

## Waqf, A Non-Definition

I was sitting in Hajj Tawfiq's office at the Imam Awza'i Islamic Studies College, in Tari' el-Jdide, the Beirut Sunni bastion par excellence. Within a stone's throw were the Beirut Municipal Stadium, home of the (Sunni) Ansar football team, and the Beirut Arab University (BAU). As 'Isam al-Huri, the director of the university's board of trustees, had told me a few hours prior, BAU was one of the first private higher education institutions developed shortly after independence within an Arab nationalist agenda to counter the American and French universities founded by missionaries in the nineteenth century. This meeting was my first encounter with Hajj Tawfiq, but as soon as I entered, and without much by way of niceties and introductions, he started asking *me* questions about waqfs: "So, what do you know about the difference between an association and a waqf?" I was not ready for the question, so I tried to deflect by talking about the nineteenth-century waqfs I had encountered in my historical research in the past year, but he retorted: "These are not waqfs." I was very confused: how could these Ottoman waqfs, which I had assumed were the model for the waqf revival, not be waqfs? And without much explanation or time for me to follow up, he followed closely with another question, with a hint of a smile on the corner of his lips: "Do you know the waqf of al-Birr wa al-Ihsan?" This was a trick question because it was the much less familiar name of the waqf behind the BAU, as I had just learned from 'Isam al-Huri. My Beirut credentials confirmed, we launched into a discussion of that waqf.

Hajj Tawfiq explained the circumstances of the foundation of the waqf of al-Birr wa al-Ihsan and how he and a few members of the board of trustees of the BAU had gone to the shari'a court and founded the waqf some twenty-five years after

the establishment of the university. Using a grammar of waqf that I had become familiar with by reading legal texts and tens of Ottoman waqf deeds, I asked what “objects” they had made into a waqf: was it the university buildings? He laughed at my question and replied enigmatically: “We waqfed words.”

“But that is not a waqf, if it does not start with an object that is moved from the ownership of a person to the ownership of God!” I thought to myself. I then remembered the “note to self” that I had made in my notebook early in my research: “I am being too normative about what waqf is. I should be much more attentive to what people all over think waqf is when I tell them that I am working on waqf.” Putting my anthropologist hat on, I stopped and tried to understand how Hajj Tawfiq approached waqf. But I was caught, as usual, between my research and my practical concerns with the politics of waqf—in this case, how the legal form of the waqf mattered and how a deed that did not follow legal conventions could be seized by the Directorate General of Islamic Waqfs (DGIW). That day, I was not able to get deeper into the conversation with Hajj Tawfiq. But in a later discussion, he explained to me, like many others would also do, that the waqf deed of al-Birr wa al-Ihsan created a moral person rather than transferring the ownership of an object to God and dedicating its revenues to some charitable purpose. The waqf of al-Birr wa al-Ihsan became the owner of the BAU, shielding it from the supervision of the Ministry of Interior, which had overseen the association of al-Birr wa al-Ihsan since its foundation in Tari’ el-Jdide in 1937.

The story of the waqf of the BAU encapsulates what I learned through various encounters in Beirut between 2007 and 2013: the decline of waqfs as objects and their rise as subjects in property relations between the nineteenth and the turn of the twenty-first century. This transformation has been noted by Gizem Zencirci (2015) in Turkey and Mona Atia (2013) in Egypt. Zencirci relates this change to development discourses, showing that in Turkey, from the founding of the republic to the 1960s, economic nationalism and state-led development encouraged a conceptualization of waqfs as “national treasures tasked with financing state-led projects” (2015, 534). Starting with the neoliberal development in the 1980s, she shows that waqfs were reconceptualized as nonprofits or, as they are known in Lebanon, nongovernmental organizations (NGOs).<sup>1</sup> However, Lebanon experienced these same changes in waqf understandings without a similar development discourse. (Lebanon did not witness much state-led development, as Gaspard [2004] shows.) I therefore suggest that these changes in the understanding and practice of waqf were first made possible because of novel definitions of a legal person,<sup>2</sup> or “moral

1. Nongovernmental organizations (NGOs) are one kind of association (*jam'iyya*) among other forms of associations like political parties, cultural clubs, youth clubs, and religious organizations. In the United States, they are more commonly known as nonprofits. In the book, I will use the Lebanese appellation (NGO or association).

2. Other terms for the same concept include *juridical person*, *artificial person*, *juridical entity*, or *juristic person* (*Black's Law Dictionary*, [thelawdictionary.org](http://thelawdictionary.org)). I use the variation *moral person* to indicate the commonsensical ascription of personhood to corporations independent of the recognition of

person” (*personne morale*) in French legal nomenclature: entities or beings whom the law regards as capable of rights or duties and who are distinct from human beings, known legally as natural persons. The rise of the waqf as a moral person, then, reflects the ascendance of a private property regime and the notion of a moral person, as well as transformations in notions of charity in Beirut, such as their restriction to religious purposes.

This transformation of waqf from object to subject was also made possible by a private property regime that expunged God from the actors involved in property relations. It is thus an essential part of the secularization of land, an important process in the instatement of a private property regime and its assumptions regarding the individuation of people, the clear separation of people and things, and disenchantment.<sup>3</sup> Anthropologists have demonstrated that such a conception of property is a Western native category (Hann 1998) whose assumptions do not hold true in other places and times (Humphrey and Verdery 2004). Furthermore, these assumptions do not reflect the complexity of the private property regime itself, for even in the West, people and things are not stable categories, but are constantly made and remade. Corporations, for example, straddle the line between being objects and subjects in property relations. Body parts become “things” sold, and rivers become people who can sue for pollution.<sup>4</sup>

By attending to the way that the waqf was remade from an object to a subject, this chapter demonstrates that the making of people and things in line with the private property regime—autonomous people, separate from things—is not a matter of the past. It is a reminder of the new practices that arise with this transformation and the older notions that continue to exist. Concurrently, I show that the transformation of waqf into a moral person during the waqf revival rendered the practice of waqf as charity less tied to a revenue-bearing object, thus contributing to the dissociation of charitable acts from “commercial” endeavors and perpetuating the idea that waqf making involves the creation of mosques or other religious institutions rather than ensuring their funding. Yet, at the same time, the idea of

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this personhood by law, a point highlighted by Maitland (2003, 63), which was the case for waqfs in the nineteenth century; they were treated as moral persons before they were recognized as such in the law. Bashkow (2014, 297) also notes that universities, businesses, and nonprofits are personified in everyday discourse, whether they are incorporated or not, suggesting that corporate personhood is produced discursively and socially. I use “legal person” to emphasize recognition in law.

3. Anthropologists and historians have argued that despite claims to the immanence of property, the private property regime is “rooted in the transcendence and violence of the state, sworn to with the authority of the Holy Bible at hand” (Klassen 2014, 181).

4. For different understandings of people and things, as well as the relation between people and their environment, see, for example, Weiner (1985), Strathern (1988), and Nadasdy (2002). On the transformation of body parts into objects, see, for example, Scheper-Hughes and Wacquant (2002), Sharp (2006), and Hamdy (2012). On corporate personhood, see the special issue of *PoLAR* (Benson and Kirsch 2014). On rivers being granted legal personality and the distinctions between nature, person, and deity, see Alley (2019).

a waqf as a revenue-bearing object continues to persist through practitioners and things that embody and perpetuate this logic.

#### OTTOMAN LATE ḤANAFĪ WAQF: WAQF AS OBJECT

To understand the origin of my assumption that waqfs should involve an object, I will start with the practice of waqf in the Ottoman late Ḥanafī tradition as described in the legal manuals of the “library” of that tradition, which I collected from the references cited in the legal opinions used in litigations around waqf (see introduction and appendix A).

##### *Definitions: Abu Hanīfa versus His Students*

*Waqf*, linguistically speaking, is a noun, the gerund (*maṣḍar*) of the verb *waqafa*. In common usage, *waqf* means “halting, stopping.” In legal parlance—at least for the Ḥanafī school to whose founder, Abu Hanīfa (d. 770 CE), the following definition is ascribed—a waqf is

the confinement of a ‘*ayn* [the corpus of a specific object, *res* in Roman law, the principal in endowment terminology] to the ownership of the waqf-founder, and the gift of its *manfa‘a* [yield or usufruct] to some charitable purpose. (al-‘Aynī, *Ramz*, 1:343)

Here, waqf is the enactment of an owner’s decision to dedicate the usufruct of his or her property to some charitable purposes while retaining ownership—the right of alienation, or the right to buy, sell, gift, mortgage, and bequeath the object. The usufruct could take the form of rent, taxes, bread, shelter, returns on money, and even shade. However, what does the “confinement” of an object to the ownership of its owner mean exactly? The question elicited internal debates among Ḥanafī scholars. Some jurists argued that since the founder owns that property, the action of confining ownership to the owner is a tautology, a nonaction; it just confirms the ownership of the owner. Mamluk jurist Ibn al-Humam (d. 1457 CE)<sup>5</sup> objected to Abu Hanīfa’s use of “confine” (*ḥabs*). He argued that since the ownership remains in the hands of the founder, the act of founding would not have changed any of the owner’s rights that come with ownership: the rights to sell, gift, and bequeath. Waqf founding then, he argued, does not include any confinement: it is simply the will of the founder to gift the usufruct to a pious purpose (Assaf 2005, 13). While gifting the usufruct to some charitable purpose, the owner retains full property rights and can revoke the waqf. Hence, for Abu Hanīfa, a waqf is not necessarily binding.<sup>6</sup> This is the reason why certain explanations compare Abu

5. The Egyptian jurist credited in the Ḥanafī school for having accommodated existing land practices of state ownership of land with Ḥanafī *fiqh* based on individual ownership (Johansen 1988).

6. A waqf based on Abu Hanīfa’s definition becomes binding in two cases: if a judge rules on it or if the founder makes it part of his or her will.

Hanifa's waqf to the gifting of usufruct or to interest-free loans (*'āriya*);<sup>7</sup> the owner can retract the gift of the usufruct. The waqf is not a gift (*hiba*)<sup>8</sup> because the ownership of the object and with it the rights of alienation remain with the founder. In addition, after the death of the founder, the waqf reverts back to his or her estate and is divided according to inheritance law. Hence, for Abu Hanifa, a waqf is not necessarily inalienable either.

Abu Hanifa's definition was questioned by two of his prominent students, Abu Yusuf (d. 798 CE) and Muhammad al-Shaybani (d. 805 CE), for whom waqf is "the confinement of the corpus [of a specific property] (*'ayn*) to the ownership of God" (al-ʿAyni, *Ramz*, 1:343). The students' innovative definition stemmed from a hadith (a tradition attributed to the Prophet Muhammad) supposedly unknown to Abu Hanifa. Had this tradition been known to Abu Hanifa, the students claimed, he would have espoused their position. This may very well be true, but the authority that the students' definition acquired cannot be explained on such grounds only, since Abu Hanifa also builds his argument on the basis of a hadith. As Peters (2012) has argued, the authoritativeness of the students' definition can be related to the changing socioeconomic and military conditions of the Islamic world at that time.<sup>9</sup> Contrary to Abu Hanifa, who confines the ownership of the waqf to the waqf founder, the students confer it to God. The conceptualization of waqf as God's property (*milik allāh*) thus dates to these very early debates. In this definition, human ownership of the waqf—and its most important prerogative, the right of alienation (*al-tamlīk*)—ceases to exist (*yazūl*) (al-ʿAyni, *Ramz*, 1:343, 345). Here, then, waqf is inalienable. Furthermore, since the only subject who can dispose of an object is its owner, the waqf becomes binding. Thus, as we have seen, even within a single law school, there was major disagreement on the essential characteristics of waqf: its inalienability and its bindingness. Yet, as all commentators explain, it was the students' definition that became authoritative.

### *Waqf as Object*

The definitions of Abu Hanifa and his students share commonalities in addition to their differences in terms of perpetuity and bindingness. In both of them, a waqf is a pious act that is not divorced from profit-making economic activity. Founding a waqf is an act that brings its founder closer to God, but it is also a revenue-generating endeavor. A waqf object generates either rent that is dedicated to a pious purpose or has a use that is itself a pious purpose. In the latter

7. "Tamlīk al-manfaʿa bilā ʿiwāḍ."

8. "Tamlīk al-ʿayn bilā ʿiwāḍ."

9. The questions of why and when the students' definition became more authoritative are worth investigating as they would give us insight into the socioeconomic determinations of the law, but I have not found works that answer them. During the lifetime of the students, their teacher's definition still held currency. Abbasid Caliph al-Mahdi (r. 775–85) appointed to Egypt a judge who subscribed to Abu Hanifa's definition and attempted to revoke many waqfs (Abu Zahra 2005, 12–13).

category, founders built mosques, fountains, libraries, and madrasas as waqfs.<sup>10</sup> These would later, in the nineteenth century, be referred to as charitable organizations (*müessesât-i hayriyye*) (Hilmi 1909: Article 17). In the former category, an array of land, shops, and houses were made into waqf, so that their revenues went to the running and upkeep of these waqf mosques, fountains, and madrasas.<sup>11</sup> In fact, most waqf foundations of mosques and other charitable institutions also included rent-producing assets. Similar rent-producing objects could also support other pious purposes, like the indigent in one's family or the poor. Thus, while providing a way to be closer to God, waqf was also a way to finance a multitude of public amenities and provide public services and relief for the poor, especially at a time when these services were not conceived as rights a state owed its citizens, and poverty was not yet conceptualized as a problem to be eradicated.<sup>12</sup> Thus waqfs, even if they were founded at a particular time and place, were perpetual because their ultimate recipients, the poor, were deemed eternal.

Both these definitions also emphasize waqf as an action, a process that transfers and then confines the ownership of an object. That is why I will sometimes use *waqf* as a verb, as in “she waqfed a shop.” The word *waqf* is also used to refer to the objects whose ownership has thus been confined, as attested by legal texts: “The waqfed object is also widely known as waqf, so one says ‘this house is a waqf’” (Ibn ‘Abidin, *Hāshiya*, 3:357). Following this usage, instead of saying “the waqfed house” or “the house made into a waqf” (*al-dār al-mawqūfa*) to describe a house or any object whose ownership belongs to God (as per the dominant practice in the court, following the students’ definition) and whose usufruct belongs to specified subjects, I will refer to it as the house-waqf. This usage appears in court records of my archive. *Waqf* there is used as a qualifier of an object (a shop, house, or parcel) to describe its legal “status.” It is mostly used when identifying a parcel of land through a description of its limits: it can be bordered “on the east by a shop-waqf of al-Hamra Sufi lodge,” on the west by “a house-waqf of the Great Mosque,” or on the “*qibla*”<sup>13</sup> by the waqf of the priests.”<sup>14</sup>

The archive, however, also points to a different usage of the word *waqf*, which the library books deny: that waqf is beyond a process or an attribute of objects, that it is akin to a person. In the shari‘a court records, numerous documents record sales and purchases for the waqf. For instance, a purchase records the administrator of

10. In Hanafī fiqh, mosques become automatically waqf; one cannot open a space for prayer and then change one's mind (Ibn ‘Abidin, *Hāshiya*, 3:369).

11. These revenue-bearing waqfs might remind the reader of trusts and endowments for universities in the United Kingdom and the United States. As I mention in the introduction (footnote 1), some scholars (e.g., Gaudiosi 1988) have advanced that the British trust has its origins in the waqf.

12. See Mine Ener (2003) for the transformation of attitudes towards the poor and the role of the state therein in Egypt in the nineteenth century; and Fleischacker (2004) for a historicization of notions of redistributive justice and the eradication of poverty.

13. The *qibla* is the direction of the Ka‘ba. In Beirut, it is almost south.

14. MBSS.S3/32/4, and MBSS.S3/35/4, respectively.

the Hamra *zāwiya* (Sufi lodge) buying shares of a shop for the *zāwiya* “from the funds [*māl*] of the aforementioned *zāwiya*.”<sup>15</sup> Here, the waqf owns assets and possesses money and can buy real estate; it is close to a moral person that can acquire rights around objects. In accounting records, waqf expenses beyond the revenues generated by the waqf’s assets are often noted as a debt that the waqf owes to the administrator. The accounting of the mosque of the Hamra *zāwiya* for the years 1256–58 [1840–42], for example, ends with around 9,000 qurush in the red, which is recorded as “a debt of the aforementioned mosque to the administrator.”<sup>16</sup> In these examples, the waqf emerges as a moral person, distinct from its administrator and able to enter into commercial transactions.

These practices differ from the explicit conceptualization of the waqf’s moral personhood in the *fiqh* library. There, the notion of a moral person can be found in the doctrine of the *dhimma*, “generally defined as a presumed or imaginary repository that contains all the rights and obligations relating to a person” (Zahraa 1995, 202). It embraces both religious and financial obligations and rights. The question then becomes whether the waqf has a *dhimma*. All commentaries repeat the same statement: “The waqf does not have a moral personality” “*laysa li’l-waqf dhimma*” (e.g., Ibn Nujaym, *Baḥr*, 5:210). Despite this absence, jurists allow transactions that end up treating the waqf “as if” it had a *dhimma*. For instance, the absence of a moral personality would prevent the waqf from borrowing money because a debt is held against one’s personality, based on analogy (*qiyās*). Yet, based on necessity, jurists allow administrators to borrow for necessary expenses like repairs after they take permission from the judge, with the debt being held against their own *dhimma*, but they can then recover that debt from the waqf revenues (Ibn Nujaym, *Baḥr*, 5:210; also in Ibn ‘Abidin, *Ḥāshiya*, 3:419–20). While this procedure constantly interposes the administrator’s own *dhimma* between the creditor and the waqf, the administrator is not personally liable for these debts.<sup>17</sup>

Islamic legal and economic historians, based on the explicit statements of jurists in law manuals, have claimed that moral personhood does not exist in Islamic law (Schacht 1964, 125; Kuran 2005). However, as seen in the examples above, and as historian Doris Behrens-Abouseif argues, the waqf has “attributes of a legal personality” (2009, 56): it outlasts its founder; it has the capacity to buy and sell; its assets cannot be foreclosed for the personal debts of the beneficiaries or the administrator; and its administrator, as an agent acting in good faith, is not liable for losses of waqf revenues, making the waqf have effectively limited liability. The waqf is therefore a moral person even if jurists do not articulate a concept of “moral personality.”

15. MBSS.S2/45, dated 15 C 1263 [30 May 1847].

16. BOA.EV 11192/56.

17. The practices that administrators could do for the waqf (borrowing, buying, etc.) according to jurists certainly effect the *dhimma* of the waqf and are worth a much lengthier discussion but are unfortunately outside the scope of this study.

*A Waqf Deed from the Archive*

In light of the debate in the library on the definition of waqf, we can turn to my Beirut archive (the shari‘a court records and some deeds from the family archive) to analyze the various practices of waqf and their relation to the different legal definitions described above.<sup>18</sup> Abu Hanifa’s students’ definition forms the backbone of the waqf cases recorded in the Beirut registers. Indeed, foundation deeds draw on and invoke the terms of their definition, mentioning the perpetuity and inalienability of waqf, as I will illustrate based on one of the earliest foundation deeds of the nineteenth century registered in the court.<sup>19</sup> A waqf foundation deed describes the original owner and founder of the waqf, the object to be made into a waqf, the beneficiaries, and various stipulations as to administrators, length of lease, and anything else the founder might deem necessary or desire.<sup>20</sup>

In this particular example, Darwish ‘Ali Agha al-Qassar surrendered the ownership of a shop he owned in the main square inside the walled city and dedicated its rents to himself during his lifetime and then to the shrine and tomb (*al-maqām wa al-ḍarīh*) of Sayyid Ahmad Badawi (1200–1276 CE) in Tanta, Egypt, and to the mosque housing it, and if these beneficiaries became extinct, to the Haramayn, the sacred sanctuaries of Mecca and Medina.<sup>21</sup> Darwish stipulated that the revenues should first go to the repairs of the shop, that the shop should not be rented to someone powerful or for more than three years, and that the administrator should receive six qurush for his services.<sup>22</sup> He appointed himself the administrator; after his death, his cousin Mustafa; and after him, the most upright of his children.

In this example, the shop waqf founded by Darwish al-Qassar sustains forever a Sufi shrine and the sacred sites of Muslim pilgrimage, sites that allow the perpetuation of Islamic ways of life. In the future imagined by the founder, Muslims would always be doing similar things: visiting Sufi saints and going on pilgrimage. Other waqfs were dedicated to the poor, which jurists take as one of the surest values in terms of providing a perpetual charitable recipient. Such waqfs’ revenues

18. Note that different locales had different relations to the library, and the typical waqf deeds exhibited slight variations.

19. MBSS.S3/157, dated 29 L 1233 [1 September 1818]. The waqf deed was copied “letter by letter” in the court register based on the request of its administrator in order to preserve it and confirm it in Shawwal 1268 [July–August 1852]. The administrator also registered another waqf of the same family, dedicated to the repair of a water fountain in Beirut, dated 8 M 1098 [24 November 1686].

20. Ghazzal (2007, ch. 6) describes the various parts that I describe below, but we have different purposes in our endeavor: my aim is to show the multiple definitions indexed; he is concerned with fictitious litigations and the way they allow for avoiding some of the requirements of contract law.

21. On Sayyid Badawi, see ‘Ashur (1966) and Mayeur-Jaouen (1994). The shrine remains a major site of visitation up to this day.

22. I have not stumbled upon any litigation where the question of a “powerful” tenant comes up, while the question of the length of the contract is central in the debates in the library and has led to innovations in the archive that have found their way back to the library. See, for example, Hoexter (1984, 1997); Knost (2010); and Güçlü (2009).



were geared towards the relief of poverty, not its eradication, and were built on the assumption that the poor would always be there. In both cases, these waqfs sustain a future of the same rather than the better. This is charitable giving that provides what the literature on development would term “sustainable” income for this shrine, distinguished from one-time handouts of food and money, which are often depicted in this literature as a quick fix, a “Band-Aid,” that does not solve any need in the long term and instead creates dependencies. This alignment with notions of sustainable development allows the conscription of the waqf by the United Nation’s ESCWA (Economic and Social Commission for Western Asia) as a local model of sustainable development (ESCWA 2013). Yet, such waqf practices delink sustainability from progress because they reproduce the same practices rather than improve or eradicate them. They remind us that progress and the eradication of poverty are not a hallmark of sustainability but of a time-horizon characteristic of our modern age.<sup>23</sup>

Darwish’s waqf deed records first a speech act, because for most Ḥanafī jurists, the mere utterance of “I made into a waqf” or an equivalent expression is sufficient to create the waqf (Austin 1962).<sup>24</sup> A founder does not need to go to court for the legal effects of the foundation to take place. The registration of the waqf deed in court serves a different purpose, as I describe below. We first encounter waqf as eternal in the verb forming the speech act of the foundation. After describing the founder, the waqf deed registers the founder’s actions: “he made into a waqf, eternalized, confined, dedicated and gifted to charitable purposes” (“waqafa, wa abbada, wa ḥabbasa, wa sabbala, wa taṣaddaqa”).<sup>25</sup> In this particular foundation, the verbal nouns derived from these verbs are then added at the end of the sentence (*waqfan ṣaḥīḥan sharʿiyyan wa taʿbīdan dāʾiman sarmadiyyan, wa ḥabsan mukhalladan marʿiyyan*), a rhetorical move that intensifies the effects of the speech act. The waqf deed sometimes mentions the consequences of the perpetuity of the waqf, mostly in terms of its inalienability. Expressions like “cannot

23. As such, waqfs question the assumption in the literature on charitable giving that religious *charity* is about one-time handouts that create dependency, since waqfs most often provide regular and sustainable income. Amira Mittermaier (2019) addresses another side of this assumption (that one-time handouts are bad) by showing the radical politics that one-time charitable handouts framed as “giving to God” allow in Egypt and beyond. For a great discussion of assumed distinctions between charity, development, and humanitarianism in terms of temporality, agency, motivation, see Scherz (2014, 5–7).

24. In many fiqh manuals, the discussion sometimes uses direct quotations by switching to the first person when explaining the words necessary for the performativity of the speech act. Sometimes, as in the waqf deed on the cover of the book, the deed starts with a section that describes the importance of charity in the tradition and the desire of the founder to do good and get close to God. However, this section does not have any legal effects, but it is one of the few places where judges do not follow prescribed formulas, providing particularly valuable information as to the conceptualization and presentation of such acts of charity.

25. MBSS.S3/157.

be gifted, inherited, pawned, owned, appropriated, transferred, or transmitted, in all or in parts, to anyone” can follow the waqf object and further confirm the use of the students’ definition of waqf. Nonetheless, the use of the verb *eternalize* and the description of the inalienability of the newly found waqf are not requisites in the waqf deeds, and many of the documents of the Beirut shari’a court skip these rhetorical devices altogether. In fact, most of the waqf deeds actually do not refer to the students’ definition in this part of the deed that contains the speech act and the description of the waqf objects, beneficiaries, and stipulations.

The next section of the waqf deed, termed by jurists “Delivery and Receipt” (Taslim wa Tasallum), describes first the founder who “took the waqf out of his ownership [*milk*] and transferred it to the ownership of God.” The reference to the students’ definition is here completely unambiguous. The founder then delivers the waqf to a person whom she names as a co-administrator or sometimes as the sole administrator (*mutawalli*).<sup>26</sup> That action of delivery and receipt points to a debate among Abu Hanifa’s students on how ownership can become extinct. They disagree as to whether the utterance is performative. For Abu Yusuf, as for most other scholars of all schools (*jumhūr al-‘ulamā’*), arguing based on the analogy to manumission of slaves, the utterance suffices to enact the waqf and transfer ownership from the founder to God. For al-Shaybani, the waqf remains in the hands of its owner and is thus revocable until the handing of the *‘ayn* to the administrator, because all ownership ultimately belongs to God, so the forfeiture of ownership only occurs through delivery (al-‘Ayni, *Ramz*, 1:344). It is because of the need for delivery that, for al-Shaybani, the founder cannot be the administrator, whereas for Abu Yusuf she can. The waqf deed in question, in the delivery and receipt section, enacts the forfeiture of ownership in accordance with al-Shaybani’s opinion and thus avoids any challenge to the waqf; it renders the waqf binding because the waqf has now left the possession of the founder.

With the delivery and receipt, the second part of the waqf deed reaches an end. The third and last section introduces further action into the waqf deed, which transforms from a forfeiture of ownership to a litigation. The section almost always starts with the statement: “Then, after the finalization of the waqf . . . , it occurred to the founder to revoke his waqf.” This sudden change of heart appears at first puzzling from a founder who has buttressed the foundation deed with every possible locution that renders the waqf unquestionable and binding. In fact, the supposed revocation is a “procedural fiction” or “fictitious litigation,” a stratagem based on the tenet that a qadi’s ruling is final (*res judicata*), and is yet another way to make the waqf deed binding. This fictitious litigation indexes the possibility of another definition even before it is brought up by actual litigants. This fictitious litigation is part of the model legal instrument developed by jurists to enforce what had become the dominant opinion of Abu Hanifa’s students and to stop potential

26. Many times, the section also includes a “threat” (*tarhib*) to anyone who changes the waqf.

heirs and interested parties from coming to court, conjuring Abu Hanifa's definition, and arguing that a waqf ends after the death of the founder and that therefore the waqf should revert back to their ownership. This part of the foundation was probably not uttered by the founder. This fictitious litigation is used in every single foundation deed in Beirut and unfolds in the following manner: After the founder changes her mind, an administrator, who is often temporary, steps in as the trustee of the waqf and argues that the students' opinion does not allow revocation. The qadi then rules in favor of the administrator, and the founder dismisses the temporary administrator. Because a judge has ruled in a litigation in favor of one of the opinions, the waqf deed becomes binding.

Consequently, waqf deeds, like the one I use here, even if they are based in and actualize the students' definition of waqf, point to another definition of waqf (and different requirements for bindingness) that very much inform the content of the document. The use of this fictitious litigation indexes these early debates and the constant possibility of a challenge to the irrevocability of the waqf. Abu Hanifa's definition appears in the shadow, as a threat to the perpetuity of the waqf. Thus, the debate over bindingness and inalienability does not simply belong to a theoretical fiqh debate of the library; it makes itself apparent in the archive as it structures the documents recorded at court.<sup>27</sup>

#### LATE NINETEENTH-CENTURY WAQF: THE QUESTION OF THE WAQF AS LEGAL SUBJECT

Thus were the general contours of waqf practice that appear in the archive in Beirut: a definition of waqf that privileged perpetuity and inalienability, with the definition of waqf as temporary lurking in the background, where God belonged to the cast of characters involved in property relations, and the hereafter figured in the practice. Waqf was mostly an object around which property relations were formed, and charitable practices were not divorced from economic profit. I turn now to the reforms of the nineteenth century and, rather than investigate their origins or aims, I turn to what actually remains of these reforms: the work they did and the effect they had on contemporaneous practice.

The new state-endorsed and exclusive Ottoman legal codes of the nineteenth century did not provide a definition of waqf. The 1858 Land Code did not define

27. The aim of the fictitious litigation is not simply to register the deed at court as a form of public registry, because public registry would not necessitate this collusive litigation (sale contracts registered at court are not accompanied by such litigation). The fact that even waqf deeds drafted by qadis but not registered at court contain the same fictitious litigation points to the possible challenges by heirs that need to be shut down by a judge's decision in a litigation. Other legal schools that do not share these differing opinions as to the inalienability do not use litigation. See, for example, Müller (2008, 74–75), who describes how Shāfi'is in Mamluk Jerusalem notarized waqf deeds at court through a certification process that involved witnesses only.

waqf, for that belonged to the jurisdiction of the shari‘a.<sup>28</sup> The codification of the shari‘a in the Mecelle had not reached a section on waqf when the new sultan Abdülhamid II interrupted its publication in 1876.<sup>29</sup> The books of the library along with various state-issued regulations remained the main sources for individual judges to make decisions on the most appropriate rulings for the founding and administration of waqfs.

However, in the late nineteenth and early twentieth centuries, new types of manuals dealing exclusively with waqf started appearing. It was my notebook that alerted me to these new manuals, rather than the archive, keyword searches at university libraries, or the bibliographies of works on waqf.<sup>30</sup> I had not encountered these manuals until one day in the summer of 2009, when an employee at the DGIW pulled a photocopied bilingual Ottoman-Arabic edition of Ömer Hilmi Efendi’s *İthâfûl’l-Akhlâf fî Mushkilâtîl-Evkâf* (1890 [1307]) from a shelf behind him, as he was trying to figure out the legal requirements of a particular contract. Such manuals are still used at the DGIW, where they are not arcane Islamic legal manuals that have been supplanted by postcolonial waqf legislation, a reminder of their lasting effects and their authoritativeness. Besides Ömer Hilmi Efendi’s book, which appeared in French in 1895, in Arabic in 1909, and in English in 1922, these manuals include Muhammad Qadri Pasha’s *Qânûn al-‘Adl wa al-Inşâf fî al-Qadâ’ ‘alâ Mushkilât al-Awqâf* (1311 [1893]), which was published in Egypt and appeared in French in 1896; Hüseyin Hüsnü’s *Ahkâmü’l-Evkâf* (1310 [1892]); Elmalılı Muhammad Hamdi Yazır’s *İrşâdü’l-Akhlâf fî Ahkâmi’l-Evkâf* (1330 [1912]); and Ali Haydar’s *Tertîbü’ş-Şunûf fî Ahkâmi’l-Vukûf* (1340 [1922]). The last three Ottoman-language manuals do not seem to have had any translations and are the least available of the five books. Muhammad Hamdi’s manual was recently “rediscovered,” and a critical edition in modern Turkish was published in 1995.<sup>31</sup> These new manuals, as I discuss further below, opened up new possibilities for waqf practices while foreclosing others.

These five manuals diverge in their audience or purpose: the first two manuals (Ömer Hilmi Efendi’s and Muhammad Qadri Pasha’s) seem to have been targeted at lawyers and judges, while the last three are lecture notes or textbooks intended for use in the new law schools producing future lawyers and judges. Together, nonetheless, these two types of manuals indicate the way the reforms of the legal

28. The Land Code originally applied only to *miri* lands and not to *milk*. The literature on the Code is voluminous, but for an introduction and excellent summary of the state of the field, see Mundy and Smith (2007, 3, 45–48).

29. According to Aydın (2003) in the *İslam Ansiklopedisi* entry on Mecelle-i Ahkâm-i Adliyye. Öztürk (1995, 3) provides 1868–1889 as the window during which the Mecelle was published. Shaw and Shaw (1976, 119) advance 1866–1888.

30. This is the case because most of these studies are historical and end before the nineteenth century. Hoexter (1997) cites them and relies on them as “semi-official Hanafi waqf manuals” in use in Algiers.

31. See also Çilingir (2015) for a study of Elmalılı’s views on waqf.

system became inescapable realities: the coupling of the adoption of the new codes as the exclusive law of the state with a new education system that familiarized the bureaucrats, lawyers, and judges-to-be with the new laws and made the ‘ulama’s independent reasoning and traditional madrasa education much less central to the development and practice of law.

All these manuals share nonetheless a common format, introduced by the Mecelle: “the code” or general rules presented as articles and arranged thematically in sections. This form of waqf manual was structured very differently from the dialogical waqf manuals of the third century AH/ninth century CE and the topical discussions of al-Tarabulusi’s compilation. The novelty of the code form and its “thinning out” of shari‘a have been the subject of much debate (Peters 2002; Fierro 2014; Ibrahim 2015; Ayoub 2016; Burak 2017), with the recent conclusion that codification is not inherently contrary to Islamic law. Nonetheless, the more important question is not about codification and its effect on the shari‘a but rather about the place of the code in the legal system and the role of law in society and in relation to the state: what happens to the shari‘a when it is used in a modern state where law serves to produce disciplined and self-governing citizens by changing the conditions of their lives (Asad 1992; Rose and Valverde 1998), rather than being an expression of God’s will for how to live a good life in light of the hereafter? The new waqf manuals and code-like works of the nineteenth century came to exist in different legal universes than the late Hanafi fiqh books.<sup>32</sup>

### *Projects and Agents of the State*

Muhammad Qadri Pasha’s and Ömer Hilmi Efendi’s manuals, although not adopted as legal codes by the Ottoman state, were almost as authoritative as state law. Qadri Pasha’s codification was only published posthumously in 1893 through the efforts of his son, who edited the three copies into the present volume after the Ministry of Education deemed the three manuscript drafts an unfit format to review (Siraj 2006, 30). Despite being under British occupation, Egypt was still under Ottoman rule, and Qadri Pasha’s son navigated the Ottoman state bureaucracy to publish the manual. The Ministry of Education sent the manuscript to the Egyptian grand mufti, who represented the scholarly community, for review. The mufti observed that the book “misquoted its sources” and did not recommend it for publication (Siraj 2006, 30). Eventually, two fiqh teachers at the newly founded schools, and thereby embedded in the state modernizing project, edited the manuscript.<sup>33</sup> Following that edition and upon the recommendation of the shari‘a court inspector, the Ministry of Justice bought and endorsed the

32. Arguing from a different perspective, Samera Esmeir (2012) shows that these legal textbooks and positive codes create a rupture in the conception of time and authority. By abstracting law outside of tradition and by their self-referentiality, they introduce a presentist temporality.

33. One of them was an al-Azhar graduate (on al-Azhar see footnote 36 below); the other I could not locate.

book and printed a first edition (Siraj 2006, 31). The purpose of the book therefore was not to participate in a scholarly debate within the tradition, which the mufti recognized. It was instead targeted to courts, judges, and lawyers, who recognized its value as such. The preface to the 1936 French annotated translation (when Egypt had become a monarchy under British “influence”) presents the endeavor of Qadri Pasha as an educative one, “for the edification of his contemporaries” (Qadri 1942, i), but then mentions that the Egyptian government commissioned its translation. The unofficial endorsement of the manual appears unquestionable, despite the preface’s claim that the manual was simply about education. The translation almost transformed the manual into a code, its translators claim. They note, nonetheless, the controversial nature of the book, as some lawyers considered it to be highly authoritative and others relegated it to a haphazard compilation of opinions.

Ömer Hilmi Efendi prepared his manual in the context of his position as a member of the Mecelle Committee, where he was assigned the codification of waqf law (Özcan 2007). The book was published posthumously in Istanbul in 1889 [1307].<sup>34</sup> Twenty years later, the Arabic translator of Hilmi Efendi’s manual emphasized its comprehensiveness, including its fiqh contents, but especially recent developments in waqf practice and their customary treatments. He advanced that Hilmi Efendi’s book had become indispensable to any “judge, president of a court, waqf employee, civil court member and scribe, law student, waqf administrator, supervisor, collector, beneficiary, and mosque staff, claimant, defendant, and lawyer, and anyone related to waqf” (Hilmi 1909, 3). These two manuals come close to being, in the minds of their authors and the practices of the courts, an Ottoman-state-endorsed code on waqf.

The authors of these two manuals came from quite different backgrounds, yet they shared a common path into state bureaucracy, and it was their work for the state that brought their manuals together and allowed the traditionally schooled scholar and the modernly educated one to overlap in their approaches and their projects. Born in 1821 to a Turkish bureaucrat who settled in Egypt, Qadri Pasha (1821–1888 CE) followed a course of studies typical of the century.<sup>35</sup> He started with the memorization of the Qur’an, then attended a small local school, after which he joined the School of Languages (Madrasat al-*Alsun*) in Cairo, which had been founded in 1836 and headed by the leading modernizing educator Azharite Rifa‘a al-Tahtawi; “both Islamic and European branches of learning . . . [like]

34. It was not until 1977, through an initiative of the Directorate General of Waqfs (Vakıflar Genel Müdürlüğü), that the book was transcribed into modern Turkish and republished, showing the effects of the secularizing reforms of the Turkish state, which eradicated waqfs and made all such manuals irrelevant until the revival of the practice.

35. The biography is based on the introduction to the 2006 Arabic edition of his book (Siraj 2006) and on Iskarus (1916). Iskarus mentions that Qadri Pasha’s father came from Anatolian town Vezirköprü (which he calls Vezirköprülü).

French, English, Italian, Turkish, Arabic, mathematics, history, and geography” were taught by “a staff of European and native teachers . . . [including] several well-known Azharites”<sup>36</sup> (Heyworth-Dunne 1939, 966). Qadri Pasha seems to have worked in Arabic, French, and Turkish, and upon his graduation he occupied various governmental offices as a translator in Cairo, Damascus, and Istanbul. He returned to Cairo and was appointed successively as an advisor to the mixed courts,<sup>37</sup> a minister of justice, a minister of education, then once more a minister of justice. He was a member of the committee working on a new civil code and new criminal legislation. He was also commissioned by the Ottoman sultan Abdülaziz to participate in the revisions to the Ottoman constitution. Qadri Pasha was also heavily involved in the process of translation and codification occurring at the time in the Ottoman center and peripheries. He not only translated into Arabic the French penal code in 1866 [1283], as well as the civil code used in the Mixed Courts of Egypt, but also codified personal status law (Abu-Odeh 2004, 1101; Cuno 2015, 158–84), as well as pecuniary transactions and waqf.

Ömer Hilmi Efendi (d. 1889 CE) was born in 1842 in Karinabad (Karnobat, Bulgaria) and followed a more traditional education for a Muslim scholar. He belonged, like his father, to the *ilmiye* (the religious class in the Ottoman Empire) rather than the new class of bureaucrats.<sup>38</sup> After memorizing the Qur’an, Ömer Hilmi studied under various ‘ulama’. He read the two classical hadith collections, *Ṣaḥīḥ Muslim* and *Ṣaḥīḥ Bukhārī*, and received his license to further transmit them (*ijāza*) from the *kazasker* (chief judge) of Rumeli. He started teaching at the Fatih Mosque in Istanbul before pursuing a bureaucratic career in the various bureaus of the Office of the Fatwa and the Waqf Ministry. He received the honorary ranks associated with the judgeships of Jerusalem and the Haramayn (Mecca and Medina) as well as that of Istanbul, considered the highest of all. He joined the Committee of the Mecelle in the early 1870s and played a critical role in the preparation of the last four books of the Mecelle. First a member of the Court of Appeal, he became its head in 1888 and taught at the newly established law school.

In the still common distinction between modernist scholars trained as lawyers and traditionalist scholars classically trained in madrasas (for an early formulation,

36. Azharites are graduates of al-Azhar, which was then and remains today one of the leading madrasas in the Muslim world, even though it adopted many modern methods of teaching in the nineteenth century. On al-Azhar’s modernization, see, for example, Gesink (2009).

37. The courts existed only in Egypt, which at the time had gained some autonomy from the Ottoman Empire under the rule of Muhammad Ali and his successors. For more on the question of Egypt’s sovereignty and its relation to the Ottoman Empire, see Fahmy (1998) and Hunter (1998). On the legal system in Egypt at the time, see Brown (1995) and footnote 56 below.

38. This biography is based on the *İslam Ansiklopedisi* entry on Ömer Hilmi Efendi (Özcan 2007). He held a professorship (*müdürrislik*)—the grade of *müdürris* is the highest in the Ottoman religious hierarchy (see Akiba 2004). He also acted as a lecturer (*dersiâm*) in Karinabad.



see Schacht 1964, 105; for recent usage, see Zaman 2012), Qadri Pasha would be placed among modernists and Ömer Hilmi Efendi among traditionalists. Such a categorization would lead one to assume that Ömer Hilmi Efendi, as part of the “old guard,” opposed reforms that undermined the reproduction of the system that produced him as a scholar. The fact that he did not, but was instead an active reformer, points to the two men’s convergence through their common careers in the state bureaucracy. Their position as agents of the state can better explain why they produced this form of fiqh manual.

### *Exclusivity of Legislation*

While the form of these manuals as codes might not have been in and of itself a novelty and while the codes of Qadri and Hilmi mostly reproduced the dominant opinions in the Ottoman late Hanafi tradition, these codes operated differently than code-like manuals in the tradition.<sup>39</sup>

We can see these differences from the waqf definitions that both Qadri Pasha and Ömer Hilmi Efendi provide. *Waqf* according to Qadri Pasha is

the confinement of a ‘*ayn* from the ownership of any human being, and the gift of its *manfa‘a* to the poor, even if [the poor is only one beneficiary] among others, or to a charitable purpose. (Qadri 2006: Article 1)

According to Ömer Hilmi, however, it is

the confinement of a ‘*ayn* so as to give its *manfa‘a* to humans and to prevent its ownership and transfer, so it is tantamount to being in the ownership of God. (Hilmi 1909: Article 1)

If these manuals are comparable to the genre of *mutūn* (core texts) in terms of their conciseness, then the provision of a single definition is not unusual. *Al-Kanz* provides one definition, for instance, even if Timurtashi’s *Tanwīr al-Abṣār*, the *matn* of Ibn ‘Abidin’s *Ḥāshiya*, provides both Abu Hanifa’s and his students’. Upon closer scrutiny, however, a few differences between these codes and the *mutūn* start appearing. The definitions used here combine definitions from different commentaries. Qadri Pasha’s definition, for instance, combines parts of the commentary on Timurtashi with others from *al-Fatāwā al-Hindiyya*. In addition, the authors do not attribute these definitions to any authority; these definitions stand as absolutes, contrary to the way they do in the *mutūn*, since both the *Kanz* and the *Tanwīr* refer

39. Analyzing Qadri Pasha’s codification of the personal status law, Kenneth Cuno makes similar arguments about the changes that codification introduces, from the elision of alternative opinions to the creation of a “definitive statement of the legal rules as a guide for legal practitioners” (2015, 173). Because the personal status code, unlike waqf, has parallel sections in the French Civil Code, Cuno can also trace the way Qadri organized the fiqh to conform to the order of the French code.



to the definitions as “for him” (*‘indahū*) or “for them” (*‘indahum*). The definitions in these new manual codes are presented as definite and absolute.

Form is emblematic of deeper changes within the whole structure of the judiciary and the realm within which these waqf manuals were to be used. The original *mutūn* did not stand on their own except as textbooks, and their meanings could not be understood without the commentaries that qualified the concise definitions provided. Here, the commentaries on these manuals (and more broadly on the *Mecelle*) do not bring out the debates in the tradition but, rather, clarify various interpretations and fine points of the articles, supplementing the articles with court decisions. The inclusion of higher court decisions, which displays the use of the doctrine of *stare decisis*, or precedent, requires the judges to follow these decisions on disputed matters. The new manual codes were written to be the sole source of the “law” of waqf among lawyers and judges, supplemented only by court decisions that further delimited these codes.

The articles following the definition further delimit the consequences of the definition of waqf with regard to the main element of controversy in the shari‘a, irrevocability, and its two effects, perpetuity and inalienability. Here, both Qadri Pasha and Ömer Hilmi Efendi adopt the students’ definition with its emphasis on forfeiture of ownership and hence irrevocability. Irrevocability is the first characteristic that Qadri Pasha’s code states (Article 3), after stating that the mere utterance of a waqf enacts it. Qadri Pasha and Ömer Hilmi Efendi consequently take the same position when they actually tackle perpetuity. Ömer Hilmi Efendi’s Article 73 simply states: “A waqf has to be eternal. The temporary waqf is not valid.” Article 13 of Qadri Pasha’s manual echoes this requirement: “The meaning of perpetuity is a necessary condition for the validity of waqf.” Both Qadri Pasha and Ömer Hilmi’s works then codified the most authoritative opinions in the Ḥanafī school.<sup>40</sup> Yet, the mixing of opinions from various manuals and privileging a single definition without referring it back to a scholar or placing it in the shari‘a debates on waqf severed the codes from the Ḥanafī tradition and presented these rules as absolutes, while commentaries linked them to court decisions that now became binding.

### *Formulating Waqf as a Moral Person*

The use of waqf in this transformative period retains many of the features earlier discussed (namely, being an object in property relations and a revenue-generating object for charitable purposes), even though a new formulation of the waqf as a moral person starts to make its appearance in the commentaries of these new manuals, rather than only in the archive as shown in court records.

40. All the articles of Qadri Pasha’s manual can be traced to seven canonical books of the Ḥanafī tradition (Siraj 2006, 36–37).

Waqf remains an object in the 1858 Ottoman Land Code, which divides the lands of the Ottoman Empire into five types: *memlûke*<sup>41</sup>, *mîrî*<sup>42</sup>, *mevkûfe*<sup>43</sup>, *metrûke*<sup>44</sup>, and *mevât*.<sup>45</sup> Except for the *mîrî*, all the structures of the adjectives are passive participles (*maf'ûl bih*): they are the objects of actions. Waqf, while recognized in the Land Code, was not yet formulated as a subject of land rights. Ömer Hilmi also makes explicit the practice, which we noted above from the court records, of calling the object made into waqf, the waqfed object, waqf. In his second article he points to the practice of calling the *mevkûfe* lands “waqf.” The new code then formalizes the use of the term *waqf* as a designation for the object made into a waqf, in addition to the process of alienation and dedication.

Despite these continuities, the new waqf manuals and legal codes paved the way for new framings of the waqf as a moral person. The various commentaries on that innovation continued with the assumption that, before this time, moral persons did not exist in Islamic law. For instance, the commentators on the French edition of Qadri Pasha's first article note: “The main legal effect of the constitution of a waqf is taking out the ownership of the *biens* [possessions] made into a waqf from the patrimony of the founder and its transfer into the ownership of the moral person called waqf” (Pace and Sisto in Qadri 1942, 1: Article 1.6). As can be seen in comparison with the definitions provided above, this formulation contradicts any formulation of the ownership of the waqf, whether by Abu Hanifa or his students—or any school or Muslim jurist prior to the end of the nineteenth century, as a matter of fact. According to these late Ḥanafî fiqh definitions, the

41. Property held in *milk*, freehold. Scholars, especially legal scholars who emphasize the translatability of legal idioms across traditions, argue that *milk* owners have rights similar to private property owners today (they can sell, exchange, gift, lease, loan, pledge, and bequeath it), and so they can “physically use or enjoy it to the fullest extent consistent with the public interest.” Furthermore, the *milk* owner's ability to “immobilize the property interest in perpetuity, making it forever inalienable,” through waqf, is proof to these authors that the owner has complete rights of ownership in his property and is not subject to any other limitations (Debs 2010, 20). However, Ottomanist historians might disagree with this understanding of *milk* as absolute ownership including the rights to the land. Instead they present it as an “entitlement to tax revenues which, like other types of revenue grants, the grantee held by virtue of an official document from the ruler” (İslamoğlu 2000, 290). The *milk* owner had the right to sell, bequeath, and endow this entitlement, yet, as Huri İslamoğlu points out, these rights were not conceived of as absolute ownership. A hint to the limits placed on *milk* rights in Ottoman practice is that, in rural areas, a *milk* owner had the duty to cultivate his land and pay taxes, and if he did not do so, the ruler could rent out the land or even sell it (Mundy and Smith 2007, 14).

42. Lands owned by the state.

43. Waqfed land. The Code distinguishes between two kinds of waqfs, which eventually come to be known as waqf *şahiḥ* (valid waqf) and waqf *ghayr şahiḥ* (invalid waqf). The former is the waqf discussed by jurists. The latter is founded on land that belongs to the Treasury and thus does not fulfill an essential condition of the object in the foundation: that it is the *milk* of its owner. Jurists have allowed such waqfs. See Cuno (1999) for these *ghayr şahiḥ* waqfs known as *murşad* in Egypt.

44. *Mîrî* land for public use, such as roads and communal lands, akin to public domain.

45. Literally, “dead.” Young renders it as “*terrains vagues*,” abandoned, uncultivated usually because they are too far away from inhabited regions (a distance is given in miles, time, and audibility—from where “one cannot hear a loud voice”) (1905, 6:74, translation mine).

ownership of the waqf belongs either to God or to the founder, not to a juristic entity called waqf. The *legal formulation* of the waqf as being a moral person is completely novel.<sup>46</sup> These European commentators who were part of the Egyptian legal system aligned the waqf with their understanding of corporate personality. The terse definition of Qadri Pasha, which did not mention the owner of the waqf and did not report the debates on the new owner in the Ḥanafī tradition, allowed new interpretations of the waqf as having a moral personality to make their way into the law. While Hilmi retained God in its definition, the enshrinement of the waqf as a moral person and the permanent expulsion of God from property relations happened by way of the property regime and its categories.

### FRENCH MANDATE: WAQF AS SUBJECT

After the end of World War I and the dismantling of the Ottoman Empire, the project that the codification of Qadri Pasha and Ömer Hilmi had begun took different trajectories in various areas of the Ottoman Empire. In the Turkish Republic, the project was halted as the state eradicated waqfs through their sale at auction, appropriation by different ministries, and reversion to private property (Çizakça 2000, 86–90). In Egypt, the codification of waqf law initiated by Qadri Pasha continued and was issued as state law, the 1946 Law of Waqf.<sup>47</sup> This law severely curtailed and even abolished waqf outside mosques and charitable institutions (Abu Zahra 2005, 40–41).<sup>48</sup> In what became Lebanon, however, the French Mandate state adopted a much more careful policy—informed by the French colonial experiments in North Africa and the strong opposition of the Muslim population to their Mandate in the Levant.<sup>49</sup>

#### *French Colonial Experiments*

The French came to Lebanon with extensive experience with waqf from their colonial enterprise in North Africa, an experiment that has been well documented and analyzed.<sup>50</sup> Algeria, occupied in 1830, was the first site of French experimentation

46. As discussed above, the waqf could borrow, via the trustee, without incurring the trustee's liability. Yet, this change "in the letter of the law" was felt during the French Mandate, when waqfs started having bank accounts without the intermediary of the trustee, for example.

47. These two countries became models, especially in terms of legislation, for many of the newly founded nation-states. See footnote 56 below.

48. I will discuss the arguments behind these measures in chapter 4. Turkey reversed its position in 1967 with a new and "modernized" law of waqf, marrying American trust law with the shari'a (Çizakça 2000, 90–110).

49. On that opposition, see Johnson (1986, 22–26); and Khoury (1987, 5–6). On the appropriation of the Ottoman politics of notables by the French to co-opt the Sunnis who were opposed to the Mandate, see Eddé (2009).

50. For Algeria, see Ruedy (1967, 6–8, 67–79); and Saidouni and Saidouni (2009), which includes an extensive survey of studies of French intervention in waqf in Algeria. For Tunisia, see Hénia (2004); and Cannon (1982, 1985). For Morocco, see Luccioni (1982); and Kogelmann (2005). Finally,

with waqf legislation. Waqf was not particularly conducive to French interests in Algeria as a settler colony, insofar as waqf lands could not be sold as freehold to settlers.<sup>51</sup> Ernest Zeys, chair of Islamic law at the École de Loi d'Alger, writes that France found half the "land immobilized, outside any transaction. She could not accept such a situation. We did not conquer such a vast and rich territory to live there precariously, without settling longer term" (quoted in Shuval 1996, 56). Also troubling for colonial power was the sale of these waqfs to European settlers by some beneficiaries or speculators who then reclaimed them on the basis of their inalienability (Powers 1989, 540). In a revisionist account that reminds us that colonial policy was not as farsighted and planned as many studies have assumed, Saidouni and Saidouni (2009) argue that French attitudes towards the waqf in the early years of the colonization of Algeria oscillated between the eradication of waqf and its reform to serve French interests.

Eventually, French legislation along with Orientalist knowledge produced about the shari'a radically transformed what waqf was and could be in French Algeria.<sup>52</sup> By 1843, legislation had integrated all "public waqfs" into the public domain (Ruedy 1967, 75) and made waqf alienable when Europeans were involved in long rents or sale contracts on waqfed assets (Pouyanne 1900, 96). In 1859, the provision of alienability was extended to all transactions on waqf. In practice, waqfs that were not religious buildings became alienable.<sup>53</sup> French waqf legislation in Algeria drew on and influenced studies of waqf in the school that came to be called French Algerian law.<sup>54</sup> These studies were elaborated by members of the "colonial school," Frenchmen intimately connected to and invested in the colonial

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see Powers (1989) for a comparison between the French-Algerian and English-Indian policies and approaches to waqf. Even though the majority in Algeria followed the Mālikī *madhhab*, they established waqf based on the Ḥanafī *madhhab* (Hoexter 1998a, 9).

51. The percentage of waqf-land is difficult to ascertain. Shuval estimates that 25–30 percent of the city was waqfs (1996, 56). Ruedy mentions that "the greater part of urban *milk*" was waqfed, whereas in rural areas at least 26,000 hectares and possibly even 75,000 hectares were waqf (1967, 8). Rural waqf constituted only 4.5 percent of the "total domain made available to colons" (1967, 67).

52. In their accounts, historians have emphasized strong ruptures in waqf in Algeria, but as this study will show, older notions and practices were not completely eradicated.

53. Bleuchot (1999) notes that these are developments in the North and that the waqfs of the South had a different trajectory, even if they were also almost obliterated.

54. Note that these were not the first Orientalist studies on waqf, as some had been written from the Ottoman Empire. One can cite here Belin (1853), an annotated translation of two waqf documents from the court of Galata. Although written by an Ottoman-Armenian subject, Ignatus Mouradgea d'Ohsson, the massive eighteenth-century *Tableau général de l'empire ottoman* had a "clear intent to explain the Ottomans to the outside world" (Findley 1999, 3). In addition, the French consuls in Istanbul had been following closely the development of waqf reforms and regulations in the Ottoman Empire. Thus, reporting to the Ministry of Foreign Affairs in June 1867, the French ambassador in Istanbul forwarded a new law on the lease of waqf properties, translated as "law of the reform of waqfs." He seems apologetic but also hopeful: "This law still has some restrictions on the complete assimilation of waqf to private property, but it is understood that these will be eliminated soon after" (Documents Diplomatiques 1867, 163, quoted in Deguilhem 2004, 402, translation mine).

project: colonial officers, judges, and professors.<sup>55</sup> The work of these Orientalists “campaign[ed] to discredit the institution among the Algerians themselves” (Powers 1989, 536). These studies permeated and transformed the very thinking and meaning of shari‘a, and waqf in particular.

The “colonial attack” on waqfs in Algeria did not go unresisted. Strong opposition from the muftis and religious scholars led to the exile of both the Ḥanafī and the Mālikī muftis (Saidouni and Saidouni 2009, 15, 25n90), and French reforms could move forward only after the protestors had been exiled (Ruedy 1967, 68). Tenants stopped paying rent and waqf administrators rented for very low prices, even passing off waqfs as private property, because they feared that “the properties were heading straight into the hands of the infidel government” (Ruedy 1967, 70–71).

The French adopted a much less radical policy towards waqf in Tunisia and Morocco, which left waqfs under Muslim administration with French supervision, in line with the new indirect-rule system of the protectorates. While no studies document the reasons behind the shift in policy, a lessons-learned explanation was put forward by Jean Terras (1899, 164), in addition to the already dominant private property regime in Tunisia. The new strategy is a source of pride for Terras, as it involves self-ascribed skillful maneuvering of the French administration. He writes: “Our administration, through a series of wise [*avisé*] regulation, modified this institution to the point of making it compatible with our juristic ideas and with our practical needs, without offending the mores and beliefs of a foreign people” (1899, 4). This strategy would also prevail in Syria and Lebanon.

### *Transmission of Colonial Knowledge to Egypt and the Levant*

The discourses, debates, and arguments around waqf and its reform that were first formulated in French Algeria informed and influenced those in Egypt<sup>56</sup> and the Levant, through the circulation of both texts of French Algerian law and people in colonial offices. Leonard Wood (2016), in his history of Islamic legal revivalism in Egypt between 1875 and 1952, demonstrates that Orientalist knowledge circulated between Algeria and Egypt as teachers moved between schools in those countries, and Egyptian manuals penned by Muslim authors were modeled after Orientalist manuals of Islamic law (following their order and format). Furthermore, writings in Arabic, in Egypt particularly, during the debate on waqf

55. See Powers (1989) for details on that school.

56. Egypt constitutes a key interlocutor for Lebanon for two main reasons. First, its legal codes provided the blueprint of many, if not most, of those of the Arab world (Brown 1995, 106). Second, it was a place where the French refined their experience with waqf. Egypt had acquired a semiautonomous status from the Ottoman Empire after Muhammad Ali’s successful challenge to the Ottoman sultan, a challenge that the Ottomans were able to contain and repel only with the help of the British. Legal reforms in Egypt had started at the beginning of the nineteenth century, but the creation of Mixed Courts in 1876 introduced a code based on the French Code Napoléon. French and Belgian judges staffed these courts alongside Egyptian judges. Despite their growing presence, the British could not anglicize the legal system because of strong local opposition (Brown 1995).

reform in the 1910s and up to the 1940s show that Orientalist discourses circulated widely and informed deliberations, especially about the abolition of family waqf that took center stage in Egypt twenty-five years after it happened in Algeria (as I demonstrate in chapter 4). Between 1924 and 1928, several doctoral dissertations by French and Egyptian lawyers studying at the University of Paris's law school investigated various aspects of waqf from the perspectives of both shari'a and the civil law tradition.<sup>57</sup> Waqf reform projects in French Syria and Lebanon, mostly centered on the abolition of the family waqf, were contemporary to those in Egypt and, here again, we find pamphlets penned by Muslim jurists engaging the Egyptian debate.

Colonial knowledge and discourse on waqf were also transmitted through colonial officers who moved between the various colonies and mandates, and officers were aware of the waqf experiments in Algeria. For instance, in one of the first yearly reports to the League of Nations, required by the League from mandatory powers, the section on waqfs notes how the "enemies" of the French tried to depict any French interference in waqfs as a "return to our olden misguided ways in Algeria, when we incorporated, due to our ignorance of this special issue [of waqfs], the immovable waqf assets into the public domain" (Haut Commissariat de la République française en Syrie et au Liban 1921, 195). The probable author of this section is the delegate of the High Commissioner on real estate matters, Philippe Gennardi, who had links to French North Africa because he had served in Morocco in World War I.<sup>58</sup> Gennardi represented a style of administration common to French officers of the Moroccan protectorate, epitomized by its Resident General, General Lyautey: these officials were well-versed in the languages of the area and less forceful and more shrewd in their strategies than their colleagues who ruled colonies like Algeria, exploiting "the strengths and weaknesses of Moroccan society and its respect for native religion and customs" (Burke 1973, 176). Gennardi knew Arabic and Ottoman, and even married a Beirut woman in 1921. His personnel file indicates that he was "well-informed" about Muslim matters and had a deep knowledge of Islam.<sup>59</sup>

### *"What Is Waqf?": French Interpretations*

In Lebanon and Syria, the French mandatory powers did not "define" waqf or issue a comprehensive waqf law, like they did with real estate, commercial, and criminal law. In some ways, then, the project of the state adopting a single definition of waqf and having a single body of laws about waqf appears as a project that can be

57. For example, Bidair (1924); Massouda (1925); Cotta (1926); Delavor (1926); and Saad (1928).

58. As Kupferschmidt (2008) mentions, Gennardi's near absence from histories of the Mandate contrasts sharply with his heavy trail in the French archive of the Mandate in Nantes: report after report on waqf between 1922 and 1940 bear his signature.

59. MAE20/72. I would like to thank Elizabeth Williams for her generosity in taking pictures of the Gennardi file for me, since the file arrived after I had left Nantes.

pursued, even as an ideal, only under certain conditions. The Muslim suspicion towards the French mandatory powers and their intentions in Lebanon towards the Muslim population rendered French maneuvering on waqf more delicate and more prone to providing ammunition to Muslim opposition to the Mandate. The various waqf codes of Qadri Pasha and Ömer Hilmi, with their definitions of waqf, did not become or inform state law in Lebanon.

The French faced an old problem when defining the waqf and determining jurisdiction over it. Firstly, it was a problem of classification inherent in law. It was further compounded by the confrontation of two legal systems, primarily because waqf, developed in Islamic law, did not have an obvious civil law equivalent—or so French jurists argued.<sup>60</sup> Is waqf a real right? Is it a personal right? This debate represented, at its core, “jurisdictional politics”—that is, “conflicts over the preservation, creation, nature, and extent of different legal forums and authorities” (Benton 2002, 10). Part of the colonial legal order was the division between personal status (*statut personnel*)<sup>61</sup> and real status (*statut réel*),<sup>62</sup> which fell under the jurisdiction of different courts and followed different codes. These disputes over jurisdiction were crucial, Benton argues, because they embodied “cultural boundaries” between settlers and natives, between the civilized and savages. While Muslim jurists also debated whether waqfs were worship acts (*‘ibādāt*) or pecuniary transactions (*mu‘āmalāt*),<sup>63</sup> their conclusion that waqf was a mix of both did not cause such a jurisdictional problem because both worship and transaction laws were elaborated by the same jurists and were part of the same “divine law.” Conversely, in French Mandate Lebanon and Syria, where real estate property was governed by French-promulgated civil codes and personal status was governed by religious law devised by legally autonomous religious sects, the classification of waqf opened space for jurisdictional politics.

French mandatory powers considered waqf to be both a personal and a real right. The preamble to Decree 753/1921, organizing the administration of waqfs in Lebanon, notes: “The administrative and case law applied on waqfs are taken from religious shari‘a, which differs considerably from the laws that are applied in other governmental offices.” Jurisdiction over the foundation of waqf belonged to

60. “It does not have any equivalent in our codes; it is not a will, nor a gift, nor a substitution *per se*,” a jurist exclaimed (Robe in Mercier 1899, 5).

61. On the creation of this new category of “personal status” in Arabic, see Asad (2003, 231fn55). In the definition of the commentators of Qadri Pasha’s manuals: “We understand by personal status, the sum of natural or familial states that distinguish among individuals and that are the sources of rights and obligations. One can cite for example the state of being male or female, of being married, widowed, or divorced, father or legitimate son, possessing legal capacity or minor” (Commentary 37 to Article 1 in Qadri 1942, 3).

62. “All questions related to patrimony pertain, in principle, to real status” (Commentary 37 to Article 1 in Qadri 1942, 3).

63. For further elaboration on this distinction, see chapter 2.



the religious courts that applied the shari‘a.<sup>64</sup> In the 1930s, the power to legislate on waqfs was given to the Supreme Waqf Council (later renamed the Supreme Islamic Legal Council). However, French regulations also considered waqf as partly real estate and thus regulated by the Real Estate Code, and various laws pertaining to real estate and certain legal ordinances around waqf exchange were issued by the French high commissioner. These codes regulated waqf without tackling its definition, creating contradictory effects as to the waqf’s essential characteristics of alienability and irrevocability.

The 1930 Real Estate Code, for example, defined land categories parallel to those in the 1858 Ottoman Land Code: *milk*, *amīriyya*, *matrūka*, and *mawāt*. The title of the code, however, indicates a different approach to the environment: it is the “real estate” code rather than the “land” code, transforming “land,” a part of the environment, into real estate and signaling the rise of a private property regime where land is mostly a financial asset.<sup>65</sup> Furthermore, compared to the 1858 code, the 1930 code displaced waqf lands from the “categories” of land. Instead, it classified waqf as a right on real estate property, dealt with in Articles 174 to 179. Rather than being a kind of ownership, divine ownership, that differs from state ownership or private ownership, waqf became a right one can have on private property. However, unlike the rest of articles tackling various rights (like possession, usufruct, etc.), the articles on waqf rights do not begin with defining them and the rights and duties they create. Indeed, Article 179 of the Real Estate Code specifies that “the regulations concerning the founding of a waqf, its validity, aim, division [*qisma*], rental, and exchange are specified in the special regulations pertaining to it.” We see here how the jurisdiction over waqf was split between civil and religious laws and courts.

Waqf in these various laws was sometimes alienable and sometimes inalienable. The first article of the section on waqf in the 1930 code states: “It is not permitted to sell, dispose of, transmit through inheritance, or mortgage a waqfed immovable<sup>66</sup> but it is possible to exchange it, and to establish a dual tenancy or a long rent<sup>67</sup> on it” (Article 174). Waqf is here inalienable. However, other articles in the same code and other legislation on waqf make waqf alienable and revocable. In the same section of the code, special lease contracts on waqf known as dual tenancies and

64. The jurisdiction of shari‘a courts was defined in Article 14 of the 1942 Legislative Decree no. 241 on the Organization of Sunni and Jaafari Shari‘a Courts and included this: “the waqf: its qualification [*ḥukm*], bindingness [*luzūm*], validity, conditions, beneficiaries, and division [*qisma*].”

65. This does not mean that there was no speculation earlier, as I explain further in footnote 11 of the introduction. These changes in humans’ relationship to land are one of the main factors in the waqf transformations I describe.

66. I use *immovable* as a noun in lieu of *immovable property* or *immovable possession* to reflect the Arabic *ghayr manqūl* and the French *immeuble*, both of which are nouns classifying property.

67. These are types of leases that give tenants long-term inheritable rights of use and usufruct on the waqf, against an original lump sum and small yearly or monthly installments afterwards. For example, see Hoexter (1984; 1997) and Baer (1979).



long rents are defined, discussed, and codified in terms of the rights they give, the duties incumbent upon their possessors, and the way they can be conveyed and voided. Holders of both these types of leases can buy out the right of alienation (*raqaba*) of the waqf (Articles 181 and 196) and therefore end the waqf, a process that makes waqf alienable. Other legislation also rendered waqf alienable. Legislation on the exchange of waqf (Decision 80/1926) allowed and sometimes forced the exchange of waqfs against cash and the reversion of waqfs to the ownership of beneficiaries and therefore effectively made waqf alienable and revocable, also here without tackling its definition as such.<sup>68</sup>

### *Creating Waqf as a Moral Person*

According to the 1930 Real Estate Code, waqfs were valid only upon their registration in the real estate registry (Article 176), and not just in the shari'a court. This registration requirement redefined waqf and allowed its existence as a moral person in the civil legal tradition. The new property regime with its new categories introduced a new grammar of waqfs, where the subjects and objects of waqf were differently configured, creating a fair amount of confusion and opening the door for the dispossession of some rights holders to the advantage of others, including the state. Let me illustrate with the Qabbani waqf, which I was able to follow in some detail because the family was still in disputes with the DGIW over the waqf and held on to the documentation of the lawsuit. Indeed, the lawyer of the waqf in the previous generation of beneficiaries, Rushdi Qabbani (1885–1974), was one of these beneficiaries and he had kept a file for the waqf, which his daughter had shared with me after pulling it from a box lodged in her bedroom closet.

Based on its waqf deed, the waqf of sitt el-'eish, as the family called it, was founded in 1854 by an Ottoman merchant, Mustafa Agha Qabbani, who dedicated a part of his garden in the up-and-coming extra muros neighborhood of Zuqaq al-Balat to his daughter 'A'isha.<sup>69</sup> His third daughter from his first marriage, 'A'isha was married to Muhammad al-Mufti al-Ashrafi. In the waqf deed, Mustafa Agha allowed his daughter to build whatever she pleased on the land, and it would be her own.<sup>70</sup> Between 1854 and 1905, when she died, 'A'isha Qabbani in

68. Whether the exchange was forced or optional depended on the rights that existed on the waqf. The law required the eradication of certain types of rights.

69. The waqf deed, pictured on the cover of this book, bears the seal of the Sayda judge. The document does not state whether the deed was drafted in Sayda or by the qadi in Beirut, but based on the witnesses' family names, one could make a guess that the deed was drafted in Sayda. Beirut at the time was attached to the province of Sayda and was the provincial capital. Mustafa Agha was surely well connected, renting out some of his waqfs to the dragoman of the province. Based on the oral histories I have collected from the family, Mustafa Agha lived in Beirut but went to Egypt to fight with the Ottomans against the Napoleonic invasion (1798–1801). The family thought he was dead, but he reappeared, even though he seems to have been wounded. On Zuqaq al-Balat, see Gebhardt and Hanssen (2005).

70. The founder also stipulated a yearly stipend of 50 qurush for Qur'anic recitation, paid to the scholar Abd al-Qadir Jamalzade and posthumously to his progeny in perpetuity.

turn, through a long-term rent agreement, allowed her husband to build on the endowed land a house, a guesthouse, and a few other small structures. Since her husband had built these objects using his own money and with 'A'isha's consent, he had various rights to dispose of them, including selling them, as long as he paid the land rent owed to the waqf. In 1875, 'A'isha's husband relinquished the ownership of the trees and houses to God and dedicated their yields to his wife and, after her death, to their children, and, if they had no children, to his six brothers and sisters. 'A'isha's husband died before her, and she became the administrator and beneficiary of the waqf he had created. However, when she died, she left no sons or daughters; therefore, the beneficiaries of her husband's endowment became his brothers and sisters, while the beneficiaries of her father's endowment became her heirs—that is, her brothers and sisters.

At first impression, property relations around that piece of Mustafa Agha's garden seem far from common understandings of "private property" today. Here is a piece of land that has been endowed for a certain beneficiary, whose houses and trees belonged to a different person and were then dedicated to yet another set of beneficiaries. How could one "own" trees and buildings but not the land on which they exist? In fact, this scenario is not so far from contemporary property relations in the West. In the United Kingdom, where the queen remains a very important landowner through the Crown Estate, ground leases allow developers to build and sell anything from shopping malls to apartment buildings (Shoard 1997, 124–25). This is a very similar scenario to the buildings of Muhammad al-Ashrafi on 'A'isha's waqf, which he could build, use, sell, or waqf after paying yearly ground rent. If one shifts the language of analysis from "ownership" to "rights," the description of the endowments in the garden of Mustafa Agha offers less of a conundrum. 'A'isha had the right to the usufruct of the land and transferred that right to him. He originally had the right of alienation, usufruct, and use of the house he built. He then surrendered this right of alienation to God and transferred the right of usufruct and use to 'A'isha and then his heirs.

This twice-waqf illustrates the Ottoman property rights regime where the same parcel was claimed for multiple functions, with rights of use, revenues, and alienation (e.g., the right to cultivate, right to a portion of the harvest, right to taxes, right to sell) dispersed among various people (İslamoğlu 2000). While the Ottoman Land Code of 1858 introduced individual and absolute ownership, such understandings were hotly contested (as detailed by İslamoğlu 2000, 35–39). Furthermore, in Jordan, as Martha Mundy and Richard Smith masterfully show, while the new codes individualized the subject of ownership, they did not yet manage to "detach the object 'land,' to which individual rights were attached, from the social forms of its mobilization in production" (2007, 235). Similarly, this process in Beirut had to wait for the cadaster, with the French occupation after the parceling of the Ottoman Empire, when a new land registry and land code were instated. These rearranged the various rights and provided new categories that the parties had to use, changing the grammar of waqf.

The new land registry (Decrees 186,188, and 189, dated 15 March 1926), whose novelty lay in being based on maps and a cadaster, did not explicitly modify the Ottoman categories in use at the time.<sup>71</sup> It allowed, therefore, the preservation of certain “facts,” while opening the possibility of their recategorization and rearrangement. A certified copy of the delimitation report (*maḥḍar al-taḥdīd*), also preserved in the family archive, reveals a protracted and contested process of registration, because new laws allowed beneficiaries to claim ownership of waqf, end the waqf, and revert it to private property, setting the two families of beneficiaries (of the land waqf and the house waqf) against each other.

The delimitation report consists of three pages, the first of which is a printed one-format-fits-all table containing rows and columns with headlines based on a private property regime. The two following pages have a heading (one page in French, the other in Arabic), “Ruling of the Land Surveying Commission,” summarizing the lengthy lawsuits that pitted the two families against one another.

The original delimitation report table, dated 6 February 1928, registered the details of the various rights on the parcel, now identified as Parcel 340. In the row for the “legal type of parcel” (*naw’uh al-shar’ī*), the surveyor had written “waqf.” This notation continues the categorization of lands in the Ottoman Code, where waqf is a type of land. However, in the row for the “name of owner” (*ṣāḥib al-milk*), “the waqf of the deceased Muhammad al-Mufdi al-Tarabulusi [sic] and his heirs” was jotted down, and the row titled “name of the waqf, type of right, amount of deferred rents [*mu’ajjalāt*], lump sum rents [*muqāṭa’āt*], and tithe [*badal al-’ushr*]” was filled with “family waqf.” In the miscellaneous-details row, we learn that “the land on which the house is built is private [*khāṣṣ*] to the heirs of ‘Abd al-Qadir Qabbani, and the built-up areas to Muhammad Mufdi Tarabulusi [sic], the waqf founder.” The various facts noted in these records (that it is a waqf, that the land belongs to the Qabbani waqf, and that the built-up areas were part of Mufti-Ashrafi waqf) correspond to the different rights that I described above.

In this regime, noting “God” as the owner would be nonsensical, and thus, during real estate registry, God was evicted from the characters involved in the waqf, and the waqf itself became the “owner” of the newly created Parcel 340. Furthermore, important characters in waqf, like the “administrator” and “beneficiaries,” could not be identified as such by the surveyors who had to subject the information to the space and structure of the table. In addition, the multiple waqfs could not be registered, and the title of “owner” fell upon the waqf of the family that was inhabiting the house at the time, the Mufti-Ashrafis. The rights the Qabbanis held were relegated to the fine points around the parcel—the Qabbani name was not even mentioned in the decision of the Commission.<sup>72</sup> With its single table per parcel, the new property registry did not allow for the multiplicity of rights to be

71. However, changes would follow, as we saw above with the 1930 real estate code.

72. The registry decision was challenged by the Qabbanis, who were able to marshal their knowledge of the French legal system to get a decision to annul the Mufti-Ashrafi waqf as invalid and have the land registered as the waqf of ‘A’isha Qabbani.

concomitant: it hierarchically classified these rights to give one of the rights holders the title of “owner.” The waqf became the “owner,” a person, transformed from being mostly an object around which property relations are articulated to a subject in these relations.

Thus, legal reforms paved the way for the transformation of the understanding and practice of waqf. By recategorizing and sometimes even erasing the main characteristics of Ottoman waqf practices and making “waqf” a person—that is, the “owner” of the parcel—the new property regime opened the way for the use of waqf as a “moral person” that could buy, sell, and enter into various transactions. Let me turn now to explaining how the intersection of the French Mandate’s classification of waqf as a person with historical contingencies and practitioners familiar with the tradition, like Hajj Tawfiq, opened the legal possibilities to both revive the waqf and make the waqf as moral person a common practice today.

#### POSTCOLONIAL WAQF PRACTICES: WAQF AS MORAL PERSON

##### *The Making of a Waqf Revival and the Waqf as a Moral Person*

I came to Hajj Tawfiq through a winding road. The lawyer of the human rights waqf I mentioned in the introduction traced his exposure to waqf to a workshop titled “Waqf and Collective Duties” (al-Waqf wa Furūd al-Kifāya), led by Abu Samah of Jam‘iyyat al-Irshad wa al-Islah al-Khayriyya al-Islamiyya (the Islamic Charitable Association for Guidance and Reform). When I followed up with Abu Samah, he pointed me to Hajj Tawfiq, who, he said, “was interested in the private waqf [*al-waqf al-khāṣṣ*].” Abu Samah explained that a booklet that Hajj Tawfiq had self-published, *The Private Waqf*, had opened the window of waqf before them. The booklet, he remarked, contained all the documents and procedures necessary to transform an association into a waqf.

I was puzzled by the notion of the “private waqf” because *private* is a notoriously ambiguous adjective, even here: it could mean waqfs dedicated to private, named persons rather than a wider public, like the poor. That was the dominant meaning in current legislation, which equated charitable waqf with public and family waqf with private (discussed in chapter 4). But *private* could also indicate that the waqf (even a mosque) was privately administered by a named individual or board, outside the supervision of the DGIW. When I got hold of the thirty-page booklet published in 1989 through Hajj Tawfiq, I noticed that it was in fact titled *The Islamic Charitable Waqf*. Following the contemporary legal classification of waqfs, these charitable waqfs would be public (benefiting a section of the public—unspecified members of the public writ large, such as “Muslims”). Even so, Abu Samah’s calling the book *The Private Waqf* reflects the essential characteristic of these waqfs for those engaged in this revival: They were neither administered nor supervised by the DGIW. Instead, they were run by an administrator that

the founder could designate and were nominally under the supervision of the religious courts and their judges, which did not have any mechanism in place for such oversight, perpetuating the lack of actual supervision by nineteenth-century shari‘a courts. Abu Samah did not use the term that the Ottomans used to describe these waqfs—“exempt waqfs” (*awqāf mustathnāt*), which I discuss next chapter—signaling the near-eradication of such waqfs during the French Mandate waqf administration.

Abu Samah credited Hajj Tawfiq for the revival of the idea of waqf in the mid-1990s.<sup>73</sup> Similarly, ‘Isam al-Huri, the head of the BAU board of trustees, mentioned that had it not been for Hajj Tawfiq, the BAU would have never become a waqf. Hajj Tawfiq, he explained, belongs to an “older generation” who had closer encounters with the waqf and a religious disposition (*tawajjuh dīnī*). Hajj Tawfiq himself framed the idea of using waqfs instead of NGOs, or of transforming existing NGOs to waqf, in such a “religious idiom”: it was a God-sent inspiration (*ilhām*). Hajj Tawfiq’s familiarity with the waqf was not only the result of his religious disposition but also, as he explained, of his engagement with the Palestinian cause, which taught him the importance of the waqf in the resistance to Israeli dispossession of Palestinians.<sup>74</sup>

The presence of practitioners like Hajj Tawfiq intersected with a historical conjuncture that allowed waqf as a moral person to exist as a practice in the 1980s, long before the “waqf revival” that Kuwait initiated in the 1990s. For Hajj Tawfiq, the momentous event that planted the seed of the waqf was the Israeli invasion of Southern Lebanon in 1978. Suddenly, resistance to Israeli dispossession seemed as much a Lebanese necessity as a Palestinian reality. In 1982, when the invasion reached Beirut, he recounted, General Security revoked the permits of seven Islamic and five Christian associations because they were related to parties opposing Israel. This move brought to the Hajj’s mind uncanny resemblances to the Israeli strategies in Palestine and crystallized the idea that “political factions could use the power of the state to threaten the operation and existence of opposing parties, and even silence them.” Along with the fear of state intervention in associations, the experience of waqf in Palestine forwarded the waqf’s sanctity as a way to found Islamic organizations without such a threat. In 1979, Hajj Tawfiq and some associates founded the Islamic Center for Education as a waqf. Yet, it took a few years, the Israeli invasion of Beirut, and the massacres of Palestinian Muslims at the hands of the Israeli Defense Forces and the Lebanese right-wing Christian militias in 1982 before he could convince the board of trustees of al-Birr wa al-Ihsan association, of which he was a member, to convert the association and

73. The first “new” waqfs were founded in the 1980s, but the waqf revival would not blossom until the mid-1990s.

74. For more on Hajj Tawfiq, his connection to Palestine, and the Imam Awza‘i Islamic Studies College, see Rougier (2007, 203–28). For waqf in Palestine, see references in footnote 19 of the introduction.

all of its schools and university campuses into a waqf. Waqf, explained the Hajj, allowed for the preservation of property from the intervention of political power (*al-sulṭa*).<sup>75</sup>

Because waqf revival came from Muslims familiar with and active in social and educational work through associations and NGOs, the new waqfs adopted much of the format of NGOs: they have internal regulations instead of founder stipulations and an administrative board in lieu of an administrator. The name that Hajj Tawfiq's booklet gives to these waqfs is "charitable waqfs of public benefit" (*al-awqāf al-khayriyya dhāt manfaʿa ʿamma*), an amalgamation of the category of "charitable waqf" defined in the 1947 Family Waqf Law and the adjective "of public benefit" of the 1977 Legislative Decree on Associations of Public Benefit. Hajj Tawfiq's booklet provides sample documents to be presented to the shariʿa court for the transformation of associations into waqfs. One addresses the judge with a letter attesting that "the Board of Trustees [of the Association] has decided to make into a waqf all the institutions of the association and its movable and immovable possessions" (1989, 10). Notice that the object that is made into waqf, which both fiqh definitions (outlined earlier in this chapter) require to be a well-defined, usufruct-bearing object, movable or immovable, becomes here an institution.<sup>76</sup> For instance, in the waqf of the Islamic Center for Education, the phrasing is "made into an Islamic charitable waqf all that is related to the Islamic Center for Education, immovables or movables, present or future." There were no revenue-bearing immovables that were clearly defined; the waqf deed was a performative that created a moral person.<sup>77</sup> I realized later that this is why Hajj Tawfiq had told me, tongue-in-cheek, that they waqfed words.

The dominance of the idea of a waqf as a moral person can be seen in the grand mufti himself approaching waqf as a such, especially in the case of the ubiquitous but extremely opaque Waqf al-ʿUlamaʾ al-Muslimin al-Sunna. I first encountered that waqf (because indeed it was a moral person) in a conversation with the lawyer of the DGIW, when asking him about the waqfed parcels that were under the supervision of the DGIW. He showed me a list, but told me that this list did not include the parcels of Waqf al-ʿUlamaʾ. Waqf al-ʿUlamaʾ was originally a waqf like the hundreds of waqfs noted in the courts of Beirut. In its structure, its waqf deed followed exactly the structure I described above based on the students' definition. It would have easily passed unnoticed, unremarkable were it not for its eminent founder, the Ottoman governor of the province at the time, Nassuhi bey, who in

75. This discourse echoes scholarly analysis of historical waqf (for instance, under the Mamluks) and how founders used waqf to escape confiscation of property (Petry 1983). I will demonstrate in the next chapter how "escaping political power" is a much more complicated issue than appears here.

76. Jurists consider a waqf that does not specify the object made into a waqf to be invalid (Ibn ʿAbidin, *Hāshiya*, 3:373), as in contracts, because it leads to uncertainty. See the discussion on *gharar* (uncertainty) and *jahāla* (lack of knowledge) in Hallaq (2009, 244).

77. The use of cash brings these foundations more in line with fiqh requirements, even if the cash is not used as revenue-bearing principal.

1895, surrendered the ownership of an 875-square-meter parcel to God and dedicated its revenues to the students of legal religious sciences (*al-ʿulūm al-dīniyya al-sharʿiyya*). The founder divided the revenue among teachers and students, and dedicated two-fifths of one-third of the revenue to the administrator of the waqf, which he assigned to the mufti of Beirut.<sup>78</sup>

At the end of 2006, the grand mufti addressed a judge of the Beirut Sunni shariʿa court asking for a new foundation deed. The mufti spoke in his capacity as the administrator of the ʿUlamaʾ Waqf, which was not under the administration or supervision of the DGIW.<sup>79</sup> The process itself is unusual but could be analyzed in a tradition of renewing waqf deeds and restating waqfs in order to preserve them. It was a practice that sultans sometimes carried out upon their ascension. It was a practice I even encountered in the archive, as with the Qassar waqf discussed above, an older deed copied in the registers for confirmation. However, the reason behind the grand mufti's request was different. In his note, he described how various muftis before him bought "parcels for the ʿUlamaʾ Waqf" and registered them under the name "Muslim Sunni ʿUlamaʾ Waqf administered by the grand mufti." The current grand mufti followed his predecessor's lead in buying for the waqf, and notes in his memorandum that these parcels "have become appended to the principal (*aṣl*) of the waqf." Therefore, he argued, it was necessary to document this waqf with a new waqf deed that notes the new "name" that the waqf has acquired and its new objects. The mufti requested the new waqf deed to explicitly state and consider the "Muslim Sunni ʿUlamaʾ Waqf administered by the grand mufti" a "charitable waqf having its own moral personality that is completely independent of the DGIW, since the day of its foundation by Nassuhi bey." In this request, the transformation of the waqf from an object to a moral person becomes particularly stark as the grand mufti seeks to subject the old foundation deed to the new understanding of waqf, asking for a rewording of the original foundation deed that would have been unutterable in the late nineteenth century, when the deed was drafted.

The reader may recall from the opening vignette of this chapter that in my first encounter with Hajj Tawfiq, I was not ready for his question on the difference between a waqf and an association. The reasons might now be clearer, given that most of the waqfs I had encountered before my ethnographic research were parcels of land and shops whose revenues supported charitable purposes, as I described above; the connection of waqfs to associations had not been obvious to me. Thus, *waqf* conjured in my mind a building or a piece of land, while an association

78. The position of Mufti of Beirut became the Mufti of the Lebanese Republic, or Grand Mufti (as I explain in further detail in chapter 2), making the grand mufti the administrator of the waqf.

79. Quotes in this paragraph are from this memo. The mufti's independent administration of the ʿUlamaʾ Waqf stirred controversy, especially under mufti Hasan Khalid. As some of my interlocutors narrated, Khalid was accused of using the funds of the DGIW (and inciting people to donate to this waqf rather than the DGIW) to buy parcels for the ʿUlamaʾ Waqf that was not under the supervision of the DGIW, particularly because this waqf carried the stipulation of a revenue percentage that went to the mufti personally.



conjured executives, meetings, fundraisers, and volunteers doing things. Perhaps I was too literal, because historians of waqf, particularly in the Ottoman Empire, have argued that waqfs, especially smaller ones, “constitute a major example of the autonomous working of civil society and the public sphere in the Ottoman Empire” (Gerber 2002, 77; see also the essays in Hoexter, Eisenstadt, and Levzion 2002; Isin and Üstündağ 2008), a place of civic engagement outside the state, which is what associations today provide. In some ways, these historians’ analyses seems confirmed by current waqf practitioners in Lebanon, like Hajj Tawfiq, who consider the waqf an alternative to associations. Yet, this coincidence hides some modern transformations that made this convergence possible: centering the waqf on its purposes and stripping it of its assets and rent-producing function.

### *Separating Religion and Economy*

Discussing these transformations with Hajj Tawfiq, we concurred that the new waqfs were indeed different from the old ones. But not only were they different, he insisted, the new waqfs were *better*. He explained that in older times, waqf was not thought of as dynamic (*harakiyyan*); civil work (*al-‘amal al-ahli*) used to take a specific shape and a fixed one—a building, a shop. He credits himself and his association with the introduction of the concept of the “agile waqf” (*al-waqf al-mutaḥarrik*) in Beirut, a waqf that is based on institutions. For Hajj Tawfiq, then, the anchoring of waqf in particular revenue-bearing immovables to finance institutions *fixed* the “flexibility” of movement that markets allowed. Hajj Tawfiq’s view of the pre-modern waqf as unchanging very much echoes modernist arguments (discussed further in chapter 3) that waqf was outside the market and thus incompatible with development (Klat 1961). This view remains prevalent, even in Hajj Tawfiq’s discourse. For Hajj Tawfiq, the waqf as a moral person, an NGO, which is not an object but can itself be the subject of property relations and own property, allowed such organizations to “escape” this predicament.

The making of the waqf into a moral person, which secularized waqf by removing God as an actor in property actions, coincided with a different kind of secularization as well: the continual quest to separate religion and economy. Waqfs that serve Muslims through providing worship spaces and religious education came to denote what is considered a pious purpose, while the activities that fund them came to belong to the realm of the economy.

The stripping of the economic from the religious and their production as two distinct spheres appeared in the process of emptying mosques of their “non-religious” functions during the reconstruction of Beirut’s city center at the end of the civil war. Older buildings, like the ‘Umari mosque, stood as an embodiment of the older logic of waqf. The mosque was invisible except for its main arch-door, as it was hidden behind an office building and shops, all of which were waqfs that supported it (Rustom 2011, 3). During renovations, the mosque became a space of struggle between older understandings of waqf that included revenue-bearing



assets and newer ones that considered religious space and commerce separate. The latter vision won over, and shops and office buildings affixed to the mosque were destroyed, while all commercial space was assigned to functions and programs not geared towards profit—a library, a conference center, a reception hall (for condolences usually), and an Islamic museum. Religion was thus “purified” to worship. As a former director of the DGIW explained, having shops and commerce around the mosque was not “proper” (*mā bilī*) for such religious buildings. This was a process that transformed the ‘Umari mosque into a “religious monument,” in contrast to the integration of religious practice into the community’s daily life and its imbrication with the economic activities around the mosque through networks of support via waqf shops and offices.<sup>80</sup>

This separation of religion into its own sphere also appeared in my conversations with founders. As appears above, in my discussions with the founders of these new waqf NGOs, the “Islamic character” or “pious purpose” of waqf was not a central topic of conversation. The transformation of waqf into a moral person seems to have ousted God from charitable endowments. New waqf actors seemed very matter-of-fact and pragmatic about the decision to create waqfs: it was about the legal advantages that they provided. But this would be too hurried a conclusion.

God was very much present, but outside these property relations. When I asked one of the founders of the Waqf of Social Affairs why they thought about founding a waqf and if they had an example in mind, she did at first mention a practical consideration: that a judge in a court in the outskirts of Beirut allowed cash waqfs, which was the main form of waqf-NGOs (waqf-ing a little money to create a moral person). But then, as if stating the obvious, she backtracked: “What *first* encouraged us to found a waqf is that waqf is *qurba* to God, *ḥisba* for God; it is a *ṣadaqa*.” All three terms signify, without the need for much explanation, actions “for God’s sake,” with *qurba* clearly expressing the desire to be close to God in the hereafter. Similarly, the booklet that al-Irshad and al-Islah distributed to visitors and members to encourage them to donate to the waqf library started with this hadith: “When a man dies, all but three of his deeds come to an end: ongoing charity [*ṣadaqa jāriya*], knowledge that benefits [humans], or a virtuous descendant who prays for him.” This was by far the most ubiquitous hadith in my notebook, especially among founders of mosques, and was also one of the main hadiths used in waqf deeds in Ottoman Beirut. The continuing circulation of this hadith highlights the persistent importance of the otherworldly rewards of waqf founding, even when utilitarian discourses occupy discussions of the legal form of waqf.

80. Not all mosques in Ottoman Beirut and beyond were enmeshed in the urban fabric around them. Around the mid-eighteenth century, mosques were sometimes surrounded by an empty space known as the *ziyāda*, although the exact purpose of the space is unknown. Was this a “monumentalization” of the mosque? What did it say about religion and its place? I hope to pursue these questions in a later project.

Despite the dominance of conceptualizations of waqf as a moral person and the waqf as a mosque or religious institution, we find traces of old understandings of waqfs as revenue-yielding assets from practitioners familiar with these older practices. One such trace appears in 'Umar al-Fahl's waqf, founded in 2003. This was a piece of land endowed for the charitable purposes of creating an Islamic center, which included a mosque and various shops to support the operation of the center.<sup>81</sup> The founder was carrying out the will of his grandfather, and also namesake, whose piety was legendary, to create such a waqf. One can surmise that the elder 'Umar al-Fahl's exposure to Ottoman waqfs under the Mandate translated in a new waqf that carried that same logic of a revenue-bearing, self-sustaining project, allowing for the older waqfs as objects to continue to exist in buildings and typologies that embody this logic.

Yet, the al-Fahl waqf and its revenue-bearing assets were not always legible as waqf. Hajj Tawfiq commented that this waqf was problematic precisely because the founder "wanted something between a waqf and something commercial." For Hajj Tawfiq, then, the idea of a waqf as a process that could be charitable while seeking the creation of profit was contradictory. This tension or even conflict that Hajj Tawfiq identifies between waqf, a charitable endeavor, and a commercial enterprise is a very modern one, partly arising from the dominance of the waqf as a moral person, since it dissociated waqf from these revenue-bearing objects.

Furthermore, Hajj Tawfiq's vehement rejection of profit-making in waqfs may also be due to the migration of discourses from the convergence and equivalence of waqf with associations. Indeed, the purpose of an association in Lebanese law is defined in opposition to profit-sharing (Article 1 of the 1909 Associations Law): it is a group of people who aim to advance purposes other than profit-sharing.<sup>82</sup> The comparability of waqf to associations for Hajj Tawfiq exacerbated the process of separating rent and profit-producing activity from waqf, which was already under way through the transformation of waqf into a moral person.

I also witnessed the lingering approaches to waqfs as revenue-bearing objects among family waqf beneficiaries. On a glorious sunny July Sunday in the mountains, my mother had organized one of her enormous annual family lunches. On the balcony overlooking Beirut, covered in a haze of humidity and pollution, her aunts were huddled together with some of their cousins. As much as I tried to enjoy my time with family, as always, questions of waqf were continually on my mind. So at the first lull in their conversation, I found myself imprudently asking about the family waqf and what the DGIW intended to do with it. My grandmother kept quiet as usual, but Tante Alia, Tante Asma, and Tante In'am

81. MBSS.H 2003/134.

82. Lebanese law distinguishes and has separate legislation for profit-seeking corporations, known as companies (sing.: *sharika*, pl.: *sharikāt*), and corporations not aimed at profit-sharing, known as foundations (sing.: *mu'assasa*, pl.: *mu'assasāt*). Anglo-American law calls both corporations and distinguishes the nonprofits through taxation. Because not all nonprofits in the U.S. serve public benefit, they are not all completely exempt from taxation.

erupted in a loud discussion. “The mufti is saying that he’s going to make it into a mosque,” said Tante Alia. Tante In’am added that a soup kitchen is also part of the plan. They started to argue about what the best plan for the waqf would be. Tante Asma was not opposed to the mosque and soup kitchen proposal, since the waqf’s charitable recipients were the poor of Beirut. But Tante In’am insisted, “What is the use of the kitchen for the poor of the Muslims? One should not just do something to feed them, but something more productive.” When I shyly asked her what *productive* means, she answered, “Look at the Christian waqfs and how they have all these schools to educate their poor.” In this statement, Tante In’am echoed critiques of handouts (by both academic and development-oriented institutions) as insufficient, arguing instead for an intervention along the lines “teach a man how to fish,” which would help eliminate the need for a kitchen and thus “truly” help the poor. But she then continued, “I once told the DGIW director, ‘Forget about this mosque. This land—just make it into a parking lot [Beirut is infamous for its parking shortage], and then spend that money on the poor.’” Everyone laughed and nodded in agreement. In such moments, practitioners like Tante In’am carry forward ideas of the waqf as a revenue-bearing object.

The idea that waqf is associated with profit-producing enterprise is nowhere better represented than by the DGIW itself, because it operates almost like a real estate developer in seeking rent, even if it does not reinvest these rents but spends them on charitable purposes. For instance, in the past thirty years, it has developed a few waqf parcels that it administers in downtown Beirut into shops and offices, through a financing model of design-build-operate-transfer. A 1982 report of the DGIW resembles a building portfolio. The opening remarks of the grand mufti are entitled “The Development of Waqf Resources [*al-Mawārid al-Waqfiyya*] Is Our Means to Energize Islamic *Da‘wa*.” The creation of revenue-bearing projects on waqfed land is key in such a development, as the revenue generated goes to finance the work of mosque personnel, “religion” teachers in public schools, scholars, administrators, and *da‘wa* more broadly. The grand mufti called for “stirring the wheel of waqf development in order to provide a fixed revenue [as opposed to needing to constantly collect donations] for a budget that can support such an effort” (al-Mudiriyya al-‘Amma li’l-Awqaf al-Islamiyya 1982, 3). One can see that even when waqf is linked to sustainable income, its revenue is spent on “energizing Islamic *da‘wa*” and revitalizing Islamic tradition, rather than on improvement, accumulation, or more building projects.

## CONCLUSION

In this chapter, we have seen how the late Ḥanafī Ottoman waqf was an object in property relations, mediating connections between God and founders and among humans, in a horizon bound by the hereafter. Even though waqf was then used as a moral person *in practice*, and both its administrator and beneficiaries had limited liability, it was not legally theorized as such in the Ottoman late Ḥanafī library.

Waqfs usually involved an immovable whose ownership founders surrendered to God and whose use and usufruct they dedicated to particular people, groups, or institutions. To engage in a rent- and profit-producing economic activity whose revenues went to a charitable cause was an act of charity that not only benefited humans but also brought founders closer to God in the hereafter. In Ottoman waqf, the horizon of property relations was not simply one's lifetime or that of one's offspring; the hereafter, an unknown future of accountability, guided action in the here and now. Calculations for one's well-being in this far-off future and the desire to please God suffused property relations. While waqfs were certainly important material assets that connected the family of the founder or a class of people, their owner was God. Waqfs were thus distinguished from other forms of voluntary charitable gifts like food or other consumables that are present-centered or bound by the lifetime of the recipient. Yet, the future in the temporality of tradition is not one of progress and improvement, of increasing wealth and eradicating poverty, but one of common patterns and cyclical time: human beings procreating, living, worshipping God, always divided into rich and poor. In late-Ottoman Beirut, waqf was part of a property regime that included not only an object and the claims of individuals and the collectivity but also God's claims and the desire to please him.

Today, waqf has mostly become a moral person in property relations. The transformation of waqf into a legal subject was made possible by modern legal reforms during Ottoman rule but especially in the French Mandate, which formalized the notion of a moral person, sought to concentrate various property rights with a single owner, and subjected property, NGOs, and people to different jurisdictions. Yet, it was only during the civil war that these legal openings came together to initiate a revival of the waqf as a moral person. Today, God is not named as the owner of the immovable in the real estate registry; it is rather the waqf as a moral person that is. With the waqf a moral person, it came to own assets, and God exited the network of entities involved in property relations, which are now limited to people, groups, and institutions. Less present in the legal definition of waqf in the Real Estate Code, God stands on the side, in a more abstract way, separate from the hustle and bustle of property relations and economic activity of leasing, building, or fructifying the land. The economic activity and profits that financed the waqf became external to the act of charity. Even more, as historian of South Asia Ritu Birla concisely put it, starting in the 1880s, charity came to be conceived in the law as "the corrective to profit," with the introduction of the private/public distinction in tax law (2009, 55).<sup>83</sup> To please God, waqf founders chose instead to do explicitly religious projects like mosques and Islamic centers.

83. In the Islamic tradition, obligatory alms purified wealth (Hallaq 2009, 231); see also Mittermaier (2013) for an ethnographic account of different economic theologies of charitable giving. Yet, wealth lawfully acquired and purified through taxation did not have the guilt that is associated with it in certain Christian traditions, as in Matthew 19:24: "It is easier for a camel to go through the eye of a needle than for someone who is rich to enter the kingdom of God." On the problem of wealth in early Christianity, see, for example, Brown (2012).

Yet, the understanding of waqf as an (inalienable) object continues to loom over contemporary waqf practices. It is carried through practitioners who have experienced waqf as an object in property relations and who then reinscribe and perpetuate this practice in new material objects and allow for these older ideas of charity mixing “economy” and “religion” to pervade the built environment and to act as reminders that things could be otherwise. The continuity of understandings of waqf as an object is also possible because of what one of my interlocutors called the “*flou*” of the law, its indeterminacy, as well as the multiple jurisdictions over waqfs in the Lebanese state. We turn in the next chapter to these indeterminacies and complexities borne out of the changing architecture of state, law, and religion, which we will discuss in the relation of the state to waqf administration.