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The "Waqf's Benefit" and Public Benefit

In the 1990s, after the end of a fifteen-year war, Beirut's newspapers were replete with articles discussing the reconstruction of the city center.[1] When the proposal for charging a private real estate holding company with rebuilding passed the legislature in 1991,[2] the debate continued and intensified; the urban plan put forward met with criticism from rights holders (*aṣḥāb al-ḥuqūq*), architects, and planners.[3] The rights holders' grievances concerned the decision to expropriate their holdings for reasons of public benefit and to compensate them with shares in stock of the company later known as Solidere.[4] This was a massive operation of dispossession

1. The literature on the reconstruction of the city center is considerable. Some of the classics include Kabbani (1992); Khalaf and Khoury (1993); Beyhum (1995); Tabit (1996); Makdisi (1997); Rowe and Sarkis (1998); Becherer (2005); Hourani (2005); and Sawalha (2010). Addressing postwar state building more broadly, Leenders (2012) provides excellent data on the reconstruction.

2. The company was a private one, but it entered into a public-private partnership with the Lebanese government for the process of reconstruction.

3. One of the first plans treated the whole area as a tabula rasa and was built on a modernist plan with very clear-cut zoning based on function. Planners and architects called for a more democratic approach to the design, including public debate (which happened de facto because of the ire of all, but opinions of rights holders were not actively sought nor included in the process), and advocated a more sensitive approach to the fabric. For more on this debate, see especially Hourani (2005) and Makdisi (1997) in the literature cited in note 1.

4. Expropriation is the equivalent of the American eminent domain. Solidere is the acronym of the French name of the company: Société libanaise pour le développement et la reconstruction. For discussions of whether the compensation for Solidere shares constitutes expropriation see Mango (2004) and Sharp (2018, 192–94).

that threatened to take away their ownership of land, shops, and apartments, whether in whole or in part. Most importantly, the new law would rob them of the possibilities the city center held for their future. However, despite the campaigns and lawsuits filed against it, the company proceeded with the expropriations, using political and legal maneuvering, and even force, with backing from the government led by Prime Minister Rafiq Hariri, who was—not coincidentally—a major stakeholder in Solidere.

The waqfs that existed in the city center seemed to me, at first, to have succumbed to that expropriation. My mention of waqfs and Solidere to various interlocutors in my research often elicited disapproving head shakes and accusations. "They sold the Muslims' waqfs," said Tante Inʿam, a matriarch of the Qabbanis contesting the Directorate General of Islamic Waqfs' (DGIW) control of the family's waqf. With her short, dark-blonde dyed hair, her below-the-knee straight skirt, and her Beiruti accent, Tante Inʿam represented the disappointment of many Sunni Muslims I had talked to about how the DGIW handled the waqfs in Beirut's city center in the face of Solidere. The DGIW had sold what was supposed to be inalienable, these interlocutors lamented.

Yet, I discovered in the course of archival research that the DGIW was one of the very few rights holders able to escape this dispossession and to retain some physical assets (buildings and lands) instead of company shares.[5] A newspaper headline in 1994 announced, "All the Parcels of the DGIW [*ʿaqārāt al-awqāf al-islāmiyya*][6] Will Be Returned" (*Annahar*, 15 January 1994, 6). In a nation-state where *public* benefit (Ar: *maṣlaḥa ʿāmma*; Fr: *intérêt général*) forms the highest reason and the only constitutional limit to the right of property, how was the DGIW able to negotiate such an exception in the name of the waqf's benefit,[7] and Muslim benefit more broadly? I contend that one can begin to understand this contradiction by examining the genealogy of "public benefit" and "the waqf's benefit" and their

5. The waqfs of the various Christian denominations had this privilege also; see the section "Explaining Waqf Exchange" below. I tackle the reasons for the failure of organization based on individual rights and the success of those marshaling religious benefit in another work. However, the reader should not assume that waqfs successfully escaped expropriation because they played on alliances between Sunni religious and political elites due to consociationalism. Indeed, the religious leaders had been to a large degree co-opted in the original plan, as I show in the section "Marshaling the Waqf's Benefit," and it was a more popular mobilization, even if by a religious community, around waqf inalienability, that opposed the Sunni religious-political elite alliance in power.

6. An alternative translation of the Arabic title ("Kull ʿAqārāt al-Awaqāf al-Islāmiyya Satustaradd") is "all the Islamic waqf parcels," but I opt for "all the parcels of the DGIW" because the statement was issued by the Supreme Islamic Legal Council and describes some of the agreements reached between the DGIW and Solidere regarding the waqfs of the DGIW.

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

articulations in the context of Beirut, under the architectures of state, law, and religious community I described earlier. Therefore, in this chapter, I will turn to focus on the relations between the state and individual endeavors of waqf and the ideals of life sustained by each. What happens to the waqf's benefit when the public benefit that the state preserves ceases to be limited by the shariʿa and to include care for the afterlives of citizens, and becomes defined as the well-being of citizens and economy, with the state having ultimate jurisdiction in deciding what counts as such public benefit?

Excavating the grammar of the waqf's benefit in the library of the late Ottoman Ḥanafī tradition, I show that jurists used the concept in the administration of waqf in conjunction with the concepts of the founder's stipulations and necessity, but never as the principle guiding administration. In that grammar, caring for the waqf's benefit did not mean seeking more profit but rather perpetuating the waqf as its founder had stipulated. The properties of a waqf could be exchanged for more prosperous ones in the late Ottoman Ḥanafī tradition only in cases of necessity. The perpetuation of these waqfs as individual endeavors defined in the shariʿa, in both their worldly and otherworldly effects, was part of the public benefits that the (Islamic) state promoted. With the rise of modern governmentality—the focus of the state on the well-being of its population in this world, on growth and progress—public benefit became wedded to such notions of progress and the here and now, and the waqf's inalienability became a hurdle to public benefit. The confrontation between the Ottoman state's preservation of public benefit as an Islamic state and as a modern state created contradictory demands, which the state resolved through procedure rather than by making a choice between these two sometimes contradictory notions of benefit. The French Mandate officials used the waqf's benefit as a principle of administration, divorced from founder stipulations and necessity, to argue for the liberalization of exchanges. At the same time, with the articulation of a Muslim community separate from the civil state, the waqf's benefit was tied to the Muslim community's and to a "religious" benefit rather than a public benefit. And it was a benefit that the state guaranteed. This introduction of a "religious" (collective) benefit distinct from the public benefit of the national state and from the public (Islamic) benefit of the Ottomans is what allowed for the mobilization of the Sunni Muslim community against the expropriation of the waqfs in the city center. In the Ottoman state, such a mobilization for the "religious benefit" of the Muslim community would have been impossible, given that the Ottoman state was an Islamic state preserving the benefit of Muslims. In contemporary Lebanon, the state's commitment to preserving "religious benefit" in addition to public benefit, and with the contention surrounding the expropriation of all rights holders by a private company in the name of public benefit, made possible a preservation of these waqfs against public benefit.

OTTOMAN LATE ḤANAFĪ BENEFIT: SHARIʿA-DEFINED AND STATE-PRESERVED WAQF BENEFIT

Benefit (Maṣlaḥa) between the Purpose of the Law and a Principle of Action

Before delving into a snapshot of the grammar governing the waqf's benefit on the eve of the Ottoman reforms of the nineteenth century, I would like to unpack the term *benefit—maṣlaḥa* (pl. *maṣāliḥ*) in the late Ottoman Ḥanafī library—since it stands at the core of both the waqf's benefit and public benefit. Jurists use *maṣlaḥa* in two meanings: a technical concept of Islamic legal theory and a common use of what is good.

Maṣlaḥa became a technical concept in Islamic legal theory in the eleventh century with the Shāfiʿī scholar al-Ghazali (d. 1111) (Opwis 2005, 188).[8] Ghazali distinguished this technical legal concept from more pedestrian understandings of *benefit* as "bringing utility [*manfaʿa*] and fending off harm" (Ghazali 1997, 416). In this distinction between *maṣlaḥa* and *manfaʿa*, Ghazali might be drawing on the linguistic roots of the two words *ṣ-l-ḥ*, "the good," more broadly, and *n-f-ʿ*, "what is useful." The good that is about utility and avoidance of harm in the here and now is a distinctly human, self-centered, and limited understanding of the good. For Ghazali, this human assessment alone does not suffice to determine the good.[9] Instead Ghazali proposes an understanding of maṣlaḥa, the good, as exceeding what is useful (*manfaʿa*) and human understanding. Maṣlaḥa is "the embodiment of the purpose of the law" (Opwis 2005, 183), which Ghazali specified in "tangible terms" (Opwis 2010, 7) as maintaining the five necessities of humans: religion, life, mind, progeny, and property. Ghazali deduces these five purposes of the law inductively from a multiplicity of legal determinations explicit in the Qurʾan (Opwis 2010, 74).[10] This "good" is what God chooses for humans accounting for the hereafter. Maṣlaḥa as a legal concept is not a lesser source of law; for Ghazali,[11] it applies only exceptionally and supplants all four other sources in cases such as necessities (*ḍarūrāt*), but only if the necessity is certain (or beyond any reasonable doubt) (*qaṭʿiyya*) and universal (involving the totality of Muslims) (*kulliyya*) (Opwis 2010, 73).[12] Therefore, maṣlaḥa as a technical legal

8. Ghazali is not just any scholar; he is one of the most important philosophers, theologians, jurists, and sufis of Sunni Islam.

9. This position reflects the Ashʿarī theology that Ghazali espoused and helped make dominant. Other Muslim theologies accepted the capacity of humans to figure out the good on their own.

10. For instance, the presence of a punishment for unlawful intercourse shows that the preservation of lineage is a benefit that the shariʿa seeks to preserve (Opwis 2010, 68).

11. By the time Ghazali was writing, the sources of Islamic law had crystallized as the Qurʾan, sunna, consensus, and analogy.

12. Maṣlaḥa's place in the derivation of laws differs among scholars. See Opwis (2010) for a discussion of this variety of positions. Ghazali's example of a valid use of maṣlaḥa in the derivation of law is the following: it is permissible to kill a Muslim that the enemy is using as a shield, if the enemy's winning could reasonably lead to the enemy's victory and the death of all Muslims (Opwis 2010, 73).

concept goes beyond a state's or an individual's assessment of harm and benefit and takes the form of the purposes of the shariʿa as jurists derived them from scripture.[13]

Maṣlaḥa, however, also appears in the library in the more general sense of "bringing benefits and averting harms" ("jalb al-maṣāliḥ wa darʾ al-mafāsid"), which Ghazali had dismissed as not what he means by the Islamic legal concept of maṣlaḥa. This use of *maṣlaḥa* appears, for instance, in the legal maxim that the actions of the ruler towards his subjects are contingent on benefit.[14] The use of *benefit* here concerns the ways the ruler governs and exercises the powers delegated to him, what I will call a principle of action. This is not about necessary and universal circumstances. The examples jurists use to illustrate this maxim are about how the ruler distributes the spoils of truce, what he orders the inhabitants of a city to build, and the like. Ibn Nujaym's discussion of the maxim extends this rule to the actions of qadis entrusted with the property of orphans, the deceased, and waqfs (1999, 207). *Maṣlaḥa* here is open to interpretation as long as it does not contradict the shariʿa.

The "Waqf's Benefit"

In light of this discussion of maṣlaḥa in Islamic legal theory, let us turn to the discussion of the waqf's maṣlaḥa in the fiqh books of the library, to see whether the term is used in the technical legal sense or as a principle of action. The discussion of the waqf's benefit arises mostly in relation to exchanges/substitutions (*istibdāl*) and rents (*ijāra*), but it is most common in the lengthy discussions of exchanges. *Exchange* is here a technical term referring to a specialized transaction of waqf property: selling a waqf's principal (*ʿayn*), or part thereof, either for cash (*badal*) or, most commonly, for cash that is immediately used to buy another principal that takes the place of the old one in terms of the stipulations of the founder. It is termed *exchange* (the most common term used in waqf studies) because the original principal is exchanged for another while the waqf's conditions continue as they were. This is an exceptional procedure as it contradicts the inalienability and perpetuity of the waqfs.[15]

However, those on a sinking or an abandoned ship cannot dispose of or eat one of their fellows to save the rest of them, because this is not a necessity that affects all Muslims (Opwis 2010, 74).

13. Any other interest that is not explicit in scriptures is known as *maṣlaḥa mursala* and for Ghazali is not an acceptable source for legal determinations (1997, 420).

14. "Taṣarruf al-imām ʿalā al-raʿiyya manūṭ bi'l-maṣlaḥa" (Ibn Nujaym, *Ashbāh*, 104).

15. Even the earliest waqf compendia, al-Khassaf's and Hilal al-Basri's—both written in the ninth century—discuss waqf exchange, but the criteria of exchange, or the various parameters used to assess the exchanged waqf and its substitute, had not yet crystallized into the generic "waqf's benefit" that would become dominant in later manuals. On one hand, al-Khassaf's discussion does not even formulate the waqf as an entity having interests. For him, the substituted waqf was to be more productive and more advantageous for the beneficiaries (*ahl al-waqf*), and not for the abstract legal entity "the waqf" (1999, 21). Hilal al-Basri, on the other hand, does speak of the waqf as such an entity when he is surprised that his interlocutor forbids exchanges not explicitly allowed by the founder in his stipulations, even

When jurists argued that exchange of a waqf in case of necessity would be permissible *because it is for the waqf's benefit,* is *maṣlaḥa* used in the technical sense I explained above? Are the jurists making a legal determination based on maṣlaḥa, *maṣlaḥa* being the purpose of the shariʿa that applies in exceptional circumstances, or in the more pedestrian understanding of *maṣlaḥa* as "the good" as a principle of action? The coupling of "*ḍarūra*" (necessity) with the argument for exchange based on maṣlaḥa might suggest that the latter is used in the technical legal sense. In that case, the maṣlaḥa of the waqf needs to be an indispensable one (part of the five necessities that the shariʿa preserves), universal, and certain. One could argue that the preservation of the waqf helps in preserving property and religion. However, would the disrepair of waqf lead to "severe harm" for property and religion for all Muslims? Given the extent of the use of waqf for mosques and madrasas, one might argue that this is indeed so. However, given that the disrepair of *one* waqf would not lead to such drastic consequences, the exchange of waqf does not serve the universal preservation of religion. In these discussions, then, *maṣlaḥa* seems to be used in a much more casual sense of the "good," as a principle of action instead of the technical meaning of preserving the aims of the shariʿa.

Some other examples confirm the use of benefit as a principle of action. Towards the end of the eighteenth century, the Damascene scholar Ibn ʿAbidin argues for the validity of exchange in the case of a waqf generating some revenue that does not suffice for its repairs: "if the qadi allows it and he sees benefit in it"[16] (*Ḥāshiya*, 3:387). Here the argument closely parallels the principle of the actions of the qadi being bound by benefit; if the exchange is "better" for the waqf, then it is allowed. Another use of *maṣlaḥa* associates it with the "benefits of the beneficiaries," as when Ibn ʿAbidin explains why a stipulation that prohibits the qadi from exchange is invalid "because it is a stipulation that involves forgoing benefit [*maṣlaḥa*] for the beneficiaries and ruining the waqf. It is therefore a stipulation that has no utility [*fāʾida*] nor benefit [*maṣlaḥa*] for the waqf, making it unacceptable" (*Ḥāshiya*, 3:388). The juxtaposition of *maṣlaḥa* with synonyms like *fāʾida* pushes one to think that in this case *maṣlaḥa* is being used as a principle guiding the action of fiduciaries and determining their legality rather than

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when it is "good for the waqf" (*wa huwa khayr l-il-waqf*) (1936, 95). Still, in this case, the exchange itself is beneficial and good for the waqf; it does not serve an independent good called "the waqf's benefit." The various criteria that enter into assessing the worth of the substitute-to-be and comparing it with the existing waqfed asset (size, revenue, etc., as discussed below in the section "Calculable Economic Benefit") had not yet formed a compound, all-encompassing term, *benefit* (*maṣlaḥa*), which concurrently would become a much more elusive concept. Coincidentally or not, however, the second characteristic of the substitute mentioned in al-Khassaf, that it be "more advantageous" (*aṣlaḥ*), has the same root as the principle of the benefit (*maṣlaḥa*) of the waqf. Both *ṣāliḥ* (*aṣlaḥ* being the comparative form of the adjective) and *maṣlaḥa* are derived from the same root, *ṣ-l-ḥ*, which is the opposite of degeneration and decay (*fasād*). This is not to say that it presages the later crystallization of all criteria under maṣlaḥa, but that the *ṣalāḥ* and *khayr* of the waqf—its good—have always been something to care for.

16. "Idhā kān bi-idhn al-qāḍī wa raʾyuh al-maṣlaḥa fīh."

as an exceptional source of legislation. It is important to note that it is the qadi who decides what is for the benefit of each waqf and that he should base his decision on criteria elaborated by scholars (as described below), while taking into account the various regulations issued by the sultan/imam to preserve benefit, as long as these regulations do not contradict the shari'a.

"Waqf Is No Business" versus the Waqf's Benefit: Exchange as Individualized Exception

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

Discussions of waqf exchange usually occur under the main heading of stipulations of founders. The titles of the sections in waqf manuals—"The Stipulation of Sale and Exchange is Valid for Abu Hanifa" (al-Khassaf 1999, 21), "A Man Waqfs a Land of His on the Condition That He Can Sell It" (al-Basri 1936, 91), "On the Stipulation of Exchange" (al-Tarabulusi 2005, 31)—already point to the intimate connection between exchange and its stipulation. Discussions of the validity of unstipulated exchanges for "the benefit of the waqf" occur in these same sections. These are, however, in dialectical tension with the stipulated ones and are not discussed under the duties of the administrator and the manner of administration. According to Abu Yusuf, the dominant opinion allows for the founder's stipulation of exchange,[17] so that the founder, the administrator, or any other person named in the founding document can carry it out.[18] Without such a stipulation, only the qadi can proceed with the exchange and there must be grounds for it; there must be a necessity (*ḍarūra*) for exchange (more below in the section "Defining Necessity").[19] For the waqf administrator, therefore, the waqf's benefit would not be the principle guiding the administrator's actions and opening possibilities for

17. This is the most authoritative position. However, an opinion attributed to al-Shaybani makes the stipulation invalid without invalidating the waqf itself (al-Tarabulusi 2005, 31). On the other hand, for Abu Hanifa, the stipulation of exchange or even sale is not controversial because for him a waqf is not perpetual, and therefore a sale or an exchange can be made even without a stipulation.

18. In the section "Constricting Founders' Stipulations of Exchange," I discuss the restrictions on the person who can carry out the exchange as a way to restrict it.

19. That is the dominant opinion in Ottoman Beirut. I will discuss other opinions below in this section.

exchange to fulfill that benefit. As discussed in chapter 2, the highest principle of administration is following the stipulations of the founder, as long as they do not contradict the *shar*ʿ.

The waqf's benefit is simply the principle that guides the choice of exchanged objects, not the principle that determines the possibility of exchange.[20] To illustrate this principle, one can imagine the order of questions concerning the possibility of exchange: First, did the founder stipulate the exchange? If he or she did, then exchange can proceed. If the founder did not stipulate it, the second question and option that could allow the exchange becomes, Is the waqf in a state of complete disrepair—that is, is there a necessity for exchange? It is after answering yes to this question that the waqf's benefit comes into play when comparing the old waqfed object to the new one. Prioritizing and making the waqf's benefit the highest principle of administration would shift the order of the questions, bringing to the forefront the question, Is it for the waqf's benefit? Even more than a different priority, such an ordering would change the grammar of the concept of waqf benefit: it would disentangle the principle of the waqf's benefit from the web of stipulations and necessity, rendering the latter two concepts irrelevant. If the administrator administered solely on the basis of benefit, the founder would not need to leave any stipulations.

The logic of exchange and the place of the waqf's benefit in it come into relief in discussions of the thorny question of the unstipulated exchange of a prosperous waqf (what I will term the unstipulated unnecessary exchange): Can one exchange a *prosperous* waqf for a different object that is for the "benefit" of the waqf if the founder has not allowed exchanges in the stipulations? This is a complex question, with different answers by different jurists. As described above, according to jurists, two main reasons can lead to exchange: stipulation and necessity.[21] If the founder had stipulated exchange, a prosperous waqf could have been exchanged. Given that stipulation of exchange is absent in this question and given that the waqf is prosperous, there is no necessity and so there should be no exchange. Allowing such an exchange would make the benefit of the waqf an operating logic of administration, where *mutawallī*s would manage waqfs as commercial endeavors seeking and planning for profit.

20. Note that Ibn ʿAbidin's abovementioned opinion (that the stipulation that prohibits the qadi's exchange is invalid because it is contrary to the waqf's benefit) considers the harm and possibility of extinction of this waqf after need. Indeed, qadi exchange happens only in case of necessity. Therefore, a stipulation that prohibits administrators from an exchange or the absence of stipulations allowing exchange would be valid.

21. Historians have found that many exchanges happened when there was no necessity and only because some founder, many times a powerful notable, wanted to make his or her waqf on properties that were already endowed—for instance, in an attempt to delegitimize a previous founder (e.g. Crecelius 1991). Although the exchanges in the court records state necessity as the cause of exchange, historians point to the existence of tenancy contracts for the supposedly destitute exchanged waqf.

Even if many of the profits accrued are redistributed to beneficiaries rather than being accumulated, making the benefit of the waqf the logic of administration is explicitly denounced in one of the earliest waqf treatises: "Waqf is done neither for business nor for making profit" (al-Basri 1936, 95).[22] Hilal al-Basri continues to reject the unstipulated unnecessary exchange: "If it was valid to sell the waqf without a stipulation specified in the foundation document, he could sell (again) the object he exchanged the waqf for. This way, the waqf could be sold every day, and that is not how waqf works [*wa laysa hākadhā al-waqf*]" (1936, 95). The way waqf works is to follow the founder's stipulations. In their rejection of unstipulated unnecessary exchange, jurists articulated this principle explicitly: "It was called waqf because it remains [*tabqā*] and is not sold" (al-Basri 1936, 95). "Duty is keeping the waqf as is without any additions [*al-ziyāda*]" (Ibn Nujaym, *Nahr*, 3:320). Increase, profit, or growth are not imperative.[23]

Against this logic of perpetuation, jurists continued to debate whether "the waqf's benefit" alone can govern unstipulated unnecessary exchange. In Mamluk Egypt, al-Tarabulusi mentions that an unstipulated unnecessary exchange is allowed, but as a prerogative of a qadi (and not the mutawallī) and only if he sees benefit in it (2005, 32). This is also the opinion of the jurist known as Qariʾ al-Hidaya, based on Abu Yusuf's opinion, who allows the unstipulated exchange of a prosperous waqf that has revenues if there is a "person who wishes to exchange it and give instead a replacement [*badal*] that is more productive and in a better location" (reported in Ibn ʿAbidin, *Ḥāshiya*, 3:389). Qariʾ al-Hidaya reports that the permissibility of this exchange is the preponderant opinion. And indeed, both historians of the Mamluk period (Fernandes 2000; Petry 1998) and Mamluk jurists like Siraj al-Din Ibn Nujaym (the less known brother of Zayn al-Din) had also noted that exchanges were very numerous and unscrupulously done (*Nahr*, 3:320). While this is a much more liberal approach to exchanges, the waqf's benefit, even as it displaces necessity, does not become the highest principle of *administration* (as practiced by mutawallīs) because unstipulated unnecessary exchanges hinging on benefit belong solely to qadis and cannot be practiced by mutawallīs.[24]

Nonetheless, the opinion of Qariʾ al-Hidaya about the permissibility of an unstipulated unnecessary exchange was challenged by many of his fellow jurists even in the Mamluk period. Given the risk of annulling waqfs that a more

22. "Al-waqf lā tuṭlab bih al-tijāra wa lā tuṭlab bih al-arbāḥ."

23. Although not brought up by jurists, the theme of keeping continuity and perpetuating the waqf as its founder created it echoes the legal maxim to keep old usage as is ("al-qadīm yutrak ʿalā qidamih"), as discussed in chapter 2.

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

liberal exchange allows, jurists attempted to put conditions on unstipulated unnecessary exchanges. Al-Tarabulusi (2005, 32; also cited in *Nahr* 3:320), for example, requires the qadi to be known for his uprightness, whereas Zayn al-Din Ibn Nujaym (cited in *Nahr*, 3:320) requires the exchange to be for an immovable and not cash, in addition to reintroducing the stipulation of necessity.

Between these two extremes of impermissibility and permissibility of the unstipulated unnecessary exchange, other jurists advocate principles of caution over the waqf's benefit. Al-Tarabulusi himself warns that such exchanges can be "attempts at revoking the Muslims' waqfs, as is common in our time" (2005, 32). Rereading these lines after my research was done was uncanny, as they echoed almost word for word some of my observations in my notebooks, like the exclamation of Tante Inʿam, "They sold the Muslims' waqfs." The argument of the fear of annulment of waqfs constitutes one of the most enduring rhetorical fields around waqf. To this day, it is used to both justify certain opinions and put into question the moral rectitude of qadis and waqf administrators. Statements by Mamluk jurists, such as "We have observed immeasurable corruption as unjust qadis have used it as a subterfuge to annul the waqfs of Muslims, and they did what they did" (Ibn Nujaym, *Nahr*, 3:320), sound as familiar and incendiary today as they did ten centuries ago. According to these jurists, the risk of exchange leading to a loss for the waqf is not worth the benefit that might accrue to the waqf. Ibn ʿAbidin breaks out in unusual emotional praise for Siraj al-Din Ibn Nujaym's refusal to allow unstipulated unnecessary exchanges: "By my life, this opinion is more precious than a philosopher's stone!"[25] (*Ḥāshiya*, 3:389). He then explains that it is more appropriate to prohibit such exchanges out of fear of transgressing the law and to prohibit exchanges for cash as "a measure of precaution"[26] (*Ḥāshiya*, 3:389).

The Ottomans leaned towards such a view, as a 1544 [951] sultanic edict based on Ebüssuʿûd's opinion required the permission not only of a qadi but also that of the sultan (Ibn ʿAbidin, *Ḥāshiya*, 3:390).[27] Such a measure confirms and extends the exceptionality of exchanges, which is enhanced in the fiqh through constrictive readings and requirements of the two conditions allowing exchanges: founder stipulations and necessity, as I will now describe.

25. "Wa la-ʿumrī an hādhā aʿazz min al-kibrīt al-aḥmar." It continues: "fa'l-aḥrā fīh al-sadd khawfan min mujāwazat al-ḥadd" (it is thus preferable to block the means [a reference to the juristic principle of preventing an evil before it happens] for fear of and to avoid a major sin).

26. "La shakk ann hādhā huwā al-iḥtiyāṭ."

27. For an erudite discussion of an exchange in Damascus, which elaborates further on the local Syrian reception of the sultanic order, see Meier (2015). Meier argues that it took a while to impose this measure and to create a uniform procedure for exchange (2015, 102). In Beirut, exchanges are few and far between; Meier mentions that in Damascus they were neither prevalent nor completely absent (personal communication, 2019).

Constricting Founders' Stipulations of Exchange. This favoring of perpetuating rather than increasing in administration appears in the precise ways of formulating stipulations of exchange and in restrictive readings of founder stipulations. The most "explicit" stipulation would be "On the condition that I can sell it and buy in its place an object that would be waqfed in eternity, like this object" (al-Basri 1936, 91). Eliminating the phrase "that would be waqfed" is permissible only based on *istiḥsān* (juristic preference), but not on strict analogy (al-Basri 1936, 92). However, dropping "and buy in its place" would invalidate the stipulation and the waqf because a stipulation of sale goes against the definition of the waqf (al-Basri 1936, 91).[28] However, in its "ideal" formulation, jurists read this stipulation literally: to them, this stipulation allows an exchange once. For more than one exchange, the stipulation needs to indicate that (Ibn ʿAbidin, *Ḥāshiya*, 3:388).

The question of who can carry out the exchange elicits even more restrictions. A stipulation that the founder can carry out an exchange does not transfer that right to the administrator after the death of the founder. One could argue that this stipulation belongs to the founder as administrator and could then be transmitted to future waqf administrators. However, jurists explain the basis of this right (and the restriction in this case) through the concept of agency, saying that if the founder names a particular person, this person is the founder's agent in that transaction, and this right cannot be transferred. Restrictions also extend to whether named persons can keep this right after the death of the founder (al-Basri 1936, 98). Such a named person cannot exchange the waqf after the death of the founder, unless the founder mentions that this right extends beyond his or her own death, because "they are like agents, and agency ends with death" (Ibn Nujaym, *Baḥr*, 5:223).[29] We can see here how exchanges are not only subject to stipulations, but that the stipulations themselves are then read restrictively and eventually result in the limiting of exchanges.

Defining Necessity. Jurists also restricted exchanges in the other case where such exchanges are allowed: necessity. As discussed above, in the case of necessity, the dominant opinion is that only the qadi can complete a waqf exchange. Furthermore, as mentioned above, al-Tarabulusi specifies that not any qadi can exchange a waqf—only the "qadi of heaven,"[30] known for his knowledge and uprightness

28. This same reasoning is repeated in Ibn ʿAbidin's nineteenth-century supercommentary (*Ḥāshiya*, 3:387)

29. This is the opinion of Abu Yusuf. Muhammad al-Shaybani considers the named person an agent of the poor (recall the discussion on chapter 2 on the qadi as representing the poor) and therefore the named person's agency does not end with the death of the founder (Ibn Nujaym, *Baḥr*, 5:222).

30. Being at the service of worldly powers seeking to legitimize themselves and their rule, qadis had a reputation of power-mongering and self-interest, and a Prophetic tradition sought to curb the eagerness of scholars to a judgeship career: "Of every three qadis, two are in hell." The third is the "qadi of heaven" that al-Tarabulusi was alluding to.

(*al-ʿilm wa al-ʿamal*), has this right (2005, 32). Such conditions on the person carrying out the exchange are mostly rhetorical, because establishing who is an upright qadi is far from obvious, yet these conditions signal the care with which such exchanges should be carried out and establish them as rather out-of-the-ordinary transactions.

The definition of *necessity* (*ḍarūra*) posed a challenge for jurists. As many modern scholars have pointed out, the answer to the question, What is necessity? is far from obvious (Illich 1992). After all, for most of the modern world, electricity is a necessity, or even a right that citizens demand of their governments, but this was not so for our medieval ancestors. Needs and necessities are products of social, economic, and technological conditions. Therefore, in the nineteenth century, when there might have been a necessity to exchange a waqf that became a swamp, modern technology might now allow for its drainage and subsequent use. Jurists addressed this relativism through the use of two temporal frames in the assessment of necessity: the present and the future. In the present, the waqf needs to be in a state that is completely unusable ("yakhruj ʿan al-intifāʿ bi'l-kulliyya") (Ibn Nujaym, *Baḥr*, 5:223). However, this is not enough to warrant exchange. It should also be impossible to repair the waqf, meaning that its future usability is also not guaranteed (Ibn Nujaym, *Baḥr*, 5:223). It is when the waqf is unusable in both the present and the future that necessity for exchange arises.

This condition (of complete unusability) then produces the need to define *use*, or *intifāʿ*, and its end, the limit beyond which an argument for the necessity of exchange arises. The reader will recall that the one of the most common definitions of *waqf* includes the gifting of an object's *manfaʿa* (yield or usufruct) to some charitable purpose. There must then be such yields for the waqf to achieve the goals of its founder. Jurists attempted to distinguish when necessity for exchange arises for different types of waqfed objects (Ibn Nujaym, cited in Ibn ʿAbidin, *Ḥāshiya*, 3:387). Land ceases to have usufruct when it cannot be cultivated or rented, or when its maintenance exceeds its revenue so that there are no yields that could benefit the waqf. The usability of a house comes into question when it is falling apart and becoming rubble, and nobody wishes to rent it. These criteria appear to be unambiguous cutting points, but their clarity can be questioned. Is the waqf considered usable if there remain only a few *para*s after repairs, a few *akçe*s, or a few *guruş?* For how many years should the administrator have attempted to rent the waqf's asset without success before concluding that it cannot be rented?[31] Jurists did not specify these details, but entrusted them to qadis, leaving some leeway in the assessment of necessity.

31. These discussions bring out the way natural disasters like plagues, earthquakes, and floods challenge the perpetuity of the res and the revenue of the waqf. However, given that many waqfs and institutions today have existed for hundreds of year, waqfs have been notably resilient.

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

Although jurists left to qadis some appraisal of necessity, they provided very detailed instructions about how to appraise equivalence between exchanged properties and benefit for the waqf: "economic" factors determine the choice of the exchanged object. In his very short discussion of exchange, al-Khassaf brings in the example of a waqfed palm tree orchard whose trees had been uprooted and which had become a wasteland. In this case, he says, it is valid for the qadi to exchange it for another piece of land that is "more productive [*aʿwad*] and more advantageous [*aṣlaḥ*] for the beneficiaries" even if smaller (1999, 21). Economic rationality based on this calculation privileges yield as the highest principle, rather than size or value, for instance. Abstract calculation detaches the purpose of waqf from the particular object made into waqf. In such a formulation, the other "functions," such as purpose and the actual role of waqf in the urban fabric and the community, do not figure in the weighing of the various options for exchange. For instance, a soup kitchen provides for the poor of a certain neighborhood, so its transfer to a different area could be detrimental to the well-being of that neighborhood. However, such considerations do not enter into the assessment of an exchange.

Hilal al-Basri's discussion of exchange is much more expansive and brings up other criteria for comparing the waqfed land to be exchanged and its substitute. As discussed in the introduction, his discussion forms the backbone of al-Tarabulusi's waqf compendium, written six hundred years later, and together, these two manuals inform all subsequent sections on waqf exchanges in the fiqh. These discussions center on the *legal* validity of the content of the stipulation, the criteria of exchange. According to Hilal al-Basri, a founder who stipulates exchanging for a piece of land cannot exchange for a house. If she specifies that she is to exchange for a land in Basra, she cannot exchange it for a piece a land in any other place. Lest it be thought that these elaborations are actually about entrenching founders and their stipulations, one should note that al-Tarabulusi explains the reason behind the non-interchangeability of lands of two villages—and it is not that "because the founder stipulated so." It is because "the lands of villages vary in their provisioning and productivity" (al-Tarabulusi 2005, 32). Location matters also because of long-term calculations of economic benefit, "even if the new piece[32] is larger, more valuable, and because of the possibility of its [the waqf's] ruin in the worse-off of the two locations and its undesirability" (Ibn Nujaym, *Baḥr*, 5:223). Al-Tarabulusi adds yet another case to illustrate that the original and exchanged waqfed lands do not have to have the same tax status, arguing that there is no land without tax. Therefore, by this logic, type and location, but not tax status, are the criteria for assessing the validity of exchange. Location trumps both value

32. The word used is *al-mamlūka*, referring to the status of the land as freehold and not waqfed yet.

and revenue, which trumps size (and tax status) in assessing the exchanged parcels.[33] Ottoman jurists like Qınalızade generalize a rule that the exchanged objects have to be of the same kind (land for land, building for building) (Ibn ʿAbidin, *Ḥāshiya*, 3:388).

In these criteria of exchange, one can notice an attempt to remain as close as possible to the letter of the waqf deed and its original object. Waqf exchanges did not treat waqf principals as contingent and temporary assets that are used to generate maximum revenue by investing them in the most revenue-producing project possible. Such is the rhythm of the preindustrial world, not conscripted yet by the notion of progress and ever-increasing accumulation.

POST-TANZIMAT OTTOMAN BENEFIT: UPHOLDING PUBLIC UTILITY AND THE "WAQF'S BENEFIT"

The nineteenth century saw a reconfiguration of the concept of the waqf's benefit, not only because of changes within the shariʿa itself and its relationship to the state, but especially because of competing benefits introduced with the redefinition of the state and its role. Among these new competing benefits, a law of "expropriation," dated 11 March 1856 [4 B 1272], introduced the notion of a public utility (*manâfiʿ-i ʿumûmiyye*). I use scare quotes around the word *expropriation* because the law was not called the Expropriation Law (İstimlâk Niẓâmnâmesî) but had a much longer title: "Regulations about Lands to be Bought from their Owners against Proper Compensation in the Necessity [*lüzûm*] of the Sultanate's Planning of Matters Including Public Utility [*manâfiʿ-i ʿumûmiyye*]." It appears that the term *istimlâk*, or "expropriation," had not yet crystallized as a concept. Indeed, while Şemseddîn Sâmî's 1890 *Turkish Dictionary* includes the word and defines it in exactly the same terms as the title of the law (the state's voluntary or forced buying of a property for public utility), he actually notes that "even though it is correct language [*güzel bir lügat*], it is not Arabic." The concept, with its assumption of the state ("the Sultanate") being responsible for and carrying out works for public utility, seems then to have taken on this meaning in the nineteenth century. A new role of the modern state, the planning of cities that makes populations and spaces legible and governable, crystallizes with the solidification and creation of the term *istimlâk*.[34]

It is important to note that this does not mean that Islamic law did not conceive of such possibilities of expropriation.[35] In legal maxims manuals, a famous exam-

33. It seems that the real estate motto "Location, location, location" has been in vogue for longer than we realize.

34. See the work of James Scott (1998) on this project of the modern state to make people and spaces legible, and its failures.

35. I am thus compelled by Susan Reynolds's argument (2010) that the idea of taking individual property for the common good for compensation was widespread, contrary to the claim that it arose only with modern liberal democracy because under "feudalism" and "Oriental despotism" the feudal

ple of the principle that "private/particular harm should be borne to avert public/general harm" is that of a privately owned (*mamlūk*) wall that has tipped onto the collectivity's road (*ṭarīq al-ʿāmma*) and therefore presents a threat or blocks the road and should be demolished and removed at the expense of the owner to avoid general harm (*ḍarar ʿāmm*) (Ibn Nujaym, *Ashbāh*, 75). Similarly, a private individual can be forced to sell part of his or her land to make space for the widening of mosque (al-ʿAyni, *Ramz*, 1:348). These maxims and examples do not make clear which agency or person is in charge of ensuring the enlarging of these utilities or the safety of the streets. While jurists make the imam responsible for the rights of God and the collectivity and public benefit, rule before the nineteenth century was not governmentalized and such processes of expropriation were not a sole prerogative of the state.[36] Indeed, when there were no municipalities nor central planning authorities, many public utilities at the level of the neighborhood were provided by guilds, charitable foundations, and various individuals and communities, while the state provided the institutional framework of courts and the like.[37] Thus collectivities could themselves exercise powers of expropriation. In contrast, eminent domain and expropriations are now prerogatives of the state and used in the state's new purpose of "the welfare of the population, the improvement of its conditions, the increase of its longevity, health" through governing that relies in the particular dispositions of people and things (Foucault 1991, 100). The state now provides for the public, which necessitates sacrifices in the name of this very public utility, a facet of public benefit.

It might be worthwhile to probe a little further the meaning of *public* in public utility and public benefit. The term here summons the meaning "what is collective, or affects the interests of a collectivity of individuals" (Weintraub 1997, 5), rather than what is open and not hidden.[38] In that sense, the *public* in "public utility" seems to echo the meaning of collectivity summoned in the shariʿa concepts of "public benefit" (*maṣlaḥa ʿāmma*) and "public harm" (*ḍarar ʿāmm*) discussed

lord or ruler had absolute ownership and could take land at will, at any time and without reason or compensation. Yet, as I discuss in this section, there were some radical transformations of the way expropriation worked in the modern state, especially in the role the state has in these expropriations.

36. See Miriam Hoexter (1995) for an argument that the care of public benefit has always been conceptualized by Islamic political theorists as the responsibility of the imam/state. Note also that one of the main areas of contention with Solidere was whether the state delegated its power of expropriation to a private company, showing that in a neoliberal era, even such powers of the state are renegotiated and privatized.

37. See, for example, Marcus (1989, ch. 8).

38. The relation of these two meanings is far from clear, and so is their distinction. One might wonder if the notion of openness and visibility was derived from the notion of collectivity. In his genealogy of the use of the term *private*, Raymond Williams (1976) first traces it to religious orders that have withdrawn from public life (*deprived*). He notes that the "sense of secret and concealed both in politics and in the sexual sense of private parts" was later acquired (1976, 242). Its opposition to *public* only came later. I would like to keep this note in mind, because I will show later that the notion of public can evoke visibility and transparency.

above. However, there is another dimension to the notion of public utility: its relation to the state. The French legal tradition equivalent of public benefit, from which the Ottoman and Lebanese codes are derived, is *intérêt général*. In their genealogy of the term in French political and social theory, Pierre Crétois and Stéphanie Roza (2017) argue that the concept has been polysemic since its inception, without a stable social or juridical meaning, yet has served to mark a position or a political-philosophical thesis. The concept is thus used by liberal, republican, and egalitarian thinkers alike as a ground for critique or for an argument. An important use of the "intérêt général" was in relation to the state, demanding that it serve not only reasons of state or the interests of princes, but the interest of the people. The intérêt général became the "the conceptual knot that is the very object of the modern state and its law, its new horizon, and its new legitimacy" (Crétois and Roza 2017, 4). For Crétois and Roza, intérêt général is concerned with "overarching considerations based on the rationalization of social phenomena," whether enforced by the state or an agency. It is distinct from both the common interest, the intersecting interests of various individuals, and the "*intérêt public*," the interest of the state itself. These distinctions highlight two senses of *public* meshed together in English: the connection to the state and the collectivity. Yet, because the intérêt général has become the guiding principle of the state, it is adjudicated by the state. That is why, as may be recalled from chapter 2, under the Mandate, the *state* classifies certain amenities as *public utilities* (public needs that should be satisfied for the public good, not for profit) that are important to be fulfilled (and therefore not left to individual initiatives/effort/enterprise) and are best served if administered independently (Yakan 1963, 128). Therefore, a public utility in the modern sense is one that the state defines, for the benefit of the collective.

Waqf and Public Utility

After this detour that only begins to shed some light on the many complexities and specifics of "expropriation," "utilities," and the "public," it is time to analyze the effect that the introduction of a notion such as public utility, with the particular role of the state that it assumes, had on the notion of the waqf's benefit. Let us return, then, to our late Ottoman "law of expropriation."

The first article of this 1856 law already defines what counts as public utility: "the creation of hygiene and health establishments, the foundation of public schools whether by the Imperial government or by populations, the building of barracks, hospitals, water tanks for fires, fountains, sidewalks, rails, docks, harbors, canals to prevent the floods of rivers for navigation, the establishment of water pipes, the creation of promenades, public gardens, the construction and the widening of quays, markets, squares, and streets" (Young 1905, 127). Note that mosques and other prayer halls do not fall within this definition. We notice already the secularization of the role of the state and its withdrawal from the care for the afterlives of its subjects. In Beirut, expropriation law was heavily relied on when Ottomans

set out to make the cities of the empire conform to the model of European cities, especially as Beirut was to become a showcase of Ottoman cities during the reign of Abdülhamid II (1876–1909) (Hanssen 1998, 44). For that reason, "urban renewal" became necessary: building new government offices, a municipality, and the opening and widening of new roads. The construction of such a project allows us to examine how the notion of public utility intersected with that of the waqf's benefit.

On Tuesday, 5 June 1894 [1 Z 1314], the municipality of Beirut destroyed a series of shops and buildings in order to widen the road leading from Bab Idris, the western gate of the city, to the government seat at the eastern "Saray" gate.[39] Among those, four shops were waqfs. The revenues of two of these shops supported the ʿUmari Mosque, located off the road that was widened. The rents of the two other shops supported the families of their founders. The expropriation law of 1879 [1296] required that owners be paid in full before proceeding to their eviction. From the court records, this seems to have been the case: the two administrators of the "family" waqfs came to court and bought assets for the waqf in exchange for the destroyed shops within a few months of the expropriation. This does not seem to be the case, however, for the ʿUmari's waqfs, which were administered by the Waqf Ministry in Istanbul through the waqf director of Beirut. The case of these two shops seems to have caused a great deal of tension between the local administrative council of Beirut and the Waqf Ministry, eliciting long and multiple communications involving not only the council and the Waqf Ministry but also the Ministry of Interior, the State Council, and the grand vizier.

At the crux of the dispute was the amount of compensation that the municipal council should pay the Waqf Ministry. The original shops were assessed to be worth a total of 70,000 piasters. This would have been a simple exchange, with the Waqf Ministry receiving the 70,000 piasters and then proceeding to buy another property in exchange. Trouble started when the ministry turned out to be the administrator of a bakery, a waqf for a different mosque, on the side of the widened street, that would therefore benefit from the widening. Beirut's administrative council proceeded to assess and impose on the bakery, that is, on the Waqf Ministry, some fees—as it did to all properties on either side of the road (to be attached to that bakery). These included an improvement tax (*şerefiye*), the price of the remainder of the parcel in front of it, as well as some fees for the execution of the road widening, totaling 11,441 piasters.[40] The Waqf Ministry, whose opinion the Ministry of Interior endorsed, argued that the leveling and paving of the street did not benefit the waqf (the bakery, that is) but actually harmed it. The

39. The information for this exchange is culled from documents included in BOA.ŞD 2289.36 and from the court records of waqf exchanges due to this expropriation, MBSS.S33/63.147 and 102.96. For more on the larger urban project, see Hanssen (2005, ch. 8; the street alignment project leading to this exchange is discussed on 216–21).

40. BOA.ŞD 2289/36/2.2.

Waqf Ministry was probably referring to the decrease in the exchange price of the waqf that the payment of the tax would cause (some 15 percent of the assessed value of the bakery), rather than any harm produced by the widening and paving of a street.

Yet, here again it is the arguments in the dispute that allow us to understand the changes in the grammar of benefit. Both ministries challenged the improvement tax and the widening of the road. Pitted against each other are "the waqf's benefit" and "public utility" (and thus, by extension, public benefit). The State Council avoided a direct assessment of the two benefits and instead argued based on a procedural issue: since all shops on the widened street paid these fees, the waqf could not be exempt. It therefore avoided making an explicit pronouncement on what mattered in the last instance, or on the relation of the waqf's benefit to public benefit. The State Council's decision did not explicitly appeal to any general rule or principle behind the equal treatment of all; however, one could maybe venture to argue that its position is based on the principle of the equality of all before the law, an important proclamation of the Tanzimat Edict.

MANDATE ARTICULATIONS: SUBORDINATING THE WAQF'S BENEFIT TO PUBLIC UTILITY

While Ottoman legislation and practice preserved the role of the state as a guarantor of both the benefits of the waqf and those of the "public," the French Mandatory power, which replaced the Ottoman state in Lebanon after World War I, presented itself, as discussed in chapter 2, as the necessary guarantor of the benefits of the various sects, but reserved for itself the right to intervene in waqf affairs for "reasons of public benefit." In the introduction to Decision 753 of 1921 on the administration of Islamic waqfs, the word *maṣlaḥa* is used six times in a two-page fourteen-point preamble.

Decision 753 introduced a benefit of a higher order than the waqf's benefit, now parochialized as part of "religious benefit" of a particular community within the nation. This ordering of rights does not mean that the "waqf's benefit" disappeared from legal reasoning. Even more, a memo on waqf leases which is part of the civil law of the State of Greater Lebanon, issued by the general secretary, the French officer Pierre Carlier, presents arguments using the concept of the "waqf's benefit" to justify the imposition of a fair rent (*ijārat al-mithl*)[41] on all waqf properties (Al-Mudiriyya al-ʿAmma li'l-Awqaf al-Islamiyya n.d., 43–44). The memo starts

41. As I mentioned at the beginning of this chapter, the concept of the waqf's interest appears also in rent discussions. I use here the French law on fair rent because it illustrates more starkly the way the waqf's interest continues to be used and in which grammar. Most commentaries in my library stipulate that waqfs should be rented at market value and for a maximum of three years to avoid a devaluing of their leases. Longer leases, like exchanges, were exceptional and to be decided by the qadis in individual cases. These, however, became very common (see, for example, Hoexter 1997). For a discussion of *ijārat al-mithl* in the Mamluk period, see Johansen (1988).

with a grand claim: the "scholars of Islam" have agreed that contracts with rents lower than the fair rent are void, because they harm the waqf. It buttresses this claim by citing an opinion by Ibn ʿAbidin, whose commentaries and fatwas were authoritative in the courts, as the reader may recall. The memo notes that Ibn ʿAbidin settled a dispute between an administrator and a qadi as to the legality of paying a rent lower than the fair rent by arguing that a contract below the fair rent was invalid. Finally, the memo advances "a general principle" from Islamic law, accepted in Islamic courts: the rent amount had to be for the "benefit of the waqf" and was thus obligatorily constrained by the fair rent. Hence, Carlier presents French Mandatory authorities as restoring the integrity of the Islamic legal tradition.[42] However, examining the logic of Carlier's argument attests to changes in the grammar of the "waqf's benefit." Although Muslim jurists reached similar conclusions requiring a fair rent for the benefit of the waqf, their discussion always addressed the stipulations of the founder (whether he or she had conditions about the rent); in Carlier's memo, the stipulations of founders are nowhere to be found, signalling the detachment of the waqf's benefit from its associated concepts of stipulations and necessity and its operation as a general principle.

This approach to waqf's benefit as a general principle reflects the different property regime and understandings of property and waqf that the French Mandate solidified. Reports of the French high commissioner to the League of Nations explicitly refer to waqfs as patrimony, as the totality of possessions of a community, thought of as real estate wealth that could be made to grow, if managed well: "Studies aimed to ensure the free circulation of waqf immovables, whose inalienability constituted an obstacle to the economic development of the country. They also aimed at improving the possibilities of the management and exploitation of the communities' patrimony" (Ministère français 1926, 106). Discussing some of the waqf legislation issued, the high commissioner highlights that it will allow "the rational development of land and provide better conditions for the management of the real estate capital that waqf immovables represent" (Ministère français 1926, 108). Here again, what is marshaled to explain these reforms and justify the intervention in waqf affairs is public benefit. Indeed, the French perceived these waqfs as "prominently harmful for public benefit, collective or individual" (Ministère français 1926, 106). The value of the individual endeavor of the founder, of bringing good deeds to its founder, along with the shariʿa purposes it embodies of preserving family and religion, for example, seem very far behind. This is an era of developing national economies and increasing real estate wealth.

French Mandate waqf legislation inverted what had been the dominant Ottoman paradigm throughout the four hundred years of Ottoman rule in the Arab provinces: the exceptionalism of exchanges, which required the approval of the sultan himself. Between 1921 and 1930, waqf legislation under the French Mandate

42. This is also the case in the introduction to Decree 753/1921.

centered on the exchange of waqf, encouraging and even forcing the exchange of waqfs for money in various cases. Decision 80/1926 forced the exchange of all waqfs having rights of usufruct that were inheritable (Article 4). The decision specified how these moneys were to be then reinvested, since these were exchanges. For the waqfs of the DGIW, it did not couple the exchange with the stipulations of the founders and allowed the use of the money for any purpose the Supreme Waqf Council approved. For "exempt" waqfs, those left to the administrators stipulated by founders, however, the stipulations of the founder would then reapply to the new waqf. However, Decision 3/1930 allowed any rights holder or beneficiary to exchange any waqf, except for "religious institutes" (Article 3), without further delimiting the use of the funds according to any stipulations. With Decision 3, after an "exchange," the waqf could simply end. Exchanges ceased to be exceptions bound by stipulations of founders and necessity, and, as importantly, eliminated the defining feature of Ottoman waqf—perpetuity.

POSTWAR RECONSTRUCTION: MARSHALING THE WAQF'S BENEFIT AGAINST PUBLIC BENEFIT

Despite all the legislation and practice that subsumed the waqf's benefit to new conceptions of property and to public benefit, the waqf's benefit remained a powerful reason that, even if used in its modern grammar (unhinged from stipulations and necessity), could challenge the very public benefit to which it is to be subsumed. I return now to the contradiction I described in the opening of this chapter, the exemption of some waqfs from expropriation in the reconstruction of downtown Beirut. This political, economic, and moral struggle centered on the concepts of "public benefit" and "waqf's benefit" and prevented the systematic dispossession of the DGIW from the city center. Such an exceptional episode does not deny the truth, extent, and violence of the dispossession that in reality did take place, but it does illustrate the incompleteness and contradictions that exist in the reasoning of modern states. This religious mobilization, with various members of the Muslim community speaking about the waqfs of the Muslim community, does not reflect any "weakness" of the state in Lebanon or its failure to create citizens more loyal to the state than to their sect. Nor does it reflect a religious resistance that adopts the sectarian logic of the state. Rather, by providing reasons that can win over "public benefit," reasons steeped in other benefits (the waqf's), this mobilization underscores both the constant battles that modern states wage to uphold the ideals they present and the tenacity of other traditions in interpellating citizens.

Explaining Waqf Exchange

The process of waqf exchange in the reconstruction of downtown Beirut since the early 1990s remains a quasi-mystery. The negotiations that occurred around

waqf possessions in the reconstruction of Beirut's city center are almost absent in the numerous articles, books, dissertations, and research that the reconstruction triggered.[43] In the most detailed study of the waqfs in the process of reconstruction, Heiko Schmid (1997, 2002) places waqf exchanges within his analysis of how Solidere and Hariri managed to defeat the various opponents and visions for the city center: through force, bribery, compromise, political influence, and economic power.[44] He portrays the reconstruction process as a battle among actors mobilizing strategies and resources: the DGIW, churches, refugees, old tenants and owners, academics, architects, and planners. While the resistance of these various actors did have an effect on the original reconstruction and its plan—from modifications of the master plan to slowing the process, to various actors retaining some of their possessions—the story that Schmid tells is the story of dispossession, of Solidere proceeding with its plans. Instead, I think it is important to highlight the process that allowed the DGIW to keep real estate assets instead of shares. This episode may be thought of as insignificant if one approaches history from its end, if one of thinks simply of winners and losers, but it might help us question the narrative of the inevitability of neoliberal dispossession.

In Schmid's narrative, the story of waqfs in downtown Beirut is that of the triumph of neoliberalism, where their administrators initially refused expropriation but were then co-opted by different means. He distinguishes between Muslim and Christian reasons behind the refusals of expropriations in order to explain the different strategies Solidere and Hariri used to reach agreements with the two communities. The DGIW based its argument against expropriations on "religious reasons" (Schmid 2002, 238), while the Christian foundations echoed the opposition to the reconstruction as voiced by Christian lay leaders. Therefore, Schmid suggests, it was easier to curb the resistance of the Christian foundations through economic and symbolic retribution. Using big Christian families as contractors in the reconstruction "embedded" them in the reconstruction process. They then had "a strong influence on the religious decision-makers of their denominations and were able to break up the resistance" (2002, 239). Financial lures were also effective to tame the DGIW. "Far better compensation was unofficially granted to the religious foundations than to normal owners, anyway. Simultaneously, the areas around the places of worship were generously restored, in order to emphasize symbolically the role of the foundations in the city centre" (2002, 239). In addition, in both cases, Hariri "recruited supporters among the respective religious foundations" (2002, 239). Schmid does not explain how Hariri managed to do so or why these individuals supported the project, but given Hariri's wealth and his political power, one can imagine personal profit played a role. In Schmid's narrative, the DGIW originally resisted expropriation but the Sunni political and religious elites

43. See also the literature cited in note 1 of this chapter.

44. Leenders (2012, 58–64) also provides much detail about these processes even though his concern is not about the waqfs in particular but the process of expropriation.

eventually struck a deal that benefited them at the expense of the waqfs of the community's nonreligious patrimony.

Schmid's study is based on "action-oriented political geographical analysis that particularly tries to re- and deconstruct the different perspectives of the protagonists" (2002, 232). Because the author places emphasis on actors, history appears to be made by main characters, willful and woeful; "Hariri proved to be a clever strategist and superior tactician, understanding how to use his resources and power to resolve the conflict in his way" (2002, 238). Schmid also emphasizes the intent of actors, making assumptions about their desires and interests. The "main interest of the Christian and Muslim foundations," he argues, "was to maintain a symbolic representation of their religion in the city center of Beirut, in addition to mosques and church buildings" (2002, 236). The DGIW and the various churches appear as uniform bodies with clear motives. Because the actors are concerned with outcomes, Schmid's analysis treats arguments as *instruments* that various actors mobilize in a power struggle. The DGIW, for instance, "declined the expropriation for religious reasons," whereas their real motive and desire was to keep a symbolic presence. I raise these issues not to say that Schmid's analysis is incorrect; to the contrary, he actually forwards many of the issues at stake and the strategies at play. However, it is also important to acknowledge structural limitations and possibilities beyond the motives of actors and direct causes. Most importantly, however, we must recognize that religious reasons are more than just excuses; they stir feelings, galvanize subjects, and produce public debates. Here, therefore, I will not take these arguments to be epiphenomenal means, mere instruments to an end, but will approach them as logics embedded in traditions and representing ideals of life.

Marshaling the Waqf's Benefit

In trying to get a better sense of the negotiations and mobilizations surrounding waqf expropriations in the city center, I delved into the archives of the DGIW and of the newspapers of the period. The story turned out to be more complicated than the one told by Schmid. The co-optation of the DGIW by Solidere after its initial resistance to expropriation did not go unnoticed. A popular mobilization, aligning political opponents of the grand mufti, religious scholars, and Sunni Beirutis, drew on the old grammar of the waqf and engrained notions of waqf inalienability. In the name of the waqf's benefit and religious benefit, the mobilization stopped the arrangement between the Sunni political and religious elite to expropriate all the DGIW's waqfs (save religious buildings) for Solidere shares, ultimately allowing the DGIW to retain valuable real estate in the city center.

At the beginning of 1994, a short news brief buried in the local pages informed readers that the members of parliament of the Jamaʿa Islamiyya[45] had issued a

45. The Islamic Group, discussed in chapter 2.

statement saying that the "obscurity and vagueness that surround the fate of the waqf parcels in downtown Beirut are the reason behind the turmoil around them, regarding the good intent, vigilance/jealousy, or even unstated intentions" (*Annahar*, 14 January 1994, 6). The brief refers to the many questions and the commotion surrounding the waqfs of the DGIW in downtown Beirut (see, for example, *Annahar*, 30 April 1992, 4; 25 May 1992, 6; 15 December 1992, 7; 31 December 1992, 13). However, instead of blaming a certain party or gesturing to the often-used *corruption*, the Jamaʿa brought up not an action or a decision but an attitude and a characteristic of the process of decision-making about waqfs and their exchange: the disclosure of information. In this, we can note the association of "public" with visibility. They refrain from pointing fingers, but their declaration is an invitation to a more "open" and transparent waqf administration.

These accusations of lack of transparency echoed many observations in my notebook, which had, at that time, led me to write: "The DGIW operates through opacity." Indeed, the DGIW does not publish annual (or other types of) reports, nor does it distribute them.[46] Security guards strictly regulate access to its offices because they are part of Dar al-Fatwa, where the mufti holds office. In addition, although the land registry is public and one can request a list of all parcels any person owns, I was denied the request for such a list for the DGIW because the "approval of the DGIW is required." I encountered that opacity in action as I was trying to do research at the DGIW. I was allowed access only to the Ottoman record of waqf deeds, which seemed harmless, far from contemporary debates on the exchanges with Solidere or any claims of "corruption."[47] Therefore, when I asked to see the file of one of the family waqfs involving a lawsuit with the DGIW, I was shown the file in one of the cupboards in the director's office: the issue is so sensitive that the file remains under the protection of the director and is inaccessible even to DGIW employees. That was also the fate of minutes of meetings of waqf committees: they were sitting in a cupboard. The hidden geography of the DGIW also included an archive in the basement, locked and inaccessible. The opacity that the DGIW sustains reflects its uneasy position between the state and the Muslim community, bound as it is to both public benefit and the community's benefit, as we shall see.[48]

The conflicting position of the Lebanese religious leadership, including the mufti, between state and community is one that the leaders themselves

46. I was able to get hold of a single report of the activity of the DGIW in the form of a booklet published during the civil war (Al-Mudiriyya al-ʿAmma li'l-Awqaf al-Islamiyya 1982).

47. Because of a myopic vision of history echoing nationalist histories that place the Ottoman past in the prehistory of Lebanon as a nation-state, Ottoman records are thought to bear no connection to the present. Indeed, with the radical changes the French introduced, crucially the new land survey, mapping nineteenth-century waqf is a complicated (but not impossible) task (see for e.g. Rustom 2012).

48. As the brief published by the Jamaʿa Islamiyya suggests, the opacity also raises suspicion of corruption and mismanagement of these vast resources controlled by the DGIW.

acknowledge. The grand mufti, the "religious head" of the Muslims (a 1967 revision of his title of the "religious head of the Sunni Muslim community," as Decree 18/1955 had defined him), along with the religious representatives of the various communities to the state, explicitly defined public benefit and the benefits of their communities as separate.[49] On an August night in 1991, the acting grand mufti, Muhammad Rashid Qabbani; the Metropolitan of the Greek Orthodox Church in Beirut, Bishop Elias Audi; and the Maronite Archbishop of Beirut, Bishop Khalil Abi Nadir attended a dinner hosted by Tammam Salam, a prominent Beiruti leader.[50] They discussed the reconstruction of downtown Beirut and said they "sought public benefit, in addition to preserving the existence of the waqfs that belong to their communities and institutions" (*Annahar*, 17 August 1992). We have here two benefits against each other: the "public" benefit and the benefit of the (religious) community. Herein lies the conundrum for these men: they stand in a position where they need to preserve both. As heads of their communities, they are accountable to preserve the benefits of their community and its waqfs. As state agents, they are supposed to uphold the public benefit. While the Lebanese constitution protects the various religious communities and their benefits, it also places public order above religious interest (Article 9).[51] The position of these leaders within the state and their commitment to uphold public benefit subjects them to the suspicion of both state and community.

As discussed in chapter 2, the waqfs of the DGIW fall between public utilities and collective private goods of the Muslim community. Because the DGIW is part of the state apparatus, waqfs can be constructed as part of public funds (*māl ʿāmm*). However, because Decree 753 defines them as the patrimony of the Muslim community, they belong to the "private" affairs of the community. Whether one considers them to be public goods or the property of the Muslim community, waqfs were the object of an act of "commoning" (Harvey 2012, 73).[52] David

49. The Shiʿi official representative was not present because there are no Shiʿi waqfs in the city center, reflecting the small number of the Shiʿa in Beirut in the nineteenth century. See Fawaz (1983) for the religious composition of the city. This did not stop a symbolic battle over whether an uncovered religious shrine was Sunni or Shiʿi. See al-Harithy (2008).

50. Salam became an MP in 1992 and 1996, and he was then the director of the Islamic Charitable Association (al-Maqasid), one of the oldest Muslim associations in Beirut. The association built a network of modern Muslim schools in Beirut, starting in the late nineteenth century, and it is responsible for the Muslim cemeteries in Beirut. On the rise of the Salams, see Johnson (1986). On the Maqasid, see Schatkowski (1969) and Shibaru (2000).

51. The text of the Article states: "Freedom of conscience is absolute. In assuming the obligations of glorifying God, the Most High, the State respects all religions and creeds and safeguards the freedom of exercising the religious rites under its protection, without disturbing the public order. It also guarantees the respect of the system of personal status and religious interests of the people, regardless of their different creeds."

52. As I mention in footnote 5 above, while this opposition mobilized Muslims as Muslims, the question of whether this mobilization reproduced subjects as members of a sect rather than as citizens

Harvey distinguishes between public spaces and public goods on the one hand and commons on the other. While public goods and utilities are provided by the state and are open, commons can be privately owned and exclusive. What renders them commons is their summoning the energies of their users into their creation, shaping, and perpetuation. Whether Muslim waqfs belong to the state-connected "public" goods might be a matter of contestation; however, they are undoubtedly commons. It is important to note that waqfs are not necessarily exclusive—in fact, shops and rooms waqfed for the benefit of various Islamic charitable purposes were rented on the real estate market to Christians and Muslims alike. Furthermore, the revenues of these waqfs founded by Muslims and dedicated to the poor of Beirut were distributed to people in need regardless of religion. As the fiery debates within the Sunni Muslim community show, the waqfs of the DGIW in downtown Beirut were a common not as in "a particular kind of thing, asset or even social process, but as an unstable social relation between a particular self-defined social group and those aspects of its actually existing or yet-to-be-created social and/or physical environment deemed crucial for its life and livelihood" (Harvey 2012, 73). The waqfs represented the symbolic existence of the community as such, and their expropriation provoked a heated debate between various groups of Sunni Muslims, each marshaling the waqf's benefit within a different grammar.

The opposition to the possibility of expropriation marshaled the concept of the waqf's benefit as described in the first section: in conjunction with the stipulations of the founder and as an exception to the logic of preservation of waqfs. Opening the debate on the last day of the year in 1992, the Association of the Azhar Graduates in Lebanon called for the "preservation of waqfs in downtown Beirut . . . and their development according to applicable regulations, while respecting the founder's stipulations" (*Annahar*, 31 December 1992). A few months later, the Association for the Preservation of the Qurʾan also made a statement that it would "work to preserve the Islamic waqf properties in Beirut totally, in terms of their limits and location, without any change or exchange. It will not accept any attempts at harming, decreasing, or changing the waqfs or their locations" (*Annahar*, 28 July 2007). We see here arguments echoing the logic of preserving waqfs as per the wills of the founders, rather than seeing in the expropriations a possibility to incur *further* benefit for the waqf; as al-Basri stated, "Waqf is no business" (1936, 95). Coinciding with the height of the revival, this is a return to the old grammar, which had been abandoned in the French legislation that liberated the benefit of the waqf from stipulation and necessity. Indeed, based on the French-era regulations discussed above, the DGIW could actually exchange these waqfs for cash.

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is the subject of another work. My preliminary answer, as might be apparent from my use of a framework of commoning, is that it is not, given that it involved a grassroots mobilization against the Sunni elites in the state and used arguments from the tradition, which the state had marginalized.

The DGIW responded using the same rhetoric, but it marshaled the waqf's benefit within the grammar of the modern state, a logic that the Ottomans had introduced and the French enshrined. In a published article, the DGIW used the waqf's benefit as an abstract principle: "The responsibility for the Islamic waqfs in Lebanon falls on the Supreme Islamic Legal Council,[53] which has previously taken decisions with regard to waqfs in Beirut's central district so as to fulfill *Islamic benefit* and to preserve the waqf parcels" (*Annahar*, 13 January 1994; italics added). The council then asserted its independence and autonomy. It is true that it is part of the state, but its allegiance also cleaves to the shariʿa. The Supreme Islamic Legal Council "takes its decisions after examining the waqf issue from all its angles and adopting a sound position that fulfills *the waqf's benefit* . . . and accords with the shariʿa rules and the highest *Islamic benefit*" (*Annahar*, 13 January 1994, 6; italics added). We see here the waqf's benefit detached from the legal edifice that produced it, the stipulations of founders, and necessity; and the rise of the notion of an "Islamic benefit" that is distinct from the public benefit preserved by the state.

These statements echo the justification of the preservation of the waqfs from within state law and with the new place of the waqfs under the secular architecture. In 1977, Mufti Qabbani, who was then the DGIW director, argued when the Public Works Ministry attempted to take over war-damaged waqfs: "The waqf parcels are not the private property of a single individual, but they are the property of the whole community [*ṭāʾifa*]. Consequently, they have the character of public utility [*lahā ṣifat al-manfaʿa al-ʿāmma*], and therefore cannot be sold" (quoted in *Al-Akhbar*, 2 February 2010, 3). He then cited the article from the Real Estate Code that affirms the inalienability of waqf before concluding, "This is the rule of the *sharʿ* and the law." Contrary to Schmid's argument, the mufti justifies the inalienability of waqfs through an argument of public utility and not by reverting to the legal determinations of the shariʿa; he does not bring anything outside of state law to make his argument for the inalienability of waqfs.

Furthermore, while the critiques of the DGIW and the waqf expropriations used the waqf's interest in the grammar of late Ottoman Ḥanafī tradition, the grand mufti was speaking a different language, appealing to the waqf's interest in a grammar made possible by the architecture of state, law, and religious community instated with the Mandate. The secular configuration opens a different grammar for mobilizing against an expropriation done in the name of public benefit. Because the constitution guarantees the sects and their benefits, and Decree 753 "religious benefit," the grand mufti called on this "religious benefit" and equated it with "public benefit." Rather than an individual endeavor confronting the collective good promoted by the Ottoman state, waqfs now served the "religious benefit"

53. After the DGIW's administrative committee (*majlis idārī*) approves the exchanges, this is the organ within Dar al-Fatwa that gives the final approval of exchanges. Yet, in the case of the Solidere waqfs, it is not clear that this procedure was followed.

of that community, a benefit that the state is supposed to guarantee. The grand mufti, like the Supreme Islamic Legal Council, introduced the notion of a religious benefit that is distinct from the waqf's benefit and public benefit. However, the situation is more complicated than the mufti's argument suggests because Decree 753 distinguishes between the waqfs as the property of the community and a higher public benefit and its associated public domain. The mufti's jump from the community to the public is not obvious. In addition, even immovables belonging to the public domain can be sold. Crucially, other state-issued regulations allow the exchange and alienability of waqfs, when, as we described in the first section, the *sharʿ* itself allows for exchanges based on stipulations and necessity. The grand mufti thus spoke in a grammar that tied the waqf's benefit to *religious* benefit (that of the Sunni Muslim community), playing on these dual commitments of the state to the sects and the larger national public good.

The New Logic of Exchange

Beyond these discourses about benefit, what did in fact happen to the DGIW waqfs in the city center? The opacity surrounding the exchanges and deals between the DGIW and Solidere fueled intense speculations and accusations, which continue up to this day. From "The Corrupt: The Grave Seller" (al-Nusuli 2010) to "Dar al-Fatwa: The Required Corruption and Reprehensible Squander" (*Al-Akhbar*, 2 February 2010), newspaper articles and online posts continue to point fingers to the DGIW, Dar al-Fatwa, and the mufti. The press used the mufti's own statements about the inalienability of waqf in 1977 to discredit the course of action on waqfs in the 1990s reconstruction of the city center. In one of the many articles on Solidere that Al-Akhbar periodically releases in line with its political opposition to Hariri, titled "Dar al-Fatwa committed a monumental real estate massacre" (*Al-Akhbar*, 2 February 2010) turns to the Sunni religious establishment. Among its crimes, the article declares, Dar al-Fatwa merged and apportioned waqfed parcels, relinquished most of the fifty-six waqfed parcels it owned in downtown Beirut, subdivided and sold waqfed parcels, including a cemetery,[54] and sold the air rights (*amtār hawāʾ*) above the newly built al-Amin Mosque.[55]

Comparing the list of waqfed parcels in downtown Beirut that were under the supervision of the DGIW in 1989 and today shows much less of a massacre. The

54. The Suntiyya cemetery has been the center of a controversy of its own (see *Annahar*, 4, 7, 9, and 12 July 2006). Like all of Beirut's cemeteries, it is under the supervision of the Maqasid rather than the DGIW.

55. *Air rights* refers to the square footage that urban regulations allow for a certain parcel based on factors of exploitation. As a mosque, al-Amin did not use up all the legally allowed square footage, and so it "sold" these rights to build a certain volume (air rights) to be transferred to another parcel. This practice is not allowed in Lebanese urban and building regulations and would have been possible only because the whole downtown was considered a single parcel for the purpose of calculating total square footage, which Solidere then distributed according to a master plan.

number of parcels quoted in the newspaper reflects the number of entries in the 1993 DGIW-produced "Table of Waqf Parcels [*ʿaqārāt*] in the City Center." Yet, more than a third of these (twenty-two, if one is conservative) are shops in the old suqs and khans (where they constituted less than 5 percent of the value of these parcels), and two more were buildings slated for demolition (and were not even open for recuperation) in Solidere's master plan.[56] A further thirteen were religious buildings that were originally or eventually excluded from the expropriation scheme. The DGIW then "owned" around nineteen parcels and parts thereof in downtown Beirut that could be subject to exchange.[57] The "presence" of Islamic waqfs was not in fact as prominent as portrayed by detractors of the then Hariri-aligned DGIW and imagined by Sunni Beirutis nostalgic for a Sunni Beirut past. However, it is worth mentioning that back then, like today, even if these parcels were not numerous, they had high resale value and generated considerable rents for the DGIW. A list of current waqfs shows that all the religious buildings remain, and seven of the nineteen immovables are still in the hands of the DGIW. How did the exchange happen, and was it in the benefit of the waqf?

After the grassroots mobilization against the expropriation, between 1995 and 1997, the DGIW struck deals with Solidere to recuperate some of its waqfs. The parcels recuperated were the ones where the DGIW was the biggest or sole owner and that held most potential for redevelopment: buildings where war damages were minimal and unbuilt parcels of land, which under Solidere's bylaws could not be recuperated. The dollar value of these seven parcels, appraised by committees of judges, was twice the dollar value of the remaining thirty-four parcels (since there were thirteen religious buildings that were eventually excluded from exchange). These remaining parcels were given up as a lump sum, rather than through individualized exchanges, as we shall see.

While exchanges in downtown Beirut resembled earlier exchanges in the importance given to the value of the parcels and in the use of a monetized assessment, they were not done on a one-to-one basis. In earlier expropriations, as we have described, administrators, with the approval of qadis, compensated for, then exchanged, each waqfed asset for another asset that was for the "benefit of the waqf." In the case of Solidere, exchanges took the form of a monetized debt swap. Monetization was always a necessary stage in every waqf exchange, since waqfs were assessed a monetary value during exchanges. The Ottoman reforms started a different process that made waqf revenues fungible (mutually identical and interchangeable): the waqf revenues of the seized waqfs were centralized into one fund at the Waqf Ministry and spent irrespective of the stipulations of each waqf's founder. In the nineteenth-century exchange I described above, despite this revenue fungibility, waqf exchanges were individualized: done by a qadi on

56. For a study of the replacement of these old suqs by new malls, see Hourani (2012).

57. There were however other waqfs, mostly family waqfs under the administration of the founders' families, which the DGIW was not in charge of.

a one-to-one basis and registered as such in the shariʿa court registers. In the 1990s, the fungibility of waqfs reached a different level as even individualized waqf exchanges became superfluous.

Indeed, a former DGIW director explained that he hired an accounting firm to settle the question of the city center waqfs and Solidere. The accounting firm compiled tables of credit and debit. The "credit" tables include the monetized assessment of what the DGIW owns—for instance, shares of parcels, waqfed shops, and apartments. The "debit" tables include the monetized assessment of what the DGIW owes: the amounts due to recuperate some of these expropriated waqfs, the rights of others to the assets of the DGIW (servitudes and shares) that Solidere paid for, dues to Solidere for infrastructural works (10 percent of the value of the parcel), and any cost Solidere expends on the assets of the DGIW (for restoration, for instance). Therefore, a waqf that the DGIW owned (say, two hundred shares out the 2,400 that make up parcel Marfaʾ 89/11) was not exchanged for an object of equivalent value. Instead, the accounting company added the amounts Solidere owed to the DGIW for expropriating all its waqfs and subtracted from them the amounts the DGIW owed to Solidere according to the debit tables. Adding up the various amounts due from and owed to the DGIW made the parcels fungible, where all that mattered was the balance. The two hundred shares went toward a lump sum that the DGIW virtually received in exchange for expropriating that waqf, which the DGIW then used towards the total amount it owed Solidere. Fungibility expanded to obliterate one-on-one exchanges, even exchanges for cash, as allowed by the Mandate-era legislation. The exchange therefore embodied the modern understanding of waqf as real estate wealth geared towards growth rather than preservation as per the will of the founder. While the DGIW did not preserve the benefit of each and every waqf, one can construct its preservation of the most valuable parcels as a preservation of a collective Islamic benefit now operating disjointed from the shariʿa defined concepts of founders stipulations and necessity but joined with state and DGIW- mandated general requirements and understandings of necessity.

CONCLUSION

As we saw in this chapter, between Tante Inʿam's reproach "They sold the Muslims' waqfs" and the DGIW's announcement that "all the DGIW waqfs will be returned" lies a much more complex reality. Tante Inʿam and the opponents to the 1990s deal struck between the DGIW and Solidere to expropriate the DGIW waqfs in the city center were drawing on notions of the inalienability of waqf that required their preservation as per the stipulations of their founders and allowed for their exchange in exceptional circumstances of dire necessity. Such notions continue to exist in the discourses of scholars trained in the tradition and embodied in older generations familiar with waqfs as inalienable eternal endeavors. Yet, this was not

the grammar dominant in the law since the French Mandate and not the grammar that the DGIW used to challenge these expropriations, which were legally permissible according to modern state law, if not the shariʿa. Instead the mufti and the DGIW marshaled a notion of the "Islamic interest," which the modern Lebanese state is bound to preserve in its constitution. Despite the subordination of this religious benefit to a larger public benefit, the grassroots mobilization and the challenges that Solidere faced to its claim of working for the public benefit allowed the DGIW to preserve some of its waqfs—even through the new grammar of waqf benefit, abstracted from stipulations and necessity.

The modern state subordinated individual waqfs to the logic of improvement, even while the subordination of the waqf's benefit to public utility continues to be a subject of contention and struggle. In early nineteenth-century Ottoman Beirut, the waqf's benefit was a concept used in conjunction with the stipulations of the founders to assess whether exchanges based on necessity were fair for the waqf. Each waqf exchange was assessed and effected individually, and each was an exception that the sultan had to approve. The Ottoman state's introduction of the concept of public utility, coupled with the state's duty to preserve these individual acts done according to the shariʿa, created deadlocks that resulted in endless lawsuits.

The colonial state resolved these conflicts and subordinated the waqf's benefit to a public benefit that was the state's duty to maintain. When waqfs became constructed as real estate wealth, the waqf's benefit became an individual goal guiding the administration of waqfs. Instead of seeking the preservation of each waqf as its founder created it, legislation encouraged exchanges for the waqf's benefit. The waqf's benefit was decoupled from founders' stipulations and necessity, and made to be what guides the logic of exchange. While the Mandate legislation subsumed the concept of the "waqf's benefit" to the grammar of the secular architecture, tied to both religious and public benefit, one should not conclude that the new grammar now determines the terms of the debates on waqf and that Muslim scholars simply adopted the new grammar. This became particularly apparent in 1991, when Solidere expropriated owners in exchange for shares in the company, to the owners' great dissatisfaction. After an outcry about the role of the DGIW to preserve waqf and religious benefit, the DGIW was able to marshal the concept of the "waqf's benefit" in these particular exchanges to refuse the exchange of parcels instead of shares and therefore to escape expropriation. Some of these older grammars continue to exist and reappear, to great effect.