 **Demétrius Nicolaides.** *Législation ottomane ou recueil des lois, règlements, ordonnances, traités, capitulations et autres documents officiels de l›Empire Ottoman*, **vol. 2. Imprimerie frères Nicolaïdes, 1873, p. 21.**

andfourmonths.[259]

The Ottoman state's evident strictness, and that of its administrative apparatus in Jerusalem, on the question of foreign ownership did not prevent foreigners and Ottoman subjects from circumventing the laws and regulations: by taking Ottoman nationality, by bribing members of the administrative apparatus in Jerusalem, and by using members of the local Christian and Jewish communities, as Ottoman subjects, to buy land, as the registers of the Jerusalem Sharia Court reveal in part.

The law on foreign ownership of 1867 opened a new stage in the foreign competition for real property in Jerusalem. The door was now open to foreign states and their subjects to own property in Jerusalem without hindrance, on condition that their governments ratified the law, and the states that wished to own property hastened to sign. At the Ottoman Ministry of Foreign Affairs in Istanbul the ambassadors of France, Britain, Belgium, Sweden and Norway signed at the same time, followed by Austria, in 1868; in 1869 the ambassadors of Prussia, the Netherlands (New Zealand), Denmark, Russia and the United States of America signed; and the license was later extended to Italy and Greece.[260]

The new Ottoman laws thus eased the acquisition of real property by foreigners in Jerusalem, and the period saw a broad wave of purchases, accompanied by the building of foreign institutions, religious, cultural and economic, and of residential houses.

From Islamization to Christianization

The political developments on the European scene that coincided with the proclamation of the ownership law of 1867 affected the course of foreign acquisition in Jerusalem. These were German unification and Italian unification, and the efforts of the new states to buy land in Jerusalem in competition with the other European powers, France and Russia above all. A united Germany sought a foothold in Jerusalem with which to rival the other European states, by cultivating good relations with the Ottoman state. The crown of this policy was the visit to Jerusalem in 1869 of the German crown prince, Frederick William, during which Sultan Abdülaziz presented the Ṣalāḥī Bīmāristān and its land to Germany as a gift, for the

259 **Jerusalem Sharia Court Register (*Sijill*) 353, 1283 / 1866, pp. 4041-.**
260 **George Young.** *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*, **vol. 1. Oxford: The Clarendon Press, 1905, pp. 335-336.**

building on that land of a church named the German Evangelical Church[261]. From that occasion German activity in buying property in Jerusalem increased. Some historical sources indicate that "the Greek Orthodox patriarch bought two-thirds of al-Dabbāgha from the ʿAlami family by ḥikr (long lease on waqf land) lease, and the community built on it the Hostel of St. John and the Aftīmūs (Euthymios) Market."[262]

In a report to the minister of foreign affairs dated 15 February 1864, no. 134, marked urgent, the French consul in Jerusalem wrote: "Excellency, I have the honor to inform you of a matter that is causing great controversy among the Latin clergy. The superintendent of the waqf, who has lately arrived from Istanbul, claims that an agreement has been reached between him and the governor of Jerusalem, who has sent an official report (*maẓbaṭa*) to the Ottoman authority in Istanbul explaining the matter and asking the sultan to issue a license for the sale of the site and remains of Sainte-Marie-la-Grande, Dabbāgha, place des tanneurs et corroyeurs, and the adjoining land, the whole of which is known as the Bīmāristān. The complex covers about 2,500 square feet and lies between the Greek property on the site of the domain of the Knights of St. John of Jerusalem and the plot belonging to the property of St. Mary that adjoins the hospital of the Venetians and the Knights of St. John of Jerusalem. The façade of this institution (the Bīmāristān) and its gate are in good condition and give onto the small street called al-Dabbāgha since the occupation of Palestine by the French kings, which is one of the only two roads leading to the entrance of the Church of the Holy Sepulcher. The carvings and ornament on the entrance of the church of St. Mary, the statues and other Latin inscriptions, and the sculpture representing the twelve months of the year with their Latin names, are still there, which proves beyond doubt that this monument was built by the knights, most of whom were French.[263]

"The superintendent of the waqf (the waqf of the Ṣalāḥī Bīmāristān) wishes to sell the plot of the Bīmāristān and the ancient monuments on it, for the account of the Ottoman state treasury, for a sum equivalent to 200,000 francs, a sum liable to rise if the sale is made at public auction, and to which the very costly fees and expenses of transfer of ownership will be added. The Latin clergy, it should be known, have no money to buy, and the other European Latin institutions, such as

261 **On the competition for ownership of the Ṣalāḥī Bīmāristān see: Thorsten Preine. «La querelle du Muristan et la fondation de l›église du Rédempteur,» dans Dominique Trimbur et Ran Aaronsohn (dir.).** *De Bonaparte à Balfour, la France, l›Europe occidentale et la Palestine 17791917-*. **Paris : CNRS Éditions, 2001, pp. 345360-.**

262 **Khidr Salama. «Intiqāl Milkiyyat Arāḍī al-Awqāf baʿda Ṣudūr al-Tanẓīmāt: Amlāk al-Almān fī al-Quds ka-Mithāl» [The Transfer of Ownership of Waqf Land after the Tanzimat: German Property in Jerusalem as an Example]. In** *al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn: al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām 1014- Aylūl 2006*, **ed. Muhammad ʿAdnan al-Bakhit. Amman: University of Jordan Publications, 2008, p. 419.**

263 **Letter from the French consul in Jerusalem, Edmond de Barrère, to the French minister of foreign affairs, dated 15 February 1864, no. 134: French Ministry of Foreign Affairs Archives, Turquie, Jérusalem, vol. 8, pp. 198200-.**

the institution of Saint-Joseph and the institution of Lyon, for all their standing and importance, have no means to buy either."[264]

The consul explains in this report that the superintendent of the waqf had either exceeded his powers or obtained permission or an order from the Sublime Porte to act in this way and offer these properties for sale, since the governor of Jerusalem had handed him an order not to put this public monument up for sale at auction, because it was Ottoman government property. The governor preferred that it remain in Ottoman hands so long as France, represented by the French treasury or by its representatives among the Latin clergy, was unable to pay its price.[265]

The consul proposes to the minister of foreign affairs: "Minister, since the Bīmāristān is an Ottoman right and we are unable to buy it, we must thank the Ottoman sultan for keeping this place and this monument under his authority and putting an end to the process of its sale, because it is a fundamental matter for France. That is why I write to you, to inform you of the situation and to let you know that this monument could be legally sold at any moment, the Greek clergy being, it is said, ready to pay the 200,000 francs asked for it."[266]

The Ottoman documents preserved at the Foundation for the Revival of Islamic Heritage and Research (Mīthāq) in Abu Dis show that the monument did not fall to France. Sultan Abdülaziz issued a firman dated 20 Dhū al-Qaʿda 1287 / 11 February 1871 granting the king of Prussia part of the land on which the Ṣalāḥī Bīmāristān stood, the remaining third of the al-Dabbāgha land on which the Bīmāristān stood, which is believed to have been in ruins at the time. The grant also included a group of properties attached to the Bīmāristān, comprising thirty-two shops and storerooms and an olive press, the total area of the sultanic grant being five dunums (about 1,000 m² each). The firman further provided that ownership of these waqf properties be transferred to Prussia and registered as private property in the name of the embassy of the state of Prussia, for the building of a church onthesite.[267]

The German archive gives us a report by the German consul in Jerusalem in 1870 that reveals a plan to take control of the whole area surrounding the Ṣalāḥī Bīmāristān adjoining the area they had received by sultanic grant, and the ways and means Germany devised for the task. The report indicates that the German consul in Jerusalem had asked the German foreign minister to send a special commission to Jerusalem to study the site of the Ṣalāḥī Bīmāristān, draw maps

264 Ibid.
265 Ibid.
266 Ibid.
267 Firman of the Ottoman sultan Abdülaziz, dated 20 Dhū al-Qaʿda 1287 / 11 February 1871: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).

of it, and lay down a plan of the ways and means to be followed in taking control of the site and transferring its ownership to Germany. A German commission did arrive in Jerusalem the same year; it visited the site, drew a map, and identified the nature of the properties near the German property there. The commission found it necessary to acquire seven shops belonging to the waqf of the Ṣalāḥī Bīmāristān near the church and part of a plot of land belonging to the Mufti of Jerusalem, Musa Efendi, together with fifteen shops in the meat market near the plot the Ottoman sultan had given to the emperor of Prussia, and the shops at the entrance of the road leading to it. The commission also recommended that no new building be permitted in the meat market area, so as to open a road through to Sūq al-Bāzār. To achieve these aims the German consul proposed buying these properties and compensating the beneficiaries of the waqf properties as follows:

payment of 1,000 piasters (qirsh) for each of the seven shops belonging to the waqf of the Ṣalāḥī Bīmāristān; a sum of money in compensation to the Mufti; 2,500 piasters for each of the fifteen shops, with the possibility of negotiating with the owners; and 500 piasters to every owner who undertook not to build or add new buildings in the meat market area. The commission also recommended asking the Jerusalem government to approve the transfer of ownership of these properties to Prussia and to issue title deeds accordingly.[268]

The correspondence between the German consulate in Jerusalem and the German Foreign Ministry indicates that these aims were achieved: title deeds were issued and ownership transferred. A report from the German consul in Jerusalem to the foreign minister dated 26 May 1870 states that the Mufti of Jerusalem, his brother and his cousin, and Muhammad Tahir Efendi al-Khalidi, member of the Jerusalem municipal council and administrator of the properties of the waqf of the Ṣalāḥī Bīmāristān, had agreed to present these properties as a gift and a small service to His Majesty the Emperor of Germany. The report noted, however, that the owners of the fifteen shops, private property, had not agreed to sell at the proposed price. The German consul proposed raising the sum tenfold to induce the owners to sell and regarded their refusal to sell at these fantastic prices as greed and avarice, for which they should be compelled to sell by the direct intervention of the Ottoman sultan.[269]

German influence in Jerusalem grew after the expulsion of the Russian consul from the city on the outbreak of war between Istanbul and Moscow in 1877, whereupon the German consulate took Russian subjects and property under its protec-

268 Political Archive of the German Foreign Office, Berlin: Auswärtiges Amt, Politisches Archiv, Berlin (APAB), R 61548.
269 Ibid.

tion. In 1898 Jerusalem received the visit of the German emperor William II; in his honor, and so that he could enter the Old City on horseback, a special opening was made in the city wall, later known as Bāb ʿAbd al-Hamid. Sultan Abdülhamid II presented him with a plot of land in Jerusalem of 2,000 square meters for the building of a church for the German Catholics. Before leaving Jerusalem, it should be noted, the emperor instructed his consul to buy a plot adjoining the one the sultan had given him, belonging to the Dāwūdī family, of 1,600 square meters.[270]

It should be noted that the German Evangelical Society, which had built on the land of the Bīmāristān, applied to the Ottoman sultan in 1913 for a license for the buildings it had already erected on the site and for permission to erect new buildings on another plot of the Bīmāristān land. Sultan Mehmed V Reşad approved, and fixed the area, boundaries and nature of the building to be erected on the land of the Bīmāristān waqf, the land to be leased to the German society by a *muqāṭaʿa (fixed ground rent on waqf land)* contract at ten per thousand of the value of the land on which the building would stand, the sum to be paid to the Bīmāristān waqf. This was set out in a firman of 7 Shaʿbān 1332 / 1 July 1914, signed by Sultan Mehmed V Reşad; Muhammad Saʿid, minister of foreign affairs; Sulayman Bushnaq, minister of commerce and agriculture; and the Shaykh al-Islām, the grand vizier and the other ministers of state, which reads:[271]

> "By decision of the Council of State and the Council of Ministers, approval has been given to the building erected at the place called the Mūristān in Noble Jerusalem by the German institution called the Evangelical Society, measuring twenty-two in length and fifteen and a half cubits in width, each cubit reckoned at seventy-five centimeters, comprising six rooms, an īwān and one latrine, and containing twenty-six windows and twenty doors; together with the erection of the building intended to be erected, measuring thirty-six in length, twenty-three in width and twenty-two and a half cubits in height, comprising nine rooms, three īwāns, a stone staircase, six places of recreation, two latrines, fifty-nine windows and forty-five doors; and the exemption from customs duty of the requisites and articles to be brought from abroad for the said constructions after Our Will; and the assignment of a *muqāṭaʿa* waqf due at the rate of ten per thousand of the value of the waqf land on which the building will stand.

270 Ibid.
271 Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).

> The Grand Vizierate is charged with communicating this to the Ministries of Foreign Affairs, the Interior, Finance and Waqfs for the necessary action in accordance with this Imperial Will.
>
> 7 Shaʿbān 1332 AH, and 14 Ḥazīrān 1330 *mālī* / 1 July 1914
>
> Muhammad Rashad"[272]

As the Ottoman documents show, the German Evangelical Society did not pay the agreed rent for fifteen years. In 1928 the director general of Waqfs in Palestine wrote to the president of the Supreme Muslim Council, al-Hajj Amin al-Husayni (letter no. 895), asking that the German Evangelical Society be required to pay the rent (*badal al-ijāra*) as laid down in the sultan's firman, and that a joint committee of the German society and the Waqfs be formed to fix the rent due. The letter noted that there was now no impediment or reason not to claim the rent, the First World War being over.[273]

The government of Palestine brought an action against the German society, styled the Evangelische Jerusalem-Stiftung, Berlin, and against the Public Custodian of Enemy Property, before the president of the Land Court in Jerusalem, stating:

1. "Within the city of Jerusalem there is a plot of land on which buildings have been erected, known as the Mūristān, of an area of five dunums and 75,346 cubits, bounded as follows: on the south by Sūq al-Qamḥ (the wheat market); on the east by the end of the market called the vegetable market, containing fifteen shops annexed to the defendant, beside which is Iskijilar Street; on the north by the public road near the Church of the Holy Sepulcher, connecting with the vegetable market; on the west by the New Street as far as the edge of Sūq al-Qamḥ.

> Included in the property claimed are seven shops formerly registered in the name of the Greek patriarch, connected with the properties described above and extending to the gate of the butchers' street, with their roofs; fifteen shops belonging to the institutions of Sultan Salah al-Din al-Ayyubi, situated north of the butchers' street in an even row, with their roofs (the open part above them); three storerooms in Sūq al-Qamḥ between the tomb of Shaykh Ghabn and the olive press belonging to the Husayni family, with their

272 Firman of the Ottoman sultan Mehmed V Reşad, dated 7 Shaʿbān 1332 and 14 Ḥazīrān 1330 mālī / 1 July 1914: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).
273 Letter from the director general of Waqfs in Palestine to the president of the Supreme Muslim Council, no. 895, 1928: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).

roofs, these storerooms not being connected with any others; seven further storerooms north of the said properties belonging to the institutions of Sultan Salah al-Din; and the plot of the said land shown on the attached plan.

2. The state of Turkey, by an imperial firman dated Dhū al-Qaʿda 1287, transferred the said property known as the Mūristān, by order of Sultan Abdülaziz, to His Majesty the exalted King of Prussia by way of gift, and an order was issued to register the said property in the name of the embassy of the exalted state of Prussia.
3. By a proclamation of the commander-in-chief of the Egyptian Expeditionary Force dated 21 December 1919, the said property was taken over by the Public Custodian of Enemy Property in Palestine.
4. By a deed dated 1 November 1893 the then emperor of Germany consented to the conveyance (*farāgh*) of the said property in the name of the first defendant, but the conveyance was not completed at the Tapu; rather, the Prussian ministry issued an order dated 23 April 1922 to complete the conveyance that had been approved.
5. Under the Ottoman Land Code, Article 3 of the Tapu Law of 1275, Articles 1 and 2 of the Tapu Title Deeds Regulation of 1276, Articles 1, 17 and 18 of the Law of 28 Rajab 1291, Article 1 of the Law of 1331, and the Land Transfer Ordinance of 1920, immovable property [may not be transferred] unless the transfer is entered in the Tapu registers. A conveyance under the two deeds dated 1 November 1893 and 23 April 1922 is therefore a void conveyance, because it does not establish the conveyance of the said property in the name of the first defendant. Ottoman law on 1 November 1893 did not permit a foreign society to register immovable property in Palestine in its name. A conveyance under the document of 23 April 1922 is also invalid, because it did not obtain the consent of the Public Custodian of Foreign Subjects' Property in Palestine to the conveyance of the said property, as required by Article 3, paragraph 3, of the proclamation referred to. The only valid instrument concerning the property claimed is the firman referred to in paragraph 2 above, and the said property, excepting what is for the benefit of the Public Custodian, remains the property of the Prussian government.
6. Under Article 28 of the Treaty of Lausanne between the Allied Powers and the Ottoman state, the government of Palestine is entitled to liquidate the said property.
7. I therefore ask your honorable court to hear the action and to determine whether the said property belongs to the Prussian government or to the German society, the Evangelische Jerusalem-Stiftung, Berlin-Charlottenburg, and to issue a judgment under Article 72 of the

Treaty of Peace of Lausanne for the liquidation of this property."[274]

In the light of this correspondence within the administration of the Islamic Waqfs in Palestine, it was decided to require the German society to abide by the sultan's firman, in a letter from the director of Jerusalem Waqfs to the German Evangelical Society dated 3 December 1928, no. 899.[275] The correspondence shows that the society refused to comply with the Waqf Department's demands and referred the matter to Mr. Nord, the German consul general in Jerusalem, who wrote to the director of Jerusalem Waqfs (letter no. 1/28) stating that the German society was not obliged to pay rent, bore no financial obligations toward the Waqf Department, and that the Department therefore had no right to claim any financial dues from the society, for the following reasons:

1. "The land of the Bīmāristān waqf and the buildings on it are a gift from the Ottoman sultan to the German Evangelical Society, as laid down in the firman of 20 Dhū al-Qaʿda 1287 / 1870, which also provided that the land be struck from the registers of waqf property and registered as private property in the name of the Prussian embassy.
2. The sultanic order of 7 Shaʿbān 1332 / 1913 contains a license for additional buildings that it was intended to erect on the land of the Bīmāristān near the Church of the Holy Sepulcher; because of the First World War the building was not carried out, and the license granted to the society does not concern the buildings of the Bīmāristān erected before the date of the sultanic order.
3. Had the Waqfs administration a right to claim rent for the waqf land of the Bīmāristān, it would have claimed it earlier, not after fifteen years; during that period no application was made on the subject."[276]

In response, the Supreme Muslim Council referred the case to the Waqfs's lawyer, Awni Abd al-Hadi, and charged him with pursuing it. He asked the German consul for a copy of the sultanic firman so that he could study the case.[277] The consul replied that the firman was in Germany and that he was awaiting a copy. A year after that letter the firman had still not arrived, and the case was suspended pending its arrival, as appears from the letter the Waqfs's lawyer sent to the German consul asking whether a copy of the firman had arrived.[278] That letter is the last document in our hands on the details of the case.

274 Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 313/1321/10/.
275 Letter from the director of Waqfs to the German Evangelical Society, no. 899, dated 3 December 1928: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).
276 Letter from the German consul in Jerusalem to the director of Jerusalem Waqfs, no. 128/: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).
277 Letter from the Waqfs lawyer, Awni Abd al-Hadi, to the German consul, dated 25 January 1929: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).
278 Letter from the Waqfs lawyer to the German consul, dated 28 February 1930: Documents of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. (1013/22/17/).

In this context I turn to the French, Austrian and Russian competition to acquire the properties of the Ṣalāḥiyya Khānqāh in Jerusalem referred to above. The only source that informs us in detail of the Western interest, Russian, French and Austrian, in the Ṣalāḥiyya Khānqāh, and of these states' wish to control its properties and possess its holdings, is the French archive: the archive of the French Ministry of Foreign Affairs at the ministry's seat in Paris, and the French diplomatic archive in the city of Nantes. This archive informs us of the rivalry among these states and of how France used its relations with the local administration of Jerusalem and the Ottoman authority to acquire some of the khānqāh's properties and to prevent the other states and the communities under their protection from acquiring them. It also reveals the importance of the khānqāh's location for France, and hence the necessity, in French eyes, of controlling its holdings.

The reports of the French consuls in Jerusalem and their correspondence with the French Ministry of Foreign Affairs reveal and set out precisely this interest, and France's policy toward the khānqāh's properties, which became for France a fundamental issue that occupied a place in the discussions of French statesmen in Jerusalem, Paris, Istanbul and Moscow.

In a report sent on 12 June 1860 the French consul in Jerusalem described the khānqāh's location and its importance for France. The khānqāh, he noted, was a complex of buildings adjoining the Church of the Holy Sepulcher and close to the Russian hospital, which was connected to the church by a bridge. Its ownership fell within the property of the Waqfs attached to the Islamic religious institutions. It comprised a mosque and a group of dwellings inhabited by Turks. Adjoining the khānqāh was a small Franciscan convent, the only place in Jerusalem set aside for the residence of the friars of the Holy Land during Easter, when their rites required their continuous presence near the Church of the Holy Sepulcher. The consul explained that this convent was very small and cramped, too small for the friars and in need of enlargement, but that enlargement was possible only at the expense of the buildings of the Ṣalāḥiyya Khānqāh, which adjoined it and surrounded it on every side. Up to that moment the Franciscans had been unable to acquire these waqf properties, for want of the money to buy them and because of the obstacles raised by the religious authorities.[279]

The report indicates that the French consul in Jerusalem had proposed to the government of the French Empire that it work to acquire the buildings of the khānqāh, with the exception of the mosque, which could not be acquired, and place

279 Report on the Ṣalāḥiyya Khānqāh sent by the French consul in Jerusalem to the French minister of foreign affairs on 12 June 1860: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 6, pp. 134136-.

these properties at the disposal of the Franciscans of the Holy Land. It explained that the opposition of the religious communities and the Christian clergy to control of these properties would be weaker if the French Crown controlled them, and that French Crown control of the khānqāh's properties would carry weight with the Ottoman government, which would find it easier to accept the conversion of this waqf property into the property of the French government than into the property of a Christian religious community.

The report also explained that the French ambassador, the marquis de La Valette, had used the events of Damascus in 1860, which had inflicted heavy losses on the Franciscans,[280] to ask the Franciscans to write to the *mutaṣarrif (district governor)* of Jerusalem, ʿAli Pasha, seeking his agreement to grant them the Ṣalāḥiyya Khānqāh in compensation for the losses the Muslims had inflicted on them in Damascus. Before this request was made, the same ambassador had met the amir of Mount Lebanon on the matter, who in turn conveyed this important and sensitive question to those concerned, explaining that questions of this kind could be raised and discussed in St. Petersburg, where the sensitive questions concerning Jerusalem and Constantinople were discussed.[281]

On 26 April 1860 the French consul in Jerusalem, Edmond de Barrère, wrote to the French minister of foreign affairs (letter no. 53): "I have the honor to send you one of the most accurate plans of the whole of the buildings near and around the Church of the Holy Sepulcher, and you will note the following:

1. "The place and site of the Ṣalāḥiyya Khānqāh, the only building not controlled by the Greeks or the Armenians and containing Latin property.
2. The site of the great Bayt al-Maqdis (the Holy House, that is, Jerusalem) [la grande maison], lately offered for sale at public auction, which represents the remains of the property of the Knights of St. John, or Knights of Malta (Chevaliers de St Jean de Malte). We erred in not acquiring it; the auction was won by an Austrian, or a Palestinian under Austrian protection, of the Order of Malta.
3. You will also note the land on which the Russian consulate will be built."

The consul continues: "I believe that the attached plan of these various places is the best commentary on and explanation of what I said in my previous letter. Thanks are due to the designer of these plans, the architect Mr. Pierotti, an officer

280 **On these events see: Muhammad Saʿid al-Ustuwani.** *Mashāhid wa-Aḥdāth Dimashqiyya fi Muntaṣaf al-Qarn al-Tāsiʿ ʿAshar 18401861-* **[Damascene Scenes and Events in the Mid-Nineteenth Century, 18401861-], ed. Asʿad al-Ustuwani. Damascus, 1993.**

281 **Report on the Ṣalāḥiyya Khānqāh sent by the French consul in Jerusalem to the French minister of foreign affairs on 12 June 1860: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 6, pp. 134136-.**

of the Sardinian Engineers (Génie Sarde). He is the same man who drew a plan of old and new Jerusalem that is considered the most accurate and the freest of contradictions and errors, and he has asked me to send it through Your Excellency as a gift to the Emperor of France."[282]

In another report from the same consul, Edmond de Barrère, to the French minister of foreign affairs, dated 21 June 1860, no. 55, we read:

> "The Ṣalāḥiyya Khānqāh, a building whose first purpose is to lodge Muslim pilgrims, lies beside the Latin convent adjoining the Church of the Holy Sepulcher, within the following limits:
>
> "It is bounded on the north by a road, on the south by the great dome and part of the Church of the Holy Sepulcher and by Greek property, which also bounds it on the east. On the west it is bounded by the Russian hospital, to which it is connected by a bridge, with a road passing beneath the bridge. The khānqāh complex is the only part that hems in the Church of the Holy Sepulcher, and it is the only building that must be acquired, so that it becomes part of our property, in order to enlarge the space around the Church of the Holy Sepulcher and make it lighter.
>
> "The other buildings around the Church of the Holy Sepulcher belong to the Russians, the Greeks, the Armenians, the Copts and the Abyssinians, and these have not done much to acquire the khānqāh's properties, though the neighbors of the khānqāh are the same as the neighbors of the Church of the Holy Sepulcher. Lately the demand for the khānqāh's properties has become so great that the price of a single one of its forty rooms has reached a hundred thousand francs. Lately the Greeks asked to buy a single room for a sum reaching hundreds of thousands of francs. Large and fantastic as the sum was, one member of the ʿAlami family, one of the administrators of this waqf, refused to sell it, on the ground that the sum was, in his view, small. If this complex consists of forty rooms, then with the rivalry among the foreign Christian communities to own it the price of these rooms has reached four million francs."[283]

282 Letter from the French consul in Jerusalem to the French minister of foreign affairs, no. 53, dated 26 April 1860: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 7, pp. 2629-.

283 Letter from the French consul in Jerusalem, Edmond de Barrère, to the French minister of foreign affairs, dated 21 June 1860, no. 55: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 7, pp. 4145-.

In the French consul's view this sum is large and exaggerated, and the Latins have no means of paying it, particularly since the license granted to the Latins to acquire property had expired; the acquisition of the khānqāh complex would therefore require millions of francs, for the following reasons:

1. The Latins were unable to raise the necessary funds.
2. There was competition to acquire these properties, demand for them having grown among the Russians, the Armenians and the Greeks, who had the financial means.
3. The complex hemmed in the Latin properties and mattered far more to the Latins than to the Russians, the Greeks and the Armenians, who owned wide areas aroundit.[284]

For all these reasons the consul proposed that steps be taken to prevent the sale of the complex's properties at these fantastic and exorbitant prices, whether to the Russians or to the Greeks, because it was the only place in the area not yet controlled by the Russians or the Greeks.

In the French consul's view there was only one way to keep the complex as it was, to prevent its ownership passing to anyone but the Latins, and to help the Latins buy it: to obtain a firman prohibiting outright the sale of any part of the complex, by public auction or by any other means whatsoever. The Ottoman sultan, the consul thought, could take possession of the complex, transfer its ownership from the Waqfs of Saladin to state ownership (mīrī ownership), and then present it to France as a gift of honor, after separating and marking out its boundaries so that the mosque and minaret belonging to the khānqāh were divided from its other properties, the ones France wished to control. To reach this goal, in the consul's view, the sultan should do the following:

1. Take ownership of the khānqāh complex and compensate those entitled under the waqf, providing them with alternative housing if necessary. The administration itself should investigate the matter and propose a suitable price, rather than leave it to those in charge of the khānqāh (meaning the ʿAlami family, which held the administration of the waqf) or set the price by the rivalry among the Christian religious communities.
2. The ʿAlami family, women and children included, should be compensated for its exploitation or administration of this waqf over more than two centuries. The sultan himself could fix a fair sum of compensation for the family through administrative assessors. The governor of Jerusalem was the sole controller of these Waqfs and could take the necessary measures, whereas the ʿAlami family and its members disposed of the waqf only under a right of disposal, though it was an Islamic waqf. Any member of the ʿAlami family could annul and halt any sale of any property in the khānqāh by other members of his family, and any

284 Ibid.

one of them could ask fantastic sums, as he pleased, for the sale of his right of disposal in the khānqāh, and no one could object. This was because the right of disposal and administration of the khānqāh was shared among the members of the family and not confined to one of them. Since the Latins' right to acquire property had expired, the governor of Jerusalem and the sultan must place a veto on every sale of any part of the khānqāh and allow no party but France to acquire it, because these properties hemmed in and surrounded the Latin holdings.

3. The sultan's government should buy these properties and convert them into state property, then grant them to France in return for France paying the price asked into the Ottoman state treasury. This would put an end to the rivalry among the powers, and also to the ʿAlami family's hold over these properties, its bargaining over their sale and its obstruction of any sale for whatever reason.

4. France should acquire the complex directly from the Ottoman sultan. This would help end the dispute between the Latin patriarch and the Franciscans, that "stupid" dispute, as the consul called it, which threatened to obstruct France's acquisition of these properties and so prevent it, especially since the khānqāh complex was the only one adjoining the Church of the Holy Sepulcher and formed a barrier between the two, that is, between the Latins and the Franciscans. The French government, or the government of the protectorate, could later recover the whole sum paid for the khānqāh, or part of it, through the collections taken on Good Friday, for instance, or private donations from individuals, or those of the French episcopal assembly.[285]

The French consul closes his report by saying that the first and most urgent task is to secure a final veto from the governor of Jerusalem and the sultan to prevent the Russians or the Greeks, the khānqāh's neighbors, who have millions, from acquiring the khānqāh's properties, especially since they are trying to control or acquire them at any price; the area (the khānqāh) must therefore be restored once and for all to the Latins, because it hems in their only convent connected with the Church of the Holy Sepulcher, and none of the other Christian communities, who can acquire any other property in any other part of Jerusalem, should be allowed to own it. The report notes that Russia has lately built a hospital near the khānqāh, and that the Greeks too are trying to acquire the khānqāh's properties and have offered 100,000 francs, the equivalent of 500,000 *asadī (the Dutch "lion dollar")* piasters, for a single room in the khānqāh. These facts and indications, the consul says, oblige France to act quickly to obtain a firman from the sultan prohibiting the sale of any part of the khānqāh to anyone but France.[286]

After ten years of following the khānqāh question and of continual attempts to acquire its properties and prevent their passing to anyone but the French and

285 Letter from the French consul in Jerusalem, Edmond de Barrère, to the French minister of foreign affairs, dated 21 June 1860, no. 55: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 7, pp. 4145-.
286 Ibid.

their representatives among the religious communities of Jerusalem, the French consul in Jerusalem wrote to the French minister of foreign affairs on 2 April 1870 to report where matters stood and to offer some proposals for settling the question in France's favor. The report refers to the ʿAlami family, entrusted with the administration of this waqf by Saladin, who granted Wafā Efendi al-ʿAlami the right of administration over his Waqfs; Wafā al-ʿAlami in turn passed the right to his descendants generation after generation, and in continuation and confirmation of it, ʿAbd Allah Efendi, son of Wafā al-ʿAlami, obtained the entitlement from Sultan Abdülmecid I by a special firman on the subject. The report notes that the courtyards of the khānqāh consist of two parts, upper and lower; that the upper part is of great importance to France, and that acquiring it would serve a political interest, since it surrounds the dome of the Church of the Holy Sepulcher; and that acquiring so important a waqf could be achieved only by the direct intervention of the Ottoman sultan. There was, however, another part of the khānqāh owned by the ʿAlami family, which France could work to acquire through the family, particularly since the ʿAlamis had not yet forgotten the services the French embassy had rendered them (the report does not say what these services were). An understanding could therefore be reached with the ʿAlami family to buy these properties, by establishing direct relations with them and tempting them with numerous privileges, without letting them sense France's wish to acquire the khānqāh's properties, especially since Russia was pursuing the same aim.

The report points to the obstacles that stood in the way of the ʿAlami family's ceding the khānqāh's properties and selling them to France. One member of the family, the second son of ʿAbd Allah Efendi al-ʿAlami, had changed his religion, entered the Catholic Church and now lived in Rome, an event that had embarrassed the family and made it harder for them to cede the khānqāh to the Latins. The family's economic situation was also poor, and the loss of the khānqāh's properties would leave them in a fragile position. For these reasons, the consul says, he understood the family's anxiety and hesitation about ceding the khānqāh, especially amid rumors that the sultan had granted the khānqāh's properties to the Franciscans. Hence the consul saw the need to ensure that the ʿAlami family would not oppose the transfer of the khānqāh's ownership to the Franciscans, and to make them indifferent to the matter, which could be achieved with money, by paying them financial compensation. The report also points to the religious obstacles to ceding ownership of waqf property, since Waqfs may not be sold, but the consul thought these could be overcome, particularly since the Muslims of Jerusalem were not religious extremists. This precious opportunity should therefore be seized, especially with news arriving that the grand vizier and the Ottoman sultan were ready to cede the courtyards of the khānqāh, including the houses around the dome, to

the Franciscans; the consent of the grand vizier and the sultan to cede the courtyards would remove every obstacle to the transfer of ownership.[287]

About a month after that report, on 7 May 1870, the French consul in Jerusalem sent the French minister of foreign affairs another report (no. 42) on where matters stood in the question of the Ṣalāḥiyya Khānqāh's properties:

"I have at last obtained a solution, the one we hoped to obtain for the present as a temporary solution. On 27 April 1870, last month, the governor of Palestine visited the Ṣalāḥiyya Khānqāh in the presence of the Austrian consul, the Father of the Holy Land (the Custos of the Holy Land), the qadi of Jerusalem and other Ottoman officials.

"Minister: the sultan has transferred part of the khānqāh's property to the Franciscan fathers, comprising three rooms and a stable and a shop beneath the three rooms. This was done by a grant from the sultan to the Franciscans. Openings have been made in the wall of one of the rooms and another in the wall of the passage that runs by the stable, so as to create a connection between the Church of the Holy Sepulcher and these new holdings, which have been completely separated from the rest of the Ṣalāḥiyya Khānqāh's properties by dividing walls built at the request of the government of Palestine. I write this report in continuation of what I wrote you on the subject on 2 April last, in which I explained in detail the upper and lower parts of the khānqāh and our need to obtain the upper part, which is a courtyard that has come to be known as the khānqāh courtyard. So far we have not been able to acquire this courtyard. The three rooms we obtained by the sultan's grant lie below it, behind the wall that marks the true courtyard of the khānqāh. In any case, the Pasha, governor of Palestine, had declared to us that the sultan had decided to grant the Franciscan fathers the courtyards of the khānqāh as well, and not only one courtyard, that is, what bears the name of the Ṣalāḥiyya Khānqāh in the wider sense. As matters stand, the Franciscans have obtained only one of the khānqāh's courtyards, and the courtyard we wish to acquire was not included in the sultan's grant. The agreement now concluded contains positive elements that may explain this misunderstanding and offer a better way of handlingthequestion."[288]

The French consul also states in his report: "Franz Joseph, of European nationality, as the Austrian consul informed me, [says] that no general prohibition has been issued on the sale of the upper part of the khānqāh's courtyards, and that

287 Report from the French consul in Jerusalem, Edmond de Barrère, to the French minister of foreign affairs, dated 2 April 1870: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 10, pp. 308318-.
288 Letter from the French consul in Jerusalem, Edmond de Barrère, to the French minister of foreign affairs, dated 7 May 1870, no. 42: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 10, pp. 331-334.

they are pursuing an aim different from Austria's. He says that, given the rivalry between France and Austria over the khānqāh's courtyards, he proposes a compromise, especially since the Ottoman authority stands between two great powers whose relations are complex, and it is not easy for it to favor one over the other, particularly as it has taken the initiative of granting the Franciscans some parts of the khānqāh. I have always believed that in such matters money plays a secondary part and that the best solution is to obtain a grant from the sultan, especially since the Franciscans could easily have raised the money to buy the properties they obtained by the sultan's grant. Austria, too, was seeking to acquire these properties by a grant from the sultan and not by purchase.[289*]

"We cannot dispute the sultan's grant or gift, especially since Austria itself raised no objection to it or to the marking of the boundaries by the Ottoman government. Father Constantine, for his part, always sought to obtain enough additional property to enlarge the convent so that it connected with the outside, but he could obtain no more than the sultan granted him."

In the French consul's view, the properties of the Ṣalāḥiyya Khānqāh granted by the sultan were a significant material gain, but worthless when set against the greatness of the French Empire. The French ambassador alone had acted on his own initiative and accepted the grant in these circumstances of rivalry over ownership. In short, the value of what the sultan granted the Latins bore no comparison with the sultan's grant to Prussia, the Ṣalāḥī Bīmāristān.

The consul closes his report by saying that he continues to follow the question and will have a plan drawn showing the importance of the khānqāh courtyard for the properties the sultan granted the Franciscans, and hence the necessity of acquiringit.[290]

On 11 May 1870 the French consul wrote to the minister of foreign affairs (letter no. 43) continuing his account of the question of the Ṣalāḥiyya Khānqāh courtyard and informing him that the qadi of Jerusalem had produced certain sultanic orders requiring the payment of compensation once the khānqāh question was settled. The consul reports that the qadi told him France could pay the compensation if it accepted the terms of Afif Bey's memorandum, which came to 60,000 piasters, the equivalent of 13,000 francs. The consul explains that this information from the qadi was incorrect: Father Custode, when he met him about the khānqāh question, told him that the agreement covered only two rooms, not three as the qadi said, together with the stable and the shop beneath the two rooms; and

289 * The words in square brackets are supplied by the translator; the sentence is incomplete in the source. [Translator's note]
290 Ibid.

that the agreement, or grant, carried extremely hard conditions, requiring the Latin fathers to demolish the two rooms and what lay beneath them to create a courtyard in their place. The Latin fathers were to bear all the costs of demolition, and were also to build, at their own expense, a wall separating the courtyard so created from the khānqāh. This would further require the demolition of a room of the Franciscan convent to give access to the courtyard and thence to the Church of the Holy Sepulcher, which would mean not only the loss of a room of the small Franciscan convent but heavy expense. The report explains that these conditions were the product of Austria's policy.[291]

The report goes on to say that everyone there was surprised by the negative results of the Austrian moves, which had brought the question to this pass. The consul saw it as a victory for the policy of Austria, which always worked against the interests of the Franciscans and their small convent. The report also explains that the contradictions between the qadi's assurances and the terms of the agreement are clearly understood in the light of the qadi's departure for Gaza the previous night. The government of Palestine, which had always been at odds with the Latins, had expressed to him its concern at the transfer of ownership of these properties to the Franciscans, in his presence and that of Father Custode and the qadi, above the khānqāh courtyard. The consul notes that at this meeting the governor of Jerusalem spoke French, so that the qadi and the mufti did not understand what the governor was saying and could make out neither the translations nor the explanations the governor gave on the basis of the sultan's recommendations.[292]

It should be noted, too, that attempts to acquire the khānqāh were made not only by European states such as France and Austria, or by the Christian religious communities under their protection, but also by the ʿAlami family, which had administered the khānqāh's properties for centuries and decades. The French reports cited above show how the ʿAlami family controlled the disposal of the khānqāh's properties and offered them for sale at public auction as though they were the family's private property and not charitable Waqfs. The registers of the Jerusalem Sharia Court also show how the ʿAlami family exploited the khānqāh's properties, as residences, for housing others and for letting, for its own benefit. On 24 Jumādā al-Ūlā 1327 Amina bint Musa al-Maghribi lodged a complaint before the qadi of Jerusalem against ʿAbd al-Ghani Efendi al-ʿAlami, son of Amin Efendi al-ʿAlami, stating in her claim that on 1 Muḥarram 1327 the defendant had usurped her belongings from "her house situated inside the Ṣalāḥiyya Khānqāh in the Christian

291 Letter from the French consul in Jerusalem to the French minister of foreign affairs, dated 11 May 1870, no. 43: French Ministry of Foreign Affairs Archives (La Courneuve, Paris), Turquie, Jérusalem, vol. 10, pp. 335337-.
292 Ibid.

Quarter of Jerusalem"; ʿAbd al-Ghani al-ʿAlami was the brother of Amina's late husband, Rashid Efendi al-ʿAlami.[293]

The reports and correspondence of the Jerusalem Waqf Department also show that the family's attempts to control the khānqāh's properties and acquire them continued. A letter signed by the waqf officer (maʾmūr Waqfs) of Jerusalem on 15 April 1939, addressed to the land registration officer of the Jerusalem Tapu Department, states that the ʿAlami family had tried to register the remaining properties of the khānqāh as its private property at the Land Registration Department, but the Waqf Department learned of it and halted the registration. The letter states that "the Ṣalāḥiyya Khānqāh is one of the Waqfs of Sultan Salah al-Din al-Ayyubi and one of the charitable Waqfs with whose ownership the ʿAlami family has no connection; they serve in it as imams and muezzins for monthly wages paid to them by the General Waqf Department; hearing claims from them, or an objection to its registration in the name of the Waqf Department, is therefore legally out of the question." [294] The ʿAlami family, for its part, brought an action against the Jerusalem Waqfs administration demanding that the Waqf Department not interfere in the registration of the khānqāh's properties in the family's name, as appears from the letter of 2 June 1939 from the waqf officer of Jerusalem to the director general of Waqfs informing him of the action.[295]

The Sharia documents, that is, the registers of the Jerusalem Sharia Court, and the waqf documents show us the many ways in which Waqfs were converted into private property, or into Waqfs for the benefit of a party other than the one on which they had been endowed. Here we point to some of the ways in which Islamic waqf property in the Christian Quarter was converted into Christian property in the Ottoman period. Among them are *istibdāl* (substitution), *khulū* (key money) and *ḥikr* (ground lease). These are means that Islamic law permitted for the exploitation of waqf property and for securing benefit to the waqf where there was no demand for exploiting the property by the normal means, that is, ordinary lease; where there was demand to rent waqf property for long periods, beyond the term fixed in ordinary waqf leases, one year for houses and shops and three years for agricultural land; and where waqf property needed rebuilding because it was unfit for use and the waqf lacked the money for repair and maintenance.

We turn first to the contract of *istibdāl*. The jurists permitted substitution in Waqfs in one case only: where the physical condition of the property had deterio-

293 Jerusalem Sharia Court Register (*Sijill*) 402, 24 Jumādā al-Ūlā 1327 / 13 June 1909, p. 322.
294 Letter from the waqf officer of Jerusalem to the land registration officer, Jerusalem Tapu Department, dated 15 April 1939: Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 1013/39/11.3/.
295 Letter from the waqf officer of Jerusalem to the director general of Waqfs, dated 2 June 1929: Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 1013/39/11.3/.

rated and it was unfit for use, so that it could not be let by the recognized methods of waqf leasing. It may be defined as a contract concluded between the waqf's administrator and the person wishing to substitute the property, with the approval of the qadi, which is a basic condition of the contract. Under it the waqf property is exchanged for another property, or for a sum of money, on condition that the sum be used to buy a new property that is converted into waqf in place of the substituted one.[296] This is what may be called "the legitimation of the sale of waqf," since in jurisprudence a waqf may not be sold by any means; to get round this rule of the Sharia the jurists devised *istibdāl*, which they saw as the best solution to the problem of ruined waqf property and the lack of money to rebuild it, and they laid down as its basic condition that it bring benefit and full advantage to the waqf. The contract is made by the administrator submitting to the qadi an application stating his wish to substitute a waqf property, naming the person who wishes to take it, giving the reason for the substitution and setting out the benefit the waqf will derive from it. The qadi then appoints a committee to inspect the property and report whether the substitution serves the waqf's interest and benefit. The committee, which includes the chief architect (*miʿmār bāshī*) or the municipal engineer, inspects the property and reports to the qadi, who on the basis of the report approves or refuses the administrator's application.

The following example, taken from the registers of the Jerusalem Sharia Court, shows how a contract of *istibdāl* was carried out. On 23 Jumādā al-Thāniya 1301, corresponding to 20 April 1884, al-Khawāja Maryan ibn Antun ibn Khalil ibn Hanna the Latin, lawful administrator of the waqf of his father Antun, appeared before the Jerusalem Sharia Court. He stated in his application that "there is in my father's waqf a house comprising four rooms, a kitchen, an open courtyard and three upper rooms, which is on the verge of ruin, sinking into the dust and about to collapse entirely, and in need of essential rebuilding; that rebuilding it would not defeat the endower's purpose; that its rebuilding requires large sums and abundant revenue, which neither I nor the other beneficiaries of the waqf have the means to provide; that no one wishes to rent it because of its ruin; and that the Patriarch Mansur Efendi ibn Yuhanna Baraku, patriarch of the Latins, wishes and asks to take it in substitution for a sum of 650 French gold liras." The qadi of Jerusalem sent a committee to inspect the house, made up of al-Hajj Muhammad Khurshid al-Shihabi, one of the clerks of the court, Antun Efendi ibn Dawud

296 **Salama. «Intiqāl Milkiyyat Arāḍī al-Awqāf baʿda Ṣudūr al-Tanẓīmāt: Amlāk al-Almān fī al-Quds ka-Mithāl,» p. 413; Ahmad al-Qudah.** *Naṣārā al-Quds: Dirāsa fi Ḍawʾ al-Wathāʾiq al-ʿUthmāniyya* **[The Christians of Jerusalem: A Study in the Light of the Ottoman Documents]. Beirut: Centre for Arab Unity Studies, 2007, p. 403; Muhammad ʿAfifi. «al-Awqāf wa-l-Wujūd al-Qibṭī fī al-Quds fī al-ʿAṣr al-Ḥadīth wa-l-Muʿāṣir» [The Awqāf and the Coptic Presence in Jerusalem in the Modern and Contemporary Eras]. In** *al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn: al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām 1014- Aylūl 2006***, ed. Muhammad ʿAdnan al-Bakhit. Amman: University of Jordan Publications, 2008, p. 174; Sroor.** *Fondations pieuses en mouvement***, pp. 135137-.**

ibn Bulus, engineer of the Jerusalem municipality, and some Jerusalem notables whom the deed calls "the trustees of the Sharia." The committee returned to the qadi after inspecting the house and reported that Khawāja Maryan's application was correct; all testified that the properties in question were on the verge of ruin and that their substitution for the sum proposed was to the waqf's benefit. On this testimony and this report the qadi approved the contract of substitution.[297] By this contract the waqf property became private property.

Another example of the transfer of Islamic waqf property in the Christian Quarter into private ownership is the contract of *istibdāl* recorded in the registers of the Jerusalem Sharia Court on 20 Rajab 1219. On that date al-Hajj Sulayman Yusuf, administrator of the waqf of his grandmother ʿAʾisha bint Yusuf Zalatimu, appeared before the Sharia court in Jerusalem asking that a house comprising two rooms, a shop, a kitchen and a cistern be offered to whoever wished to take it in substitution for five hundred *zolotas (an Ottoman silver coin of 30 para)*. The house lay in the Christian Quarter; it had been known as Dār al-Sitt and had become famous as "Dār al-Ḍawiyya," bounded on the south by the mosque, on the east by a house in the hands of Greek Christians, and on the north and west by the road onto which its door opened.[298]

Among the contracts of *istibdāl* that contributed to the transfer of Islamic waqf ownership to Christian ownership we note the following examples.

In mid-Rabīʿ al-Thānī 1234 / 11 February 1819 the qadi of Jerusalem, on the report of the committee he had sent to investigate and inspect the truth of the application submitted by Hasan Efendi Muhyi al-Din Zada, administrator of the waqf of his paternal grandmother, approved the substitution of a vault belonging to his grandfather's waqf to the monk Yusuf, agent of the monks of the Franks' Monastery (Dayr al-Ifranj), out of the monastery's funds, for 1,900 *asadī* piasters.[299] By this contract the vault passed from the ownership of Islamic Waqfs into Christian ownership for the benefit of the Monastery of the Frankish monks in Jerusalem.

In the same way, the qadi of Jerusalem approved the application submitted by Shaykh Danaf Zada Shaykh Bakr Efendi on 15 Muḥarram 1252 / 2 May 1836 for the substitution of a house belonging to his waqf to al-Muʿallim Dawud, son of Yaqut al-Kurdī al-Ifranji, for a sum of 2,000 *asadī* piasters.[300]

Istibdāl thus formed a legal and Sharia-compliant instrument for converting

297 **Jerusalem Sharia Court Register (*Sijill*) 370, 23 Jumādā al-Thāniya 1301 / 20 April 1884, p. 121.**
298 **Jerusalem Sharia Court Register (*Sijill*) 285, 20 Rajab 1219 / 25 October 1804, pp. 9092-.**
299 **Jerusalem Sharia Court Register (*Sijill*) 302, mid-Rabīʿ al-Thānī 1234 / 11 February 1819, p. 67; see also: al-Qudah.** *Naṣārā al-Quds*, **p. 405.**
300 **Jerusalem Sharia Court Register (*Sijill*) 320, 15 Muḥarram 1252 / 2 May 1836, p. 73; see also: al-Qudah.** *Naṣārā al-Quds*, **p. 405.**

waqf property into private ownership, and thereafter for disposing of it as private property, by sale, inheritance or endowment. The following example shows how a property that had originally been an Islamic waqf was converted through *istibdāl* into waqf property belonging to Christian Waqfs; an Islamic waqf thus became a non-Islamic waqf, with the resulting change in the identity of the waqf's beneficiaries.

"On the fifth day of Rabīʿ al-Thānī of the year 1211 / 1796, ʿAbd al-Salam Efendi, formerly *naqīb* of Noble Jerusalem, sold to the monk Bidrus, patriarch of the monks of the monastery of the Armenian community in Noble Jerusalem and administrator of the Waqfs of the said monastery, out of the monastery's waqf funds and for the benefit of the said waqf, ‹what is in his ownership and at his free disposal and lawful possession, having come to him in part by purchase from the heirs of the late Ibrahim Chalabi al-Nimri and in part by lawful substitution from Musa Chalabi al-Nimri, administrator of the waqf of his grandfather Khalil al-Jaʿuni, by deeds of purchase and deeds of substitution: namely the whole of the cultivated walled garden situated in Jerusalem in the Rīsha quarter, which before this date was a mound of earth harmful to neighbor and passer-by, comprising a cistern for collecting winter rainwater, with two doors, one eastern and one western, bounded on all four sides by the public road, with all its rights, its roads, its walls, its benefits, everything known and attributed to it, and every right lawfully belonging to it, by a final and valid sale for a price of five thousand *asadī* piasters, paid in full and received by the seller from the said patriarch, as he acknowledged receiving it by lawful receipt. By all of this the purchaser Bidrus, the waqf of the monastery and the monks of the monastery are lawfully discharged of the whole of the said price and of every part of it, a discharge of receipt and satisfaction; and the contract of final sale was concluded between them by valid and lawful offer and acceptance, delivery and taking of delivery, in all of that.'"[301]

In the same way, in Jumādā al-Thāniya 1254, corresponding to July 1838, the Armenian community acquired by *istibdāl*, from the administrator of the waqf of the Yaʿqūbiyya Zāwiya, a member of the ʿAlami family, two walled gardens and eight houses near the Armenian monastery belonging to the Waqfs of that zāwiya[302]

Another of the contracts for exploiting waqf property that contributed to changes in the ownership of Islamic Waqfs in the Christian Quarter is the contract of *khulū*. Here a person applies to rent a ruined waqf property and expresses a wish to repair it. The administrator puts the matter to the qadi, giving the reasons that

301 Jerusalem Sharia Court Register (*Sijill*) 278, 5 Rabīʿ al-Thānī 1211 / 8 October 1796, p. 36.
302 Jerusalem Sharia Court Register (*Sijill*) 323, Jumādā al-Thāniya 1254 / August 1838, pp. 2526-.

lead him to let the property by *khulū*: the property is ruined and about to collapse; the waqf lacks the money to repair it; letting the waqf property in this way is more useful and more in the waqf's interest; and there is someone willing to repair and restore it and then rent it. The qadi sends a committee, comprising one of the court clerks, the chief architect and a group of trustworthy persons, to inspect the condition of the property in question and estimate the sum needed for restoration and repair. The committee carries out its task and reports to the qadi, who on that basis permits the tenant to restore, repair and rebuild the waqf property. When the tenant has finished, he appears before the qadi and informs him, and the qadi sends the committee again to see what the tenant has built on the property and to estimate what the tenant, or "the holder of the *khulū*," has spent. The sum the holder of the *khulū* spent on building becomes a *khulū*, a lawful charge (*marṣad*) secured on the property, which is treated as a debt owed by the waqf.[303] It is also agreed that the holder of the *khulū* will pay an annual rent for the property to the waqf. Under this contract the administrator may not remove the tenant, the holder of the *khulū*, from the property, or rescind the lease, so long as the waqf has not paid the tenant the sum spent on building. The tenant, the holder of the *khulū*, is therefore entitled to dispose of the property as personal property, that is, to pass it to his descendants or to sell his right of disposal in it; and the contract is not limited to any fixed period.

For example, "the *dhimmī (a non-Muslim subject under Islamic law)*, son of the *dhimmī*, Yaqut al-Bannaʾ the Armenian" rented the shop fitted out as a barber's, belonging to the waqf of Sinan Pasha Agha, by lawful *khulū* from the waqf's administrator, Khalil al-Din Agha al-ʿAsali. Yaqut spent 180 piasters on rebuilding the shop, and its annual rent was fixed at 18 *zolotas*.[304]

The registers of the Jerusalem Sharia Court also record the conversion, by *khulū*, of certain properties in the Christian Quarter, consisting of two houses and a storeroom belonging to the Waqfs of Shaykh Ahmad al-Tharwini, into a Christian waqf for the benefit of the poor monks of the Ethiopian Orthodox community living in their monastery known as Dayr al-Sulṭān. On 27 Tishrīn al-Thānī 1293 *mālī* / 9 December 1877, al-Khawāja Hanna Efendi Frutikar, who belonged to the Ethiopian community of Jerusalem, bought the whole of the *khulū* of two houses and a storeroom belonging to the waqf of Shaykh Ahmad al-Tharwini, charged with an annual rent of fifty-five piasters. On 19 Shawwāl 1308 AH / 28 May 1891 he converted these properties into a waqf for the benefit of the poor monks of the Ethio-

303 **ʿAfifi.** *al-Awqāf wa-l-Ḥayāt al-Iqtiṣādiyya fī Miṣr fī al-ʿAhd al-ʿUthmānī* **[Waqfs and Economic Life in Egypt in the Ottoman Period], p. 167; al-Qudah.** *Naṣārā al-Quds*, **p. 409; Salama. «Intiqāl Milkiyyat Arāḍī al-Awqāf baʿda Ṣudūr al-Tanẓīmāt: Amlāk al-Almān fī al-Quds ka-Mithāl,» p. 411; Sroor.** *Fondations pieuses en mouvement*, **pp. 132135-.**
304 **Jerusalem Sharia Court Register (***Sijill***) 304, Rabīʿ al-Awwal 1236 / January 1820, p. 48.**

pian Orthodox community in Jerusalem and those coming to it, generation after generation.[305] Thus the usufruct of Shaykh al-Tharwini's waqf became a waqf for the poor monks of the Ethiopian community in Jerusalem.

Another of the waqf lease contracts that brought about radical changes in waqf ownership is the contract of *ḥikr*, a lease under which a person rents waqf land in order to build on it or plant it with trees. The tenant under this arrangement is called the *mustaḥkir*. Under this contract, which the *mustaḥkir* concludes with the waqf's administrator with the qadi's approval, the tenant enjoys the rights of an owner of the land so long as he pays the agreed rent. He may build on the land or plant it with trees, and the administrator may not remove him from it except for non-payment of the rent. The contract is not limited to a fixed period; it is a perpetual lease, under which the tenant may bequeath what he has built or planted on the land, sell it, or dispose of it with all lawful dispositions. The waqf's administrator thereby loses his right to exploit the land let in this way as he pleases or as the waqf's interest requires, or to let it to another person at another rent.[306] This is what may be called, if the expression is permitted, the conversion of the waqf by this means into the quasi-private property of the tenant, by way of *ḥikr*.

The contract of *ḥikr* brought about important changes in the ownership of Islamic Waqfs in Jerusalem, particularly in the nineteenth century. The registers of the Jerusalem Sharia Court abound in examples of this change in ownership, which Islamic law permitted in the effort to secure benefit for waqf property that could not be let for the legal term, only three years for the exploitation of land in agriculture.

The following example sets out in detail the legal procedure of a *ḥikr* contract as documented in the registers of the Sharia Court in Jerusalem, and shows the changes in certain properties in Jerusalem.

"There took in *ḥikr* the pride of the Christian community, al-Khawāja Yaqut Biskal, by lawful agency for the chief of the scholars of the Christian community, the pillar of the nation of Jesus and present patriarch of the Armenian community in Jerusalem, the monk Dinis, out of the principal's own funds and not those of another, from his lessor Naʿman Efendi al-Jaʿuni, son of the late Shaykh ʿAbd al-Rahman Efendi al-Jaʿuni, and from his paternal cousins and the other agents of the beneficiaries of the waqf of their said grandfather, the whole of the houses situated in the Armenian quarter belonging to the said waqf … six houses look-

305 **Jerusalem Sharia Court Register (*Sijill*) 379, 19 Shawwāl 1308 / 28 May 1891, p. 187.**
306 **ʿAfifi.** *al-Awqāf wa-l-Ḥayāt al-Iqtiṣādiyya fī Miṣr fī al-ʿAhd al-ʿUthmānī*, **p. 160; al-Qudah.** *Naṣārā al-Quds*, **p. 410; Salama. «Intiqāl Milkiyyat Arāḍī al-Awqāf baʿda Ṣudūr al-Tanẓīmāt: Amlāk al-Almān fī al-Quds ka-Mithāl,» p. 413; Sroor.** *Fondations pieuses en mouvement*, **pp. 130132-.**

ing onto one another, most of them intermingled, some comprising upper storeys and lower rooms, one of them enclosing a walled garden, and the rest of the said houses comprising lower rooms, dwellings, utilities, wells, conveniences and lawful rights. The six said houses are bounded in their entirety on the south by the public road, in which is one of the doors, beside which is a door leading to the roofs of some of the houses, on which a beehive is placed; also adjoining the six said houses on the said southern side is a smooth walled garden in the hands of the Armenian monks; on the east by the house of Ibn Ṣiyām and two houses that belonged to the children of Shaki Maki and are now in the hands of the Armenian monks, and also adjoining the said houses on the said eastern side are some of the rooms of the monastery situated there, known as the shrine of our lord al-Khiḍr, peace be upon him, which is in the hands of the Greek monks; on the north by the said monastery, together with the courtyard at its gate, in which lies the door of the said houses, leading north; and on the west by the road, in which are two doors, one opening westward and the other set in the corner, its door opening southward; with all the lawful rights of all of this, for a *ḥikr* of five hundred *asadī* piasters a year; and there was also paid in advance to the two waqfs two hundred and forty thousand *asadī* piasters from the funds of the principal *mustaḥkir*, into the hands of the beneficiaries and the administrator, so that the said sum becomes a lawful *khulū* charged on the corpus of the six said houses. At that time the contract of *ḥikr* and *istiḥkār* was concluded between them by valid offer and acceptance, delivery and taking of delivery. The administrator, the beneficiaries and the agents of the female beneficiaries gave leave to the principal, His Beatitude the said patriarch, the *mustaḥkir*, to build in the said houses inside and out, to timber the vaults, plaster the rooms, pave the roofs, build and erect within them all kinds of building, to plant and build in the walled garden that forms part of some of the houses mentioned above, and to pull down and rebuild whatever needs pulling down and rebuilding; and whatever sums he spends on all these works shall be a lawful *khulū* charged on the corpus of the said houses, added to the sum of the cash amount fixed above; and he may dispose of all this with all lawful dispositions after paying their *ḥikr* fixed above, the five hundred *asadī*piasters."[307]

The documents also indicate that on 15 Shaʿbān 1264 / 17 July 1848 the ʿAlami family was letting by *ḥikr*, to the Greek monks living in Jerusalem, the whole of the plot of land in the Christian Quarter through which ran the water channel feeding Ḥammām al-Batrak (the Patriarch's Bath), which belonged to the Ṣalāḥiyya Khānqāh, under a Sharia deed dated 1190 AH / 1776. The administrators of

307 **Jerusalem Sharia Court Register (*Sijill*) 340, 25 Jumādā al-Ūlā 1273 / 21 January 1857, p. 36.**

the waqf, the ʿAlamis, affirmed that they had no claim on the Greek monks other than the *ḥikr* of forty Egyptian silver pieces a year, and that the *ḥikr* of the previous years had reached them. In their capacity as administrators they had given leave to the patriarch of the Greek monks and all the monks to dispose of the said plot of land and erect on it whatever building they wished, to be their property; in return the Greek patriarch, the monk Kabirbakus, and all the monks undertook to leave a passage for the water from the pool to the Patriarch's Bath as ancient custom had it, and to maintain the continued supply of water to the bath if they builtontheplot.[308]

It should be noted, too, that many properties belonging to the Ṣalāḥiyya Khānqāh and the Ṣalāḥī Bīmāristān in the Christian Quarter had been let to the Christians of Jerusalem by the ʿAlami family by *ḥikr*, so that the tenant was granted the right to exploit the waqf properties for a long, unspecified period and to erect buildings on waqf land. The account and expenditure registers of the waqf of al-Malik Salah al-Din al-Ayyubi indicate that many of this waqf's properties in the Christian Quarter had been let by *ḥikr*. In this connection I note the *ḥikr* of the roof of two rooms inside the Ṣalāḥiyya Khānqāh, the *ḥikr* of the roof of two houses in Dār al-Mubayyiḍ, the *ḥikr* of land beside the Patriarch's Pool, the *ḥikr* of the roof of the vestibule of the Patriarch's Bath, and the *ḥikr* of a walled garden known as al-Karj.[309]

The registers of the Jerusalem Sharia Court also record many Islamic waqf properties in the Christian Quarter that were let by *ḥikr* contract. On 19 Rajab 1250, corresponding to 21 November 1834, ʿAbd Allah Hujayj, administrator of the waqf of his grandfather Shahin, let by *ḥikr* a walled garden belonging to his grandfather's waqf in the Christian Quarter to the *dhimmī* Jurjis, son of Hanna ʿAlwisha the Greek, for an annual rent of only three piasters.[310] In the same way Salih, son of the late Hasan Qamʿ, administrator of his grandfather's waqf, let a walled garden belonging to his grandfather's Waqfs in the Christian Quarter to the priest (*khūrī*) Mikhaʾil, son of Mitraki al-Baramiki the Greek, for an annual rent of only twenty *zolotas*, in Dhū al-Qaʿda 1272 / July 1856.[311]

On 1 Ṣafar 1274 / September 1857 Muhammad ʿIsmat and his brother ʿUthman, sons of Salim, heirs of the waqf of their grandfather Ahmad ibn Hasan, let by *ḥikr* a house in the Christian Quarter, for a rent fixed at fifty *zolotas*, to Malika, daugh-

308 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 313/264/6.1/.
309 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), file no. 913/265/3.45/2/; file 913/267/3.47/2/.
310 Jerusalem Sharia Court Register (*Sijill*) 301, 19 Rajab 1250 / 21 November 1834, pp. 4748-; al-Qudah. *Naṣārā al-Quds*, p. 413.
311 Jerusalem Sharia Court Register (*Sijill*) 339, 1 Dhū al-Qaʿda 1272 / July 1856, pp. 7677-; al-Qudah. *Naṣārā al-Quds*, p. 413.

ter of al-Khawāja Ibrahim al-Salih the Armenian.[312] Husayn Efendi Asʿad Abu al-Suʿud al-Dajani, administrator of his grandfather's waqf, in early Rabīʿ al-Awwal 1274 / October 1857 let al-Khawāja Hanna Abu Kārina al-Jallād, dragoman of the Frankish monks, a walled garden in the Christian Quarter by *ḥikr* for an annual rent of twenty piasters, and let him in the same way a ruined house in the same place for an annual rent fixed at fifty piasters.[313]

Finally, we note the *ḥikr* contract signed on 1 Ramaḍān 1250 / 1 January 1835 by Fayd Allah Efendi al-ʿAlami and Husayn Efendi al-Shurafa, agent for both ʿAbd al-Qadir Wafā al-ʿAlami and Ahmad Abu al-Yaman al-ʿAlami, administrators of the waqf of the Ṣalāḥiyya Khānqāh. Under this contract the *dhimmī* Khalil, son of Hanna al-Sinnu the Greek, rented the whole of the roof of the two shops situated in the Christian Quarter for an annual rent of thirty *asadī* piasters. The contract gave the tenant the right to erect whatever building he wished on the roof of the twoshops.[314]

Here we see how, for all the small size of the Christian Quarter, whose area is less than a quarter of that of Jerusalem within the walls, which does not exceed one square kilometer, it was marked by the presence of private Muslim ownership and by the abundance of Islamic Waqfs, which occupied an important part of it. The Ṣalāḥī Bīmāristān occupied a significant share of the quarter's area, more than five dunums, in addition to the markets and shops attached to it, most of them in the Christian Quarter. The Ṣalāḥiyya Khānqāh occupied a strategic position in the heart of the Christian Quarter, near the Church of the Holy Sepulcher, in addition to the residential and commercial properties attached to it, most of them in this quarter, numbering about seventy.

The importance of this position grew in the second half of the nineteenth century with the rivalry among the European states, France, Russia and Austria above all, for ownership of the properties of the Ṣalāḥiyya Khānqāh, where the price of a single room exceeded a hundred thousand French francs. Ḥammām al-Batrak and its pool, no less than three dunums in area, with its contents and surroundings, form an extension of the properties of the Ṣalāḥiyya Khānqāh and the Ṣalāḥī Bīmāristān. Some of the Islamic madrasas and zāwiyas founded in the Mamluk period also occupied part of the Christian Quarter, and so did the private property and family Waqfs of Muslim families, which occupied an important part of the quarter, above all the property and Waqfs of the ʿAlami and Quṭayna families.

312 **Jerusalem Sharia Court Register (*Sijill*) 340, 1 Ṣafar 1274 / September 1857, p. 173; al-Qudah.** *Naṣārā al-Quds*, **p. 413.**
313 **Jerusalem Sharia Court Register (*Sijill*) 341, early Rabīʿ al-Awwal 1274 / October 1857, pp. 144145-.**
314 **Jerusalem Sharia Court Register (*Sijill*) 319, 1 Ramaḍān 1250 / 1 January 1835, p. 250.**

This shows the size and nature of the family Waqfs founded by Muslim families in the Christian Quarter in the nineteenth century, which exceeded a hundred properties. What has been set out above shows how the Islamic charitable Waqfs in the Christian Quarter underwent a change of ownership: most passed into Christian ownership, and part were converted into Christian Waqfs, whether by the direct intervention of the Ottoman sultan, by the sale of properties by their administrators, by the tenants' exploitation of the facilities that the waqf lease contracts, *khulū* and *ḥikr*, gave them, or by *istibdāl*, contracts that allowed the tenant to keep the waqf property in perpetuity and dispose of it as an owner disposes of his own. As a result the Islamic Waqfs of the Christian Quarter suffered a marked reduction in size and a radical change in identity and function.

The study of this subject has let us understand the nature of the economic relations among the inhabitants of the Christian Quarter regardless of their sectarian and ethnic affiliations. Our study has shown the interweaving and interlocking of the relations among the quarter's inhabitants, social and economic alike. The existence of private and waqf Muslim property in the Christian Quarter, which the study has shown, is evidence not only of the Muslim presence there but of the nature of relations among its inhabitants: the active real estate market the quarter saw, and the fact that this market was not confined to a single religious community, point to the positive relations and the trust that prevailed among the parties to that market. The circulation of private property among the families living in the quarter, and the letting of Islamic waqf property to Christian families or the reverse, give a living picture of the transcending of religious difference and of the barriers of closedness and confessional rigidity. In the same direction lies the interpretation of the conversion of Islamic waqf property into Christian ownership, whether at the hands of Muslim families or of the ruling Islamic authorities. The Ottoman sultan's presentation of important properties and institutions of the Islamic waqf establishment in Jerusalem as gifts to foreign states carries a large political and religious significance, whose interpretation differs with differing points of view and orientations. In the same direction, though the justifications, interpretations and explanations differ, lies the political and religious significance of the growing demand by the foreign states that protected the Christian communities in Jerusalem to acquire Islamic waqf property, even if that significance differs from what drove the Ottoman sultans to present important waqf properties to these states, as the study has shown and as we shall show in the following waqf case, that of al-Madrasa al-Ṣalāḥiyya, founded by Sultan Saladin in Jerusalem in 1187 CE.

From a Qurʾānic Madrasa to a Catholic Church

In modern usage the term "madrasa" refers specifically to an institution in which the Islamic sciences are taught, that is, a college of higher education, as distinct from the traditional elementary school (the *kuttāb*). In the Middle Ages the term was applied above all to the college of jurisprudence, where the other Islamic sciences, literature and philosophy among them, were taught as supplements.[315] Madrasas were not official government institutions; they were founded by individuals. Their construction was governed by waqf contracts recording the stipulations the founder laid down for internal organization, aims, methods of administration and the number of students, together with the creation of property to generate the income needed to fund the madrasa and so secure the continuity of its mission.[316] It follows that madrasas developed and flourished so long as their waqf property flourished, and disappeared when the property in question declined or its use was changed to serve other sectors of activity, which was often the case in Jerusalem.

Saladin founded al-Madrasa al-Ṣalāḥiyya in 1187 CE. It stood within the walls of Jerusalem near Bāb al-Asbāṭ, built on the ruins of the Church of St. Anne[317], which is believed to have been built in turn on the site of the house of Joachim and Anne, the parents of the Virgin Mary. In 1008 CE the Fatimid caliph al-Hakim bi-Amr Allah destroyed several buildings belonging to Christian institutions and converted the church into a house of learning. With the arrival of the Crusaders in 1099 it became a church again, until the arrival of the Muslims. [318]

In 1187 Saladin converted the Church of St. Anne and the properties surrounding it into a Shafiʿi madrasa[319]. The Arabic sources indicate that Saladin bought the remains of the Church of St. Anne and the surrounding properties through the agent of the public treasury (wakīl bayt al-māl), who was empowered to administer and sell state property[320]. Saladin recorded the transaction in a document dated 13 Rajab 583 / 1187. This document, re-recorded in Tapu survey register 522, lists several properties assigned to fund the madrasa: the whole of the village of Silwan near Jerusalem; Sūq al-ʿAṭṭārīn (the Spice Market); the market of Bāb Ḥiṭṭa (Gate of Remission); the khān of Bāb Ḥiṭṭa; the bathhouse of Bāb al-Asbāṭ

315 **J. Pedersen. «Madrasa.»** *Encyclopédie de l›Islam*. **Leiden: E. J. Brill, 1986, pp. 11191130-; Joan Elizabeth Gilbert.** *The Ulama of Medieval Damascus and the International World of Islamic Scholarship*. **Berkeley: University of California, 1977, p. 69.**

316 **See: Jerusalem Sharia Court Register (***Sijill***) 342, 23 Jumādā al-Ūlā 1275 / 1858, p. 53; Jerusalem Sharia Court Register (***Sijill***) 343, 3 Dhū al-Qaʿda 1276 / 1860, p. 132.**

317 **Martin Strohmeier. «Al-Kulliya al-Salahiyya, A Late Ottoman University in Jerusalem,» in Sylvia Auld (ed.).** *Ottoman Jerusalem: The Living City, 15171917-*. **London: Altajir World of Islam Trust, 2000, vol. 1, pp. 5762-.**

318 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 55.**

319 **Strohmeier. «Al-Kulliya al-Salahiyya, A Late Ottoman University in Jerusalem,» vol. 1, p. 57.**

320 **Abu al-Hasan al-Subki.** *Fatāwā al-Subkī*. **Beirut: Dār al-Jalīl, 1992, vol. 2, p. 126.**

in Jerusalem; a garden near Bāb al-Maghāriba; another garden at ʿAyn Ayyūb; a garden near Bāb Ḥiṭṭa; the whole of the land of Gethsemane (al-Jasmāniyya); the bathhouse of Bāb al-Asbāṭ; a whole farm at al-Qastal; and 8 qīrāṭ (a twenty-fourth share) of the village of Naʿliya (Hebron)[321], meaning that the village belonged to the Hebron governorate at that period, and was later annexed to the province of Gaza.

Documents from the Jerusalem Waqfs (the archive of the Foundation for the Revival of Islamic Heritage and Research, Mīthāq, Abu Dis) and the French archives reveal that in the second half of the nineteenth century some Ottoman sultans granted waqf property to European powers for political or religious reasons. Sultan Abdülmecid I, for instance, presented the building of al-Madrasa al-Ṣalāḥiyya in Jerusalem to France in 1856 in recognition of the help France had given the Ottomans in the Crimean War (1853 to 1856). A report from the French consul in Jerusalem to the office of the minister of foreign affairs in 1856, entitled "The Rights of French Religious in the Shrines of the Nativity of the Virgin," explains the position of the Church of St. Anne (al-Madrasa al-Ṣalāḥiyya) from a religious point of view:

> so that the sultan could do with it as he pleased "This place was a church when Saladin took Jerusalem, and he turned it into a college. In Saladin's time the Latin clergy went to the shrine once a year, on the feast of the Nativity of Our Lady. They said Mass and chanted the prayers there, and no one prevented pilgrims, European or religious, from visiting the holy places whenever they wished.
>
> More than once the Muslims of the country barred the clergy from entering the holy place, locked the door and refused to open it except for money. The Frankish clergy were incensed by this encroachment and went to the qadi of Jerusalem to put an end to the situation; the qadi summoned the superintendent (the mutawallī of the Ṣalāḥiyya).
>
> There were properties assigned to the expenses of the madrasa, and shops which the mutawallī let, and when the madrasa closed the mutawallī kept the money, deducting from the shop rents only the sums needed to maintain the buildings and the annexes of the Ṣalāḥiyya.
>
> He was responsible for maintaining the buildings of the Ṣalāḥiyya

321 *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn (Daftar Taḥrīr Ṭābū raqm 522).* **Mehmet İpşirli, p. 175.**

and kept the keys of the doors, and he was responsible for maintaining a lamp to light the inside of the madrasa. In the time of Tahir Pasha (governor of Jerusalem) the Ṣalāḥiyya was abandoned (no longer used as a madrasa) and fell into decay.

It then became known that the Greek Catholics wanted to acquire the site to turn it into a church or a small convent. They obtained a written attestation from the senior officials of the city establishing that the Ṣalāḥiyya contained the shrine in which the Virgin Mary was born, and that, according to Christian belief, the place had not originally been a mosque. In fact, the sultan may, according to his law, cede a place that was formerly a shrine of the Christian faith to make it a church; but if the place was a mosque, the Grand Seigneur cannot cede it under Turkish law ...

"The Greeks appealed again and again to the Sublime Porte for a firman (certificate) ceding the shrine to be turned into a church or a convent. When Tahir Pasha learned of this he visited both al-Ḥaram al-Sharīf (the principal mosque) and the Ṣalāḥiyya, and did everything in his power to prevent the Greek Catholics from recovering the Ṣalāḥiyya. He explained to the Sublime Porte that the Ṣalāḥiyya had an income from shops and houses, and that the *mutawallī* (the administrator) was keeping all the money without any benefit to the Ṣalāḥiyya. Tahir Pasha obtained the appointment of his own interpreter as *mutawallī* of the Ṣalāḥiyya, at the expense of the Sublime Porte, with any surplus of funds to return to the public treasury, and thus to the government. He also saw to it that the key remained in the hands of the government and not of the *mutawallī*, and that only the sums needed to maintain the building of the Ṣalāḥiyya were drawn from the public treasury.

"Tahir Pasha ordered the superintendents to allow the clergy to perform their customary prayers in the shrine, and they complied. While the clergy prayed, the superintendent, four soldiers, two skilled Turkish locksmiths, and a Latin locksmith working alongside those Turkish workmen and accompanying the Christian and Latin clergy, changed the locks."[322]

322 French Ministry of Foreign Affairs Archives, Diplomatic Archives, Nantes (CADN), série A, no. 36, 1856, pp. 45-.

This situation led the French government to ask Sultan Abdülmecid I, in recognition of the help it had given the Ottomans in the Crimean War (1853 to 1856), to return al-Madrasa al-Ṣalāḥiyya to it so that it could be restored to its original form as a church, as it had been in 1008. In the end the sultan authorized the transfer of the madrasa to the French, in the reign of Napoleon III, who, after reoccupying the buildings, founded a school called the École Sainte-Anne, run by Catholics.[323]

To make the situation clearer, we cite the minutes of the official ceremony of France's taking possession of al-Madrasa al-Ṣalāḥiyya, with the aim of reconverting it into a place of Christian worship, in accordance with the wish of Napoleon III, and turning it into a Latin church, under a deed of gift from the sultan obtained at the request of the French ambassador, Monsieur Thouvenel. The transaction took place at al-Madrasa al-Ṣalāḥiyya on 1 November 1856, in the presence of the governor of the province of Jerusalem, Kamil Pasha, the French consul, Edmond de Barrère, and the qadi of Jerusalem, Muhammad Thabit:

> "Today, the third of Rabīʿ al-Awwal of the year one thousand two hundred and seventy-three of the Hijra, that is, Saturday the first of November of the year one thousand eight hundred and fifty-six of the Christian era according to the Gregorian calendar, Kamil Pasha, governor of the province of Jerusalem, accompanied by the qadi of the Sharia court and the members of the council on the one part, and on the other the French consul, Monsieur Edmond de Barrère, accompanied by the chancellor and the staff of the consulate, went to the Church of St.
>
> Anne, where the governor of Jerusalem, in the name of the sultan, ceded this building to France and to the Emperor, into the hands of the consul, with the following understandings:
>
> "We ask God, the Most High and Almighty, to bless and perpetuate the close alliance and intimate union that bind His Majesty our sovereign and His Majesty the Emperor of the French. We ask Him also to strengthen and increase day by day the true harmony and sincere friendship that exist between the peoples and the officials of the two empires.
>
> "In the name of this sincere affection and close friendship, His Majesty the Emperor of the French asked His Majesty the Sultan to cede the site on which we now stand, a site which before the conquest was

323 **al-ʿAsali.** *Maʿāhid al-ʿIlm fī Bayt al-Maqdis*, **p. 57.**

a church known as the Church of St. Anne, consecrated to the Latin rite, and which is today abandoned and empty. His Majesty the Sultan granted this request and ordered that the site be given and delivered to him. Therefore, in obedience to the noble imperial firman, obtained thanks to the tireless efforts of His Excellency Monsieur Thouvenel, ambassador of France, and to the letter sent to me by His Highness the grand vizier, I place this land, whose boundaries and description have been recorded in a deed, in your hands. And as a token of this delivery, be pleased to accept the keys, the orders and the documents I have just mentioned.

"The wish of His Majesty the Emperor of the French has been fulfilled, and to him, represented by you, His Majesty the Sultan entrusts this estate. This is conclusive proof of His Majesty the Sultan's firm resolve to protect and care for all religions equally, without distinction. Your friendship, which believes in this, will rejoice with me at this opportunity to renew to you my sincere sentiments of affection and esteem.

"The French consul replied: In the name of the Emperor, and by virtue of the gift made to France under the memorandum issued by the holder of territorial sovereignty at the request of His Excellency the ambassador of France, Monsieur Thouvenel, decrees which have just been read publicly and ordered to be registered, I accept the transfer of ownership of the Church of St. Anne and its dependencies, which Your Excellency has just placed in my hands, and I have the honor to receive it as the lawful property of France.

"This brilliant expression of His Majesty the Sultan's respect for all religions, of which he is justly proud, and of the sentiments of friendship he bears toward France and His Majesty the Emperor Napoleon, his august ally, inspires in us sincere gratitude, which I am delighted to have the honor of expressing. Nothing could contribute more to strengthening the ancient bonds of amity and alliance between our two governments and our two countries. We are most happy that you have been the voice of your government on this occasion, and I am delighted to express to Your Excellency my sincere thanks and appreciation for your frank and loyal cooperation in bringing this event to a successful conclusion.

"To establish the legitimacy of the French right and the reality of its consecration, once more by a public act, His Excellency Kamil Pasha, governor of the province of Jerusalem, and the French consul, Mon-

sieur Edmond de Barrère, signed this report; the chancellor of the consulate, the governor's secretary and the interpreter signed their respective translations and the same report, in the Church of St. Anne, in the presence of the qadi and the members of his council."[324]

On the same day (1 November 1856) the qadi of Jerusalem wrote the following Sharia document, called an *i'lām*, in the register of the Jerusalem Sharia Court, concerning the conversion of al-Madrasa al-Ṣalāḥiyya into private property for the benefit of France in accordance with the sultan's order:

"The French government having previously asked permission to build a church of the Latin rite in Jerusalem, on the site situated within the city near Bāb Sitti Maryam in the Bāb Ḥiṭṭa quarter, which before the conquest was known as the Church of St. Anne of the Latin rite, and which is today (although traces of buildings remain in it) an abandoned ruin, His Majesty the Sultan was asked, in his inexhaustible generosity, to facilitate the building of the said church by donating the land. We were informed of His Majesty's august will concerning the donation of this land and the building of this church by an imperial firman addressed to us, accompanied by a plan and by a letter from the vizier in which His Excellency the *wālī* Pasha is charged with carrying out the sovereign will and informing us by report of the manner of its execution.

"Accordingly, the council having been convened, and the French consul being also present, the august firman was opened and read with the utmost solemnity, all present standing. I, the undersigned, the humble servant, having fully understood its meaning and its terms, and being wholly convinced that every order issued by His Majesty the Sultan becomes a sacred duty of conscience to be obeyed with devotion, went with the council to the said place, where I worked with the council and the architect to measure and survey the land of the church and its site, as the church's courtyard, in accordance with the plan, as follows: from the public road to the wall, to the land of Khawāja Hanna Karlu on the north, a length of two *qamas*; from the passage to the garden of Musa Efendi on the

324 Minutes of France›s taking possession of al-Madrasa al-Ṣalāḥiyya on 1 November 1856: French Ministry of Foreign Affairs Archives, Diplomatic Archives, Nantes (CADN), série A, no. 36, pp. 3233-.

west, to the wall of the bathhouse on the east, a width of 32 and a half cubits; from the wall of the site, from the church on the north to the wall of the bathhouse on the south, a length of 52 and a third cubits; from the passage to the garden of Musa Efendi on the west to the land containing the ruins of Hanna Karlu on the east, a width of 45 cubits; forming a rectangle of a total area of 3,400 cubits, whose boundaries were fixed and marked in the presence of the consul, as an annex to the land of the church serving as its courtyard. The said consul took delivery of it in accordance with the sultanic will; and we have issued a decree, the command belonging to him who has the right to issue it."[325]

On the same day, 1 November 1856, the council of the district (*liwāʾ*) of Jerusalem issued a memorandum (minutes of the council's session) on the matter. It was signed by the governor of the district of Jerusalem, the qadi of Jerusalem, his deputy, its mufti, the finance clerk, the director of civil affairs, the supervisor of agriculture, nine members of the council, the representative of the Latins, the representative of the Greeks, the representative of the Armenians, the representative of the Jews and the representative of the Protestants. It read:

"The French government having previously asked permission to build a church in Jerusalem for the Latin rite, on the site situated within the city near Bāb Sitti Maryam in the Bāb Ḥiṭṭa area, which before the conquest was known as the Church of St. Anne, a church of the Latin rite, and which is today (although traces of buildings remain) in a state of ruin and abandoned, the government of His Majesty the Sultan, in its inexhaustible generosity, was asked to facilitate the building of the said church by donating the site.

"His Majesty's sovereign will concerning the donation of this site and the building of this church was notified to us by a sultanic firman addressed to us, and was presented to us accompanied by a plan and by an order from His Highness the grand vizier, by which we were charged with carrying out the sovereign will and reporting on the manner in which the said imperial order was executed.

325 **Sharia *iʿlām* of the qadi of Jerusalem, Muhammad Thabit, concerning the conversion of the land of al-Madrasa al-Ṣalāḥiyya into a church, written on 3 Rabīʿ al-Awwal 1273; signature: the humble servant who prays for the Great Ottoman Porte, Muhammad Thabit, qadi of Jerusalem; on the reverse, the qadi›s seal: CADN, série A, no. 36, pp. 4041-.**

> "Accordingly, as soon as we had the honor of receiving this august firman, we met in extraordinary session, the French consul being present among us. All present stood, and the sovereign order was raised and read with all reverence and respect. Since it is our sacred duty, as faithful servants, to carry out His Majesty the Sultan's intentions with the utmost exactness, and since this obedience is incumbent upon us, we all proceeded to the said place. There we fixed and marked out the boundaries of the said land in accordance with the description and delimitation contained in the *iʿlām* (the legal document) and in accordance with the plan. We then delivered it to the consul for the building of a church. At the same time we delivered to the French consul the written documents mentioned above, which were recorded in the court and in the register of the council's proceedings. This is to record our report on the matter and to attest what has been done, and we have the honor to submit this memorandum (*maẓbaṭa*) humbly; the rest of the matter rests with our master, to whom the right of command belongs."[326]

Finally, on the same day, 1 November 1856, Kamil Pasha, governor of Jerusalem, sent the following report to the grand vizier on the transfer of property belonging to al-Madrasa al-Ṣalāḥiyya to France:

> "I had the honor of receiving an order from Your Highness dated 16 Ṣafar 1273 AH / 16 October 1856 CE, the substance of which is, in brief, as follows: the French government has asked for a site in Jerusalem, formerly known as St. Anne, which belonged to the Latin rite, was for a time converted into a madrasa, and then fell into ruin with the passing years, in order to build a Latin church there. Your Highness having asked for a report on the subject, your humble servant, the governor of Jerusalem, replied that the site had belonged to the Latins and that the church had with time fallen into ruin. When this reply, accompanied by a plan of the site, reached the Sublime Porte, His Majesty the Sultan, who had already granted permission to build the church, consented by sovereign decree to its being built on this site, and ordered that the august firman

326 Memorandum (minutes) of the session of the council of the district of Jerusalem of 1 November 1856, the session devoted to ratifying Sultan Abdülmecid I›s grant of al-Madrasa al-Ṣalāḥiyya to France for the building of a church: CADN, série A, no. 36, pp. 4345-.

required for the purpose be sent separately to Jerusalem, together with the attached plan; His Highness also orders his servant to report to him as soon as possible on what he has done to carry out His Majesty the Sultan's wishes.

"Accordingly, as soon as my hands had the honor of touching the august firman, I took counsel with myself, and before assembling the members of the council, together with the faithful servant of Your Highness, the qadi of Jerusalem, whom I summoned after informing him of the sultanic firman and the vizier's order, I took every care that he should understand its meaning and scope fully and completely; I then convened the council in extraordinary session and invited the consul of France to attend. Thereupon all the members of the council stood, and the sovereign order was raised and read with solemn ceremony and majesty; then we all proceeded to the said place. There, as Your Highness will see in the qadi's report and the council's report (two documents which I have the honor to attach herewith), an architect proceeded to mark out the boundaries of the land in accordance with the plan, and I entrusted the French consul with the official record of this site for the building of a church. This is precisely the report which, in accordance with Your Highness's order, I have the honor to submit to you by my obedientservant."[327]

It should be noted that France used this gift to enlarge its landholdings within the walls of Jerusalem, particularly around al-Madrasa al-Ṣalāḥiyya (the Church of St. Anne), where it sought to buy all the adjoining properties. The French consulate in Jerusalem even had a plan drawn showing the site of the Church of St. Anne and the properties around it. To show the nature of this task we quote a letter to the French minister of foreign affairs dated 30 March 1857, four months after the transfer of ownership, from the French consul in Jerusalem:

"I received today the letter which Your Excellency did me the honor of writing to me under the seal of the Political Directorate, no. 2, dated the seventeenth of this month.

"I should like to convey to Monsieur Pierotti, who will no doubt ap-

327 Report from the governor of Jerusalem to the grand vizier, dated 1 November 1856: CADN, série A, no. 36, pp. 47-49.

preciate it, my warm thanks for his kind willingness to draw, at our request, a plan of the Church of St. Anne and the buildings adjoining it. I am very glad that Your Excellency has not declined the proposal I had the honor to submit to you, together with a gift: the services of this architect free of charge.

"His Excellency the ambassador may have noticed that the best of the adjoining properties have been acquired by Hanna Karlu Jīlāt (Hanna Carlo Gellat), senior assistant dragoman of the consulate. This dragoman, moreover, undertook in writing last December to transfer ownership of his properties to the French government at the purchase price, after verification by a financial official of our government, and on first request. He has assured me that the total price does not exceed twelve to thirteen thousand francs. All the deeds of purchase drawn up by the qadi in the court are entirely in order.

"The firman granted France the church and the abandoned land, that is, the land with no known owners, which forms its forecourt.

"It was necessary, legally, to divest the lawful Muslim owners of the immediately adjoining properties, such as the one containing the ruins of the French Benedictine convent of Queen Melisende and the attached plot surrounding the upper part of the apse, in order to annex these important monuments to French land and to protect access to that part of the church without our leave. On the north side of the church's façade there is also a piece of land that had to be acquired for the same reason. The title to the first plot, divided into two parcels, shows a chain of lawful owners by sale and inheritance going back to 1777. I give Your Excellency these details because I have learned, through private letters, that strange interpretations have been put forward on this matter. The attached memorandum, moreover, will give you an exact idea of the position of the plots and the title deeds before the last acquisition, made with the aim of annexing these lands adjoining the church, with no known lawful owner, which the sultan granted free of charge to the government of the Emperor. I shall be truly glad to learn the final decisions the Emperor's government will take, both on the restorations needed by the church and on the placing of the inscription attesting that gratitude is owed to the government of His Majesty. I earnestly ask that a French architect be sent to Jerusalem as soon as possible. The dispatch of the courier and the speed of my reply on the very day

> Your Excellency's kind dispatch arrived have prevented me from informing the Latin Patriarch today of the intentions that show the interest of His Majesty's government in the Patriarchate; he will no doubt be glad and grateful for the confirmation of the happy news of the conversion of the Church of St. Anne into a patriarchal church, a conversion in which we have always believed, and which will take place after the church's restoration.
>
> "I thank Your Excellency for approving the practice which I applied at once, in agreement with Monsignor Valerga, of holding religious services from time to time in the church itself, before its new consecration, using portable altars. I shall be most happy to see our devout compatriots attend during their journey, and I shall certainly consult Your Excellency on how to give these ceremonies all the solemnity and dignity befitting the wisdom and propriety of worship.
>
> "Accept, Excellency, the assurance of my highest respect and esteem, your obedient and devoted servant."[328]

One of the documents issued by the Ministry of Waqfs in Jerusalem, among those we examined, records a meeting organized by some prominent Muslim figures of Jerusalem in 1899 in reaction to this transfer to France.[329] The document does not give the day, month or place of the meeting, but it discussed the sultan's violations of the waqf of al-Madrasa al-Ṣalāḥiyya and of its founding deed, dated 588 AH / 1192 CE. The notables at the meeting asked the director of Jerusalem Waqfs to review the contents of the madrasa's founding deed to determine the fate of the properties belonging to the waqf. It emerged that Ḥammām Maryam (the Bath of Mary), which had been part of this madrasa's waqf, had been transferred to the Catholics by a *ḥikr* lease concluded with them by the Jār Allah family (the heirs of the administration of this waqf). The same document of 1899 attests that, while attending the meeting, the director of Jerusalem Waqfs received a firman from Sultan Abdülmecid I dated mid-Ṣafar 1273 AH / 1856 CE confirming the gift of the madrasa building and the bathhouse to France, and the director stressed the necessity of respecting the order of the government and the sultan.[330]

At the close of the meeting the Muslim notables of Jerusalem declared that these properties were an integral part of the waqf of Saladin and must be restored to

328 Letter from the French consul in Jerusalem to the minister of foreign affairs, no. 29, dated 30 March [1857]: CADN, série A, no. 36, pp. 5052-.
329 Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis: file (313/317/2-9/).
330 Ibid.

their original status; any other status was unlawful for want of a legal basis. They further declared it necessary to reassess the remaining properties of the madrasa under the administration of the Jār Allah family.[331]

The madrasa remained under French administration until 1915. In that year France lost control of the madrasa/church when Jamal Pasha handed it to the Ottoman authority and converted it into an Islamic college called Kulliyat Salah al-Din (the Ṣalāḥiyya College).[332]

On 9 December 1917, the date of the British occupation of Jerusalem, the madrasa became once more the Church of St. Anne, with the addition of a library and a museum.[333]

Fifteen years before Sultan Abdülmecid I's gift of al-Madrasa al-Ṣalāḥiyya to France, the qadi of the Sharia court in Jerusalem had approved the sale of a plot of land belonging to the waqf of al-Madrasa al-Ṣalāḥiyya and ruled the transaction valid. Under this contract of sale the plot, which had been the property of a Muslim waqf, became the property of a Jewish waqf, and the seller retained no rights in the land. The contract of sale stated clearly that the object of the purchase was the bare ownership of the land (the *raqaba* of the land), not merely the right to cultivate or plant it, a right that Islamic law did permit. On 15 Jumādā al-Thāniya 1257 / 1841, Hayim al-Sarzali, dragoman of the Jewish community in Jerusalem, bought from ʿAbd Allah ibn Ahmad al-Silwani, for the Jewish Waqfs, the whole of the land known as al-ʿArbāsh, situated outside the city near Ein Silwan. The plot belonged to the waqf of al-Madrasa al-Ṣalāḥiyya. It measured 195 cubits in length and 156 in width, and contained olive trees and a well. Al-Silwani received a sum of seven thousand piasters.[334]

The contract of sale nevertheless stated that the land was part of the waqf of al-Madrasa al-Ṣalāḥiyya. It appears, then, that ʿAbd Allah ibn Ahmad al-Silwani at the same time regarded the waqf land as his private property, to be disposed of by sale like his own possessions, since his family had administered it for generations. The document does not say how the waqf land came into his family's hands, whether they rented it or merely administered it. At the end of the document it is recorded that the qadi finally granted the contract to Hayim al-Sarzali and recognized the legality of the sale. Under the deed of sale the plot became the property of the Jewish waqf in Jerusalem, and the seller lost all his rights in the land. Al-Madrasa al-Ṣalāḥiyya, too, lost one of its economic tributaries by unlaw-

331 Ibid.
332 On this question see the report in *The Palestine News*, no. 89, 14 May 1918; *The Arab Bulletin: Bulletin of the Arab Bureau in Cairo, 19161919-*, vol. III, 1918. Oxford: Archive Editions, 1986, p. 159.
333 Strohmeier. «Al-Kulliya al-Salahiyya, A Late Ottoman University in Jerusalem,» p. 57.
334 Jerusalem Sharia Court Register (*Sijill*) 325, 15 Jumādā al-Thāniya 1257 / 1841, p. 19.

ful means, even though the transaction was concluded before the Sharia qadi of Jerusalem and the deed of sale was issued over his signature.

In fact, Islamic law permitted the sale of waqf assets only by *istibdāl*. The administrator had the power to sell and buy within the framework of *istibdāl*, on condition that the exchange of the waqf's assets was necessary or that the sale was profitable to the waqf. In either case the qadi decides whether to offer the property for sale or to permit the administrator to complete the transaction.[335] In this case the sale of the waqf property had the same meaning as *istibdāl*. For a sale of waqf property to be valid two conditions had to be met: the necessity of the sale to protect the waqf's interests, and the necessity of buying a private property to become waqf in place of the property sold. Clearly, in the case of the land of the waqf of al-Madrasa al-Ṣalāḥiyya, neither condition was met. The qadi did not ask the seller the reasons for selling the waqf property, and did not require him to buy a substitute property.

The jurists have explained that if a purchaser restores a waqf property (by painting a wall, for instance) without the restoration adding any value when the contract of sale is annulled, the seller is bound to return only the sum originally paid. If the restoration has added to the property's value, and the demolition of buildings and the uprooting of trees would not reduce the value of the land, the administrator may offer the purchaser a sum equal to the value of the restoration. If the purchaser refuses the offer, he is bound to uproot the trees and demolish the buildings, and the land returns entire to the waqf.[336]

If, however, demolition and uprooting would damage the land, ownership of the buildings and plantings passes to the waqf's administrator, subject to payment of a minimum compensation: either the purchaser is required to remain, or he is required to demolish the buildings and uproot the plantings, with his consent. If the purchaser refuses, the land and buildings continue to be let, or the existing lease of the land and trees is renewed, and the rent is divided between seller and purchaser according to the value of each, or according to the value of the trees alone.[337]

Finally, it should be noted that jurisprudence does not permit the sale of certain elements of the waqf, such as timber, stone and the like, when buildings are demolished, whether by natural causes or by deliberate demolition, even if a judicial order for sale has been issued, except in two cases: first, where the rubble is

335 **al-Ramli.** *al-Fatāwā al-Khayriyya*, **p. 178. See also: ʿAshshub.** *Kitāb al-Waqf*, **p. 53; al-Husayni.** *al-Manhal al-Ṣāfī fī al-Waqf wa-Aḥkāmih*, **p. 42.**

336 **See: al-Ramli.** *al-Fatāwā al-Khayriyya*, **pp. 178179-; ʿAshshub.** *Kitāb al-Waqf*, **p. 53; al-Husayni.** *al-Manhal al-Ṣāfī fī al-Waqf wa-Aḥkāmih*, **p. 42.**

337 **ʿAshshub.** *Kitāb al-Waqf*, **p. 53.**

no longer fit for building; second, where the rubble could be reused in building but there is fear that it will disappear with time. In these two cases the proceeds of the sale of the rubble had to be preserved and devoted exclusively to new building on the waqf's land. The proceeds may not be returned to the beneficiaries or the holders of rights, who hold only rights in the produce; they must be devoted to rebuilding the ruined and collapsing waqf properties alone, and this, certainly, to fulfill the waqf's condition of permanence.[338]

In conclusion, we may say that these transfers of the property of Saladin's Waqfs took place outside the legal framework of the waqf as defined in Islamic law, and also contradicted the Ottoman legislation that treated these Waqfs as exempt and as true waqf whose endower's stipulations must be observed. This stands in complete contradiction to what the documents we have analyzed reveal: that a number of the institutions supported by Saladin's Waqfs in Jerusalem, together with their properties, were ceded, sold or confiscated, and so converted into private property, by lawful or unlawful means, at the end of the Ottoman period. Al-Madrasa al-Ṣalāḥiyya was presented to France by the Sublime Porte and converted into a church (the present Church of St. Anne), though the Catholic community regarded the transfer as a return of favor and a recovery of their property and churches. Some of the lands belonging to the waqf of al-Madrasa al-Ṣalāḥiyya were sold to individuals who converted them into a Jewish waqf. The area of the Ṣalāḥī Bīmāristān and some of its properties were presented to Germany by the Ottoman Empire and converted into a church (the present Church of the Redeemer). And some of the properties belonging to the Ṣalāḥiyya Khānqāh were sold and became non-Muslim property.



338 Ibid., pp. 5354-.

Chapter Four

The Waqfs of al-Ḥaram al-Sharīf and Those Who Hold Power

> "The condition of al-Aqsa Mosque is like the condition of the Mosque of Abraham, and there is no wonder in the Mosque of Abraham, for its town has neither governors nor grandees nor judges nor men of authority. The wonder is al-Aqsa Mosque: you see no one commanding right or forbidding wrong; its condition, may God mend and restore it, has decayed and changed, and you see no fine carpets, no bright and pleasing lamps, no cleanliness and no upkeep, all through the negligence of those in charge toward this matter of great import and manifest proof. And if this is the state of al-Aqsa Mosque, God's nearer throne, what of the state of the other mosques outside it, the ribāṭs, the madrasas, the zāwiyas and the shrines of the saints and prophets that lie outside Jerusalem and Hebron? You see no such place but it has fallen to ruin and been effaced, and the madrasas lie fallen in upon their roofs..."[339]

Al-Ḥaram al-Sharīf, with al-Aqsa Mosque and the Dome of the Rock, has been the focus of the Arab and Islamic world's attention, particularly since the liberation of Jerusalem by Saladin in 1187 CE. Muslims did not express that attention only through ribāṭ (hospice) in it and around it in its defense against foreign invasion, or through visitation and pilgrimage to it in what became known as *taqdīs al-ḥijja*, the "consecration of the pilgrimage," with all that implies in binding the pilgrimage to Mecca to the pilgrimage to Jerusalem; they expressed it also through material generosity and spending on it. From that period appeared what are known as the Waqfs of al-Ḥaram al-Sharīf, or the Waqfs of al-Aqsa Mosque and

339 **Shams al-Din Muhammad ibn Muhammad ibn Sharaf al-Din al-Khalili.** *Tārīkh al-Quds wa-l-Khalīl* **[The History of Jerusalem and Hebron]. Ed. Muhammad ʿAdnan al-Bakhit and Nufan Rajā al-Sawariyya. London: al-Furqān Islamic Heritage Foundation, 2004, p. 161.**

the Dome of the Rock, as the sultans and amirs of the Islamic states and men of charity competed to offer perpetual charity for the upkeep of the Ḥaram by converting their movable and immovable property into Waqfs for the maintenance of al-Aqsa Mosque and the Dome of the Rock. These Waqfs reached their peak during the first three centuries of Ottoman rule, thanks to the interest the sultans of the House of Osman took in Jerusalem and its mosque, the money they gave for its upkeep, and their care to preserve its Waqfs and prevent encroachment on them: the villages endowed for the benefit of the holy places came to exceed twenty-five, besides hundreds of other properties. In the nineteenth century, however, the policies and orientations of the Ottoman sultans toward the charitable Waqfs of the Ottoman provinces, the Waqfs of Jerusalem and of al-Aqsa Mosque and the Dome of the Rock among them, changed radically. Material interest now governed these new policies where faith had governed before; the sacred became the non-sacred, and the waqf became private property.

This chapter therefore tries to discuss the problem of the relationship between the sacred and the material: how did the sacred become non-sacred, and how did the relationship between the Ottoman sultanic state and the waqf of al-Ḥaram al-Sharīf change from a complementary relationship to one of collision? Answering these questions leads us to uncover the transformations that overtook the Waqfs of the blessed al-Aqsa Mosque and the noble Dome of the Rock, and the sultanic state's relation to those transformations in the nineteenth century. This lets us understand why the financial revenues of al-Aqsa Mosque have declined since that period, and hence why the mosque has lacked the means to play the historical and civilizational role in which it led for the many centuries before that one.

Despite the many studies of al-Ḥaram al-Sharīf and its Waqfs, most do not address the transformations in the ownership of its Waqfs; that is, they do not answer the question: where did these waqf properties and revenues go? The very important and unique manuscript that partly answers the question, and from an early point in the Ottoman period, the first half of the eighteenth century, is that of Shaykh Shams al-Din Muhammad ibn Sharaf al-Din al-Khalili (d. 1734 CE), entitled *Tārīkh al-Quds wa-l-Khalīl* [The History of Jerusalem and Hebron], edited by Muhammad ʿAdnan al-Bakhit and Nufan al-Sawariyya and published in 2004, which reveals the encroachments of the Turkish governors and rulers of Jerusalem on the revenues of the Waqfs of Jerusalem and Hebron, and their plundering of them.

This chapter answers the question along three main lines. The first offers a brief account of the properties endowed through history for the benefit of al-Ḥaram al-Sharīf (al-Aqsa Mosque and the Dome of the Rock), since it is hard to enumer-

ate every waqf property belonging to the Ḥaram: those endowed on it directly can be counted; those not endowed on it directly, whose endowers stipulated that the revenues pass to al-Aqsa Mosque and the Dome of the Rock once their descendants had died out, cannot, and these appear in many family waqfiyyas, Islamic and non-Islamic alike.[340] The second line tries to show the complementary relationship between the sultanic state and the Waqfs of al-Ḥaram al-Sharīf, and how the Ottoman authorities worked to prevent encroachment on the Ḥaram's Waqfs and to preserve them. The third tries to uncover how the relationship between the sultanic state and the Ḥaram's Waqfs changed from complementary to adversarial; that is, it answers the question: where did the Waqfs of al-Ḥaram al-Sharīf go?

Between the Known and the Unknown

Al-Ḥaram al-Sharīf, with its blessed mosque and noble dome, received marked attention from the holders of wealth and power, who converted their properties into Waqfs for its benefit. From the Mamluk period the properties endowed on the Ḥaram grew greatly, and came to include the lands of whole and partial villages, markets, shops, houses, khāns and other properties. This came either directly, by endowment for the benefit of the Ḥaram, as Sultan al-Zahir Baybars did in 1266 CE when he converted the lands of entire villages into Waqfs whose yield was to be spent in the service of the Ḥaram, such as the villages of Lifta and Nuba, as the following table shows; or by another kind of waqf that the Ḥaram knew, which may be called indirect Waqfs, in which the yield of family Waqfs passed to the Ḥaram once the endower's descendants had died out. This answered the conditions under which Islamic law permits the family waqf: for a family waqf to be valid, Islamic or non-Islamic, Islamic law requires that, once the endower's descendants who benefit from the waqf's revenues have died out, its yield pass to a charitable purpose that never lapses, such as the Ḥaram, the poor and the destitute, or other charitable ends. Some of the cases in the following table illustrate this too.

On this basis the Hanafi jurists require that the waqf of a non-Muslim fulfill the meaning of a pious act (*qurba*) both in his own belief and in the eyes of Islam. These jurists affirmed that a *dhimmī (a non-Muslim subject under Islamic law)* may not endow his property for the benefit of a church, a temple or a house of

340 **Musa Sroor. «al-Ḥuḍūr al-Islāmī fī Siyāsat Muʾassisī al-Awqāf al-Yahūdiyya wa-l-Masīḥiyya fī al-Quds al-ʿUthmāniyya» [The Islamic Presence in the Policy of the Founders of Jewish and Christian Waqfs in Ottoman Jerusalem].** *Majallat al-ʿIbar lil-Dirāsāt al-Tārīkhiyya wa-l-Athariyya fī Shamāl Ifrīqiyā* **[al-ʿIbar Journal for Historical and Archaeological Studies in North Africa]. Ibn Khaldoun University, Tiaret, vol. 8, special issue, March 2025, pp. 3668-.**

worship: "If a *dhimmī* makes his house a synagogue, a church or a fire-temple as waqf, or endows land of his on what has been mentioned, or on the priests or the monks, and calls witness that he has removed it from his ownership for the purpose named, while in sound health, it is not permitted and is void, and it is like the rest of his property, inherited from him after his death."[341] Here it should be noted that the jurists agree that a *dhimmī* may not endow property on churches and temples, on the poor of the people at war with the Muslims, or on the priests and monks of a given church, or on those who manage the affairs of a given church or synagogue, because this does not count as a pious act in Islam, though it counts as one in the religion of the *dhimmī*.[342] Conversely, the jurists permitted a *dhimmī* to endow his property on the poor of the church or the synagogue, because in this charity is realized and the *dhimmī* does not intend the support and exaltation of his religion; on this there is Sunni juristic consensus.[343]

By way of illustration in the same connection, we note from the cases in the following table that these endowers stipulated that, once their descendants had died out, the revenues of their Waqfs should pass to al-Aqsa Mosque and the Dome of the Rock and to the poor and the destitute. It is worth noting that none of the endowers stipulated that the poor must be Muslims in order to benefit from their Waqfs, whether the poor of Jerusalem or of any other place. The endower ʿAʾisha bint Ahmad ibn Hasan Bey al-Nimri, of the Bāb Ḥiṭṭa (Gate of Remission) quarter of Jerusalem, endowed her properties on 2 Rabīʿ al-Awwal 1329 / 3 March 1911 on: "herself for the term of her life, to benefit from them by residence and lodging, by yield and exploitation, and all the lawful benefits of a waqf; then after her on her living daughters, namely Nasab, Amuna and Fattuma, daughters of Khalil ibn Muhammad Ḥammūd al-Fuqqaʿi, born to her of her late husband the said Khalil ibn Muhammad Ḥammūd al-Fuqqaʿi, of the people of Noble Jerusalem, to benefit from them; then after them on their children, male and female, in equal shares among them; then after them on their children likewise in equal shares, then on their children's children likewise in equal shares, then on their children's children's children likewise in equal shares, then on their offspring and posterity likewise in equal shares among them, the beneficiaries benefiting from them by yield and exploitation forever, so long as they endure and remain and multiply, generation after generation and people after people. And if the beneficiaries all die out, and time has destroyed them to the last of them, and none of

341 **Burhan al-Din al-Tarabulusi.** *Kitāb al-Isʿāf fī Aḥkām al-Awqāf*. **2nd ed. Cairo: Maṭbaʿa Hindiyya, 1902, p. 141.**
342 **Musa Sroor. «Ishkāliyyat al-Dīnī wa-l-Siyāsī fī al-ʿAlāqa bayna al-Dawla al-Sulṭāniyya wa-l-Awqāf al-Masīḥiyya fī al-Quds al-ʿUthmāniyya» [The Problem of the Religious and the Political in the Relationship between the Sultanic State and the Christian Waqfs in Ottoman Jerusalem].** *Majallat Usṭūr lil-Dirāsāt al-Tārīkhiyya* **[Ostour Journal of Historical Studies], no. 14, 2021, p. 62.**
343 **ʿAshshub.** *Kitāb al-Waqf*, **p. 36.**

them remains, it reverts as waqf to the interests of the noble al-Aqsa Mosque and the noble Rock; and if that is impossible, God Most High forbid, it reverts as waqf to the poor of Noble Jerusalem; and if none are found, to the poor and destitute wherever they may be and wherever they are found, the matter proceeding in this manner forever and ever, until God, Lord of the worlds, inherits the earth..."[344] There are countless examples documenting this scene; we point to some in the following table.

Examples of the Waqfs of al-Ḥaram al-Sharīf (al-Aqsa Mosque and the Dome of the Rock)

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
1	Waqf of Timas ibn ʿAbd Allah	The village of Kharāb Bāb al-Wād (the Jaffa road)	Jerusalem	100%	On Shaykh ʿAbd al-ʿAziz and his descendants, and after their extinction on the noble Rock and al-Aqsa Mosque	Timas ibn ʿAbd Allah	1198 CE[345]
2	1. Waqf of al-Ḥaram al-Sharīf	The village of Lifta	Jerusalem	50%	al-Ḥaram al-Sharīf	Sultan al-Zahir Baybars	1266 CE[346]
2	al-Ḥaram al-Sharīf	The village of Nuba; the village of Idhna	Hebron	100%	al-Ḥaram al-Sharīf	Sultan al-Zahir Baybars	1266 CE[347]
3	Waqf of Aqbugha ibn ʿAbd Allah al-Awhadi	1. The village of Majdal / ʿAsqalān; 2. the village of Hamama; 3. the village of al-Shammāsiyya	ʿAsqalān / Gaza; Gaza; Gaza	15 sahm; 15 sahm; 4%	On his turba in Cairo, on his children and descendants, then on the poor of the Two Noble Sanctuaries	Aqbugha ibn ʿAbd Allah al-Awhadi	1334[348]

344 **Jerusalem Sharia Court Register (*Sijill*) 409, 2 Rabīʿ al-Awwal 1329 / 3 March 1911, pp. 337338-.**
345 **İpşirli.** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn: fī Alwiyat Ghazza, al-Quds, Ṣafad, Nābulus, ʿAjlūn ḥasab al-Daftar raqm 522 min Dafātir al-Taḥrīr al-ʿUthmāniyya*. **Istanbul: IRCICA (Research Centre for Islamic History, Art and Culture), p. 47.**
346 **al-Khatib.** *al-Awqāf al-Islāmiyya fī Filasṭīn fī al-ʿAṣr al-Mamlūkī 12501517-*, **p. 97.**
347 **Foundation for the Revival of Islamic Heritage and Research, 1984.** *al-Waqf al-Islāmī fī Filasṭīn*. **Jerusalem (Bayt al-Maqdis): Department for the Revival of Islamic Heritage, pp. 5153-, appendices.**
348 **İpşirli.** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn*, **p. 10.**

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
4	Waqf of Shams al-Din Muhammad ibn Yusuf, known as Ibn Uzrayq al-Ghazali	A mill known as al-Zurayqa	Nahr al-Ṣalāḥiyya / Tiberias	12.5%	His descendants	Shams al-Din Muhammad ibn Jamal al-Din Yusuf ibn ʿAli, known as Ibn Zurayq al-Ghazali; and if they die out, on the Two Noble Sanctuaries of Jerusalem and Hebron	1378[349]
5	Waqf of al-Hajj Musa ibn Ibrahim and his brother al-Hajj ʿAbd al-Qadir, sons of Suman	Date-palm plantations	Mazraʿat Sidi / Tiberias	Number unspecified	On themselves and their descendants, then after their extinction on the Two Noble Sanctuaries	al-Hajj Musa ibn Ibrahim and his brother al-Hajj ʿAbd al-Qadir, sons of Suman	1483[350]
6	Waqf of Shahin ibn ʿAydin	The village of Irbil	Dependent on Tiberias	50%	His descendants, and on the Two Sanctuaries after their extinction	Shahin ibn ʿAydin	1411[351]
7	Waqf of Muqbil al-Husami	The village of Jubb Yusuf with the farm of Ḥattā	Safad	100%	On himself, then his descendants, then the Two Sanctuaries	Muqbil al-Husami	1423[352]
8	Waqf of Muhammad ibn al-Hajj al-Samannudi	1. Plots of land known as Samannūdī al-Ṣughrā and al-Kubrā; 2. a house	Ramla	al-Ṣughrā 100%; al-Kubrā 50%; 1	On his descendants, and on the interests of the Two Noble Sanctuaries after their extinction	Muhammad ibn al-Hajj al-Samannudi	1435 CE[353]

349 **İpşirli.** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn*, **p. 58.**
350 **Ibid., p. 66.**
351 **Ibid., p. 71.**
352 **Ibid., pp. 6465-.**
353 **Muhammad ʿIsa Salihiyya (study and edition).** *Sijill Arāḍī Alwiyat Ṣafad, Nābulus, Ghazza wa-Qaḍāʾ al-Ramla ḥasab al-Daftar raqm 312 / 1566* **[The Land Register of the Districts of Safad, Nablus and Gaza and the Sub-District of Ramla according to Register no. 312 / 1566]. Ottoman Palestine Land Registers: Prime Ministry Archive, Istanbul. Amman, 1999, p. 356.**

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
9	The children of Nasir al-Din ibn Jamaq	1. The village of Sākiya (Sāqiya); 2. the village of Badrus; 3. the village of Jindas	Ramla	12.5%; 30%; 21%	On his descendants, then after their extinction on the Two Noble Sanctuaries	The children of Nasir al-Din ibn Jamaq	1464 CE[354]
10	Waqf of Fatima bint Musa ibn ʿAli al-Kashman	The village of Sītān	Ramla	50%	On ʿAli Muhammad al-ʿAlāʾī and the children of her son Ahmad ibn Musa al-Ansari and their descendants, then after their extinction on the Two Noble Sanctuaries of Jerusalem and Hebron	Fatima bint Musa ibn ʿAli al-Kashman	1465 CE[355]
11	Waqf of Jamal al-Din ibn Yusuf al-Hadbani	The village of Qubeiba	Ramla	100%	On himself, then his descendants, and after their extinction on al-Ḥaram al-Sharīf	Jamal al-Din Yusuf al-Hadbati	1487 CE[356]
	Waqf of Shaykh Kamal al-Din ibn Abi Sharīf	The village of Kafr Hīr	Ramla	25%	On his descendants, then after their extinction on whoever recites the Qurʾān in al-Aqsa Mosque, and if that is impossible, on the poor of Jerusalem	Shaykh Kamal al-Din ibn Abi Sharīf	1488 CE[357]
	Waqf of Muhammad ibn ʿAbd al-Rahman Nazir al-Habs	1. The village of ʿArār; 2. the village of Qamṣā	Gaza	12.5%; 9.36%	On himself and his descendants, then after their extinction on the Two Noble Sanctuaries	Waqf of Muhammad ibn ʿAbd al-Rahman Nazir al-Habs	1489[358]

354 **Salihiyya.** *Sijill Arāḍī Alwiyat Ṣafad, Nābulus, Ghazza wa-Qaḍāʾ al-Ramla ḥasab al-Daftar raqm 312 / 1566*, **p. 350.**
355 **İpşirli.** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn*, **p. 42.**
356 **Salihiyya.** *Sijill Arāḍī Alwiyat Ṣafad, Nābulus, Ghazza wa-Qaḍāʾ al-Ramla ḥasab al-Daftar raqm 312 / 1566*, **p. 364.**
357 **Ibid., p. 349.**
358 **İpşirli.** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn*, **p. 115.**

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
	Waqf of Sarim al-Din Ibrahim ibn ʿUmar	1. The village of Bayt Dajan; 2. the village of al-Safiriyya	Ramla	66.5%; 8.33%	On himself and his descendants, and after their extinction on the Two Noble Sanctuaries	Sarim al-Din ibn ʿUmar	1498 CE[359]
	Waqf of Rahhal ibn Fakhr al-Din	1. Plantations in the garden of Ibn ʿAli in the land of Ḥamrāʾ al-Taḥtā; 2. plantations in the land of the garden of Shāhid in the land of Ḥamrāʾ al-Taḥtā	The town of Safad	33.33%; 33.33%	Himself, then his children and descendants, and if they die out, on the Red Mosque (al-Jāmiʿ al-Aḥmar) in the town of Safad and on the Two Noble Sanctuaries	Rahhal ibn Fakhr al-Din	1509; 1537[360]
	Waqf of Badr al-Din ibn Jamal al-Din al-Faqih	A bathhouse with the large hall; a mill	Ḥārat al-Waṭā; Wādī al-Bayḍa, known as Umm Ḥaṣā	100%; 50%	On himself, then on the Two Noble Sanctuaries	Badr al-Din ibn Jamal al-Faqih	1522[361]
	Waqf of Ibrahim ibn Shaykh al-Shabāb and his brother Khalil	Karm Shaykh al-Shabāb (vineyard)	The town of Ramla	100%	Their descendants, then after their extinction on the Two Noble Sanctuaries	Ibrahim ibn Shaykh al-Shabāb and his brother Khalil	1524 CE
	Waqf of Muhibb al-Din Muhammad ibn ʿAlaʾ al-Din ibn al-Wasi	The village of Bayt Māsīn	Jerusalem	100%	Himself, then his descendants, then on the Two Noble Sanctuaries and on the Sanctuary in Hebron and Jerusalem	Muhibb al-Din ibn ʿAlaʾ al-Din ibn al-Wasi	1535 CE[362]

359 **Salihiyya.** *Sijill Arāḍī Alwiyat Ṣafad, Nābulus, Ghazza wa-Qaḍāʾ al-Ramla ḥasab al-Daftar raqm 312 / 1566*, **p. 360.**
360 **Ibid., p. 99.**
361 **İpşirli.** *Awqāf wa-Amlāk al-Muslimīn fī Filasṭīn*, **p. 65.**
362 **İpşirli. Ibid., p. 23.**

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
	Waqf of Sinan Subashi	1. Shops in Sūq al-Zāwiya; 2. shops in the Turkmān quarter; 2. a dye-house in the Citadel quarter; 3. a sesame-oil press; 4. a bakery in the Turkmān quarter; 5. houses in the Bāshqārdī quarter	The town of Ramla; the town of Ramla; the village of Lydda; the town of Ramla; the town of Ramla	2; 2; 100%; 33.33%; 1	On himself, then his descendants, and after their extinction it reverts as waqf to the Two Noble Sanctuaries and to the public meal (simāṭ) of our lord al-Khalīl (Abraham); and from its yield the restoration of the Mosque of Shihab al-Din ibn Ruslan in Ramla	Sinan Subashi, famous as Qulaqsuz Sinan Mardtimar	1556 CE[363]
	Waqf of Sidi ibn Shaykh al-Shabāb	A plot of land known as Kafāt Shaykh al-Shabāb	Ramla	100%	On his children and descendants, and after their extinction it reverts as waqf to the Two Noble Sanctuaries	Sidi Muhammad ibn Shaykh al-Shabāb	1557 CE[364]
	Waqf of Shaykh ʿImad al-Din ibn al-Maliki	1. A plot of land known as Ibn Malik; 2. the walled garden of al-Maghār; 3. the vineyard of Ibn Malik	Ramla	100%; 50%; 30%	On himself and his descendants, then after the extinction of his descendants on the Two Noble Sanctuaries	Shaykh ʿImad al-Din ibn al-Maliki	1557[365]
	Waqf of ʿIzz al-Din	An orange grove known as «Bayyārat ʿIzz al-Din»	Jaffa	100%	On himself, then his children, then the Two Noble Sanctuaries	ʿIzz al-Din ?	1802 CE[366]

363 **Salihiyya.** *Sijill Arāḍī Alwiyat Ṣafad, Nābulus, Ghazza wa-Qaḍāʾ al-Ramla ḥasab al-Daftar raqm 312 / 1566*, **pp. 342-343.**
364 **Ibid., p. 353.**
365 **Salihiyya. Ibid., p. 352.**
366 **ʿAbir Qattanani. «al-Awqāf fī Qaḍāʾ Yāfā khilāl al-Mudda (17991864-)» [The Waqfs of the Jaffa Sub-District, 1799-1864]. In** *al-Awqāf al-Islāmiyya fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn: al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām 1014- Aylūl 2006*. **Amman: University of Jordan, 2008, p. 292.**

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
	Waqf of al-Muʿallim Antun, son of Hanna Marqus al-Ifranji	A house / the al-Ḥaddādīn quarter, Christian Quarter, Jerusalem	Jerusalem	100%	On himself and his descendants, and if they die out on the Frankish monks; and if these die out it reverts as waqf to the noble Rock and the blessed al-Aqsa Mosque	al-Muʿallim Antun, son of Hanna Marqus al-Ifranji	1235 AH / 1820 CE[367]
	Ishaq ibn Yaʿqub ibn Yudalib Shidis and Sara Nahman bint Yusuf Lurt	The whole of the upper room and the lower room beneath it and the land facing them, measuring one hundred and sixty cubits, outside Jerusalem on the Bāb al-Khalīl (Jaffa Gate) side, within the Mishkenot Israel company	Jerusalem	100%	On the sick in Bikur Cholim (a hospital) in the Jewish quarter of Jerusalem; then on the poor of the Ashkenazim generally; and if none are found, on the sick of the Mosaic (Jewish) community in Jerusalem; and if none, on all the sick of Jerusalem; and if none, on the interests of al-Ḥaram al-Sharīf in Jerusalem; then on the poor wherever they may be	Ishaq ibn Yaʿqub ibn Yudalib Shidis and Sara Nahman bint Yusuf Lurt	1305 AH / 1888 CE[368]

367 Jerusalem Sharia Court Register (*Sijill*) 303, 14 Shaʿbān 1235 AH / 26 May 1820 CE, pp. 183184-.
368 Jerusalem Sharia Court Register (*Sijill*) 378, 8 Jumādā al-Thāniya 1305 AH / 20 April 1888 CE, pp. 1718-.

No.	Name of the waqf	Endowed property	Place / sub-district	Share	Beneficiary	Endower	Date
	Maymun Hayim ibn Shimʿun ibn Shluma al-Maghribi	The whole of the plot of land and the building standing on it, which the endower erected, of an area of one dunum (about 1,000 m² each) and 600 cubits, comprising rainwater cisterns, walls and utilities; and the whole of the house and the undivided share of three parts in four, that is, eighteen qīrāṭ (a twenty-fourth share) of twenty-four, in each of twenty-eight shops and the two houses standing above them, in the Bāb Yāfā (Jaffa Gate) area near the gate	Jerusalem	100%	The endower endowed his waqf on himself for his lifetime, then after him on his son Abraham, then after him ... and after their extinction it reverts to the poor of the Maghrebi Jewish community in Jerusalem and those coming to it at any time; then it reverts as waqf to the poor of the Mosaic Jewish community in Jerusalem and those coming to it; and if none are found it reverts as waqf to all the poor of Jerusalem and those coming to it; and if none are found it reverts as waqf to the interests of al-Ḥaram al-Sharīf of Jerusalem	Maymun Hayim ibn Shimʿun ibn Shluma al-Maghribi	1305 AH / 1888 CE[369]

The multitude of waqf properties of the indirect kind endowed for the benefit of the Ḥaram, and the difficulty of tracing and counting them, leave us unable to carry out a complete and comprehensive survey of every waqf property belonging to al-Ḥaram al-Sharīf, particularly of the indirect kind. The first kind, the direct, can be traced, and that is what I have tried to do in the following table.

369 Jerusalem Sharia Court Register (*Sijill*) 378, 8 Jumādā al-Thāniya 1305 AH / 20 April 1888 CE, pp. 1718-.

Summary Table of the Waqfs of al-Ḥaram al-Sharīf (al-Aqsa Mosque and the Noble Dome of the Rock)[370]

No.	Location	Type of waqf property	Share / number
1	Beitunia	village	67%[371]
2	Lifta	village	50%
3	Ein Yabrud	village	67%
4	Ein Arik	village	50%
5	Beit Rima	village	50%
6	Qarawat Bani Zeid	village	50%
7	Arura	village	42%
8	Abu Qash	village	50%
9	Beit Hanina	village	50%
10	Kafr Ein	village	50%
11	al-Tayyiba	village	37.5%
12	Nuba	village	100%
13	Abwein	village	67%
14	al-Auja	village	100%
15	al-Nuweiʿma	village	100%
16	al-Janiya	village	100%
17	Mazariʿ al-Nubani	village	50%
18	Aboud	village	100%
19	Ramallah	village	50%
20	al-Eizariya	village	50%
21	Sur Bahir	village	25%
22	Deir Dibwan	village	100%
23	Beit Anan	village	100%
24	Arāḍī al-Birak	village	100%
25	Kafr ʿAna / Nātā	village	100%
26	Idhna	village	100%
27	Jerusalem, Old City / Sūq al-Qaṭṭānīn (the Cotton Merchants' Market)	half the market, shops and houses	50%
28	Jerusalem, Old City / Sūq al-Ḥuṣur (the mat market)	the whole market, shops and houses	100%
29	Jerusalem, Old City / Sūq al-Ṣāgha (the goldsmiths› market)	shop	51

370 **Sroor.** *Fondations pieuses en mouvement*, **pp. 152153-.**

371 **The share in the original is in qīrāṭ; 24 qīrāṭ equals 100%. For ease of conveying the idea, qīrāṭ have been converted into percentages.**

No.	Location	Type of waqf property	Share / number
30	Jerusalem, Old City / Sūq al-ʿAṭṭārīn (the Spice Market)	shop	4
31	Jerusalem, Old City (the Great Market)	Khān al-Sulṭān	100%
32	Jerusalem, Old City / Sūq al-Bāshūra	shop	1
33	Jerusalem, Old City / the Sharaf quarter	house (dār)	9
34	Jerusalem, Old City / the Sharaf quarter	bakery	1
35	Jerusalem, Old City / the Sharaf quarter	storeroom	3
36	Jerusalem, Old City / Bāb al-ʿAmūd (Damascus Gate)	coffeehouse	1
37	Jerusalem, Old City / Bāb al-ʿAmūd	shop	3
38	Jerusalem, Old City / Bāb al-ʿAmūd	house	1
39	Jerusalem, Old City / Bāb al-Ḥadīd (Iron Gate)	house	1
40	Bethlehem	a plot of land known as Khallat al-Jāmiʿ	100%
41	Jerusalem, Old City / the Jewish Quarter	room (bayt)	14
42	Jerusalem, Old City / the Jewish Quarter	storeroom	3
43	Jerusalem, Old City / the Jewish Quarter	bakery	1
44	Jerusalem, Old City / the al-Wād quarter	house	2
45	Jerusalem, Old City / the al-Wād quarter	coffeehouse	1
46	Jerusalem, Old City / the al-Wād quarter	shop	5 shops
47	Jerusalem, Old City, Sūq al-Qaṭṭānīn	Ḥammām al-Shifāʾ	100%
48	Jerusalem, Old City, Bāb al-Ghawānima	house	2
49	Jerusalem, Old City, Bāb al-Silsila (Chain Gate)	house	9
50	Jerusalem, Old City / Bāb al-ʿAtam (Gate of Darkness)	house	1
51	Jerusalem, Old City / the Saʿdiyya quarter	house	1
52	Jerusalem, Old City / the Bāb al-Qaṭṭānīn (Cotton Merchants' Gate) quarter	shop	25
53	Jerusalem, Old City / the Bāb al-Qaṭṭānīn quarter	mill	1
54	Jerusalem, Old City / the Bāb al-Ghawānima quarter	shop	4
55	Jerusalem, Old City / the Bāb al-Sāhira (Herod's Gate) quarter	shop	4

From the table above we see that no fewer than twenty-five villages are endowed, some wholly and some in part, for the benefit of al-Ḥaram al-Sharīf, in addition to 97 shops and the whole of Sūq al-Ḥuṣur with the properties it contains, together with 26 houses and 14 rooms,[372] besides 6 storerooms, two coffeehouses, two bakeries and a mill.

I do not claim that this table includes all the Waqfs of the blessed al-Aqsa Mosque and the noble Dome of the Rock. In the deeds of the registers of the Jerusalem Sharia Court we find other Waqfs, recorded as belonging to al-Ḥaram al-Sharīf and not included in the table, some of them in the Christian Quarter of Jerusalem, mentioned indirectly in the deeds and cases of the registers. This shows how hard it is to enumerate every waqf property belonging to this great religious edifice. In this connection I offer the following Sharia deeds as examples:

> "Khalil, son of al-Talhami, bought with his own money for himself and not with the money of another, from his daughter Ruza, of full age and sound judgment, present with him in the court, identified by the lawful identification of Kārina al-Jallād and Yaʿqub, son of [Qabāja]; and she sold to him, by a final sale, what is hers and in her ownership and at her free disposal and lawful possession, having come to her by inheritance from her mother Sabat, daughter of Fransis [al-Karuz] the Frank, and being in her hand until the issue of this final sale: namely the whole of the undivided share, being one half, twelve qīrāṭ of twenty-four, in the whole of the room, the kitchen and the [darbakūniyya] (small balcony) situated in Dār al-Karuz in Noble Jerusalem **in the Christian Quarter**, with the right of passage from the door of the house to it and the use of the utilities of the said house ... the house in which the room and the kitchen and the house are situated being bounded on the south by **the house of the waqf of the noble Rock**, on the east by the house of Mitrī, on the north by the two houses of Zakariyyā, and on the west by **the walled garden of the pool belonging to the waqf of the Rock**, with all the lawful rights of all of this, in partnership with the purchaser; written on the twenty-ninth of Jumādā al-Ākhira of the year one thousand two hundred and twenty-five."[373][374]*

372 «Room» (*bayt*) here means a single chamber.
373 Jerusalem Sharia Court Register (*Sijill*) 294, 29 Jumādā al-Thāniya 1225 AH / 1 August 1810, pp. 4849-.
374 * Square brackets and bold type in the two deeds are the author's: the brackets mark uncertain readings of the register, the bold the boundary clauses. [Translator's note]

In another case the court register documents another waqf in the Christian Quarter of Jerusalem belonging to the noble Dome of the Rock: "There appeared on the date hereof before the court of the noble Sharia the *dhimmī* Yusuf, son of the *dhimmī* Fransis Marqus the Frank, and acknowledged, confessed and called witness against himself … that he had made waqf, detained, dedicated and given in charity what is his and in his ownership and at his free disposal and lawful possession, having come to him by purchase under a Sharia deed dated late Dhū al-Qaʿda of the year one thousand two hundred and fifty-six, and being in his hand in settled possession without dispute until the issue of this waqf: namely the whole of the large house standing built in Noble Jerusalem … the whole house being bounded on the south by **a walled garden belonging to the waqf of the noble Rock**, on the east by a house belonging to the waqf of the Greek monastery, and on the north by the house in which the *dhimmī* Hanna ʿAbduh lives … written on the tenth of the venerated month of Shaʿbān of the year one thousand two hundredandsixty-seven."[375]

What is set out above demonstrates the difficulty of enumerating every waqf belonging to al-Ḥaram al-Sharīf.

From Surplus to Deficit

The preceding tables show the vast extent of the Waqfs of al-Ḥaram al-Sharīf, given its need for large sums to pay for its services: cleaning, lighting, the wages of employees and superintendents, and the rest. The absence of permanent sources of funding for the Ḥaram leaves those responsible for its administration unable to meet all its requirements. The deeds in the registers of the Jerusalem Sharia Court record the Ḥaram's many expenses and how the revenues of its Waqfs were spent. For example, one-third of the shops of Sūq al-Ṣarf (the money-changers' market), belonging to the waqf of the noble Rock and al-Aqsa Mosque, was let for an annual rent of 640 piasters (qirsh) for the period from 1 Muḥarram 1100 AH (26 October 1688 CE) to the end of Dhū al-Ḥijja of the same year, to the tenant Hasan, son of the late Yusuf al-Masmadi, the sum to be spent on the holders of offices in al-Ḥaram al-Sharīf: the ḥadīth scholars, the Qurʾān commentators, the preachers, the imams and those who perform the rites of the noble Ḥaram.[376]

The audit conducted by the qadi (Sharia judge) of Jerusalem, ʿAli Efendi, of the administrator of the waqf of the noble Dome of the Rock, ʿAli Agha, shows the size of

375 Jerusalem Sharia Court Register (*Sijill*) 333, 10 Shaʿbān 1267 AH / 10 June 1851 CE, p. 2.
376 Jerusalem Sharia Court Register (*Sijill*) 191, undated deed recording the lease of one-third of Sūq al-Ṣarf for the year 1100 AH / 1688 CE, p. 365.

the sums accruing to the waqf from its properties: the audit for the year 1099 AH / 1687 CE records revenues estimated at the time at 19,482 Egyptian pieces (*qiṭʿa*).[377]

To these must be added the expenses of collecting the waqf's revenues from the waqf villages. In late Rajab 1113 AH (31 December 1701 CE), for example, the qadi of Jerusalem, Mustafa Efendi, styled in the register of the Jerusalem Sharia Court "our master, shaykh of the shaykhs of Islam" (a title exceeding even that of Ibn Taymiyya), appointed Marwan ibn ʿAli Makki to the office of collector of the waqf revenues of the village of Beit Anan, belonging to the waqf of the noble Rock, for a daily wage of 4 *ʿuthmānī*.[378]

If we look at another element of the services and expenses of al-Ḥaram al-Sharīf, and at what happened once the revenues of its Waqfs had dried up, the size and abundance of the Ḥaram's waqf revenues become plain. That element is "lighting," since the Ḥaram needs continuous night lighting for the performance of the prayers. The famous historian of Mamluk Jerusalem, Mujir al-Din al-Hanbali al-ʿUlaymi, tells us in *al-Uns al-Jalīl* that at the evening and dawn prayers each day seven hundred lamps were lit in al-Aqsa Mosque and five hundred and fifty at its gates, and the Dome of the Rock was lit with five hundred and forty, apart from the lamps that lit the courtyards of the Ḥaram; on the night of mid-Shaʿbān more than twenty thousand lamps were lit in the Ḥaram, and the same on the Night of Power and the night of the Night Journey and Ascension.[379] In an important study of the lighting of the Ḥaram, Husayn al-Qahwati shows that among the chief duties of the superintendent of the Two Noble Sanctuaries was to supply the requirements of lighting, oil and the rest, for the lamps and candles. Having reviewed the lighting of the Ḥaram down the ages and the abundance of its revenues, al-Qahwati notes that in the Ottoman period the revenues of its Waqfs declined and its lighting suffered accordingly, and explains the decline thus: "The waqf of al-Aqsa supported a large number of administrators and employees, though al-Aqsa Mosque itself and its other expenses were in dire need of the money; rationalization, consumption and the struggle between the Waqfs administration and the administrators went on continually, particularly when we know that the expenses of the Waqfs were growing while the waqf's income fell, through the negligence of some officials and the greed and selfishness of others."[380]

377 **Jerusalem Sharia Court Register (*Sijill*) 191, late Rabīʿ al-Awwal 1101 AH / 11 January 1690 CE, p. 468.**
378 **Jerusalem Sharia Court Register (*Sijill*) 201, late Rajab 1113 AH / 31 December 1701 CE, p. 105.**
379 **Mujir al-Din al-Hanbali al-ʿUlaymi.** *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-l-Khalīl*, **vol. 2, p. 75.**
380 **Husayn al-Qahwati. «Min Khadamāt Idārat al-Awqāf fī al-Quds: Inārat al-Ḥaram al-Qudsī Anmūdhajan 1940-1955» [Among the Services of the Waqfs Administration in Jerusalem: The Lighting of the Jerusalem Ḥaram as a Case, 19401955-]. In** *al-Muʾtamar al-Duwalī al-Sābiʿ li-Tārīkh Bilād al-Shām 1014- Aylūl 2006: al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-ʿArabī al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn***. Amman: University of Jordan, 2008, p. 490.**

On this matter a witness of that age, Shaykh Muhammad al-Khalili, tells us: "you see no one commanding right or forbidding wrong; its condition, may God mend and restore it, has decayed and changed, and you see no fine carpets, no bright and pleasing lamps, no cleanliness and no upkeep, all through the negligence of those in charge toward this matter of great import and manifest proof."[381] Shaykh al-Khalili attributes the deterioration of al-Ḥaram al-Sharīf and the wasting of its waqf revenues to the corruption of the Ottoman governors and their theft of the funds of the Ḥaram of Jerusalem and of the Sanctuary of Abraham in Hebron, writing: "the lack of care of those in authority, the rulers of Sharia and of custom, for this matter; for some twenty years no governor has come to these lands but we have mentioned it to him, and we have seen none of them respond or take any interest in it; rather they turned away and forbade it."[382]

This testimony shows clearly that those responsible for the loss and theft of the revenues of the Ḥaram's Waqfs were the Turkish governors of Jerusalem, until matters reached the point, according to Shaykh al-Khalili, where no oil could be found to light the Ḥaram despite the abundance of its funds.

The registers of the Jerusalem Sharia Court, and also the sultanic decrees recorded in the Mühimme (the registers of important affairs of the imperial council) registers, document many encroachments on the Waqfs of al-Ḥaram al-Sharīf and their theft by members of the local community. These documents show the part played by the judicial and sultanic authorities in preventing encroachment on these funds, as sacred property, and in calling to account those implicated in embezzlement and theft. On 29 Muḥarram 972 AH / 5 September 1564 CE a sultanic decree was sent from the Sultan's Chancery in Istanbul to the *sanjak*-bey of Jerusalem and the qadi of Jerusalem concerning the complaint the inhabitants of Jerusalem had submitted to the sultan about the weak revenues of Ḥammām al-Nabī Dawud, belonging to the Waqfs of the noble Dome of the Rock, owing to the shortage of water reaching the bath, which depended solely on winter rainwater collected in special cisterns, enough for only two months of operation, after which the bath ceased to provide its services for want of water. The sultan asked the *sanjak*-bey and the qadi of Jerusalem to supply water to the bath so as to keep it working and thus increase the bath's income accruing to the Dome of the Rock.[383] This shows clearly, first, the concern of the people of Jerusalem that the revenues of the Ḥaram's Waqfs keep flowing and its waqf institutions keep

381 **al-Khalili.** *Tārīkh al-Quds wa-l-Khalīl*, **p. 161.**
382 **al-Khalili. Ibid., p. 157.**
383 *Bilād al-Shām fī al-Aḥkām al-Sulṭāniyya al-Wārida fī Dafātir al-Muhimma 951 AH / 1544 CE - 973 AH / 1566 CE* **[Bilād al-Shām in the Sultanic Decrees Recorded in the Mühimme Registers, 9511544/ to 9731566/]. Fadil (preparation and translation). Amman: University of Jordan, 2005, pp. 243244-.**

working, since they addressed their complaint directly to the sultan; and second, the sultan's attention to the complaint of the people of Jerusalem, his response to their demands, and his orders to those in charge to solve the problem of the bath's water supply.

The encroachments were not confined to the Waqfs of al-Ḥaram al-Sharīf; they extended to the Waqfs of the Takiyya of Khassaki Sultan, "al-ʿImāra al-ʿĀmira," and this shortly before the death of Sultan Suleiman the Magnificent, who died on 6 September 1566 CE: that is, encroachment on the revenues of the Waqfs of the sultan himself, in Jerusalem. On 27 Rajab 973 AH (18 February 1566 CE) the Sultan's Chancery sent the governor of Damascus and its qadi, and the qadis of Jerusalem and Ramla, a letter stating that the peasants of the waqf villages of al-ʿImāra al-ʿĀmira had sent the sultan a petition complaining that the waqf's villages had fallen into ruin through the injustice of ʿAbd al-Karim, the administrator of the said Waqfs, who "had swallowed up the Waqfs of the mosques and congregational mosques of many villages, so that their imams and preachers had left them and the mosques stood closed." The letter also states that the governor of Damascus and the qadis of Jerusalem and Ramla had previously complained to the sultan that "the evildoers Muhammad al-Qāḍī and ʿIsa al-Mukhriz, of the village of Jindas in the sub-district of Ramla, one of the Waqfs of the said ʿImāra al-ʿĀmira, and Shihada and Ismaʿil Faqīh of the people of Yazur, and Muhammad ibn Mahmud of the people of Lydda, have repeatedly and by more than one proof been shown to be violent, wicked and fraudulent, murderers and thieves, and have become known for rebellion and disobedience..."[384]

This example shows how encroachment on waqf funds and their theft was a widespread phenomenon, restrained neither by fear of the sanctity of the money nor by fear of its sacredness, whether the money belonged to al-Ḥaram al-Sharīf, to other mosques, or to the Waqfs of the sultan and his wife themselves.

From Deficit to Loss

Everything set out above shows plainly that the Ottoman sultanic state, through its various organs, took care to prevent encroachment on waqf funds, above all the Waqfs of al-Ḥaram al-Sharīf; this is what we call the complementary relationship between the sultanic state and the Waqfs of the Ḥaram. That relationship lasted until the Ottoman Tanzimat (1839 to 1876), and in particular until the issue of the Ottoman Land Code, which was a knockout blow to the important

384 Ibid., pp. 334336-.

charitable Waqfs founded by the Mamluk and Ottoman sultans, as will be shown below. The period before the Tanzimat was marked by encroachment on, and the plunder and pillage of, the waqf's revenues, without encroachment on the corpus of the waqf and its assets; the second period, after the Tanzimat, was marked by the state's authoritarian role and its direct encroachment on the corpus of the waqf and the draining of its resources and assets. Al-Ḥaram al-Sharīf suffered the consequences and adverse effects of this law as the other important waqf institutions of Jerusalem and Palestine did: the law helped convert waqf lands, villages and farms, into private property, some of which became private Christian and Zionist property, as happened to dozens, indeed hundreds, of waqf villages in our territory occupied in 1948.

Islamic and non-Islamic Waqfs alike were subject to the rules of waqf in Islamic law, the waqf being a religious act and a pure and sustainable charity, since ownership of the endowed property passes from the endower to God Almighty. For this reason, from the Ottoman period onward, the founding and administration of a waqf, Islamic or non-Islamic, came under the supervision of the qadis of the Sharia courts, and until the Ottoman Tanzimat (1839 to 1876) the state authorities had no part in the affairs of the waqf and its rules.

The study of the Waqfs of Palestine in general and Jerusalem in particular shows that most of the important waqf institutions in the Old City of Jerusalem were founded by the amirs and sultans of the Ayyubids, Mamluks and Ottomans, and that their waqf documents do not indicate their ownership of the endowed properties, as is plain in every waqfiyya. It should be noted that some 160 villages in Palestine were endowed by them on the waqf institutions of Jerusalem.[385] These properties, villages and farms, kept their waqf character through all the historical periods until Ibrahim Pasha's occupation of Palestine in 1831, when he confiscated them, stripped them of their waqf character and returned them to the state treasury, among them, as noted above, the villages of the waqf of Khassaki Sultan. After the Ottoman return these properties kept their waqf character, though the state confiscated their revenues, following the policy of the previous regime, and assigned a sum of money for the upkeep of the takiyya (soup kitchen and hospice). This measure did not accord with the jurisprudential rules prevailing in the Ottoman state, which guaranteed these properties immunity from the state and its policies. New rulings and legislation were therefore needed to legitimize the state's confiscation and ownership of the properties. For these important waqf properties to remain outside the state's authority deprived the state not

385 Ibid., pp. 184194-.

only of their revenues but of the extension of its control and influence over the social groups that benefited from and dominated them, whether the Jerusalem elite and notables or the peasants who worked the properties and were subject to the authority of the notables rather than, in practice, to that of the state. In 1858, as part of its reform policy, the Ottoman state issued the Land Code, also known as the Tapu Law, followed by supplementary laws that clarified it and closed its gaps. The Code was meant to legitimize the state's policy and the measures it had taken against the properties of waqf institutions founded by amirs and sultans throughout the preceding historical periods, which extended over more than five centuries. Article 1 of the Code divided the lands of the Ottoman state into five categories: freehold (*mulk*) land, state (*mīrī (state)*) land, endowed (*mawqūfa*) land, communal (*matrūka*) land and waste (*mawāt*) land,[386] while Article 4 was devoted to defining what was meant by endowed land.

During the practical application of these concepts in Jerusalem, the lands of more than 160 villages and farms were converted from waqf land to mīrī land, among them the waqf villages belonging to al-Ḥaram al-Sharīf. Juristic and legal disagreement and dispute also arose over the Code's application to certain waqf properties, such as those belonging to ancient waqf institutions like the waqf of Khassaki Sultan, wife of Sultan Suleiman the Magnificent.[387] Among the properties endowed on that institution were the two villages (towns, in today's terms) of Bethlehem and Beit Jala, with their Christian majorities. The dispute arose over whether these villages were true waqf or non-true waqf, given the grave consequences these concepts carry for real property ownership in these areas. The legal dispute has not been settled to this day.[388]

During the British Mandate over Palestine (1917 to 1948) the British authorities took no legal measures to change the legal status of the waqf in Palestine in general and Jerusalem in particular; they made the Waqfs the responsibility of the Supreme Muslim Sharia Council under the presidency of the Mufti of Jerusalem,

386 **The Ottoman Land Code of 1858, Article 1.**

387 **On the Takiyya of Khassaki Sultan in Jerusalem see: Ghassan Muhaybish.** *Waqfiyyat Khassaki Sultan: Dirāsa wa-Taḥlīl* **[The Waqfiyya of Khassaki Sultan: A Study and Analysis]. Unpublished PhD dissertation, Ain Shams University, 2004; Kamil Jamil al-ʿAsali.** *Min Āthārinā fi Bayt al-Maqdis***. Amman: Ministry of Culture, 2009, pp. 2829-; pp. 940-; Khalil Shawka.** *Tārīkh Bayt Laḥm fī al-ʿAhd al-ʿUthmānī***. Bethlehem, 2000; David Myres. «al-ʿImara al-ʿAmira: The Charitable Foundation of Khassaki Sultan (9591552/),» in Sylvia Auld (ed.),** *Ottoman Jerusalem: The Living City, 15171917-***. London: Altajir World of Islam Trust, 2000, vol. 1, pp. 539583-; Amy Singer. «The Mülknâmes of Hürrem Sultan›s** *waqf* **in Jerusalem,» in Gülru Necipoğlu (ed.),** *Muqarnas: An Annual on the Visual Culture of the Islamic World***. Leiden: Brill, 1997, pp. 96102-; Amy Singer.** *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem***. Albany: State University of New York Press, 2002; Amy Singer. «The Privileged Poor of Ottoman Jerusalem,» in Jean-Paul Pascual (dir.),** *Pauvreté et richesse dans le monde musulman méditerranéen***. Paris: Maisonneuve et Larose, 2003, pp. 257269-; Oded Peri. «***Waqf* **and Ottoman Welfare Policy: The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem.»** *Journal of the Economic and Social History of the Orient***, vol. 35, part 2, 1992, pp. 167185-; Sroor.** *Fondations pieuses en mouvement***; St. H. Stephan. «An Endowment Deed of Khâsseki Sultân, Dated the 24th May 1552.»** *The Quarterly of the Department of Antiquities in Palestine***, vol. 10, 1944, pp. 170194-.**

388 **On this question see: Musa Sroor. «The Question of the Privatization of Jerusalem Waqf Land: The Land of Bethlehem and Beit Jala as a Case Study since 1950,» in** *Filistin, Tarih, Toplum ve Siyaset***, Alaadin Dolu (ed.). Istanbul: Libra Kitapçılık ve Yayıncılık, 2019, pp. 219247-.**

al-Hajj Muhammad Amin al-Husayni. Anyone who examines the agreement concluded between the Supreme Muslim Sharia Council and the government of the British Mandate in Palestine on the waqf villages of Palestine, which covers only 100 villages, will notice the absence of every one of the waqf villages of al-Ḥaram al-Sharīf.[389]

As a result of this Ottoman law, all twenty-five waqf villages belonging to al-Ḥaram al-Sharīf were converted first into state land and then into private property. This is what we see today when we look at the present condition of the villages listed in Table 2. These transformations in the ownership of the Ḥaram's Waqfs helped deprive it of its sources of funding and dry up the economic resources that had given it independence from the need for the donations of benefactors, official or local.

Nor is the picture of the present state of the Waqfs of the blessed al-Aqsa Mosque complete in this ugly form; many waqf properties, houses and shops, which had been let to local residents of Jerusalem, Muslim and non-Muslim, were converted by lawful and unlawful means into the private property of their tenants, through legal channels created by the Ottoman judicial authorities in what is known as the Ottoman civil code (the *Mecelle*) of 1876, some of whose articles (Articles 1660 and 1661) provided that a claim would not be heard once the legal period for hearing it had passed, what is known as "prescription." Part of the waqf property of al-Aqsa Mosque thus became Jewish property, and part Christian, under this new legislation. Our analysis of the registers of the qadis of Jerusalem issued after 1876 let us observe the qadis' reliance on the articles of the *Mecelle* in deciding the cases before them. From the articles of the *Mecelle* we also drew essential information that allowed us, on the one hand, to understand the importance of certain provisions and articles of the *Mecelle* in converting waqf property into private property for the benefit of its usurpers, and on the other, to compare the articles of the *Mecelle* with the decisions of the qadis of Jerusalem who abided by them.[390]

This chapter, in treating the Waqfs of al-Ḥaram al-Sharīf and what became of them at the hands of those who hold power on one side and Ottoman legislation on the other, reveals the great standing the Ḥaram held in Islamic society and among its local and official components, particularly after its liberation from Crusader occupation in 1187 CE. That standing found expression in the conver-

389 See: Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, Palestinian Ministry of Awqaf, file no. (100/57/1.35/).

390 Many studies of the *Mecelle* have been published; see for example ʿAbd al-Sattar al-Khuwaylidi. «al-Khaṣāʾiṣ al-Manhajiyya li-Majallat al-Aḥkām al-ʿAdliyya, al-Majalla al-ʿUthmāniyya» [The Methodological Characteristics of the Mecelle, the Ottoman Code]. *al-Majalla al-Tārīkhiyya al-ʿArabiyya lil-Dirāsāt al-ʿUthmāniyya* [Arab Historical Review for Ottoman Studies], nos. 131996 ,14-, pp. 129143-.

sion of a large number of properties, among them the lands of twenty-five Palestinian villages, into Waqfs for the benefit of al-Aqsa Mosque and the Dome of the Rock, to ensure that it could go on performing its religious and intellectual function as a beacon of prayer and learning. The Mamluk sultans, though not Arabs, played an important part in preserving the Ḥaram, not only by developing its architecture and building its walls, minarets and gates, but by building markets and khāns and converting them into Waqfs for its upkeep, and by assigning the yield of dozens of waqf villages to its benefit. Thanks to the Ḥaram's sustainable waqf resources, which were spent on its services, wages, lighting and cleaning, it was able to carry out its tasks in full for many centuries.

The revenues of the Ḥaram's Waqfs kept flowing through the Ottoman period despite many encroachments and embezzlements, whether by those in charge of them or by those who benefited from them, and the state and its administrative and judicial organs on many occasions played a notable part in preventing these encroachments and preserving the sanctity of these waqf properties. But with the changes in the structure of the Ottoman state and its reforming and modernizing systems from the start of the Tanzimat in 1839, al-Aqsa Mosque fell back from performing its task and the revenues of its Waqfs evaporated. The sultanic state's new policies toward charitable Waqfs, particularly agricultural land, and above all the Waqfs founded by the Mamluk sultans, helped convert the lands of twenty-five waqf villages first into state land and then into the property of those who exploited them, under the provisions of the Land Code of 1858. Al-Ḥaram al-Sharīf thus found itself overnight without revenues or fixed sources of funding, dependent on the gifts and assistance the state provided to perform the minimum of its functions.

Here we see that, where the waqf properties had once supplied the important liquidity of al-Ḥaram al-Sharīf and had the largest part in its independence and freedom from any need for sources of funding, the Ḥaram became dependent on the state, those in charge of it waiting for what the state provided in grants and gifts, the "Rūmī purse" (*al-ṣurra al-rūmiyya*), to cover some of its expenses. This condition persisted after the end of Turkish rule and the Ḥaram's subjection to British colonial rule, when it came to depend on the services and funding provided by the Supreme Muslim Sharia Council.

These new policies toward the Waqfs of al-Ḥaram al-Sharīf turned "the sacred" into "the non-sacred," despite the sanctity of the Ḥaram and despite the waqf's standing as a sacred act and a perpetual charity. By virtue of that sanctity the endowed property passes from the ownership of the endower to the ownership of God Almighty; the theft of waqf funds and encroachment on them by individu-

als is, under the rules of Islamic jurisprudence, the theft of God's property and an encroachment on it, and the Sharia judiciary used to call to account whoever encroached on waqf funds and revenues. But what if the encroacher is the very one who yesterday called the encroacher to account and prevented his encroachments? Who, in that case, will call to account the state that, by its laws, legitimized the confiscation of waqf land and its revenues? And the question that presents itself: since waqf ownership, as the ownership of God Almighty, is not subject to the law of prescription enacted by Ottoman legislation, how can we today restore the sanctity of the sacred under the policies of occupying states that pay no regard to the sanctity of the sacred?



Chapter Five

The Waqfs of the Maghrebis in the Colonial Courts

> "This blessed waqf has been completed with all its stipulations and elements, in accordance with its rules and with the soundness of its structure; its ruling has been executed and it has been concluded, having been made by one entitled to make it, in its proper place and in the approved manner, being lawful and permissible and free of anything that would lead to its annulment or dissolution; for it has become a confirmed waqf and a perpetual ḥabs, freed and rightly directed, that may not be owned, nor given in alms, nor donated, nor pledged, nor exchanged for money, nor compensated for, nor taken away. It is not lawful for anyone who believes in God and the Last Day, and knows that he will return to his mighty Lord, whether amir or subordinate or unjust holder of power, to annul this waqf or any part of it, or to alter it, or to let any part of it lapse, or to impugn it or any part of it, or to seek its annulment or the annulment of any partofit..."[391]

The text above is quoted from the waqfiyya of Abu Madyan al-Ghawth, the subject of this chapter. With it the endower closed his waqf instrument in the presence of the qadi (Sharia judge), warning against any breach of the stipulations of his waqf, in the belief that faith in God and the Last Day would hold back every hand that coveted the revenues of his waqf, and every holder of power among amirs and sultans, from annulling or confiscating it. These stipulations, which he set down, have endured as long as his waqf has endured and as long as it has gone on performing the function he defined for it in his waqf instrument in 1320 CE. Abu Madyan did not know that in 1948 the hand of colonialism would reach his waqf, confiscate its properties, and respect neither the sanctity of his waqf nor the sacredness of its stipulations. Nor did he know that this waqf instrument would be

391 The waqf instrument of Abu Madyan al-Ghawth of 1320, comprising the waqf of the village of Ein Karem: French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.

the weapon that other colonial powers would take up to defend the ownership rights of this waqf and demand its return to those entitled to it; that this waqf instrument would wring from the colonizer's courts an admission that annulled the colonizer's legitimacy in owning the waqf's properties; and that the power of this waqf instrument was, and remains, greater than the power of colonialism and its policies, if it is put to good use.

This chapter is devoted to discussing and analyzing the details of this case, which shows the victory of the waqf and its documents over the might and arrogance of colonialism.

Between Historical Rights and Colonial Policies

The Maghrebi presence (Morocco, Algeria, Tunisia) in Jerusalem goes back to the Ayyubid period, and specifically to the years after the city's liberation by Saladin in 1187. From that time Maghrebis came for religious or educational reasons, pilgrimage and study in Jerusalem; some volunteered for the *jihād (holy war)* against the Crusaders and then settled in the city.

The roots of the Maghrebi Waqfs lie with al-Malik al-Afdal al-Ayyubi, who endowed a plot of land within the walls of Jerusalem near al-Aqsa Mosque for the benefit of the Maghrebis living in Jerusalem and coming to it. The plot later became known as the Maghāriba Quarter, and on the same site al-Afdal built them a madrasa (college) known as al-Afḍaliyya. The quarter's boundaries, as given in the waqf deed, are: on the south the city wall, on the east the wall of the Ḥaram, on the north the Bāb al-Silsila road leading to the Ḥaram, and on the west Ḥārat al-Sharaf. This waqf is accordingly regarded as the first endowed on the Maghrebis inJerusalem.[392]

Among the other famous waqfiyyas in the same quarter is the waqf made by the scholar Abu Madyan Shuʿayb in 1320, which comprised the whole of the village of Ein Karem together with a zāwiya (Sufi lodge) near Bāb al-Silsila that bore his name. Abu Madyan founded this waqf to support and provide a decent life for the Maghrebis living in Jerusalem and coming to it down the ages, and he set aside part of its revenues for the burial expenses of Maghrebis who died in Jerusalem.[393]

The Abu Madyan waqf was founded at the beginning of the eighth century AH by Shaykh Sayyid Abu Madyan, grandson of a well-known figure of Tlemcen, Abu Madyan Shuʿayb. While on a visit to Jerusalem, this religious figure bought

392 **Tibawi.** *The Islamic Pious Foundations in Jerusalem*, **p. 13.**
393 **Jerusalem Sharia Court Register (*Sijill*) 194, p. 364.**

extensive property, of an estimated area of 15,000 hectares[394*] (a hectare being 10,000 square meters), in the village of Ein Karem, together with a quarter in Jerusalem near the Burāq Wall. These properties, to which other waqf properties were later added, formed a perpetual and permanent waqf under a deed issued on 29 Ramaḍān 720 AH, corresponding to 3 November 1320, for the benefit of the Maghrebis living in Jerusalem and those making pilgrimage to it.[395]

From the founding of the waqf, the waqf properties of the village of Ein Karem supplied the Maghrebi waqf institution with the greater part of its revenues. Over the centuries the tenants in the village tried to turn the waqf properties they rented into their private property, which in the end contributed to the gradual loss of these properties and their appropriation. Nor were the waqf's properties in the village fully registered in the land registers, either in the Ottoman period or under the British Mandate. Despite all this, they were recognized as waqf property throughout the various historical periods, through the cases and judgments concerning them and through government decisions. This is what led the government of the British Mandate to pay the tithes of the village to the waqf's account in the budget of the Supreme Muslim Council, in recognition of the village's waqf status. The value of these tithes was estimated at 417 Palestine pounds.[396]

From the beginning of the British Mandate a number of Jews claimed ownership of plots of land in the village of Ein Karem and erected buildings on them, which led the waqf's administrator, Shaykh al-Mahdi, to lodge a series of complaints with the Mandate government seeking the annulment of the Jews' title deeds in this waqf village. But the Mandate ended before a final judicial ruling was issued in the case. With the end of the war of 1948 the village of Ein Karem fell within Israeli territory, and a kibbutz (an agricultural settlement) was established on its lands.[397]

One consequence of the Zionist occupation state's presence on the lands of Ein Karem was that the resources and livelihood of the Maghrebis in Jerusalem dried up, which led a number of Algerian scholars to ask France to intervene to protect their Waqfs in Jerusalem and defend their rights, violated by the occupation state.[398]

On 14 December 1951 the French Union (a political union created in 1946 by the

394 * Thus, in the French letters of 1961; the lands of the village were about 15,000 dunums, some 1,500 hectares. [Translator's note]
395 French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.
396 Ibid.
397 Ibid.
398 Massignon. «Documents sur certains *waqf*s des lieux saints de l›Islam : principalement sur le *waqf* Tamimi à Hébron et sur le waqf tlemcénien Abû Madyan à Jérusalem.» *Revue des Études Islamiques*. Paris: Librairie Orientaliste Paul Geuthner, 1952, p. 86.

Fourth French Republic to replace the old French colonial organization and end what was known as the regime of the *Code de l'indigénat*) met to discuss a proposal calling on the French government to take urgent decisions and to take, as a matter of urgency, the measures necessary to secure the preservation of the Waqfs of the Maghrebis in general, and of the Algerians in particular, in Palestine, endowed for the benefit of the Muslim pilgrims of North Africa and those residing there. The minutes of the meeting and the demands they contained were sent to the French government, signed by all the figures who attended.

The minutes set out the reasons and motives for holding the meeting and producing the proposal, as follows (the author's translation from French into Arabic; because of its importance I have tried to translate it literally):

> "Ladies and Gentlemen,
>
> "There is no city in the universe like Jerusalem (Urushalīm, the city of peace), a city in the world that resembles the divine traces bound up with place and stone. One of these places is the famous Wailing Wall, the last surviving trace of the temple of Herod, which stands in a cul-de-sac where the open space is attached to a well-known and wealthy institution, an Algerian waqf, the Abu Madyan waqf, founded in 1320 / 720 for the benefit of the Maghrebis residing in Jerusalem by one of the grandsons of a religious figure of Tlemcen, Bū Madyan. It is recorded in the files of the French consulate general in Jerusalem that this waqf falls under its protection. This place is called al-Burāq, and according to Islamic tradition it is the point fixed, before the year 637 of the Western calendar, from which the Prophet set out in his desire toward the city of the prophets, and the place that was touched on the ground was the temple and the place where the sacrifice of Abraham occurred.
>
> "On that night of the Night Journey Muhammad proclaimed the prayer. This wall is part of al-Ḥaram al-Sharīf, which contains the Mosque of ʿUmar and al-Aqsa Mosque, mentioned in the Qurʾān as blessed in its surroundings (citing the sūra of the Night Journey). It is therefore one of the fundamental elements of this place, which constitutes the third mosque of Islam in sanctity, according to the decisions of the armistice commission between Britain, the Arabs and Israel. The French consul general in Palestine, M. Neuville, tried to weigh the possibility of Jews entering this religious site (the Wailing Wall) against permission for Christian and Muslim Arabs to visit the holy places under Israeli control (the territory occupied in 1948). But the armistice commission met Israeli opposition on the second

point (that is, allowing Arabs to visit Israel); in other words, refusal from both sides.

"This transgression against the highest spiritual places is the basis of the concern that has arisen in Islam over the Mosque of ʿUmar and al-Aqsa Mosque, expressed first by Muhammad ibn Yusuf (Muhammad V), king of Morocco, then by the Hanafi mufti of Algiers in 1948, and finally by influential Algerian religious and literary figures such as Shaykh al-ʿUqbi, the grand mufti of the town of Bāb ʿUmar and the grand mufti of the capital, and Messrs. Tawfiq al-Madani and Lamine Lamoudi.

"These figures also asked the French government to work to preserve the rights of Algerians in their Waqfs in Palestine, particularly those concerning the waqf of Shaykh Abu Madyan. But since the assurances given by the minister Robert Schuman in 1949 and 1950, nothing in the situation has changed. An Algerian mission was sent to the spot to make an inquiry on the ground; it found that the greater part of these Waqfs, of high notional value, lies under Israeli occupation and that its status in favor of the Maghrebis has not been respected. Yet the Maghrebi beneficiaries of this waqf have the right to the protection of their material and moral interests by the French Union, whether they are French citizens of Algeria or subjects of the Sultan of Morocco, exactly as is the case with the Christians and their material and cultural interests, and with the members of French families under the care and protection of the Sultan of Morocco.

"At the international level: France is the only power that has given up its interests and concerns in the Islamic holy places of Palestine for the benefit of the Maghrebi pilgrims and refugees in Palestine. To preserve and strengthen this unique moral position is the duty of the French Union. We therefore ask the Assembly of the French Union to adopt the following proposal:

"The Assembly of the French Union asks to see the material and moral interests of Maghrebi Muslims abroad preserved like those of any religious community belonging to the French Union abroad; and asks the government to take the necessary and urgent measures to secure the preservation of the Islamic Waqfs, the Abu Madyan waqf in Palestine, so as to preserve its traditional work for the benefit of Maghrebi pilgrims.

"The rights of the Maghrebis to the revenues of this waqf are disputed by no one, and were affirmed by an important judicial decision; this waqf, situated at al-Ḥaram al-Sharīf and attached to the Western Wall, near the Wailing Wall as the Jews call it and the Burāq Wall

as the Muslims do, has been the subject of certain difficulties since the nineteenth century, followed by the judicial authorities in examining the rights of the Maghrebis.

"The endower directed that after his death the waqf be administered by the Maghrebis living in Jerusalem, and particularly the most judicious and pious of them. The qadi of Jerusalem decided to appoint two administrators, one of them Shaykh al-Haydusi, al-Hajj ʿAli ibn Muhammad, who went to Algeria to raise the question of the waqf.

"Since the fourteenth century the most important revenues of the waqf have come from the fertile lands of the village of Ein Karem, but these lands, like all the waqf's properties, lie in the Israeli zone, which prevents the Maghrebis from benefiting from them. Since 1947 the revenues have not been transferred to the waqf's administrator. This situation is extremely grave: the Algerian Maghrebis, and the Maghrebis in general, who were forced to leave their homes for the Jordanian zone, have been deprived of the basic means of survival, and the waqf's buildings in the Jordanian zone, for want of the revenues of the Ein Karem waqf, have become uninhabitable for lack of repair.

"The committee called France-Islam for Concord, chaired by Massignon, asked Shaykh al-ʿUqbi and the qadi Ben Houra to go and gather information on the spot (Jerusalem). On 3 to 5 August 1949 two important meetings were held in Algiers under the chairmanship of Shaykh al-ʿUqbi, attended by the members of the Committee for the Defense of Palestine, Messrs. Tawfiq al-Madani and Lamine Lamoudi, and an urgent telegram was sent to the Ministry of Foreign Affairs asking it to defend the Waqfs of Algerian Muslims in Palestine, and particularly the Abu Madyan waqf. In his telegram the minister of foreign affairs, Robert Schuman, replied: ‹The French government will continue to defend the rights of Algerians in the waqf in Palestine, and particularly the Waqfs of Sidi Bū Madyan.' Finally the Assembly of the French Union was asked to meet and approve the proposal of M. Jean Scelles and a number of his colleagues, seeking to call on the government to preserve this waqf for the benefit of Maghrebi pilgrims. The Assembly asked that the revenues be devoted to the Maghrebi pilgrims and that these interests be defended as the Christian rights and certain spiritual families in the Arab countries are defended.

"Algeria cannot stand idle before this situation, even though this is not state property but only present rights, or ultimately the rights of Algerians or Maghrebis.

"Algeria holds strongly to the material and moral interests attached to these Waqfs in the holy places of Palestine, not only for Muslims but for Christians and Jews as well (given the importance of Palestine to the three revealed religions).

"In the endower's vision, resting on the tradition of Tlemcen, the number of Maghrebis and of the Maghrebi community in Jerusalem would grow, and with it the number of the waqf's beneficiaries; and in accordance with the wish of Abu Madyan, from whom came the idea of preserving this waqf forever for the benefit of the Maghrebis, his direction reached the Maghrebi higher authorities on one side and the French government on the other, to take the necessary measures regarding the Maghrebis who have been deprived of this waqf and to demand the restoration of their rights.

"In consequence the Algerian National Assembly (the Algerian parliament) asked the governor (the French governor of Algeria) to take the necessary measures urgently to secure the preservation of the Waqfs in Palestine for the benefit of the Maghrebis and to assist the beneficiaries temporarily deprived of this waqf. M. Mesbah, rapporteur of these minutes, read the following report: ‹A large number of our Muslim colleagues have submitted proposal no. 52R22, which calls on the government to take the necessary measures urgently to preserve the waqf in Palestine for the benefit of the Maghrebis and to assist the beneficiaries temporarily deprived of its revenues. This concerns the waqf founded in 1320 by one of the grandsons of the religious figure of Algeria who died in 594 AH at al-ʿUbbād, at the gates of Tlemcen, the waqf that bears the family's name.

"'It should be noted here that there are 2,000 Maghrebis in Palestine, 500 of them living in Jerusalem and 1,500 in the territory near the Israeli territory, and these are divided by their countries in the following proportions: 6 Moroccans to every 4 Algerians and one Tunisian.

"'This landed inheritance certainly has considerable value from an economic point of view. At the social level this waqf is very important, if only for the assistance it provides to a total of more than 2,000 Maghrebis. From the spiritual and moral side, too, the Abu Madyan waqf is a pole of attraction for a significant number of pilgrims, and its influence is felt among the Muslims of North Africa. To these places laden with history, where the zāwiya (the holy place) stands, may be added their spiritual, cultural and moral radiance.

"'A delegation of the France-Islam committee, made up of Professor Montagne, Shaykh al-ʿUqbi and the qadi Ben Houra, visited Palestine for this purpose. But all our actions and deeds met with evasion from

the Israeli authorities.

"'In 1949 the Committee for the Defense of Palestine, formed under the chairmanship of al-Tayyib al-ʿUqbi and including also Tawfiq al-Madani and Lamine Lamoudi, applied to M. Robert Schuman, minister of foreign affairs, who replied that the French government would continue to defend the rights of Algerians and the Waqfs in Palestine, and in particular the Waqfs of Abu Madyan.

"'Finally, the Assembly of the French Union held a meeting on the proposal of M. Jean Scelles and a number of his colleagues, asking the French government to protect the waqf for the benefit of Maghrebi pilgrims. The Algerian parliament will act and work in the same direction, particularly since the Waqfs are a matter of concern to many Maghrebis who live in Palestine or who may be expected to go on pilgrimage to Jerusalem or who wish to stay there. This constitutes simply a draft resolution, not a proposal for a resolution; it falls to the Algerian parliament to do what is necessary in asking the government to take all the diplomatic steps required to respect the sacred religious character of the waqf.

"'The urgency and legitimacy of the draft resolution approved by the committee on religions are beyond appeal.

"'There is always urgency in halting a violation or an aggression, and delay in defending against it may always be understood and interpreted as abandonment of rights, and so contribute to the loss of rights. Regrettable consequences must therefore be avoided.

"'On the other hand, because the important revenues of the Ein Karem properties, estimated before the war at 50 million francs a year, are no longer received, the administrators can no longer manage the waqf. At the same time the waqf's buildings, particularly the zāwiya, have fallen into a pitiable state and are close to collapse, since there are no means to repair them. Nor can the Maghrebis in Palestine any longer obtain the means of subsistence, and they find themselves today in a tragic situation.

"'It is not only the preservation of the waqf's material property that is important and indispensable, but also the preservation of a religious treasure beyond price, of a high degree of historical importance. It would naturally be a great and additional honor for France, which must display its humane traditions and its love of all spiritual and civilizational values, to save this great waqf institution from destruction, the institution founded and bequeathed by one of the most famous and eminent of Maghrebi Sufis.

"'Your committee on religions proposes that you vote for this draft

resolution and asks you to restore the Sufi dwellings, particularly those devoted to charitable work aimed at social solidarity.'"[399]

Under the Weight of Tutelage

France answered this call and accepted intervention and tutelage over the Waqfs of the Maghrebis in Jerusalem, particularly the Abu Madyan waqf. It should be noted that Massignon (who had been an officer attached to the office of the French High Commissioner in Syria, and was said to be an advocate of religious tolerance and rapprochement among the religions) was the founder of the France-Islam committee, whose aim was to prepare the ground for French intervention in the Palestinian question, which Britain and then America and Israel had taken in hand. Massignon's committee sought to mobilize the loyalists among the scholars and intellectuals of North Africa in support of France's efforts in calling for the internationalization and protection of the holy places. Reports were published and news of Palestine spread; the cause of the Palestinian refugees of Maghrebi origin became a priority for the French media in North Africa; donations were collected for the relief of these displaced people; and the media spoke much of the Abu Madyan waqf, including in press articles by some of the scholars of Algeria, foremost among them the shaykhs al-Ibrahimi and al-ʿUqbi.[400]

The sources indicate that Massignon prepared a delegation of Algerians, headed by Shaykh al-ʿUqbi and ʿAbbas al-Turki, to make contact with the displaced Palestinian Maghrebis in Jerusalem and its surroundings. The Algerians donated eight million francs for this task, and Tunisia one million.

Massignon adduced several proofs of the Abu Madyan waqf's connection with Algeria, and hence of France's right to intervene in its affairs and exercise tutelage over it: that Abu Madyan, founder of the waqf in Jerusalem, was from the Algerian city of Tlemcen, and that the waqf's administrator, al-Hajj ʿAli ibn Muhammad al-Salih al-Haydusi, was also Algerian. This led the Algerian muftis to insist on the French government's intervention at the United Nations concerning the holy places in Jerusalem and Hebron. The mufti Muhammad al-ʿAsimi addressed the French Ministry of Foreign Affairs on the subject on 28 October 1948, and the muftis sent the ministry telegrams on 9 August 1949 and 7 November 1949 on the same subject. Among the most prominent supporters of the idea was Shaykh al-Tayyib al-ʿUqbi.

399 French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.
400 Ibid.

Shaykh al-Tayyib al-ʿUqbi held the presidency of the Association of Scholars and was also director of the newspaper *al-Baṣāʾir*, and he chaired the Palestine Relief Committee. His positions toward the French administration, however, were not always in harmony with those of his colleagues in the Association of Scholars, after a dispute among them in 1938 led to al-ʿUqbi's departure from the Association's leadership, accused of loyalty to the French.

In 1949 the Committee for the Defense of Palestine was founded under the chairmanship of Shaykh al-ʿUqbi, with Tawfiq al-Madani and Lamine Lamoudi as members. The committee wrote to Robert Schuman, minister of foreign affairs, asking for the support and assistance of the French government. The answer was that the French government was continuing to defend the Waqfs and rights of Algerians in Palestine, and particularly the Abu Madyan waqf. The French Chamber of Deputies and the Algerian assembly took the same line: a draft resolution was adopted giving the Algerian Assembly the right to ask the French government to take all the diplomatic ways and means required to respect the will of the endower Abu Madyan and the sanctity of his waqf, and to halt the seizure of the waqf's properties and revenues. The draft noted that the revenues of the village of Ein Karem before the war were estimated at about fifty million francs a year; that the waqf's administrator could not manage it; that the waqf's zāwiya needed restoration and repair; and that the Maghrebis in Palestine could find no means of livelihood. Defending the waqf would therefore protect not only its material properties but its spiritual value and historical standing, and it would be a great honor for France to act in accordance with its humane, spiritual and cultural values by preserving a great institution of religious and historical standing left by one of the greatest masters of Sufism in Islam.[401]

But French tutelage over the Waqfs of the Maghrebis did not win the support of all Maghrebi scholars. It met opposition from some Algerian scholars, who attacked not only French tutelage but its supporters and advocates, such as Shaykh al-ʿUqbi. Shaykh al-Bashir al-Ibrahimi launched a campaign against Massignon's project, accusing him of being a colonial orientalist who deceived the Easterners, kept silent about what his country did to Islam and the Muslims, and posed as a champion in the defense of Islamic foundations such as the Abu Madyan waqf; a government orientalist and an instrument in the hands of the French Ministry of Foreign Affairs, who put scholarship in the service of politics; and a missionary of colonialism.[402]

401 **Ibid.**

402 **Abu al-Qasim Saʿd Allah. «al-Dīn wa-l-Wiṣāya fī Waqf Abi Madyan bil-Quds.»** *Muʾtamar al-Awqāf fī Bilād al-Shām mundhu al-Fatḥ al-Islāmī ilā Nihāyat al-Qarn al-ʿIshrīn*. **Amman: University of Jordan, 2008, pp. 161185-.**

In Shaykh al-Ibrahimi's view the France-Islam committee appeared only when the matter in Palestine had been settled at the hands of the Western states and the Zionist movement. It would have been better to apply the principle that charity begins at home, which required the committee to begin in Algeria, where, as he said, Islam was violated, Waqfs demolished, and displaced people sated with hunger. Why, he asked, did the committee not begin by liberating the Waqfs of Islam in Algeria rather than with the Abu Madyan waqf in Palestine? And where was Massignon on the day his state took part in the crime of Palestine and the expulsion of Islam from it, by agreeing to partition and supporting Jewish immigration?

Al-Ibrahimi held that Massignon's aim, through the "France-Islam committee," was to find his French state an opening through which to put its finger into Palestine, namely the Algerian Abu Madyan waqf, which would give it an opportunity to recover the sympathy of Muslims through the cause of the displaced Palestinian Maghrebis. Massignon regarded these accusations as mere press polemics among the scholars of Algeria.[403]

Al-ʿUqbi visited Jordan and Palestine in 1950 as representative of Massignon's committee, accompanied by the qadi Ben Houra, who enjoyed the French authorities' confidence. He studied the conditions of the Palestinian Maghrebi refugees in Jerusalem and Jordan, and on behalf of the Muslims of Algeria he undertook to examine how the Waqfs and rights of the Maghrebis in Palestine, particularly the Abu Madyan waqf in Jerusalem, might be defended.

In 1952, the French reports indicate, a large number of Muslim scholars submitted a proposed resolution, numbered 25 and 22, calling on the French government to take the swift, urgent and necessary steps to save the Waqfs of the Maghrebis in Palestine and defend them, and to assist the beneficiaries of these Waqfs, who had lost all the revenues of their Waqfs after Israel's takeover of the village of Ein Karem.[404]

In response the French consul general in Jerusalem, Neuville, began to take the steps required to save and defend the Waqfs of the Maghrebis. This coincided with the mission that the France-Islam committee sent to Palestine for the purpose, comprising al-ʿUqbi and Ben Houra. None of the steps taken met any response from the Israeli authorities. The French consul gave full assistance and support to the administrator of the Abu Madyan waqf in taking the necessary legal measures and bringing complaints before the Israeli courts, with the help of the Israeli

403 Saʿd Allah. «al-Dīn wa-l-Wiṣāya fī Waqf Abi Madyan bil-Quds,» pp. 161185-.
404 French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.

lawyer Suzbak, whom the French embassy engaged for the purpose.[405] The governments of Algeria, Tunisia and Morocco all supported the case, and the initial expenses of the case were allocated.[406]

This is confirmed by the letters sent by Gruffaz, secretary general of the Tunisian government, to the Prime Minister ("*al-wazīr al-awwal*") of the government of the Tunisian Protectorate. On 18 September 1952 he sent a letter of which this is the translation from French into Arabic (the author's translation): "With full satisfaction the minister of foreign affairs has received the results presented by Shaykh al-Haydusi, administrator of the Abu Madyan waqf in Jerusalem, during the latter's visit to Tunis last September.

> "The financial support that the Tunisian council of ministers is to grant by its decision at the meeting of 27 September 1952, on the proposal of His Excellency Sidi al-Tayyib Khayrī, acting Prime Minister of Tunisia, for the benefit of the needy Maghrebis in Palestine, who cannot be left isolated. Algeria has naturally made a comparable effort, and His Majesty the Sultan has for his part allowed the Moroccan waqf department to give substantial support to the Waqfs of Abu Madyan.
>
> "The department links the price to the financial support that must be sent quickly, and I shall be obliged to ask you, after the agreement of the financial department, to instruct, through the Residency General, the accounts section of the consular and diplomatic chancery to request payment of 2 million francs, the sum fixed by the council of ministers on 27 September for the mali/calendar year 1952/53.
>
> "In accordance with the wish expressed by His Excellency the minister of state, the accountant will transfer the sum to the French consul in Jerusalem, who will in turn transfer it to the Waqfs of Abu Madyan, supervising and monitoring its proper use."[407]

He also sent another letter, dated 1 October 1952, of which this is the translation from French into Arabic (the author's translation):

405 Ibid.
406 Archives nationales de Tunisie, dossier no. SG SGG 331954-1953 ,3/.
407 Archives nationales de Tunisie, dossier no. SG SGG 331954-1953 ,3/.

> "To His Excellency the Prime Minister of the Kingdom of Tunisia / Tunis
>
> "Subject: the Waqfs of Abu Madyan
>
> "The department has informed the Residency General that the French consul general in Jerusalem has set out the present financial needs of the Waqfs of Abu Madyan, to help Shaykh al-Haydusi meet the obligations of the year's end. The minister of foreign affairs has decided to grant the Waqfs fresh relief and has asked us urgently to transfer the support approved by the Tunisian government for these Waqfs, in view of the great material difficulties the waqf is now suffering.
>
> "In these circumstances I wish to confirm what was requested in my letter referred to above, that the sum of 2 million francs be sent to the accounts section of the consular and diplomatic chancery in support of the cause of the Maghrebis in Jerusalem."[408]

The correspondence between Tunis and France confirms that the sum recommended was in fact transferred for the benefit of the cause of the Maghrebi waqf in Jerusalem on 26 February 1953.[409]

Between Recognition and Disregard

In 1955 the French embassy won the case and succeeded in annulling the registration of lands in the village of Ein Karem in the names of Israelis. It also succeeded in halting the procedures of Israeli takeover of the village lands until the case was concluded. In 1957, following the intervention of the French embassy, the Israeli government agreed to pay compensation, with retroactive effect from 15 May 1948, for its exploitation of the lands of the village of Ein Karem. The compensation was fixed at 3,000 Israeli lira a year, and the government also agreed not to list the village of Ein Karem and classify it as absentee property, and that it was private waqf land. This was what France had been seeking. The case did not end there: France went on pleading the case until Israel's hand should be lifted from the village entirely and it should be returned to the Maghrebis.[410]

The financial reports indicate that Israel paid the waqf compensation amounting to 38,000 Israeli lira up to 1 January 1962. The French government gave the waqf

408 Ibid.
409 Ibid.
410 French colonial archives (Archives nationales d›Outre-mer, ANOM), 81 F 843844-.

50,000 Israeli lira, and the French consulate paid the Israeli lawyer Suzbak, the embassy's lawyer, 24,000 Israeli lira, equivalent to 220,000 new francs.[411]

Despite this achievement on behalf of the Waqfs of the Maghrebis, its intervention with the Israeli government to halt the procedures of usurpation of the waqf's property, and its defense of the waqf's rights, France faced sharp criticism in the anti-French media directed by the leaders of the Algerian National Liberation Front; this was the period of the Algerian revolution (1954 to 1962). The French reports indicate that the leaders of the National Liberation Front threatened the beneficiaries of the Waqfs of the Maghrebis and demanded that they accept no assistance or support from France. Under this threat the beneficiaries sent the responsible French authorities a letter on 11 September 1958 refusing any assistance from France, which was, in their words, the enemy of the Arabs and of Islam.[412]

The French correspondence and reports indicate that Morocco and Tunisia, from the time they gained independence, gave the French government no support in its defense of the Maghrebis' interests in Jerusalem and answered none of France's approaches on the subject. Faced with the Maghrebi governments' refusal to allow French tutelage over the Waqfs of the Maghrebis in Jerusalem to continue, and the cessation of their financial contributions to the funding of the case, France decided to end its tutelage and abandon the case it had brought before the Israeli courts. This is revealed by the letter of the French minister of foreign affairs, Couve de Murville, to the minister of finance and economic affairs, dated 9 February 1961 and headed "the Abu Madyan waqf." He explains that the pursuit of the case begun in 1955 in Israel in defense of the Abu Madyan waqf now raises a problem of funding, and that the case may drag on. He writes: "It is the waqf's presence in the Israeli zone that led us to intervene in the case before us, which has an exceptional character, as follows:

> "1. The importance of the interest before us: the waqf claims ownership of more than 15,000 hectares of land on the outskirts of Jerusalem, whose value is estimated by its importance for the development of the capital of Israel.
>
> "2. The case is of great complexity, owing to the multiplicity of the plots and their owners, and also to the many expropriations carried out by the state of Israel in this area. Added to the nature of the Is-

411 Ibid.
412 Ibid.

raeli judicial system, inherited from the British Mandate, this complexity has made the case extremely costly (particularly in relation to its value) and slow and protracted.

"3. The religious character cannot, of course, be excluded. Even if the waqf deeds are old and strong, and even though they were not all registered as title deeds, the position is not in favor of these Islamic Waqfs, which have lost ownership to the force of Israeli need for these lands.

"Even in these discouraging circumstances my department (responsible for the case) took the decision in 1955 to help the waqf recover its rights. At that time, in 1955, the General Government of Algeria, Tunisia and Morocco took great interest in the matter and decided to join the case, undertaking to share the expenses (2/5 for Algeria, 2/5 for Morocco and 1/5 for Tunisia). The case could not be avoided either: in the event of a judgment in Israel's favor, a review of the land registration procedures was stipulated, which in Israel led to a final establishment of ownership rights in favor of the Maghrebis. It is above all a matter of protecting the interests of the Maghrebis in Israel.

"Since that period circumstances have changed greatly. Morocco and Tunisia have become independent states and have stopped answering our approaches on the matter. Algeria, for its part, is preoccupied with other problems, which have led to a lack of interest in the case.

"We have only small financial resources for pursuing the case in Israel, and some material subsidies from Algeria. Our representatives in Israel have followed the case and kept it alive so that the waqf's rights should not be lost. Unfortunately, it is difficult, indeed impossible, to maintain this position, particularly since the case has reached an advanced stage: the embassy's lawyer in charge of the case came to Paris to present the position, set out his conclusions and explain the need to allocate the sum of 500,000 new francs required to cover the earlier sums and meet the new costs and expenses of the litigation for 1961.

"The time limits set for certain proceedings require us to decide without delay either to do what is necessary or to abandon the defense of the case. Simply abandoning the case would bring us to a judicial position that could not be revived, particularly as regards the interests we have accepted to defend up until now. On the eve

> of the changes (here he refers to the possibility of Algerian independence) that may occur in Algeria, a decision in that direction seems to me wholly inappropriate. Certainly, in everything we do in this field there is a fear that many criticisms will be directed at us; but any halt at the present stage, for purely financial reasons, given the responsibility we must bear toward the waqf, and the final abandonment of these waqf rights, would bring the accusation that we had sacrificed the interests of the Maghrebi Muslim community in Palestine. These last considerations make me insist on asking you to approve the grant to my department of an additional sum of 500,000 new francs for the year 1961 to pursue the case on behalf of the Abu Madyan waqf. On the other hand, because of the urgency of other payments connected with the current proceedings, I should be grateful if you would approve the swift disbursement of the 300,000 francs already entered in the budget of the Ministry of Foreign Affairs for the restoration of the Church of the Holy Sepulcher; the dispute among the Christian communities is what prevented the use of this sum during 1961."[413]

I should add here that all the measures taken by the lawyer secure the reimbursement of the sums paid, and paid by the French government, should the case succeed.[414]

There was also opposition to this step from other official French circles, which saw France's abandonment of the case as a fatal blow to France and its interests. The French minister of foreign affairs explained, in a letter to the minister of state for Algerian affairs dated 16 September 1961:

> "This case cannot be abandoned lightly, for the loss of the enormous interests and the great importance which this waqf represents for us cannot be accepted. The loss of 15,000 hectares of land, whose value is estimated at several billion francs, cannot be accepted.
>
> "On the other hand, several years ago we took the decision to pursue the case and to go on bearing responsibility for this waqf and defending it actively; should we abandon the case we may suffer a fatal blow with the loss of the interests represented by the waqf, which

413 Ibid.
414 Ibid.

runs counter to the decisions the French authorities have taken, quite apart from the rights of the absentees.

"The Israeli authorities will no doubt be delighted if we give up our right in this waqf. And Arab public opinion, particularly in North Africa, despite its lack of interest in the matter and its doubts about our defense of their Waqfs in Jerusalem, will one day accuse us of failing to defend the rights of the Maghrebis in Jerusalem, and we shall be accused of not having defended our own interests as well as we might, and thus of conspiring with Israel against the rights of the Maghrebis. There is therefore only one step to take, which is not to abandon this waqf, because abandoning it would be a moral injury to France, and might be the reason for a claim to this waqf by the waqf's representatives.

"For these reasons I can only recommend continuing to support this waqf until the day the Algerian authorities are able to bear the responsibility and take a final decision on the case.

"To continue pursuing the case we need 500,000 francs, and a decision must be taken as soon as possible, since the legal period is about to expire. In these circumstances I take the liberty of asking you to reconsider the case and to inform me urgently of the sum that can be devoted to it."[415]

It emerges from the correspondence that France decided to give up pursuing the case and to ask the Israeli authorities to adjourn it until the government of Algeria, after independence, could take over the case from France, which no longer had any legal standing to continue pleading it or exercising tutelage over it after Algeria's independence. In a letter from Jean-Marcel Jeanneney, ambassador and High Representative of the French Republic in Algeria, to the Secretary of State to the Prime Minister for Algerian Affairs, headed "the Waqfs of Abu Madyan," we read (the author's translation from French into Arabic):

"In your letter no. SAG/AG AD/1929 of 12 December 1962 you asked me to contact the Algerian government to inform them of the decision taken, at our request, by the Israeli government to suspend the proceedings in the case concerning the protection of the landed Waqfs of the Abu Madyan waqf until the end of the year. That date

415 Ibid.

will at least allow us, and the Israeli government, to give the Algerian government an opportunity to decide whether it can provide support to the waqf's representatives (the financial support needed to pursue the case at the beginning of 1963).

"As soon as I received your letter one of my assistants took the necessary steps with the Algerian Ministry of Foreign Affairs. The ministry knows nothing whatever of the matter and has asked to be supplied with the necessary information. It wishes in particular to obtain information on the stage the case has reached and on the sums remaining to be paid to the lawyer until the case is concluded.

"In any event the final deadline we have obtained, very short as it is, is sufficient for the Algerian government to take the appropriate decision. It would also be a pleasure for us to obtain an extension of this period, of about a month from the moment we receive the documents and hand them to the Algerian authorities."[416]

The correspondence shows that the Israeli government agreed that the Algerian government should pursue the case, but there is nothing to indicate that the Algerian government accepted to plead it before the Israeli courts, since that would constitute recognition of Israel, or that it supported the waqf's administrators in continuing to plead.

The French reports indicate that although Israel's occupation of the greater part of the waqf's properties had in the past aroused great interest in the religious circles of the Muslim community in Algeria, where the Tlemcen Committee for the Defense of the Waqfs of Abu Madyan in Palestine was formed in 1952, none of its members, nor any other Muslim figures involved in it, agreed to take part in the judicial proceedings begun on the initiative of France's representative in Jerusalem. They held that the waqf's rights, because of its religious character, were preserved and could not be altered by prescription, and were moreover recognized through the validity of the judicial ruling by which the occupying state paid compensation to the waqf for its takeover, its recognition that these were Waqfs being proof of their established rights in them.[417]

The reports also showed that the Abu Madyan case held no interest on the Algerian political side. They noted that human exchanges between the Algerian families in Jerusalem and the Algerians were very limited; these families formed only

416 Ibid.
417 Ibid.

a minority of the beneficiaries of the Abu Madyan Waqfs, the greater number being from Morocco and Tunisia. The influence of the Algerian National Liberation Front over the Algerian community in Palestine also played a part in weakening interest: at the Front's request the community sent a memorandum to the French authorities concerned in September 1958 declaring its refusal of all assistance, relief or subsidy coming from France. All of this contributed to the Algerians' failure to pursue the case.

In conclusion, it may be said that the legal case of Ein Karem, and France's extraction from Israel of a recognition of its waqf status and of the illegitimacy of Israel's ownership of its properties, is a model of the waqf's role in resisting colonial policies and defeating all their settlement plans on waqf land; and that waqf rights are not subject to the laws of colonialism, however varied they may be and however long colonialism may last. The colonial states may succeed in controlling waqf property and plundering its revenues, but they cannot erase it from historical memory or Judaize its identity, since its immunity under the Sharia remains an obstacle to all colonial policies, exposes the falseness of the colonizer's presence and refutes the legitimacy of his continuance.

For all the occupation of the village of Ein Karem, the displacement of its inhabitants, and the bringing of colonists from the ends of the earth to settle in its houses and be given title to its lands, the waqf character enjoyed by the ownership of its properties invalidated every claim and policy of the colonizer, and the colonizer's courts were compelled to rule against the will of their judges. This is a compass by which political decision-makers, Palestinian and Maghrebi alike, may steer, not only in reopening the case to restore the right to its owners, but in opening the files of dozens, indeed hundreds, of Palestinian waqf villages and sites under the control of the Zionist colonizer, particularly since international law does not permit him to control and acquire waqf lands, which religious and international legislation alike have guaranteed.



Chapter Six

The Waqfs of Roxelana before the Judges

> "... the binding force of the waqf by the strength of its proof and evidence ... and its validity and binding force were adjudged, with all its stipulations and provisions, in full knowledge of the point of disagreement among the imams, the foremost of the eminent scholars of the community, by a valid, decisive judgment under the Sharia and an explicit, duly observed and manifest ruling; so that it has become a binding, registered waqf that may not thereafter be altered or converted, nor annulled or suspended: 'But whoever changes the will after hearing it, the blame will only be on those who made the change. Surely Allah is All-Hearing, All-Knowing' [Q. 2:181]; and whoever changes it is 'condemned by Allah, the angels, and all of humanity' [Q.2:161]."[418]

The period of the Ottoman Tanzimat (the Ottoman reform era, 1839 to 1876) saw many measures affecting the waqf system and its legal and jurisprudential heritage. New classifications of Waqfs appeared that had not been known before, such as the "administered" (*maḍbūṭa*) and the "exempted" (*mustathnā*) Waqfs. Nor did matters stop there: many laws and regulations were issued that governed the course of the Ottoman land system in both its waqf and non-waqf branches, and what became known as the Ottoman Land Code of 1858 was created. Article 1 of the Code defined the types of land in the Ottoman Empire and classified them into five kinds, Waqfs among them, and this was followed by a detailed definition and explanation of each kind, including waqf land. Article 4 of the Code divided waqf land into two categories, true Waqfs and non-true Waqfs. As soon as the Code was issued these concepts began to be applied on the ground, and the process neither stopped nor ended with the end of Ottoman rule in Palestine; it continued through the Mandate, Jordanian and Israeli periods.

418 Jerusalem Sharia Court Register (*Sijill*) 270, late Shawwāl 967 AH / 24 July 1560, p. 26.

During the practical application of these concepts in Jerusalem, juristic and legal disagreement and dispute arose over the Code's application to certain waqf properties belonging to ancient waqf institutions, such as the waqf of Khassaki Sultan, wife of Sultan Suleiman the Magnificent. Among the properties endowed on that institution were the two villages (towns, in today's terms) of Bethlehem and Beit Jala, with their Christian majorities. The dispute arose over whether these villages were true waqf or non-true waqf, given the grave consequences these concepts carry for real property ownership in these areas. The legal dispute had not been settled at the time these lines were written.

On that basis, this chapter tries to shed light on this legal question, on the disagreement over the application of the concepts of true and non-true waqf, and on the effect of self-interest and of confessional and sectarian differences on the divergent understanding and proper application of these waqf concepts.

The question that presents itself here, and that we try to answer in this context, is why this disagreement over the understanding and application of the concepts of true and non-true waqf arose in the case of Bethlehem and Beit Jala and not in the other villages belonging to the same waqf institution, referred to in the course of Chapter Two. Does it go back to a clash of self-interests, and hence to the interpretation of these concepts in the light of those interests? Or does it go back to the confessional and sectarian conflicts and disagreements between the Islamic waqf establishment and the non-Muslim communities that benefited from Islamic Waqfs?

This is what the present study examines, on the basis of diligent research in the registers of the Islamic court of Jerusalem and the documents of the archive of the Islamic Ministry of Waqfs, the Foundation for the Revival of Islamic Heritage and Research. These archives preserve many of the cases that were fought in the courts over the waqf of Bethlehem and Beit Jala. All of this has also been compared with the other waqf properties belonging to the same waqf institution, to which the concepts of true and non-true waqf were applied.

Roots and Ancestry

I do not want to speak here in detail of the Khassaki Sultan waqf and its ancient history, since the subject has been exhaustively researched by many Arab and

foreign scholars.[419] I shall offer only a brief historical sketch by way of introduction to the cases presented below, so that the reader may easily grasp their historical background, particularly since researchers have passed over them, whether from ignorance of the matter, from inability to consult the archival documents concerning it, or because of its sensitivity and a reluctance to uncover what it conceals: the truth about the ownership of the lands and properties held by the inhabitants of the towns of Bethlehem and Beit Jala; whether they in fact hold title documents or whether mere possession and custom stand in place of title documents; and why they still have no title documents, either for the lands they exploit and claim to own or for those on which their houses and institutions stand.

The waqf documents (the waqfiyya of the Takiyya of Khassaki Sultan) indicate that in Shaʿbān 964 AH / June 1557 the wife of Sultan Suleiman the Magnificent (r. 1520 to 1566), Roxelana, of Russian origin, famed under the name Khassaki Sultan, meaning the sultan's favorite, or Hürrem as the Turks call her, endowed a takiyya (soup kitchen and hospice) in Noble Jerusalem near the blessed al-Aqsa Mosque to serve the poor of the Holy City.[420] The takiyya comprised a very important architectural complex whose features still stand today, and whose name remains immortal in the memory of history, defying oblivion and the transformations that have swept over it.[421] The place where the complex was built came to be known by her name, ʿAqabat al-Takiyya. The complex comprised a huge kitchen that served daily meals to the poor of Jerusalem, to travelers, and to those living beside the blessed al-Aqsa Mosque, as the text of the waqfiyya says; 2,000 loaves of bread a day, or what the document calls *fodula*, were prepared and distributed there. The waqfiyya also gives a precise description of the meals served daily in the takiyya and of their ingredients, with special provision for Fridays and the days of the blessed month of Ramaḍān. On ordinary days soup with rice was served for the midday meal and soup with wheat for the evening meal, the soup

419 **See for example: Ghassan Muhaybish.** *Waqfiyyat Khassaki Sultan: Dirāsa wa-Taḥlīl*. **Unpublished PhD dissertation, Ain Shams University, 2004; Kamil Jamil al-ʿAsali.** *Min Āthārinā fī Bayt al-Maqdis*. **Amman: Ministry of Culture, 2009, pp. 28-29; pp. 940-; Khalil Shawka.** *Tārīkh Bayt Laḥm fī al-ʿAhd al-ʿUthmānī*. **Bethlehem, 2000; David Myres. «al-ʿImara al-ʿAmira: The Charitable Foundation of Khassaki Sultan (9591552/),» in Sylvia Auld (ed.),** *Ottoman Jerusalem: The Living City, 15171917-*. **London: Altajir World of Islam Trust, 2000, vol. 1, pp. 539583-; Amy Singer. «The Mülknâmes of Hürrem Sultan›s** *waqf* **in Jerusalem,» in Gülru Necipoğlu (ed.),** *Muqarnas: An Annual on the Visual Culture of the Islamic World*. **Leiden: Brill, 1997, pp. 96102-; Amy Singer.** *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*. **Albany: State University of New York Press, 2002; Amy Singer. «The Privileged Poor of Ottoman Jerusalem,» in Jean-Paul Pascual (dir.),** *Pauvreté et richesse dans le monde musulman méditerranéen*. **Paris: Maisonneuve et Larose, 2003, pp. 257269-; Oded Peri. «***Waqf* **and Ottoman Welfare Policy: The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem.»** *Journal of the Economic and Social History of the Orient*, **vol. 35, part 2, 1992, pp. 167185-; Sroor.** *Fondations pieuses en mouvement*; **St. H. Stephan. «An Endowment Deed of Khâsseki Sultân, Dated the 24th May 1552.»** *The Quarterly of the Department of Antiquities in Palestine*, **vol. 10, 1944, pp. 170194-.**

420 **On the life of this sultana see: David Myres. «al-ʿImara al-ʿAmira: The Charitable Foundation of Khassaki Sultan (9591552/),» in Sylvia Auld (ed.),** *Ottoman Jerusalem: The Living City, 15171917-*. **London: Altajir World of Islam Trust, 2000, vol. 1, p. 540.**

421 **Musa Sroor. «Dawr al-Awqāf al-Islāmiyya fī al-Tanmiya al-ʿUmrāniyya fī al-Quds.»** *Majallat Ḥawliyyāt al-Quds*. **Institute for Palestine Studies, no. 14, autumn 2012, p. 68; Musa Sroor. «The Role of the Islamic Pious Foundations** *Waqf* **in Building the Old City of Jerusalem during the Islamic Periods 6371917-,» in Robert Carvais (ed.),** *Nuts & Bolts of Construction History: Culture, Technology and Society*. **Paris: Picard, 2012, vol. 2, p. 233.**

being made of rice, clarified butter, chickpeas, onions, salt, wheat and sour yogurt; on Fridays and feast days meat, honey and rice colored with saffron were served. The complex also comprised a mosque, fifty-five rooms (*ḥujra*), a khān, two bathhouses, one for men and one for women, and a madrasa (college) known by her name. The waqfiyya also laid down in full detail how the institution was to operate, particularly the posts and wages of its staff and their duties.[422]

In keeping with waqf custom and its independence from the interference of the state and its various organs, even though the endower belonged to the ruling house, and to secure the running of this huge institution, the endower assigned dozens of properties, spread across the districts and sanjaks of Bilād al-Shām (Greater Syria), whose yield was to be spent on the institution. These properties included villages, farms, khāns, shops, mills and bathhouses, among them 24 villages and farms, all of them in Palestine. The document gives the share of each village and farm endowed, some wholly and some in part. Among them:[423]

The whole (24 qīrāṭ (a twenty-fourth share), 100%) of the village of Amioun, *nāḥiya* of Kūra, dependent on Tripoli (Lebanon)

The whole of the village of Lydda, *nāḥiya* of Ramla

The whole of the village of Beit Iksa, district of Jerusalem

The whole of the village of Kafr ʿAna with the farm of Kafr Tab, *nāḥiya* of Ramla

The whole of the village of Baqiʿ al-Daʾn, district of Jerusalem

The whole of the village of al-Kanīsa, *nāḥiya* of Ramla

The whole of the village of Bir Maʿin, *nāḥiya* of Ramla

The whole of the village of Sabtāra, *nāḥiya* of Ramla

The whole of the village of Innaba, *nāḥiya* of Ramla

The whole of the village of Safiriyya, *nāḥiya* of Ramla

The whole of the village of Kharbatha, *nāḥiya* of Ramla

The whole of the village of Yazur, *nāḥiya* of Ramla

The whole of the village of Yahudiyya, *nāḥiya* of Ramla

The whole of the village of Bayt Shanna, *nāḥiya* of Ramla

The whole of the village of Rantiya, *nāḥiya* of Ramla

The whole of the village of Qaqun, *nāḥiya* of Nablus

422 **Waqfiyya of Khassaki Sultan. Jerusalem Sharia Court Register (*Sijill*) 270, 964 / 1557, pp. 1827-.**
423 **Waqfiyya of Khassaki Sultan. Jerusalem Sharia Court Register (*Sijill*) 270, 964 / 1557, pp. 1827-.**

The whole of the village of Beit Liqya, district of Jerusalem

18 qīrāṭ of the village of Bethlehem, district of Jerusalem

18 qīrāṭ of the village of Beit Jala, district of Jerusalem

18 qīrāṭ of the village of Niʿlin, *nāḥiya* of Ramla

18 and a half qīrāṭ of the village of Bayt Dajan, *nāḥiya* of Ramla

18 qīrāṭ of the village of Kafr Jinnis, *nāḥiya* of Ramla

7 qīrāṭ of the village of Jindas, *nāḥiya* of Ramla

One-tenth of the village of al-Jib

To perpetuate the memory of his wife, who died in 1558, Sultan Suleiman the Magnificent endowed new properties for the benefit of this institution, recorded in the same register of the Jerusalem court as an appendix to the document of the waqfiyya[424]. The takiyya went on performing its function as the founding document laid it down throughout the first three centuries of Ottoman rule in Jerusalem. The winds of change began to buffet this ancient institution when Ibrahim Pasha, son of Muhammad ʿAli Pasha, took control of Palestine in 1831, having wrested it by force from the Ottoman sultanate. As the crown of the anti-waqf policy he had followed in Egypt, Muhammad ʿAli Pasha confiscated all the properties and revenues of this charitable institution, and it ceased to operate. It should be noted that the confiscated properties and revenues were not returned to the takiyya after Palestine in general, and Jerusalem in particular, came back under Ottoman control in 1841; the Ottoman authority followed the same policy. After the protests of the population, particularly the groups that benefited from the takiyya's work, the Ottoman state was compelled to pay an annual lump sum of 1,150 Turkish lira in place of the revenues of the takiyya's properties confiscated by the Sublime State[425]. After the British occupation of Palestine in 1917 the Mandate authorities handed the institution to the Supreme Muslim Council, which they themselves had formed, appointing the Mufti of Jerusalem, al-Hajj Amin al-Husayni, as its president in 1921[426]. The Mandate authority followed the same policy as the Ottoman state toward the institution, assigning a lump sum of 2,950 Palestine pounds a year for the running of the kitchen, in return, of course, for its control of the revenues of all the villages belonging to this waqf, estimated in 1948 at twelve thousand Palestine pounds a year. After Jerusalem passed to Jordanian administration in 1948 the takiyya came under the Jordanian Ministry of Waqfs,

424 **Sroor.** *Fondations pieuses en mouvement*, **p. 302.**
425 **al-ʿAsali.** *Min Āthārinā fī Bayt al-Maqdis*, **pp. 2829-.**
426 **al-ʿAsali.** *Min Āthārinā fī Bayt al-Maqdis*, **pp. 2829-.**

like all the Waqfs of Jerusalem and the West Bank, and it remained so even after the Zionist occupation of the whole of historical Palestine in 1967. The tie was not severed until the formation of the Palestinian National Authority in 1994 and the creation of the Palestinian Ministry of Waqfs.

Between Jurisprudential Authenticity and Legislative Modernity

Among the most important conditions on which the jurists agree for the validity of a waqf, for all their differences over many of its rules, such as whether movables may be endowed, are that the endowed thing be of value and known to the endower at the time he concludes the contract of waqf, and that it be owned by the endower at the time of the waqf, in full ownership beyond doubt; anything else is a non-true waqf.[427] But with the marked spread of the waqf in the late Ayyubid period and, above all, in the Mamluk era, and the founding by amirs and sultans of many waqf institutions, mosques, madrasas (colleges), zāwiyas (Sufi lodges) and khānqāhs (Sufi hospices), which had to be tied to economic resources that would not lapse at their deaths, these men had no choice but to endow extensive agricultural land, villages and farms. The problem they faced was the juristic rules requiring the endower to own the endowed property, particularly since these sultans drew no distinction between their private property and the property of the Muslim public treasury or the state treasury. Given the great influence this class held in society, they did not abide by this juristic condition and founded hundreds of waqf institutions funded from extensive agricultural lands belonging to the public treasury. This confronted the jurists of the state with a dilemma that called for new juristic rules to legitimize an unlawful practice they could not refuse.

Faced with this dilemma the scholars of Syria devised what became known as *waqf al-irṣād* or *waqf al-takhṣīṣāt*, which is:

> "That the Imam endow land belonging to the public treasury, the land known as mīrī land, on a public purpose such as mosques, hospitals and madrasas, or endow it on those who have an entitlement in the public treasury, such as scholars, judges, the poor and the destitute, in satisfaction of part of their rights. This was not a genuine waqf, because the condition of ownership was not met in it

427 **ʿAshshub.** *Kitāb al-Waqf*, **pp. 2123-.**

> ... and it may not be annulled and returned to the ownership of the public treasury as it was, nor diverted to a purpose other than the one intended, as the eminent scholars have ruled, unlike the *iqṭāʿāt* (fiefs), which may be annulled."[428]

The study of the Waqfs of Palestine in general and Jerusalem in particular shows that most of the important waqf institutions in the Old City of Jerusalem were founded by the amirs and sultans of the Mamluks and the House of Osman, and that their waqf documents do not indicate their ownership of the endowed properties, as is plain in every waqfiyya. It should be noted that some 160 villages in Palestine were endowed by them on the waqf institutions of Jerusalem.[429] These properties, villages and farms, kept their waqf character through all the historical periods until Ibrahim Pasha's occupation of Palestine in 1831, when he confiscated them, stripped them of their waqf character and returned them to the state treasury, among them, as noted above, the villages of the waqf of Khassaki Sultan. After the Ottoman return these properties kept their waqf character, though the state confiscated their revenues, following the policy of the previous regime. This measure did not accord with the jurisprudential rules prevailing in the Ottoman state, which guaranteed these properties immunity from the state and its policies. New rulings and legislation were therefore needed to legitimize the state's confiscation and ownership of the properties. For these important properties to remain outside the state's authority deprived the state not only of their revenues but of the extension of its control and influence over the social groups that benefited from and dominated them, whether the Jerusalem elite and notables or the peasants who worked the properties and were subject to the authority of the notables rather than, in practice, to that of the state.

In 1858, as part of its reform policy, the Sublime State issued the Land Code, also known as the Tapu Law, followed by supplementary laws that clarified it and closed its gaps. The Code was meant to legitimize the state's policy and the measures it had taken against the properties of waqf institutions founded by amirs and sultans throughout the preceding historical periods, which extended over more than five centuries. Article 1 of the Code divided the lands of the Sublime State into five categories: freehold (*mulk*) land, state (*mīrī (state)*) land, endowed (*mawqūfa*) land, communal (*matrūka*) land and waste (*mawāt*) land.[430] Article 4 was devoted to defining what was meant by endowed land:

428 **ʿAshshub.** *Kitāb al-Waqf*, **p. 24; al-Husayni.** *al-Manhal al-Ṣāfī fī al-Waqf wa-Aḥkāmih*. **Jerusalem: al-Maṭbaʿa al-Waṭaniyya, 1982, pp. 15, 30.**
429 **Sroor.** *Fondations pieuses en mouvement*, **pp. 184194-.**
430 **The Ottoman Land Code of 1858, Article 1.**

> "Endowed lands are of two kinds. The first kind is land which, having been in origin true freehold (*mulk*) land, was made waqf in accordance with the Noble Sharia. The corpus (*raqaba*) of such endowed land, together with all rights of disposal over it, belongs to the waqf, and the legal transactions do not apply to it, since the endower's stipulation must be followed whatever it may be; for this reason, this kind of endowed land is not treated in this Law.
>
> The second kind is land separated from the mīrī lands and endowed by the great sultans or endowed by others with their own hands by sultanic permission. The corpus of such land, being regarded merely as a portion separated from the mīrī lands, with its mīrī benefits, such as tithes and dues, assigned by the Sublime Sultanate to some purpose, is not a true waqf; and most of the endowed land in the Well-Protected Domains is of this kind. Endowed land of this form belongs to the category of assignments (*takhṣīṣāt*); since it is exactly like mīrī land, its corpus reverting to the public treasury, the legal transactions described and detailed below apply to it in full."[431]

From this article emerges what are called the true waqf and the non-true waqf. A waqf whose corpus originally belonged to the endower is a true waqf: it keeps its waqf character and the new land laws do not apply to it. A waqf endowed by the sultans, whose corpus belongs to the public treasury, is a non-true waqf: its waqf character is cancelled and it reverts to the ownership of the Muslim public treasury, that is, to the ownership it had before its conversion into waqf, and the rules governing mīrī land apply to it.

The question, then, is what became of the properties of the waqf of the Takiyya of Khassaki Sultan: were they classified as true waqf or non-true waqf? Searching the archives, we found a firman from the sultan to the governor of Jerusalem, Thurayya (Süreyya) Pasha, dated mid-Jumādā al-Ūlā 1275, corresponding to 21 December 1858, indicating that the properties of the takiyya's waqf in the al-Wād quarter of Jerusalem had been confiscated by the state treasury.[432] It should also be noted that most of the villages belonging to the Khassaki Sultan waqf were subjected, after this law, to the same transactions and rules as mīrī land, so that those who exploited them were allowed to register them in their own names, that

431 The Ottoman Land Code of 1858, Article 4.
432 Firman from Sultan Abdülmecid I to the governor of Jerusalem, Thurayya Pasha, dated mid-Jumādā al-Ūlā 1275 / 21 December 1858: Archive of the Foundation for the Revival of Islamic Heritage and Research (Mīthāq), Abu Dis, unnumbered file headed «Takiyyat Khassaki Sultan.»

is, to convert them into their private property, since they were classified as non-true Waqfs. The exception was the lands of the two villages of Bethlehem and Beit Jala, which continued to be regarded as Waqfs of Khassaki Sultan and to be governed by the rules of waqf: these lands were let to the inhabitants of Bethlehem and Beit Jala under the contract called *ḥikr (long lease on waqf land)*, which allows the tenant to rent waqf property for an unspecified period in order to build, and gives the tenant, called the *mustaḥkir*, the right to own the building erected on the rented waqf land so long as he pays the rent for the land, known as the *ḥikr*; the waqf may not annul the contract and remove the tenant from the land so long as his building stands and he pays the rent.[433] What created the difficulty in re-classifying the waqf villages, and in deciding whether they were true or non-true waqf, was the very slow process of application, which took decades and did not end with the end of the Ottoman presence in Palestine but continued throughout the British Mandate. The lands were never re-registered in the government departments under the new classifications. The reasons were, first, the fear of the inhabitants and those who exploited the land of the registration process and of what might follow from it, the obligation to pay taxes and military conscription; and second, the disagreement between the Jerusalem Waqf Department and the land registration departments over the interpretation and classification of waqf land as true or non-true. This disagreement went back, fundamentally, to the absence of the old waqfiyyas, which would show whether or not the endower owned the corpus of his waqf, and to the Waqf Department's failure to register true waqf properties in the Tapu registers.[434]

The modernization and codification of the juristic rules on waqf in the period of the Ottoman Tanzimat created a problem of understanding and interpretation among those concerned, between those who benefited from the continued force of the old, inherited juristic rules and those who benefited from the modernization and amendment of those rules. The legal disputes that this problem produced became plain with the departure of the legislator who had enacted these laws and was able to interpret their ambiguities, and the accession to power of a new legislator who not only did not understand these laws and rules but exploited them in the service of his own interests and policies; here I refer specifically to the government of the British Mandate.

433 **On** *ḥikr* **see: Qadri Basha.** *Qānūn al-ʿAdl wa-l-Inṣāf lil-Qaḍāʾ ʿalā Mushkilāt al-Awqāf***. 5th ed. Cairo: Maktabat al-Ahrām, 1928, Article 333, p. 147; al-Husayni.** *al-Manhal al-Ṣāfī***, p. 43; ʿAshshub.** *Kitāb al-Waqf***, p. 229.**

434 **Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.**

Between Recognition and Denial

As already noted, Sultana Roxelana had endowed 18 qīrāṭ of the full 24 qīrāṭ of the lands of both Bethlehem and Beit Jala for the benefit of her takiyya in Jerusalem. The Mamluk sultan Qaytbay had earlier endowed the remaining 6 qīrāṭ that complete the 24, "with his own money," as the Jerusalem Waqf Department claims, and this was recorded in the Imperial Register (*Defter-i Hakani*) in Istanbul. The lands of Bethlehem and Beit Jala thus became, in their entirety, a true waqf, as the Jerusalem Waqf Department claims. The people of Bethlehem and Beit Jala made use of this land as tenants of the waqf; the lands of the waqf were let to them by *ḥikr*, they paid the waqf the *ḥikr* rents, and every *ḥikr* contract affirmed that the lands belonged to the Khassaki Sultan waqf. Over the years the inhabitants of Bethlehem and Beit Jala came to feel that they were no more than tenants on the land, and whenever the chance arose they looked for a way out of this waqf.

Under the British Mandate an attempt was made to prove that the lands of Bethlehem and Beit Jala were not a true waqf, and it failed: an action was brought before the Mandate Land Court on the question, and the court ruled that the lands of Bethlehem and Beit Jala in their entirety were a true and lawful waqf.[435] After Jerusalem and the West Bank came under Jordanian rule in 1948, the attempts of the people of Bethlehem to refuse recognition of the waqf status of the lands they occupied were renewed, as they tried to take ownership of them and to stop paying the *ḥikr* rents. In 1952 one of the people of Bethlehem, Hanna Issa Qawas, brought an action before the Jerusalem Court of First Instance, registered as case no. 110/52, to annul this waqf; he failed, and the Court of First Instance ruled that the lands of Bethlehem and Beit Jala were a true waqf.[436] But this was not the last attempt. In June 1956 Salim Jiryis Ibrahim Raba' and others brought an action against the Attorney General, the waqf officers of Jerusalem and Bethlehem, and the General Manager of Waqfs, seeking the cancellation of the *ḥikr*, the correction of the registers concerning their lands, and a ruling that the lands did not belong to the waqf. In their claim the plaintiffs asked that the Waqf Department be stopped from claiming the *ḥikr* from them until the action was decided, and they lodged a surety covering any loss or damage to the Waqf Department that might arise from the suspension of *ḥikr* collection. On 15 July 1956 the court granted the application to suspend the collection of the *ḥikr*, having heard the application in the presence of one party only. In response, the General Manager of Waqfs applied for the cancellation of the suspension order, on the grounds that the application to suspend the collection of the *ḥikr* was not, in his view, an urgent matter,

435 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.
436 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/04/53/.

and that it also exposed the Waqf Department to great harm. The court heard the application in the presence of both parties.

In the light of this the applicant, the General Manager of Waqfs, through his attorney, produced evidence to prove that the respondents had previously paid the *ḥikr* on the plots of land in question. Ahmad Husni Abu al-Saud, an employee of the Jerusalem Waqf Department, testified that:

> "the respondents, thirteen persons in number, used to pay the *ḥikr* on their lands in previous years," and he produced nineteen receipts for sums the respondents had paid to the Waqf Department, the receipts being for the years 1953 and 1955.

The respondents in turn presented their evidence, which consisted of the testimony of Salah al-Din al-Husayni, assistant land registration officer of Jerusalem. The witness testified to the procedure the Land Registration Department had followed in the transactions of renewed registration for the lands of Bethlehem and Beit Jala. He stated that under the Mandate the Department, when carrying out a transaction on a registered property, would send a notice to the Waqf Department if the records showed the property to be waqf, informing it that it should collect the *ḥikr* on the property within two weeks, failing which the transaction would proceed; for transactions on properties whose records contained nothing to indicate that they were waqf, the Department sent the Waqfs no notice, and this applied also to transactions of renewed registration. The witness also stated that in the period in question:

> "instructions had been issued, about a year and a half earlier, to the registration officers not to register any land or carry out any transaction on lands in Bethlehem and Beit Jala unless they had sent a notice to the Waqf Department for the collection of the *ḥikr*." He also testified that "there are many lands in Bethlehem and Beit Jala of the *mulk* and mīrī kinds."[437]

The court's decision in this action was issued on 19 February 1957 and reads as follows:

437 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.

> "The court finds from the evidence that the respondents have previously paid the *ḥikr* on their lands to the Waqf Department, whether as a result of transactions or without their having transactions, as appears from the receipts produced. The court finds that it is bound by the registers of the Land Department concerning the lands in question: if they are registered in the land records as waqf and subject to *ḥikr*, then the *ḥikr* must be collected on them until a decision is issued cancelling it. We therefore decide that the Waqf Department has the right to collect the *ḥikr*, and we decide to cancel its earlier decision dated 15 July 1956. As for lands that are unregistered, or whose land records contain nothing to indicate that they are waqf, no *ḥikr* is collected on them. And we award the applicant the fee and costs and five dinars in attorney's fees."[438]

In April 1958 the people of Bethlehem and Beit Jala banded together against the Waqfs, trying once more to prove that Bethlehem and Beit Jala were not a true waqf. According to the Waqfs's lawyer, Abdul-Ghani Kamlah, in his letter of 23 April 1958 to the Controller General of Waqfs in Jerusalem, they were ingenious in the methods they used to reach this end: they brought a fresh action against the Waqfs in the names of fourteen persons before the Jerusalem Court of First Instance and appointed lawyers for the purpose. The Waqf Department argued before the court that Bethlehem and Beit Jala were a true and lawful waqf, resting its defense on the waqf document of Khassaki Sultan and on other documents proving that the inhabitants of Bethlehem and Beit Jala had historically paid the *ḥikr* rents. The court, however, did not give its decision in a single session, and went on adjourning judgment from one date to another.[439]

The inhabitants of Bethlehem and Beit Jala did not wait for the court's final judgment in their case against the Jerusalem Waqf Department; they took matters into their own hands:

> "On 19 November 1958 the waqf officer of Jerusalem, accompanied by the Waqfs collector Mr. Shakib al-Daqqaq and the policeman Fahmi al-Ja'bari, of Bethlehem, went to the house of Atallah Sam'an al-Araj to collect the *ḥikr* rent due from him. As they approached the house the wife of the said Atallah came out to them and asked them

438 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.8/56/.
439 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.

> to fetch the mukhtar and her brother Hanna Saba al-Araj. When the policeman Fahmi al-Ja'bari and the collector Mr. Shakib al-Daqqaq, who had gone to summon the mukhtar and her brother, returned, Hanna Saba al-Araj of Bethlehem attacked the Waqfs collector and began to slap him on the cheeks with his open hand while he was performing his duty; the others attacked the policeman and tried to take his rifle from him; and all the while Hanna Saba al-Araj was insulting the officials, the state and the Chief Islamic Justice, and demeaning them with the obscene words he addressed to them, publicly, within the hearing and sight of the public."[440]

Accordingly, the attorney of the General Manager of Waqfs in Jerusalem, the lawyer Abdul-Ghani Kamlah, in his letter of 20 November 1958 to the military governor of the districts of Jerusalem and Hebron, asked that the complaint be investigated and the accused brought before a military court, since the Waqf Department could not collect the *ḥikr* rents due from the people of Bethlehem unless its officials felt that they were under the protection of the state.[441]

The pleadings and cases between the inhabitants of Bethlehem and Beit Jala on one side and the Waqf Department on the other continued over whether the lands of Bethlehem and Beit Jala were a true or a non-true waqf. On 18 March 1964 the inhabitants, represented by Salim Jiryis Raba' and seven others, brought an action against the General Manager of Waqfs and Islamic Affairs, asking for a judgment that the corpus of the properties in their possession was of the kind of waqf al-takhṣīṣāt and not a true waqf let by ḥikr, and for a judgment that they owned the properties. The defendant opposed this, showing that the lands were part of the Waqfs of Khassaki Sultan and the Waqfs of Sultan Qaytbay, as recorded in the Turkish Imperial Register issued in the mali/calendar year 1281 (1865), under the "records of permanent registration" (qayd dā'imī). At the end of the pleadings the court issued the following decision:

> "I find that the court is bound to regard the waqf as a true waqf, as stated in the registration records, until the contrary is proved, whereupon it becomes a waqf of *takhṣīṣāt*. In this case, and under

440 Letter from the attorney of the General Manager of Waqfs in Jerusalem, the lawyer Abdul-Ghani Kamlah, to the military governor of the districts of Jerusalem and Hebron: Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.

441 Letter from the attorney of the General Manager of Waqfs in Jerusalem, the lawyer Abdul-Ghani Kamlah, to the military governor of the districts of Jerusalem and Hebron: Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.

the said registration deed, the court finds itself before evidence, namely the registration deed, which is uncontradicted, since no evidence whatever proving the contrary has come before the court from the plaintiffs, on whom the burden of proving that the waqf is non-true rests. Accordingly, the presumption in favor of the waqf's being true must prevail."[442]

The plaintiffs, Salim and his group, did not accept this decision. Their attorney lodged an appeal to have it set aside, arguing that the bench had erred in its decision by failing to deal with all the legal points raised by the plaintiffs, and in particular the following:

1. "It did not deal with the extent of the legal effect which the Land Code had on the old waqfiyyas that had been made contrary to its provisions.
2. It did not deal with the legal significance of the registrations made in the Tapu registers of the properties of the two towns of Bethlehem and Beit Jala, whether registered as *mulk* or as waqf belonging to Khassaki Sultan, before the year 1331, which absolutely negates the possibility of regarding these properties as true Waqfs.
3. It did not deal with the legal effect of the non-registration of the properties in dispute, and the other properties and lands of Bethlehem and Beit Jala, as subject to *ḥikr*, as the attached documents show.
4. It did not deal with the legal effect of the payment of the tithe and the *werko* on these properties.
5. It did not deal with the legal and factual grounds raised concerning the impossibility of two waqfs, one true and the other non-true, existing at the same time.
6. It did not deal with the argument raised that the transactions of registration and mortgage, and all the other transactions carried out by the Tapu departments before the year 1331, did not include the properties of true Waqfs, and that the Law of Waqf Rents and *Muqāṭaʿa* Dues of the year 1331 was limited in effect to the properties registered in the special register and does not cover the *yoklama* and *daimî* records registered in the Tapu records.
7. It did not deal with the argument raised concerning the illegality of the instructions issued by the director of Lands requiring transactions to be referred to the Waqf Department for the collection of the ḥikr before their completion, which conflicts with the Law on the Collection of Waqf Rents and Muqāṭaʿa Dues of the year 1331, and the extent of the effect of these instructions on the parties to the transactions.

442 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.6/61/.

> "These are some of the main points which the majority of the bench of the Court of First Instance did not deal with, and in view of the legal and factual grounds I raised earlier on each of these important points, it erred in overlooking them and in failing to deal with or address them, since each of these points is sufficient to decide the contrary of what the Court of First Instance reached."[443]

In reply to this appeal the Waqfs's attorney asked that the appeal be dismissed and the decision of the Court of First Instance upheld as to its result, refuting the appellants' claims. How, he asked, could evidence be produced now, after more than 400 years, that neither Khassaki Sultan nor Qaytbay owned what they endowed? Reasoning by interpretation of the texts of laws, he argued, was not evidence in this action; evidence would be for witnesses to come forward and state, according to their knowledge, that Khassaki Sultan and Qaytbay did not own the land; or for the appellants to produce documents tracing their ownership, or that of their forebears by inheritance or purchase, back to more than 400 years ago. He asked, too, how the appellants could expect any court now sitting to rule against a Sharia judgment, certified from the registers of the Jerusalem Sharia Court and more than 400 years old, which decides that Khassaki Sultan owned the lands of Bethlehem and Beit Jala; and how any lawfully constituted court could rule contrary to what a judicial ruling decides without the appellants producing evidence contradicting that ruling. The Waqfs's attorney also showed that the appellants were estopped from their claim by their own acknowledgment of the waqf's validity: since the Waqfs's evidence had proved that all the appellants had paid the *ḥikr* on the plots of land in question on the footing that they were a true waqf, they were estopped by their acknowledgment from claiming the contrary, under Article 50 of the Evidence Law.[444]

In the end the pleadings in this action closed and the case was adjourned for judgment without a fixed date, to allow the judiciary time to study it. The case remained pending without a final decision, particularly after Jordanian rule ended with the Israeli occupation of Jerusalem and the West Bank in 1967. The last detail we have on the case is the proposal made by the governor of Jerusalem in 1966, a year before the Israeli occupation, for a compromise between the two parties under which the *ḥikr* rents would be replaced by a lump sum paid by the people of Bethlehem and Beit Jala to the Waqf Department. It appears from the letter of the Waqfs's lawyer, Ibrahim Bakr, dated 10 June 1966 and sent to the president of the

443 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.
444 Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.

Council of Waqfs and Islamic Affairs, that the Council had agreed in principle to preliminary negotiations on the matter and to the formation of a committee representing the Waqfs, and that the people of Bethlehem and Beit Jala had formed a committee to negotiate with the Waqfs, made up of the mayors of the two towns, their deputies and their notables, the negotiations to take place under the auspices of the governor of Jerusalem.[445]

In conclusion, it may be said that the juristic and legal dispute and struggle between the Waqfs on one side and the inhabitants of the two towns of Bethlehem and Beit Jala on the other has not ended to this moment, and needs, in my view, a political decision to put an end to it, in the absence of an impartial judicial decision. But if we go back to the origins of the case in order to reach a judgment on it, away from religious conflicts and selfish personal interests, that can be done by returning to the original document, the waqfiyya, that is, the waqfiyya of the Takiyya of Khassaki Sultan itself. The "parapsychological"[446*] analysis of the text of the waqfiyya, and the analysis of its content, lead us to the conclusion that the waqfiyya divided the endowed properties into two groups: one group in which the text states expressly that the endower, Roxelana, owned, by legal documents, certain properties that she endowed for the benefit of her institutions; and another group of endowed properties listed without any reference to the endower's ownership of them. The document begins with the properties of which the endower's ownership is established, and here I quote the original text to show it:

> "... the endower, of exalted rank, endowed ... for the interests of the shining sites and the noble buildings, several kinds of Waqfs, with full intention and sufficient resolve. Among them: the whole of the inhabited village named Amyūn, situated in the *nāḥiya* of Kūra among the dependencies of well-protected Tripoli of Syria, may it be guarded from calamities and ruin, together with the farm named Qabqaba; among them the whole of the village named Lydda, situated in the *nāḥiya* of Ramla among the dependencies of well-protected Gaza; and the whole of the share reckoned at two thousand five hundred dirhams of the tithe of the village named al-Jib, in the district of Noble Jerusalem, according to what is contained in the noble sultanic rescript; each of them strung upon the thread of the ownership of the said endower, may the streams of divine favor still

445 Letter from the Awqāf›s lawyer, Ibrahim Bakr, to the president of the Council of Waqfs and Islamic Affairs, dated 10 June 1966: Archive of the Foundation for the Revival of Islamic Heritage and Research, file no. 270/3/2/1.7/64/.

446 * The author's term. By it he means reading what the document does not say: what its drafter meant but did not write, that is, reading between its lines. [Translator's note]

> flow upon her, by sultanic grant of ownership (*tamlīk*) and imperial gift, needing no description or delimitation, being famous to all near and far; the delimitation of their boundaries and markings, and the setting down of their landmarks and confines, being in the folds of the noble imperial rescripts, in the fullest delimitation and the most complete setting down."[447]

Here is an express statement of the endower's ownership of the properties just mentioned.

The document then goes on to list the remaining properties endowed on the takiyya, Bethlehem and Beit Jala among them, without any reference, as before, to the endower's ownership of these villages and properties:

> "... and among them the whole of the share of the village of Bethlehem, being eighteen qīrāṭ of twenty-four qīrāṭ, of boundaries known to the neighbors; and among them the whole of the share of the village of Beit Jala, being eighteen qīrāṭ of twenty-four qīrāṭ, of boundaries known to its people ... with all that belongs to these said properties of boundaries, utilities, appurtenances, annexes, roads and paths, and everything that must be mentioned in respect of them, whether mentioned or not, set down or not, as a true and lawful waqf, an explicit and duly observed ḥabs, and a settled and approved dedication (*tasbīl*). This has been verified and established and its matter has been made plain and clear, in that the exalted party, the seat of glories and eminences ... the intimate of the exalted imperial presence, Jaʿfar Agha ibn ʿAbd al-Rahim ... acknowledged and confessed ..., after his unrestricted agency to acknowledge the waqf and the dedication had been established ..."[448]

From this we see that there is not the slightest reference to the endower's ownership of these properties, as there was in the first group.

Hence it may be said, on the basis of the juristic classifications and the legal applications of the concept of true and non-true waqf, that the endowed villages of Khassaki Sultan fall into two groups: those of which the endower's ownership is

447 **Waqfiyya of Khassaki Sultan: Jerusalem Sharia Court Register (*Sijill*) 270, 964 / 1557, pp. 1827-.**
448 **Waqfiyya of Khassaki Sultan: Jerusalem Sharia Court Register (*Sijill*) 270, pp. 1827-.**

established, which under the Land Code count as true waqf, subject to the endower's stipulations and not to the laws of the state; and those of which the endower's ownership is not established, which under the foregoing classification count as non-true waqf, on the ground that the endower did not own the endowed properties, so that their waqf character is cancelled, their ownership reverts to the state, and those who hold them are allowed to take ownership of them as the Land Code of 1858 provides. This applies not only to Bethlehem and Beit Jala but to all the villages named in the waqfiyya other than those listed in the first group above. Put simply, the lands of Bethlehem and Beit Jala are a non-true waqf, and what applies to the other waqf villages classified as non-true waqf, whose lands were taken into ownership by the citizens who held them, applies to them; here I point to all the villages named in the waqfiyya that are inhabited by Muslims, such as the villages of Yazur, Niʿlin, Bayt Dajan, Qaqun, Beit Liqya, Beit Iksa, Beit Hanina, Innaba and others. Both parties to the dispute erred in reading and analyzing the document's content, each interpreting it according to its own interests: the first party, the Waqfs administration, took the first part of the document, which states the endower's ownership of certain properties, and generalized that ownership to all the properties in the waqfiyya; the second party, the inhabitants of Bethlehem and Beit Jala, relied on the other part of the waqfiyya, which does not refer to the endower's ownership of the lands of the two towns, to justify the legitimacy of their possession and ownership of those lands and the legality of their not paying rent for the lands in their hands, on a par with the inhabitants of the other villages named in the waqfiyya.

From these cases we reach the conclusion that the refusal of the Ottoman Waqfs administration in Jerusalem, at root, to regard the two villages of Bethlehem and Beit Jala as a non-true waqf, on a par with some thirty other villages belonging to the same waqf, goes back to the fact that those who benefited from these Waqfs, by residence and lease, were non-Muslims; and that it was out of spite toward them, in my view, that the concept of true and non-true waqf was not properly applied to the waqf properties they exploited. And the refusal of the inhabitants of these villages to go on paying the dues for their occupation and use of the properties of these waqf villages, despite their historically documented commitment to doing so for four centuries, from 1557 to 1953, came from nothing but a desire to change the existing state of affairs and take possession of these properties, taking advantage of the change of political regime in Palestine and Jerusalem's subjection to Jordanian administration between 1948 and 1967.

Conclusion

Confronting the Sacred

The Hanafi mufti Khayr al-Din al-Ramli (1585 to 1671) was asked: "Concerning waqf land in a village, which a usurper (mutaghallib) seized and planted with trees, and the trees bore fruit, and the usurper died, whereupon the people of the village laid hands on the trees: may the spokesman for the waqf bring a claim against them, establish the land as the waqf's and take it out of their hands, and require of them its fair rent for the period of usurpation, to be taken from his estate for his period and from the peasants for theirs? And do the trees remain, or are they uprooted?"[449]

He answered: "Yes. The spokesman for the waqf may bring a claim against the trespasser who laid hands on the waqf land, establish proof against him, remove his hand from the land, and demand of him the fair rent for the period he held it, whatever it amounts to, and the uprooting of the trees planted without right, so long as that does not harm the land; and if it does harm it, he is the one who has wasted his own property. Some of our scholars have ruled that the waqf takes ownership of them at the lower of the two values, uprooted and not uprooted, and this is what should be relied upon."[450]

Islamic law and international law granted religious property and the Waqfs, Islamic and non-Islamic alike, immunity from the encroachments of local and colonial authorities, since waqf property enjoyed the attribute of "sanctity." This immunity and sanctity were the principal incentive for the wealthy to convert their real property into Waqfs and so protect it from the violence and aggression of those who hold power.[451]

The jurists differ on some questions concerning the waqf in Islamic law, but they agree that the waqf enjoys immunity under the Sharia. When real property becomes a waqf it leaves the ownership of the endower (the owner) and passes into the ownership of God Almighty. The endower retains no right of ownership in it, for it has become something sacred: it belongs to God and can therefore enter

449 He is Shaykh Khayr al-Din ibn Ahmad ibn Nūr al-Din ʿAli ibn Zayn al-Din ibn ʿAbd al-Wahhab al-Ayyubi al-ʿUlaymi al-Faruqi al-Ramli, imam, exegete, ḥadīth scholar, jurist, philologist, morphologist and grammarian, shaykh of the Hanafis of his age and author of the *Fatāwā*. He was born in the Palestinian town of Ramla, hence his epithet al-Ramli, and studied jurisprudence at al-Azhar. For more on his biography see: Muhammad Amin ibn Fadl Allah al-Muhibbi. *Khulāṣat al-Athar fī Aʿyān al-Qarn al-Ḥādī ʿAshar* [The Quintessence of the Record of the Notables of the Eleventh Century]. Vol. 2. Beirut: Dār al-Kutub al-ʿIlmiyya, 2006, pp. 131137-.

450 al-Ramli, Khayr al-Din. *al-Fatāwā al-Khayriyya li-Nafʿ al-Bariyya*. 2nd ed., vol. 1, 1400 AH, p. 174.

451 Ibn Khaldun. *al-Muqaddima*. Cairo: Dār al-Fajr lil-Turāth, 2004, p. 524.

into no one's ownership. Here lies the status of the waqf in Islamic law. Under that law the waqf may not be sold, inherited or given to anyone; the endowed property may not be returned to its original condition; and consequently, it may not be plundered or encroached upon. In short, a waqf may not be converted into private property. The endowers themselves were unanimous about this; in the stipulations they wrote into their waqfiyyas.[452]

This immunity under the Sharia, which keeps the waqf beyond the reach of the covetous, the despot and the ruler, was a principal motive for the wealthy to convert their real property into Waqfs, for several reasons and motives, of which we recall some. First, to prevent its being encroached upon or confiscated by the ruling power. Second, to prevent the fragmentation of the fortune or the property under the Islamic law of inheritance. Third, to ensure that the endower and his descendants benefited from its revenue generation after generation. Fourth, to give the endower the say in deciding the course his fortune would take after his death, who would benefit from it and who would be excluded. And finally, the religious factor: a perpetual charity through which the endower earns recompense and reward.

Islamic and non-Islamic Waqfs alike were subject to the rules of waqf in Islamic law, the waqf being a religious act and a pure and sustainable charity, since ownership of the endowed property passes from the endower to God Almighty, as noted above. For this reason, from the Ottoman period onward, the founding and administration of a waqf, Islamic or non-Islamic, came under the supervision of the qadis of the Sharia courts, and until the Ottoman Tanzimat (1839 to 1876) the state authorities had no part in the affairs of the waqf and its rules, even after the founding of the Imperial Ministry of Waqfs in 1826.[453]

The study of the Waqfs of Palestine in general and Jerusalem in particular shows that most of the important waqf institutions in the Old City of Jerusalem were founded by the amirs and sultans of the Ayyubids, Mamluks and Ottomans, and that although their waqf documents do not indicate their ownership of the endowed properties, as is plain in every waqfiyya, these were regarded as true Waqfs by the consensus of the Mamluk and Ottoman jurists until 1858 CE; we have recorded no challenge from them to the validity of these Waqfs before that

452 **Sroor.** *Fondations pieuses en mouvement*, **p. 19.**

453 **See: Faruk Bilici. « Les** *'imâret* **ottomanes : un instrument de lutte contre la pauvreté ? «, dans Jean-Paul Pascual (dir.).** *Pauvreté et richesse dans le monde musulman méditerranéen*. **Paris : Maisonneuve et Larose, 2003, pp. 271289-, p. 83; Stanford Shaw.** *History of the Ottoman Empire and Modern Turkey: Reform, Revolution and Republic: The Rise of Modern Turkey, 18081975-*, **vol. 2. Cambridge: Cambridge University Press, 1977, p. 75; John Robert Barnes.** *An Introduction to Religious Foundations in the Ottoman Empire*. **Leiden: Brill, 1986; Randi Deguilhem. «Government Centralization of** *Waqf* **Administration and its Opposition: The Syrian Example,»** *BRISMES Proceedings of the 1991 International Conference on Middle Eastern Studies*, **London, 1012- July 1991, pp. 223230-.**

date. It should be noted that some 160 villages in Palestine were endowed by them on the waqf institutions of Jerusalem alone,[454] which means that there are also hundreds of other waqf villages in Palestine endowed for the benefit of other waqf institutions, such as the Sanctuary of Abraham in Hebron and others. These properties, villages and farms, kept their waqf character through all the historical periods until Ibrahim Pasha's occupation of Palestine in 1831, when he confiscated them, stripped them of their waqf character and returned them to the state treasury without any lawful or legal justification. After the Ottoman return these properties kept their waqf character, though the state confiscated their revenues, following the policy of the previous regime, and assigned lump sums for the upkeep of certain charitable waqf institutions, such as the Takiyya of Khassaki Sultan, as compensation from the state to these institutions for the confiscation of their waqf revenues. This measure did not accord with the jurisprudential rules prevailing in the Ottoman state, which guaranteed these properties immunity from the state and its policies. New rulings and legislation were therefore needed to legitimize the state's confiscation and ownership of the properties. For these important waqf properties to remain outside the state's authority deprived the state not only of their revenues but of the extension of its control and influence over the social groups that benefited from and dominated them, whether the Jerusalem elite and notables or the peasants who worked the properties and were subject to the authority of the notables rather than, in practice, to that of the state.

In 1858, as part of its reform policy, the Ottoman state issued the Land Code, also known as the Tapu Law, followed by supplementary laws that clarified it and closed its gaps. The Code was meant to legitimize the state's policy and the measures it had taken against the properties of waqf institutions founded by amirs and sultans throughout the preceding historical periods, which extended over more than five centuries and which make up the largest part of the waqf property in the Ottoman lands, Palestine among them. Article 1 of the Code divided the lands of the Ottoman state into five categories: freehold (*mulk*) land, state (*mīrī (state)*) land, endowed (*mawqūfa*) land, communal (*matrūka*) land and waste (*mawāt*) land,[455] while Article 4 was devoted to defining what was meant by endowed land, as explained above.

From this article emerges what are called the true waqf and the non-true waqf. A waqf whose corpus originally belonged to the endower is a true waqf: it keeps its waqf character and the new land laws do not apply to it. A waqf endowed by the sultans, whose corpus belongs to the public treasury, is a non-true waqf: its waqf

454 **Sroor.** *Fondations pieuses en mouvement*, **pp. 184194-.**
455 **The Ottoman Land Code of 1858, Article 1.**

character is cancelled and it reverts to the ownership of the Muslim public treasury, that is, to the ownership it had before its conversion into waqf, and the rules governing mīrī land apply to it. As soon as the Code was issued these concepts began to be applied on the ground, and the process neither stopped nor ended with the end of Ottoman rule in Palestine; it continued through the Mandate, Jordanian and Israeli periods.

During the practical application of these concepts in Jerusalem, the lands of more than 160 villages and farms were converted from waqf land to mīrī land. Juristic and legal disagreement and dispute also arose over the Code's application to certain waqf properties, such as those belonging to ancient waqf institutions like the waqf of Khassaki Sultan,[456] wife of Sultan Suleiman the Magnificent. Among the properties endowed on that institution were the two villages (towns, in today's terms) of Bethlehem and Beit Jala, with their Christian majorities. The dispute arose over whether these villages were true waqf or non-true waqf, given the grave consequences these concepts carry for real property ownership in these areas. The legal dispute has not been settled to this moment.[457] This reveals the complexity of applying the provisions of this law and the divergent legal interpretations of its articles, which have made certain cases a matter of controversy on the judges' table for decades, undecided by the courts and awaiting a political decision.

During the British Mandate over Palestine (1917 to 1948) the British authorities took no legal measures to change the legal status of the waqf in Palestine in general and Jerusalem in particular; they made the Waqfs the responsibility of the Supreme Muslim Sharia Council under the presidency of the Mufti of Jerusalem, al-Hajj Muhammad Amin al-Husayni. The Jordanian authorities likewise preserved the Ottoman legal status of the waqf and attached the Waqfs of East Jerusalem to the Jordanian Ministry of Waqfs and Religious Affairs throughout the period of Jordan's annexation of East Jerusalem and the West Bank (1948 to 1967), in what became known as "the Jordanian custodianship (wilāya) over the Waqfs of Jerusalem."

The waqf institution did not remain beyond the authoritarianism of the colonial

456 **See for example: Muhaybish.** *Takiyyat Khassaki Sultan*; **al-ʿAsali.** *Min Āthārinā fī Bayt al-Maqdis*, **pp. 2829-; pp. 940-; Shawka.** *Tārīkh Bayt Laḥm fī al-ʿAhd al-ʿUthmānī*; **Myres. «al-ʿImara al-ʿAmira: The Charitable Foundation of Khassaki Sultan (9591552/),» vol. 1, pp. 539583-; Singer. «The Mülknâmes of Hürrem Sultan›s** *waqf* **in Jerusalem,» pp. 96102-; Singer.** *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem*. **Albany: State University of New York Press; Singer. «The Privileged Poor of Ottoman Jerusalem,» pp. 257269-; Peri. «***Waqf* **and Ottoman Welfare Policy: The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem,» part 2, pp. 167185-; Sroor.** *Fondations pieuses en mouvement*; **Stephan. «An Endowment Deed of Khâsseki Sultân, Dated the 24th May 1552.»** *The Quarterly of the Department of Antiquities in Palestine*, **vol. 10, pp. 170194-.**

457 **On this question see: Sroor. «The Question of the Privatization of Jerusalem Waqf Land: The Land of Bethlehem and Beit Jala as a Case Study since 1950,» pp. 219247-.**

state and the force of its laws. From the moment the Zionist colonizer proclaimed his state, the relationship between the waqf and the state, in its general and historical sense, changed from one of complementarity to one of collision and competition. In the colonial case, the colonial state regarded the waqf as depriving it of important sources of income on the one hand, and as weakening its domination over local society, elites and marginalized alike, on the other. It set out to turn the mosque, the school, and the religious and social elites who ran and benefited from waqf institutions into tools in the hands of its colonial administration. It also regarded waqf land as an existential challenge that undermined its settlement and colonial projects, because it could not buy waqf land or acquire it in the normal way without provoking a broad social reaction, given the waqf's religious immunity and its social and spiritual sanctity.[458]

The colonial states therefore enacted a great deal of legislation, not only to strip the waqf and its institutions of their immunity, but also to devise "lawful" pretexts permitting them to seize waqf funds and properties. These policies produced radical changes in the ownership of the charitable Waqfs in the Palestinian territory occupied in 1948, "West Jerusalem" among them.

For the same motives and reasons, and with the same policies under different names, the Israeli occupation state, from its proclamation on 15 May 1948, dealt with the waqf system in the areas of Palestine it occupied. This was despite the fact that the United Nations partition resolution of 1947, which the leaders of the Zionist movement accepted, affirmed that "the family law and personal status of the various minorities and their other religious interests, including the Waqfs, shall be respected," and despite the assurance of Ben-Gurion, the first head of the Israeli government, that his government was studying "means of resolving the questions on the basis of the laws of the Islamic waqf and the prevailing conditions."[459] The concept of "prevailing conditions" here is vague and undefined, and it was used as a way of circumventing the laws of the Islamic waqf in the service of the occupation state.

It was not easy, however, to abolish the waqf system and its administrative structure, given that some 130,000 Palestinians, most of them Muslims at the time of the occupation, remained in the territory occupied in 1948 despite the policies of expulsion, killing and displacement aimed at emptying the country of its inhabitants. To win their loyalty, their submission to its policies and their acceptance of its existence, the Zionist state resorted to recognizing the Muslims' own independent interests, the interests that guarantee the continued application of the

458 **Sroor. «al-Waqf ka-Adāt Muqāwamat al-Istiʿmār,» p. 127.**
459 **Dumper.** *Siyāsat Isrāʾīl tujāha al-Awqāf al-Islāmiyya*, **p. 63.**

Sharia in matters of personal status, mosques, cemeteries and religious property.[460]

Despite this recognition of the Muslims' independent interests, it missed no opportunity to seize the lands abandoned by their Palestinian owners during the war, and waqf lands were treated in the same way, on the pretext that the Supreme Muslim Sharia Council, which had administered them, had become absent. On that basis it confiscated a large part of the waqf lands, with the aim of eliminating the financial resources of Waqfs independent of the state and of easing the co-optation and integration of the religious elites who supervised the Waqfs into its administrative structure. In execution of its aims of controlling the property and Waqfs of the displaced Palestinians, the Zionist occupation state enacted in 1950 the "Absentees' Property Law," [461] which laid the foundation for other later laws and regulations that enabled the occupation state to transfer the resources of Islamic Waqfs to Israeli Jews, on the footing that they were lands belonging "to the State of Israel and lands owned by the Jewish National Fund." Under this law 80 percent of the total area of "Israel" was confiscated from Palestinians. Outwardly, the aim of the Absentees' Property Law, passed by the Israeli Knesset on 14 March 1950, was "to protect the property of the Palestinian refugees residing outside the country." The law created the office of "Custodian of Absentee Property" and entrusted him with "responsibility for maintaining the refugees' property, collecting rents, letting, and other matters connected with its administration, pending a settlement of the refugee question." In reality the office was used to "legalize the dispossession of the refugees of their land and property, since without it the ‹State' owned only a very small proportion of the land."[462]

It should be noted that the word "waqf" does not appear specifically in this law. The waqf lands that had been administered by the Supreme Muslim Sharia Council were classified as "administered Waqfs" (*Waqfs maḍbūṭa*) and as absentee property, which the Custodian was entitled to take over. The law also authorized the Custodian to dispose of wide areas of waqf property and gave him the right to transfer large parts of it to the Jewish National Fund in particular. Dumper holds that by this means Israel "was able to launder the confiscated Palestinian property and to ensure that the property it obtained under the Absentees' Property Law[463*] remained in Jewish hands," so enabling it, by this legal stratagem, to absorb any opposition or protest that might have arisen had the property been

460 **Dumper. Ibid., p. 66.**
461 **See: ʿĪsa. «ʿAqārāt al-Ghāʾibīn al-Filasṭīniyyīn fī Ẓill Qānūn Amlāk al-Ghāʾibīn al-Isrāʾīlī li-Sanat 1950 wa-Taʿdīlātih» [The Real Property of Palestinian Absentees under the Israeli Absentees› Property Law of 1950 and Its Amendments], pp. 534599-.**
462 **Dumper.** *Siyāsat Isrāʾīl tujāha al-Awqāf al-Islāmiyya fī Filasṭīn*, **p. 69.**
463 * **The Land Acquisition (Validation of Acts and Compensation) Law, 57131953-. [Translator's note]**

confiscated directly. In this way the property of the Islamic Waqfs in the territory occupied in 1948, West Jerusalem included, came to be regarded as exclusively Jewish property, and the Jewish National Fund was granted the exclusive right to buy all the lands the Development Authority offered for sale. To justify this step, the "Land Acquisition Law" was enacted in 1953, affirming the Custodian's right to sell waqf property and laying down procedures "for the payment of compensation, by which the Israeli government sought to make confiscation and transfer of ownership more acceptable to the Muslims. But this compensation was paid not to those lawfully entitled to it in the Muslim community in the occupation state, but to the Israeli Ministry of Religious Affairs."[464]

The Muslim community did not accept these Zionist policies aimed at seizing the property of the Islamic Waqfs in the Palestine occupied in 1948, and its rejection was expressed not only in speeches and the press but through legal steps led by a group of Muslim lawyers, particularly in 1961. This legal step was the most serious legal challenge the Custodian had faced since the Absentees' Property Law of 1950. These lawsuits, in Dumper's words, "were a source of concern for the government, since a ruling by the courts in favor of the litigants would have caused the transfer of waqf property to Jewish settlements and projects to collapse entirely. This concern was over ending the dismantling of the Islamic waqf system and making any change of status impossible." The result of these legal proceedings was the passage of the third amendment to the Absentees' Property Law, enacted on 2 February 1965.[465]

The new Absentees' Property Law of 1965 differed from that of 1950 in referring expressly to the Waqfs: it allowed the Custodian to "release" waqf property to its beneficiaries, and more importantly it allowed the release of "waqf property without any condition, restriction or similar limitation imposed or contained in any law or any document relating to the waqf." The danger of this provision, for all its importance, is that it allows the released waqf revenues to be diverted to those not entitled to them, that is, not necessarily to the beneficiaries designated by the waqf documents and the endowers' stipulations. This ensured that Israel would not have waqf dues spent on bodies and projects the occupation state does not permit; that is, it restricted the political use of these funds by imposing conditions on them, and it allowed "the state to persist in its policy of transferring the resources of the Muslim community to the Jewish community under the outward cover of Muslim bodies, by confining the work of those bodies to specified responsibilities and by delivering these benefits to the state." It also freed what

464 **Dumper.** *Siyāsat Isrāʾīl tujāha al-Awqāf al-Islāmiyya fī Filasṭīn*, **p. 69.**
465 **Sroor. «al-Waqf ka-Adāt Muqāwamat al-Istiʿmār,» p. 134.**

remained of waqf property from the restrictions and conditions of the rules of waqf in Islamic law, such as the prohibition on its sale.[466]

As for the eastern part of Jerusalem, known as "East Jerusalem," it came under the Hashemite Kingdom of Jordan from 1948, and the Waqfs of East Jerusalem and the West Bank were attached to the Jordanian Ministry of Waqfs and Religious Affairs until 1967. In its policies toward the Waqfs, of Jerusalem and of Jordan alike, the ministry followed the Ottoman policies, procedures and laws, and the procedures and applications that the Supreme Muslim Sharia Council had followed during its existence between 1921 and 1948 (the period of the British Mandate). This Jordanian custodianship over the Waqfs of Jerusalem and its religious institutions continued despite Israel's occupation, in June 1967, of this part of Jerusalem and of what remained of historical Palestine (the West Bank and Gaza). This was because of the absence of international recognition of the legitimacy of that occupation, and because international law regards East Jerusalem, the West Bank and Gaza as occupied territory and not Israeli territory; Israel could not impose on the Waqfs of East Jerusalem the policies and laws it had imposed on the territory occupied in 1948, the western part of Jerusalem included. Even after the establishment of the Palestinian National Authority in 1994, as an outcome of the Oslo Agreement, Jordan's custodianship over the Waqfs and holy places of Jerusalem continued, since Israel did not allow the Palestinian Authority to supervise the Waqfs of Jerusalem, their affairs and their religious holy places.[467]

On the whole, however, the Israeli occupation state did not respect this legal status of the Waqfs of East Jerusalem and the Jordanian custodianship over them. From the first days of the occupation it demolished the Maghāriba Quarter, a charitable waqf for the benefit of the Maghrebis of Jerusalem, and displaced its inhabitants.[468] From that date the Waqfs of Jerusalem have suffered repeated encroachments and attempts at seizure under various pretexts, such as the expansion of spatial areas in the Holy City, as in the encroachment on the Waqfs of the Mamilla (Māmillā) cemetery in Jerusalem.[469]

Despite all these policies and measures, the Islamic and Christian Waqfs of Jerusalem have posed a dilemma for the occupation state in seizing them by means other than force and the imposition of the occupation's will by destruction, displacement and seizure, as happened in the Maghāriba Quarter; that is, in pursu-

466 **Dumper.** *Siyāsat Isrāʾīl tujāha al-Awqāf al-Islāmiyya fī Filasṭīn*, **p. 94; Sroor. «al-Waqf ka-Adāt Muqāwamat al-Istiʿmār,» p. 133.**
467 **Haytham Sulayman.** *al-Waqf al-Islāmī fī al-Quds: al-Makāna wa-l-Taḥaddiyāt al-Qānūniyya wa-Furaṣ Iḥyāʾih* **[The Islamic Waqf in Jerusalem: Standing, Legal Challenges and Opportunities for Revival]. Jerusalem: PASSIA, 2023, p. 89.**
468 **See: ʿAbd al-Hadi al-Tazi. «Ḥayy al-Maghāriba bil-Quds.»** *Majallat al-Dirāsāt al-Filasṭīniyya*, **vol. 1, 1972, pp. 731-.**
469 **See: Sami al-Salahat.** *al-Awqāf al-Islāmiyya fī Filasṭīn wa-Dawruhā fī Muwājahat al-Iḥtilāl al-Isrāʾīlī*. **Beirut: Markaz al-Zaytūna lil-Dirāsāt wa-l-Istishārāt, 2011, pp. 122123-.**

ing alternative "soft" methods, such as the purchase of waqf property by settlers or settler associations. The legal status of the waqf has prevented certain individuals and associations from completing transactions of sale and purchase as with private property. The absence of private ownership and of private title documents has been an obstacle to attempts to take ownership of waqf property, whether by the local Jerusalem community or by settlers, particularly given the availability of the legal and historical documents that establish the legal status of waqf property and form the legal instrument in the hands of the Waqfs administration for bringing cases in the courts against those who encroach on waqf property on the one hand, and for frustrating attempts at sale and purchase on the other.

Here we see how the waqf, with its historical documents that cannot be forged or concealed, and with its sanctity and immunity, has been a fundamental obstacle to the policies of the colonial states in taking control of its property; and how Israel, for all its control of the Muslim community and its confiscation of land, particularly in the territory occupied in 1948, could not take direct control of the waqf system, but resorted to many stratagems to subject the Waqfs to its administration and seize their properties, which eases the success of any legal actions that may be brought in the international courts against the colonizer and his seizure of waqf property. This is what the case of the Waqfs of the village of Ein Karem, near Jerusalem, in the part occupied in 1948, demonstrated: France's success in the case it brought against Israel's seizure of the waqf lands of Ein Karem, and its extraction from Israel of an official recognition of the waqf status of the village's lands and of the non-application to them of the Absentees' Property Law.[470] This is all the more so since the Israeli Absentees' Property Law is "contrary to international laws, constitutions and treaties such as the Fourth Geneva Convention and the Hague Convention concerning war on land, which require respect for the right of property and forbid encroachment on it."[471] So too is the continuation of the cases between the administration of Islamic waqf affairs and the inhabitants of Bethlehem and Beit Jala since the early 1950s over the Islamic Waqfs's ownership of the lands of these two towns, and the standing of the inhabitants as tenants of the lands, as has been the case since 1557, the date of the conversion of the lands of the two towns into charitable Waqfs by Roxelana, wife of Sultan Suleiman theMagnificent.[472]

470 On this case see: Sroor. «al-Waqf ka-Adāt Muqāwamat al-Istiʿmār,» pp. 121160-; Musa Sroor. «Le contentieux franco-israélien à propos des biens *waqf*s maghrébins à Jérusalem 19481967-.» *Annuaire Droit et Religions*, Université d›Aix-Marseille, vol. 9, 20172018-, pp. 2545-.

471 Husayn ʿAhid ʿĪsa. «ʿAqārāt al-Ghāʾibīn al-Filasṭiniyyīn fī Ẓill Qānūn Amlāk al-Ghāʾibīn al-Isrāʾīlī li-Sanat 1950 wa-Taʿdīlātih.» *Majallat Kulliyyat al-Qānūn al-Kuwaytiyya al-ʿĀlamiyya* [Kuwait International Law School Journal], year 8, no. 3, serial no. 31, 2020, p. 631.

472 See: Sroor. *Fondations pieuses en mouvement*, pp. 301308-; Sroor. «The Question of the Privatization of Jerusalem Waqf Land: The Land of Bethlehem and Beit Jala as a Case Study since 1950,» pp. 219247-.

It is useful here to stress the consensus of the jurists on the obligation to respect the endower's stipulations as set out in the waqf document, which must be carried out and respected by the administrators of the waqf generation after generation, as a kind of testament that must be executed. Among the most important duties of the Sharia judge is to supervise the working of the waqf and to audit the administrator each year on how he has managed the waqf, collected its revenues and spent it on the purpose assigned to them according to the endower's stipulations. The Sharia judge is therefore, in law, responsible for the proper administration by the administrators of the Waqfs in their hands and for calling them to account. Endowers, too, agree in the stipulations of their Waqfs, Islamic and non-Islamic, that the responsibility for appointing administrators in accordance with the endower's stipulations rests with the Sharia judges. In other words, all the administration of the affairs of charitable and family Waqfs takes place in the court of the Sharia and with the approval and supervision of the qadi (Sharia judge) himself.

In conclusion, the function of waqf studies today, in the Palestinian situation, must not be limited to singing the praises of the history of the waqf and its institutions, presenting statistics of its properties and architectural descriptions of its buildings. It must focus today on how to preserve what remains of Waqf property on the one hand, and on recovering what has been seized on the other. The waqf system and its rules must be reactivated and put back to work in preserving real property ownership on the one hand and, on the other, in doing what supports the state's role in the humanitarian, social and educational fields. Many universities in the world today, Islamic and non-Islamic, have turned to the waqf system as an effective means of guaranteeing the permanent operation of institutions and providing them with fixed material income, without the need for intermittent support from the nation-state or from individual assistance, particularly since waqf studies have shown the leading role of waqf institutions in providing education and social, humanitarian and other services to important segments of society across different generations, eras and decades. They have shown how the waqf system and its rules were the safety valve for the continued operation of these institutions over long centuries, as in the case of the waqf institutions of Jerusalem, and how the legal and Sharia status of the waqf was the protective shield against every attempt at encroachment and seizure.



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The Book

This book offers a new perspective on the waqf in Jerusalem, adopting a deconstructive strategy, structural critique and the fragmentation of meaning, and reading the rules of Waqfs and their application in Jerusalem critically and analytically while taking apart the historical narratives that surround them. Through a new "micro-historical" lens it brings together the theory and the practice of the rules of Waqfs in Islamic jurisprudence and in the Ottoman legislation that remains in force in Palestinian society to this day. It presents many issues and cases in which the waqf properties of Jerusalem were subjected to attempts at unlawful acquisition, and in which many of the cases succeeded in vindicating the Waqfs and establishing waqf rights that are not subject to prescription.

To revive the sacred and restore its sanctity, the author has tried, through the questions and hypotheses from which he sets out and which the book examines by analysis, critique and deconstruction, by way of jurisprudential and legal approaches resting on the many cases in which the waqf succeeded in resisting attempts to seize real property in Jerusalem from the late Ottoman period to the present day, to interrogate what history has silenced and forgotten and to establish the facts. He does so through archival excavation among documents scattered across local, regional and international archives, written over hundreds of years in several languages: Arabic, Ottoman Turkish, French, English and German. The book is the fruit of continuous research spanning more than twenty-five years. It has uncovered much that has been silenced and forgotten about the transformations in the ownership of the waqf properties of Jerusalem, the legal cases concerning them, and the resisting role the waqf has played against every one of these attempts.

The book thus shows how the waqf, "as a sacred act," has stood and stands as an impregnable barrier against attempts at unlawful acquisition and transfer of ownership, and how none of the attempts at acquisition made down through history has been able to hide the sacred or strip it of its sanctity.

The Author



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Fondations pieuses en mouvement. De la transformation des statuts de propriété des biens waqfs à Jérusalem 1858-1917. Damas: Institut Français du Proche-Orient, Syrie / Aix-en-Provence, IREMAM, 2010.