

الْمُؤْمِنُونَ

# AWQAF

Refereed Biannual Journal Specialized in Waqf and Charitable activities

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*Awqaf* is based on a conviction that waqf -as a concept and an experience- has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the *Umma*. Waqf also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps finding solutions for emerging problems. During the decline of the *Umma*, Waqf maintained a major part of the heritage of the Islamic civilization and caused it to continue and pass from one generation to another. Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, *Awqaf* comes up with a keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development. Waqf is originally known to be a voluntary activity which requires *Awqaf* journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society-state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's.

### Objectives of *Awqaf*:

1. Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
2. Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
3. Investing the current waqf projects and transforming them into an intellectual product in order to be exposed to specialists. This is hopefully expected to induce dynamism among researches and establish a link between theory and practice.
4. Promoting reliance on the repertoire of Islamic civilization in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individual's and nation's levels.
5. Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other.
6. Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
7. Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

# Contenus - Sommaire

- On the Nature of Waqf  
Pious Foundations in Contemporary Syria : A Break in the Tradition  
Dr. Randi DEGUILHEM ..... 5
  
- Les waqfs dans la société mamlûke:  
réflexions à partir de quelques cas  
Khaled KCHIR ..... 44

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*AWQAF* journal publishes original Waqf-related researches in Arabic, English and French. It also accepts summaries of approved M.A's and Ph.D's reports on conferences, symposia, and seminars dealing with in the field of Waqf.

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- 1.** They should not be published before, or meant to be published anywhere else.
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- 3.** Articles should be written in good handwriting on A4 papers, preferably accompanied by a disk (Word software).
- 4.** Articles must be 4000-10000 words in length.
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- 6.** Material meant for publication should undergo a confidential refereeing.
- 7.** Coverage of seminars and conferences is acceptable.
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**OPINIONS EXPRESSED IN AWQAF  
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## On the Nature of *Waqf*. Pious Foundations in Contemporary Syria: A Break in the Tradition. (\*)

*Randi DEGUILHEM* (\*\*)

The institution of *waqf* drastically changed in many countries bordering the southern and eastern Mediterranean after independence was attained during various point in the 20th century. The present research adopts a micro-historical approach in order to closely study details of this process of change in one country and, indeed, of the revolutionary transformation of *waqf* in Mandate and independent Syria.

### ***Introduction***

One of the principal reasons for the continued and wide-spread use of the pious foundations in contemporary Muslim communities, whether those situated in the southern and eastern Mediterranean countries or the Muslim and Eastern Christian communities located, for example, in Europe,<sup>1</sup> in the Indian peninsula and Pakistan<sup>2</sup> or elsewhere throughout the world<sup>3</sup>, including the U.S.A.,<sup>4</sup> resides in the fact that the endowments are a personal expression of an individual's relationship to certain institutions and/or persons situated within multi-leveled and concentric social and religious networks. Up until their nationalisation in the post-colonial period, waqfs were created on a one-by-one basis

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\* This paper was presented by the author on the Workshop VI « Networking Across the Contemporary Mediterranean Trust Proprieties, Revenues and Social Political Alliances Between North Africa, the Middle East and Europe » directed by Randi Deghilhem & Abdelhamid Henia, *Second Mediterranean Social and Political Research Meeting*, Organized by the European Institute- Robert Schuman Center for Advanced Studies, in Florence, Italy, 21-25 mars 2001.

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<sup>1</sup> Manço 2000.

<sup>2</sup> For example, the contemporary situation of *waqf* in Pakistan and India has been studied for approximately two decades by Gregory Kozlowski 1995.

<sup>3</sup> Malik 1990; McChesney 1991; Qureishi 1990; Utyabay-Kerimi 1994.

<sup>4</sup> In the U.S.A., the NAIT (North American Islamic Trusts) is the governing body which oversees Muslim waqfs in the country.

by individual property holders (according to Islamic law, waqf must only be established with privately owned properties – with a founder's milk properties – but many exceptions to this rule exist),<sup>5</sup> and it is, in particular, the choice of the endower's beneficiary which pinpoints and highlights the relationship between the founder of a waqf and a specific institution (a given mosque, religious school [and often, the choice of a particular madhhab within such an institution], a hospital, a library), a particular locale (funds going towards maintenance of a specific fountain, a bridge, a set of public steps, a resting station on the *Haramayn* pilgrimage route) or, in the case of the *dhurri* and *mushtarak* waqfs, a given person and pre-determined progeny issuing from that person.<sup>6</sup>

The choice of beneficiary often reveals the strategies of a wâqif/a which may range from very personal concerns such as an individual's decision to subsidise a specific public or semi-public institution or place located within the founder's neighbourhood to sponsoring more broader interests such as political, religious or intellectual movements (via the subsidy, for instance, of a zâwiya which may represent an affinity or an opposition to given ideas) which cut across the Mediterranean and sometimes beyond. Yet, this choice, however personal it may appear, is most frequently determined within the context of the social matrix to which the founder belongs. In other words, the choice of beneficiaries by a founder of a waqf is usually conditioned by familial, communal and political exigencies, exceptions notwithstanding.<sup>7</sup>

Yet, whether this choice of beneficiary was a personal one made by the wâqif/a or whether it was affected by that individual's socio-religious or political environment, it is this very linkage which explains the extreme utilisation and importance of the endowments. Economically, this linkage between founder and beneficiary is of course feasible within the context of the Muslim endowments since a foundation, despite its generic character, is also an operational unit whose founder determines the beneficiary or beneficiaries which (whom) are to receive revenues generated by that particular

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<sup>5</sup> Deguilhem 1991, 71-74.

<sup>6</sup> Doumani 1998.

<sup>7</sup> Pinto 1998; Elias 1991; *Ibid.*, 1997; Mennell 1989. In relation to waqf, this idea is developed further in Deguilhem (forthcoming).

foundation's assets.<sup>8</sup> By studying this linkage, it is therefore possible to trace relationships between benefactors and beneficiaries through this means. revenue-generating property may located in one region of the Mediterranean basin while the beneficiary institution or individuals may be located in an entirely different area.

### *A revolution in the nature of waqf*

From its early days in the first Islamic century to the 19th and 20th century colonial period, the waqf never followed a linear development in the course of its history. It was a continuously evolving institution which amalgamated and combined different normative and customary practices into various types of endowment foundations which were institutionally modified over time in response to individual, communal, community and state needs and over which the ulama and the state regularly attempted to impose codification and extend control.<sup>9</sup>

The foundations were omnipresent in all levels of Muslim society (they were also a mainstay of the Mediterranean Jewish and Christian communities up until post-colonial times<sup>10</sup>) both in the form of individual endowments and simultaneously as separate parts of a larger institutionalised system that was regulated, at least to a certain extent, by shari'a and state laws (qânuñs in the case of the Ottoman Empire).

In order to grasp the ubiquitous character of the Muslim foundations, it is possible to think of them in three basic ways: their wide-spread vertical and horizontal use throughout all socio-economic strata of Muslim society, their capacity to adapt to individual and group needs and, finally, the longevity of the institution in urban and rural Muslim society. By using the waqf system, individuals and, via them, their communities, simultaneously created and financed religious, political, social, charitable, cultural and spiritual networks through the establishment of a "permanent" economic linkage between revenue

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<sup>8</sup> van Leeuwen (1991) has studied the functional operation of waqf with a framework closely related to a Bourdieu line of thought.

<sup>9</sup> For the Ottoman example: Gerber 1983; Barnes 1985; Yediyildiz 1985; for the Syrian example: Deguilhem-Schoem 1986, 49-55, 81-182; Reilly 1990a; *ibid.* 1990b; van Leeuwen, 1999.

<sup>10</sup> Gil 1976; *Ibid.* 1984; Shaham 1991; Jones 1980; Slim 1987; Saliba 2000; Afifi 1994.

produced by assets (built and agricultural property, movables as well as cash sums) belonging to their foundations which were regularly handed over to the beneficiaries of that endowment (usually on an annual basis) – from the most modest endowers of a foundation to the most ostentatious amongst them. The endowments were also the essential means of subsidising the transmission of knowledge since the construction and patronage of places for institutionalised learning (mosques, religious schools: the *madrasa*, *dâr al-hadîth*, *dâr al-Qur'an*) were almost exclusively funded by waqf. This was equally true for many libraries in the traditional as well as in the post-colonial Muslim world. Waqf was clearly the infrastructural core around which Muslim civilisation expressed itself from the early centuries of its existence to the post-colonial period.

Yet, despite the remarkable adaptability of the institution of waqf, following the attainment of political independence by the Mediterranean Muslim states at different points during the 20<sup>th</sup> century, the pious foundations experienced an irrevocable break with their past in relation to the absolute essence of the institution. That is to say, certain elements in the very nature of waqf inalterably changed when a number of the post-colonial newly-independent nations in that region took over the direct control and administration of public (*khayri*) and mixed (*mushtarak*) waqf properties, incorporating the management of their assets as well as the distribution of revenues accruing from them within the state bureaucratic apparatus. The inclusion of the management of the foundations within the state administration meant a profound infrastructural change in the nature of waqf in that this action transformed one of the key axes in the core configuration of the foundations, namely, the relationship between a founder (*wâqif/wâqifa*) of a waqf and the beneficiary or beneficiaries that he or she had chosen and had named in the waqf foundation document (*waqfiyya*, *kitâb al-waqf*). The model which had existed for thirteen centuries had dissolved.

Up to this point in time, the founder of a waqf had straightforwardly designated the various levels (*darajât*) of the beneficiaries (*mustahaqqûn*) which (or, who, in the case of individual persons named as beneficiaries) were to receive pre-determined dividends from that founder's waqf's revenues. But, henceforth, in the case of Syria, for example, the 16 May 1949 Waqf Abrogation Law n° 76 of the Syrian Civil Code (al-Qânûn al-Madanî al-Sûrî) that was

passed by the Husnî al-Za‘îm government<sup>11</sup> ordained that it was now the state which was to distribute, as an ensemble, the totality of the country’s public waqfs’ revenues according to a distribution pattern established by the state itself without it being beholden to the original stipulations (*shurût*) expressed by the founders of the waqfs.<sup>12</sup> In other words, in post-Za‘îm Syria, the given revenues of already-existing waqfs would not necessarily remain the same as those that had originally been selected by the founder of a waqf.<sup>13</sup> Neither would a potential *wâqif/a* be able to specify the beneficiary of his or her choice nor could he or she determine the amount of the allocation to be handed over to the chosen beneficiary.

This state take-over of the direct administration of waqf assets in Syria thereby produced an irrevocable change in the relationship between founder and beneficiary of a waqf, forever removing that essential long-lasting (i.e. perpetual *ilâ abâd*) link between the two.

The private family waqf (*dhurî*) in Syria also underwent a deep-seated transformation. The same n° 76 Law<sup>14</sup> decreed the obligatory liquidation (*ilghâ*) of existing private foundations and forbade the establishment of any new waqfs of this kind. Through *istibdâl*, the traditional means by which *shari‘a* removed property from a waqf,<sup>15</sup> this law ordered the public sale of assets that were owned by

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<sup>11</sup> Takrîfî 1974, 312; Kaylânî 1981, 793-795, 804-809; Fansa 1982.

<sup>12</sup> For a brief discussion on the basic configuration of the establishment of a waqf as based on the late 8<sup>th</sup> century al-Shaybânî (known as al-Khassâf) and the 20<sup>th</sup> century Qadrî bâshâ and Abû Zahra: Deguilhem-Schoem 1986, 55-65; Deguilhem 1995a, 15-18.

<sup>13</sup> Jallûl 13 January 1992.

<sup>14</sup> Takrîfî 1974, 312; Kaylânî 1981, 793-795, 804-809.

<sup>15</sup> *Istibdâl* was the traditional means accepted by *shari‘a* to rid a waqf of unprofitable property. *Istibdâl* permitted the administrator of a waqf to declare a property that was owned by the waqf that he supervised as unproductive and of negative benefit for the foundation (this process sometimes required the approval of a *qâdî*). The property in question would then be sold and the proceeds would be used to buy another more profitable asset for the waqf. Though sometimes perfectly warranted, both individual waqf administrators as well as state representatives, in some cases, abused the process of *istidbâl*, using it simply to remove property from a waqf and putting it upon the market: this stratagem was used, for example, (though somewhat unsuccessfully) in French Mandate Syria (cf. Deguilhem 1994, 129-135) and, more successfully, in French-held 19<sup>th</sup> and 20<sup>th</sup> century Algeria.

the *dhurri* waqfs through a system of public bids: the beneficiaries of the concerned waqfs usually had priority in the bidding for the assets of the foundation which had produced revenues for them, thereby giving an advantage to the former beneficiaries of purchasing the properties which had previously produced revenues for them via their status as *mustahaqqûn*.<sup>16</sup> Different from Ottoman and French Mandate legislation on waqf in Syria, the 1949 and post-1949 Syrian state laws on waqf applied to all private and family foundations, whether they were *waqf sahîh* ("sound" waqf), i.e. those foundations established with properties that had originally been privately-owned (*milk*) or *waqf ghayr-sahîh* ("unsound" waqf), i.e. those founded with properties that had originally belonged to the state (*mîrî*).<sup>17</sup>

The government appropriation of the administration of the Syrian Muslim public waqfs (putting aside the question of the much more difficult to trace "free", undeclared clandestine waqfs) and the abrogation of the traditional family waqfs by the Za'îm government in 1949 marked a major break – a point of no return – in the history of the foundations in Syria. This rupture in the history of Syrian waqf, specifically datable to Law n° 76 of 16 May 1949, was both indelibly allied with profound political transformations which the country had been undergoing since the Mandate years and during its early years of independence (e.g. new groups with origins outside of Damascus and Aleppo coming to power) as well as being closely tied to colonial and post-colonial trends of globally treating landed and real-estate property within a region or country nation as economic resources liable for public use or benefit.<sup>18</sup>

#### *Line of query*

In direct relation to this, one of the major questions posed in the present research studies the causes and circumstances which had laid the ground for this dramatic upheaval in the institution of waqf in independent Syria and the processes by which this occurred. What were the socio-economic and political conditions in the early years of independent Syria which permitted the state to abolish the traditional waqf system in the country? Which forces within the country allied themselves with this revolution in the history of waqf and which ones

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<sup>16</sup> Deguilhem-Schoem 1986, 146-151.

<sup>17</sup> *Ibid.*, 88, 91, 110-111, 146; Deguilhem 1991, 71-74.

<sup>18</sup> Challah 1960; Essaleh 1943; Helbaoui 1955; Thobie 1977.

opposed it? More specifically, how did Husnî al-Za‘îm’s government succeed in incorporating the foundations within its state bureaucracy whereas a similar program formulated by the French Mandate authorities in Syria had met with organised and massive domestic opposition throughout bilâd al-Shâm which effectively neutralised the Mandate reform program on waqf? How can this move of nationalising the Muslim endowments in the first years of independent Syria be understood in relation to similar actions undertaken in other post-colonial predominantly Muslim countries in the Mediterranean basin, i.e. in Algeria,<sup>19</sup> Tunisia, Egypt and other countries in the area where newly independent countries decided to centralise the administration of the endowments within a Ministry of Waqf and Religious Affairs (Wizârat al-Awqâf wa-Shu‘ûn Dîniyya), associating in various ways the Muslim religious hierarchy of the country?

Waqf was now to be used as a state instrument, as an instrument to implement and reinforce state policy within an individual country but also in the state’s relations with other Muslim countries.

### *Waqf – an intimate institution turned official*

#### **The nature of waqf in Mandate Syria (1920-1946) and local reaction to change**

Having learned a painful lesson from their experiences in Algeria where the French government’s policy to authorise large-scale and outright sale of endowment (habous) properties had met with stiff opposition from ulama associations as well as from individuals and families who had controlled endowment properties – not to speak of resistance groups fighting the French presence in all its forms – the French authorities in Mandate Syria adopted another approach by attempting to associate, from the start, local power groups in bilâd al-Shâm with their project to gain economic and administrative control over Muslim waqf real-estate (Christian and Jewish waqf in Ottoman Syria did not fall under the government aegis in the same way as did Muslim waqf). For example, in Algeria, as early as 1844, the French had officially permitted long-term renters of habous property to purchase those assets that they rented, without any apparent regard for opposition by the administrator or the beneficiaries of the concerned

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<sup>19</sup> Deheuvels 1991.

endowment. Furthermore, a French political decree of 1858 permitted anyone, either Algerian or foreign, to simply buy habous properties in Algeria. Most controversial of all, in 1873, the French authorities in Algeria declared that all habous lands and other properties held by the foundations were completely subject to French legislation and no longer fell within the jurisdiction of *shari'a*.<sup>20</sup>

To paraphrase André Raymond: “the French government has the responsibility of having thwarted Arab independence and goals after the withdrawal of the Ottomans from Syria. Despite passionate protests by the inhabitants of Syria, historical Syria was dismembered under French auspices and Syria was deprived of prime territory. Still, the French presence was not as destructive as it had been in North Africa since it was clear at the start that the presence was temporary and that Syria was destined for independence.”<sup>21</sup>

The French did not only aim at dismembering Syrian territory but also planned the dismemberment of the waqf system in bilâd al-Shâm. French diplomatic documents show that, in fact, French interest in the waqf system in Syria and the relation of waqf reform to France itself dates back at least to the Tanzîmât era. A report issued in 1867 by the French ambassador's office in Istanbul to the Ministry of Foreign Affairs in Paris included a translation of the Ottoman “Law on Waqf” passed on 7 Safar 1284 (1867) which concluded that “the law was a desired and decisive step toward the assimilation and eventual disappearance of waqf and was therefore beneficial for French interests”.<sup>22</sup> Although, ultimately, France did not economically invest all that heavily in its overseas territories, the French colonial programme was intensely interested in maintaining and keeping its Outre-mer lands as part of its political and cultural empire.<sup>23</sup>

As referred to above, just after the beginning of their mandate in bilâd al-Shâm, the French reorganised the waqf administration in Syria with the promulgation of law n° 753 (Tasdîq qarârât al-majlis al-a'lâ

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<sup>20</sup> Mercier 1899, 91; Cardahi 1945, 121; Tabet, 10; Canon 1984, *passim*; *ibid.*, 1995, *passim*.

<sup>21</sup> Raymond 1980, 66.

<sup>22</sup> *Documents diplomatiques* 1867, 163.

<sup>23</sup> Kanya-Forstner 1981; Thobie 1977.

li'l-awqâf al-islâmîyya: al-qarâr 753) on 2 March 1921.<sup>24</sup> This law created the Contrôle Général des Wakfs Musulmans which was composed of influential ulama and other Syrian Muslim leaders, thereby infrastructurally linking sectors of the Syrian religious hierarchy with Mandate waqf reform. Even it is asserted that the ulama who worked for the Contrôle Général des Wakfs Musulmans exercised some control over waqf reform, documents published in the official government mouthpiece, *al-Jarîda al-Râsmiyya*, indicate that the Contrôle Général provided the actual basis for Mandate legislation on endowment reform;<sup>25</sup> in other words, it is indisputable that the French High Commissioner held direct authority and veto power over all actions undertaken by the Contrôle Général.<sup>26</sup>

In relation to its politics in Algeria, the French therefore adopted a more inclusive and assimilative tactic concerning waqf Mandate Syria. From the very beginning of the Mandate presence there, the French High-Commission aimed at closely associating part of the ulama hierarchy within its programme to nationalise Muslim endowments in Syria. To this effect, the High-Commission passed an edict on 2 March 1921 which instituted a three-tiered administration for the management of waqf that was headed by a Syrian General Comptroller of Muslim Waqfs (Contrôleur Général des Wakfs Musulmans). In this way, the Mandate publicly placed primary responsibility for the incorporation of Muslim foundations within the state administrative apparatus on a member of the Syrian religious hierarchy even though, in reality, the Syrian General Comptroller was appointed by and directly answerable to the French High Commissioner himself. This first official step taken during the very first winter of the Mandate, in 1921, to affiliate Syrian religious leadership with the Mandate project to nationalise and partly liquidate Muslim waqf met with resistance, on one hand, from both ulama associations and political groups in bilâd al-Sham as well as, on the other hand, local cooperation from other groups and individuals including some persons who were recipients of family endowment revenues.

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<sup>24</sup> Kaylânî 1981, 249-267, 292-293; "Arrêtés n° 753-755", *Journal du Gouvernement*, IIIe année, n° 194, 5 May 1921, n° 195, 9 May 1921.

<sup>25</sup> Luquet 1923, 152.

<sup>26</sup> Longrigg 1958, 137.

An infrastructural view of the Contrôle Général is as follows:

1 – The Contrôle Général des Wakfs Musulmans was the executive organ of the Commission. It was headed by the General Comptroller who was named and appointed by the French High Commissioner in Syria to whom he was directly responsible.

2 – The Conseil Supérieur des Wakfs Musulmans was the High Council of Muslim Waqf. It was composed of the General Comptroller, the presidents of the shari'a tribunals plus a delegate from the Muslim community in Damascus, Aleppo, Beirut and Lattakieh. The Conseil Supérieur played a judicial and administrative role, including acting upon suggestions put forth by the General Comptroller, local *mudîrs* and *mutawallîs* of waqf. The Conseil Supérieur was able to suggest improvements in the running of the Contrôle Général and the general administration of waqf which was under the jurisdiction of the Contrôle Général, including propositions of investing surplus waqf revenues. It also had the responsibility of reporting irregularities to the High Commissioner.

3 – The Commission Générale des Wakfs Musulmans consisted of the Conseil Supérieur des Wakfs Musulmans plus local *mudîrs* and delegates from the *liwâ's* and *qadâ's*. The main purpose of the Commission Générale was to examine and verify the waqf budget which was submitted annually to the Council by the General Comptroller.

Under this system, the daily administration of the endowments was conducted within the newly-created branches located in Damascus, Aleppo, Homs, Lattakieh, Duma, Zabadani, Jayrud, Idlib, Ma'arat al-Nu'man, Jisr, Aza, al-Bab, Ariha, Dayr Kusha, Armanaz, the Hawran, the Euphrates area, the Jazira area and the Qalamun. These branches were under the jurisdiction of the Conseil Supérieur.<sup>27</sup>

The Contrôle Général began its work with the re-registration of every waqf in Syria. A special department was created for this in the *mahkamat tamyîz* headed by the director of the Department of Justice, the head of the Land Reform Bureau and the inspector general.<sup>28</sup> The registration of each waqf was considered to be the point of departure for the establishment of real property rights on the assets owned by the

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<sup>27</sup> Busson de Janssens 1951, 60-61.

<sup>28</sup> Kaylânî 1981, 293.

foundation.<sup>29</sup> In order to register a waqf, the administrator was required to give the name of the endowment's founder by producing the foundation document or a certified copy of it, the name of the current administrator by showing the proper document (*hujja*) and all changes relating to the management of that waqf's property, its administration and its beneficiaries, again by showing the relevant documents.

In order to attempt to ascertain the actual extent of land holdings in Syria, including those possessed by the waqfs, a research team directed by two government individuals, P. Gennardi, head of the mandatory land services and delegate to the Contrôle Général des Wakfs Musulmans, and C. Dourafourd, head of the cadastral survey section, issued several reports which gave details about land distribution and its disposition and ownership, in each *qadâ'* in bilâd al-Shâm – the purpose being to propose land reform and reorganisation for a more profitable utilisation of land resources in Syria.<sup>30</sup> To do this, members of the team looked for precise cadastral measurements on land title-deeds which, of course, they did not encounter since the Ottoman documents had used another means of describing land parcels (i.e. using landmarks known to the local population). In line with these and other reports, the Mandate government decided to concentrate its initial efforts upon the redistribution of arable land which it regarded as the primary source of production. To this end, the state set about encouraging investment in land development, including pieces of land that were held in waqf. However, the supply of credit for investment was scarce and the existing Agricultural Bank did not meet the Mandate's ambitious programme;<sup>31</sup> the French bank Crédit Agricole stepped in and extended credit with a guaranty for those investing in land.<sup>32</sup> This included the possibility of using waqf properties as collateral for those who were buying and investing in land. Usufruct resulting from the authorised types of rent (cf. below) on waqf properties could likewise be used as surety for loans.<sup>33</sup>

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<sup>29</sup> *Rapport à la Société des Nations* 1930, 62.

<sup>30</sup> *Rapport général* 1921-1931; Dourafourd 1929; Tabet 1936, 2, 7, 26.

<sup>31</sup> Longrigg 1958, 19.

<sup>32</sup> Essaleh 1943, 82.

<sup>33</sup> Himadeh 1935, 222.

In keeping with their plan to try and diminish opposition to their waqf reforms by using, for example, former Ottoman legislation which authorised the state to administer four categories of waqf: *waqf mazbût* (a *waqf dhurri* whose beneficiaries had expired, thereby reverting to a *waqf khayri*), *waqf mulhaq* (an endowment established by top Ottoman officials but whose line of given administrators had expired), *waqf mudawwar* (a waqf which reverted to the state because the beneficiaries had committed a serious crime) and the *waqf mustathnâ* (certain of the *waqf khayri*),<sup>34</sup> the Mandate government followed the same system of categorising the foundations in its 2 March 1921 law. Therefore, Mandate law n° 753 decreed that the Contrôle Général exercised authority over the *waqf khayri* which fell under its jurisdiction as well as *waqf mazbût*, *waqf mulhaq* and those *waqf dhurri* and *waqf mushtarak* whose beneficiaries had expired.

The Mandate government tried to gain real control over the endowment properties that were held with long-term rent contracts such as *ijāratayn*, *ijāra tawīla*, *mursad*, *hikr*, *musāqâh* and others which, in many cases, led to a form of private property in that the longevity of the contract made it, in reality, part of the renter's inheritable assets that were passed on to a deceased's heirs who often did as they liked with the asset.<sup>35</sup> Although *shari'a* did not theoretically authorise long-term rent contracts on waqf property for the very reason that it would lead towards private possession of that property, the versatility of *shari'a* shows itself once again in that tribunal documents and the *ahkâm al-awqâf* literature demonstrate that contracts were most frequently calculated in multiples of three years, sometimes leading up to possession which ran over several generations, i.e. up to 99 years.

In its attempt to incorporate the management of waqf properties within the state apparatus and to curb the passing of waqf assets into private property, the Mandate government's High Commissioner Henri de Jouvenal passed decrees n° 79 and n° 80 on 29 January 1926<sup>36</sup> which declared that all rent contracts on waqf properties were invalid except for *ijāra wâhida* (a simple yearly contract), *ijāratayn* (a long-term contract where the renter pays an immediate sum to the waqf approximately equivalent to the asset's worth and thereafter a nominal

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<sup>34</sup> Chaoui 1928, 11; Himadeh 1936, 55-56.

<sup>35</sup> Ghazzal , 101-117; Hénia 1999; Deguilhem-Schoem 1988.

<sup>36</sup> al-Takrîti 1967, 251-257; Kaylânî 1981, 502-510.

annual sum) and *ijâra tawîla* (in 19<sup>th</sup> century Damascus, often involving the purchase of a building or plantations on waqf property with long-term payment on the asset), all of which were subject to *istibdâl*. Moreover, many waqf properties theoretically entered the market on 16 February 1928 when the long-term rent contract of *kadak* was abolished.<sup>37</sup>

All the while in accordance with the ulama who were working for the Contrôle Général and despite wide-spread protests and arguments by large groups of ulama and waqf beneficiaries, decrees n° 80 from January 1926 and n° 167 from 22 March 1926 permitted large-scale *istibdâl* on all *waqf khayrî* assets except those belonging to mosques.<sup>38</sup> As part of their protests to resist the Mandate plan to alienate property from their foundations via *istibdâl*, the Damascus branch of the Jam‘iyat al-‘ulamâ’ and individual Muslim scholars met in Aleppo in 1934 to warn against the fact that *istibdâl* was often indiscriminately and even unscrupulously being used to liquidate waqf that were still viable.<sup>39</sup> Nonetheless, based upon decision n° 3 of the Conseil Supérieur dated 22 December 1930,<sup>40</sup> the Mandate authorities passed decree n° 156 on 26 December 1931 which served to legalise *istibdâl* on waqf properties, with the exception of religious buildings, that were held with an *ijâra wâhida* contract.<sup>41</sup> Decree n° 156 ruled that each case of *istibdâl* must include the following information: the type of waqf offered for *istibdâl* whether *mazbût*, *mulhaq*, *khayrî*, *dhurrî* or *mustathannâ* (*waqf khayrî* that were endowed for *takiyyas*); the registration number of the concerned waqf in the land register (*al-sijill al-‘aqâriyya*), in the public record office register (*daftar khâna*) and in the title-deed register (*sanad al-tâbû* register); the location of the property which is to be offered in *istibdâl* and whether it is urban, rural, cultivated with trees or vegetables, the full name, age, profession, nationality and address of both the petitioner for *istibdâl* and the person who pays for the transaction and, finally, whether the *istibdâl* is to be

<sup>37</sup> al-Takrîti 1967, 251; Kaylânî 1981, 502.

<sup>38</sup> al-Takrîti 1967, 252, 254; Kaylânî 1981, 502-503.

<sup>39</sup> Shukrî and al-Ustâwânî, 1359/1940, 22; *Bayân ‘âmm* 1852-1934, 4-6, 8.

<sup>40</sup> *Décision* n° 3, 22 December 1930. I thank Jean-Paul Pascual for having made a copy of this Décision available to me.

<sup>41</sup> al-Takrîti 1967, 254-257; Kaylânî 1981, 681-686.

transacted in cash or for another property. Presumably, the *istibdâl* which, in verity, was a sale of the property, went to the highest bidder, not excluding the waqf administrator nor the endowment beneficiaries should their bid be the highest.<sup>42</sup> However, it seems that priority for the *istibdâl* transaction was often given to the foundation's individual administrators as well as the beneficiaries.<sup>43</sup>

The importance of these decrees lies in the fact that not only was *istibdâl* made possible but it was made compulsory for endowment properties held in *ijâratayn* and *ijâra tawîla* within one year after the promulgation of decree n° 80 (January 1926).<sup>44</sup> This meant that, in effect, the concerned properties heretofore possessed by the foundations and managed by that waqf's administrator would now be put on the market as would any other property. Reminiscent of the French programme to dismember the habous system in Algeria in the 19<sup>th</sup> century, the Mandate government in bilâd al-Shâm proceeded, however, as mentioned above, with the explicit complicity of certain ulama who were infrastructurally part of the decision-making process which strove to liquidate part of the endowment assets in Syria. Another important consequence of this mandatory legislation was that, for the first time, all waqf in Syria were centralised under one administration. Until that time, despite repeated Ottoman reforms, the waqf administrative council of each *qadâ'* had remained largely autonomous. Of equal import and significance, waqf budgets were to be increasingly planned in a centralised fashion. Likewise based on partly enforced former Ottoman legislation, mandate decrees compelled all endowment administrators to register all expenses and revenues and to put aside 10 % of the profits as a reserve against unforeseen expenses.<sup>45</sup>

A principal goal of the above legislation was not only the elimination of unproductive endowment properties but, more importantly, the French Mandate government aimed at putting constructed waqf property and agricultural lands on the market in accordance with the idea that these assets were a source, like any other real-estate, for profit-making investment. By incorporating legislation

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<sup>42</sup> Berger-Levrault 1927, 301.

<sup>43</sup> al-Qâsimî 1983.

<sup>44</sup> Kaylânî 1981, 676.

<sup>45</sup> Busson de Janssens 1951, 50.

from Ottoman times and by making explicit reference to it, the mandate laws intended to create an atmosphere of economic and political stability.

### *Ulama resistance to the nationalisation programme: The Jam'iyyat al-'ulamâ' and the Râbitat al-'ulamâ'*

Although some ulama, along with non-religious elites who either believed that the waqf system was outmoded and harmful for a country's economic well-being in the post-Ottoman world (such as economists like S. Essaleh, Y. Helbaoui and S. Himadeh) or those, for example, who had ties with the French on a commercial basis,<sup>46</sup> did cooperate with the Mandate government in its programme to nationalise certain types of the foundations enumerated above, others opposed the programme.

Ulama opposition across Syria to the Mandate waqf project was established on the basis of several reasons. The endowments had traditionally formed an important financial, political and social base for all socio-economic levels of the ulama (as well as for individuals belonging to the military and bureaucratic sectors in addition to persons unattached to any particular hierarchy – both men and women – who also benefited in various ways from managing the foundations<sup>47</sup>), giving them a certain autonomous power and concrete influence within Islamic society.<sup>48</sup> Members of the ulama not only managed the daily running of the waqfs and their assets but were also themselves beneficiaries of the endowments by virtue of their appointment to positions in mosques, madrasas, *dâr al-hadîths* and other complexes where they received salary stipends coming from the endowments. On a personal level, individual ulama were also, of course, beneficiaries to foundation revenues as any other persons.

While those opposed to government reform in Syria referred to *sharî'a* and historical precedents to support their position of opposition to reform, the ulama in favour of reforms working for the Contrôle Général likewise referred to *sharî'a* but also to the economic necessity

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<sup>46</sup> Khoury 1984, 518; note 33.

<sup>47</sup> Roded 1989; Deguilhem 1995b, 55-65;

<sup>48</sup> al-Sayyid Marsot 1973; Raymond 1973-1974, 424-429, 794.

of change in the endowment system for the progress of the Muslim community.

The situation was admittedly a complicated one and many persons – economists as well as individuals closely associated with the endowments either as managers of waqf or as beneficiaries – did not always necessarily perceive waqf reform in terms of opposing or cooperating with the Mandate authorities but rather in terms of economic viability. For example, several Syrian economists reported that in 1934, there were 4,000 waqf in Syria whose real-estate represented “considerable wealth, some 500 million francs of which only one-quarter were run by the state, the rest being managed according to the desires of the individual administrators”, i.e. in an anarchic fashion.<sup>49</sup> Though impossible to confirm the real extent and value of endowment properties in Mandate Syria at the present state of research, it has been asserted by some Damascene historians that over one-half of the built and agricultural real-estate in Damascus and the Ghuta belonged to waqf by the beginning of the Mandate period.<sup>50</sup>

Studying the viability of certain modernising programmes for their country in the 1930s, some Syrian economists accused the waqf system of being a hybrid hodge-podge and “economically non-acceptable, obviously negative, an economic defect and a social vice”.<sup>51</sup>

It was clear that infrastructural reforms in the waqf system would inalterably change the ulama’s access to endowment management, wealth and associated powers, placing them, to a much larger extent, under the aegis of the state. But, in addition to their personal interest and career stakes in maintaining the traditional endowment system, many Islamic religious leaders opposed the waqf reforms undertaken by the Mandate since they would also undermine the religious, public, social and cultural infrastructure of Islamic society – much of which was organised around the foundations. Dismantling of the system, explained the chief ulama resistance groups, the Jam‘iyat al-‘ulamā’ and the Râbitat al-‘ulamā’, would dissolve interconnections between groups of different strata within the umma which crossed paths via the endowment system. Among the examples often given by these groups to emphasise the importance of waqf were the fact that mosque

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<sup>49</sup> Helbaoui 1955, 87; Essaleh 1943, 87; *Rapport à la Société des Nations* 1934, 59.

<sup>50</sup> Dahmân 1982.

<sup>51</sup> Helbaoui 1955, 87.

and *madrasa* endowments often provided student scholarships to rich and poor alike, other waqfs supplied housing and food for travellers regardless of their financial or social standing, they made possible fresh drinking water for the public from all socio-economic strata, etc.<sup>52</sup>

The ulama organised resistance to Mandate waqf reform not only in the principal cities of Damascus, Aleppo, Beirut, Homs and Antioch but also in smaller centres such as Lattakieh, Idlib, Zabadani, Wadi al-'Ajam, Nabak, Hama, Tartous, Dayr 'Atiyya, Munbaj, al-Bab, Quneitra, Sidon and other areas where branches of the Jam'iyyat al-'ulamâ' and the Râbitat al-'ulamâ' held meetings to coordinate their opposition to the Mandate programme. These associations published and distributed pamphlets, tracts and posters to explain the importance of the institution of waqf for Islamic society and the danger that modifying the endowment infrastructure would have for the Islamic community. Through these publications that were aimed at the larger Islamic community as well as individuals who were sympathetic to their resistance, the Jam'iyyat and the Râbitat claimed that the Mandate waqf reform plan was but one element among many whose goal was to impair Islamic society.<sup>53</sup> The associations issued statement after statement against the Mandate's programme to re-organise the *waqf khayrî* and to dissolve the *waqf dhurrî*. The associations' publications warned that such moves would harm not only the immediate beneficiaries but also the community at large, that it would result in the dispersal and eventual disappearance of waqf: "a unique, permanent and stable form of wealth for the community".<sup>54</sup>

In 1938, the Jam'iyyat al-'ulamâ' held a major meeting in Damascus where, besides the claims that the break-up of the endowment system would cause irreparable harm to Muslim society, the two associations denounced those ulama who worked for the state on the waqf programme with arguments that the "dissolution of waqf was contrary to the *sunna* and merely exposed the reformers' greed for

<sup>52</sup> *Bayân 'âmm* 1352/1934; Peri (1992) studies the example of beneficiary lists belonging to the Hasseki waqf in Ottoman Jerusalem, founded by Roxelane, the wife of sultan Sulaymân al-Qânûnî, whose waqf-subsidised soup kitchen was frequented by rich and poor alike : receiving food from this soup kitchen was, in fact, a mark of honour, regardless of one's socio-economic standing in society.

<sup>53</sup> *Bayân mu'tamar al-'ulamâ'* 1357/1938; *Tahdhîr min 'umr khatîr* 1946.

<sup>54</sup> *Tahdhîr min 'umr khatîr* 1946; *Risâlat jam'iyyat al-'ulamâ'* 1938.

[control of] waqf property".<sup>55</sup> In the meeting's minutes, the ulama of the Jam'iyyat and the Râbitat called upon other ulama as well as sympathetic sectors within the government, newspapers and the population at large to support their goals of maintaining the traditional endowment system, the official recognition of the existing categories of waqf and the fact that *shari'a* principles should continue to govern the waqf.<sup>56</sup>

At later meetings in 1940 of this association in Damascus, the Jam'iyyat al-'ulamâ' opposed other government reforms, in particular, those which would have changed the orientation of a *wâqif/a*'s stipulation (*shart*). In the pamphlet published from this meeting, the ulama claimed that it was illegal to change the stipulations (*shurût*) of a *wâqif/a* since they were akin to *shari'a*.<sup>57</sup> The comparison of an endowment founder's *shurût* with the inviolability of *shari'a* was traditionally claimed by waqf founders with the aim of ensuring the longevity of their instructions. But, in reality, endowment administrators often modified a founder's stipulations in face of the exigencies of the daily running of an endowment's business affairs, with, it should be said, the sanction of the ulama who specifically allowed for the change or modification of waqf in determined circumstances,<sup>58</sup> especially when the net result was the same.<sup>59</sup>

This particular declaration in the 1940 pamphlet of the Jam'iyyat al-'ulamâ' which concerned the religious legality of modifying waqf stipulations was in reference to a specific waqf whose revenues contributed toward the support of the Takiyya Sulaymâniyya in Damascus. Proposed changes in the waqf's *shurût* included the substitution of a fixed amount of money for each of the student's meal who studied at this *takiyya* instead of actually providing the food itself as had been stipulated in the *waqfiyya* and as had previously been done. The Jam'iyya opposed this change because in stipulating that meals should be provided for the *takiyya*'s students, the *wâqif* was not only guaranteeing the proper nourishment of the establishment's students but

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<sup>55</sup> *Risâlat jam'iyyat al-'ulamâ'* 1938, 2.

<sup>56</sup> *Bayân mu'tamar al-'ulamâ'* 1357/1938.

<sup>57</sup> Shukrî and al-Ustawâñî 1859/1940,21.

<sup>58</sup> Deguilhem 1995a, 17-18.

<sup>59</sup> Shukrî and al-Ustawâñî 1859/1940, 21; al-Subsubî 1946, 260.

also a livelihood for the purchaser of the food products to be used for the meals, the distributor of the food, the person in charge of the cleaning after meals. The pamphlet emphasised all these points, pointing out that a substitution of cash for meals would lead toward a loss of revenue for the persons who would be deprived of the above work and, moreover, such a move may endanger the students' health [that they may spend the cash unwisely and not on proper food].<sup>60</sup>

Actual control over the *waqf khayrī* was the most important issue of all for the ulama. Their increasing loss of control over these waqf eroded their power, prestige and leverage within the Islamic community. In addition to their own personal loss, the ulama claimed that, under state supervision, waqf profits were being diverted from beneficiaries specified by the endowment founders and were distributed among other recipients.<sup>61</sup>

The Aleppo, Damascus and other groups demanded that control over the public/charitable waqf such as those supporting the religiously important and politically significant Hijaz railroad<sup>62</sup> and the prestigious Takiyya Sulaymāniyya as well as the Takiyya Salīmiyya in Damascus,<sup>63</sup> be returned to the ulama's jurisdiction. In so doing, they stressed the fundamental link between *waqf khayrī* and the Islamic orientation of the community.

In addition to reforms in the public/charitable waqf, the Mandate programme also undertook changes concerning the family/private waqf, including its dissolution. Ulama working for the state, especially the Contrôle Général des Wakfs Musulmans, formulated the changes, arguing that *waqf dhurrī* was not a sacred institution since it was neither mentioned in the Qur'an nor in the accepted *sunna*.<sup>64</sup> The ulama working for the Mandate reforms explained that, as an institution which protected individual wealth for one's family members or other individuals, *waqf dhurrī* was not in the same category of charity as *waqf khayrī* which was established to perform good deeds.

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<sup>60</sup> Shukrī and al-Ustāwānī 1859/1940, 3-4, 17-27.

<sup>61</sup> *Bayān mu'tamar al-'ulamā'* 1357/1938, 5.

<sup>62</sup> *Bayān 'āmm* 1352/1934, 2, 8; *Bayān mu'tamar al-'ulamā'* 1357/1938, 15-16; Ochsenwald 1976; *ibid.*, 1980.

<sup>63</sup> *Bayān mu'tamar al-'ulamā'* 1357/1938, 5.

<sup>64</sup> al-Azharī al-Husaynī 1938.

The Jam'iyyat al-'ulamâ' and the Râbitat al-'ulamâ' vehemently opposed these changes. They strongly defended the family/private waqf and denied any real difference between the *dhurrî* and the *khayrî* type of endowment, reasoning that the ultimate beneficiary, in both cases, was a charitable or public one.<sup>65</sup> They also warned that the liquidation of the *waqf dhurrî* would cause irreparable political and economic harm to the Islamic community.<sup>66</sup> However, demands to dissolve family waqf sometimes originated from endowment beneficiaries themselves on the grounds that waqf managers were extorting foundation funds or that beneficiaries had become so numerous that individual shares were negligible.<sup>67</sup>

Even before the Mandate era, some individuals who were beneficiaries of family foundations supported the abrogation of the waqf system in the belief that outright purchase of the properties which belonged to their family waqf would result in better management and profitability of the assets for the family. For example, according to a member of the Mu'ayyad al-'Azm family, it seems that this family was apparently the first in Syria to have asked for and to have obtained official authorisation from the state to dissolve their *waqf dhurrî* in 1919 under the Faysal regime.<sup>68</sup> However, the Liquidation Register which recorded the abrogation of family and mixed waqf in Syria via legislation passed during Husnî al-Za'im's regime contradicts this information with an entry specifying that the Mu'ayyad waqf was dismembered in the spring of 1950.<sup>69</sup> However, since many wealthy families possessed several waqfs, the liquidation of the Mu'ayyad family endowment assets in 1919 could have therefore referred to but one of several foundations belonging to the family.

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<sup>65</sup> *Risâlat jam'iyyat al-'ulamâ'* 1938; al-Sammân 1937.

<sup>66</sup> *Bayân mu'tamar al-'ulamâ'* 1357/1938.

<sup>67</sup> *Tahdhîr min 'umr khatîr* 1946, 2; al-Subsubî, p. 262; Himadeh, 1936, p. 57.

<sup>68</sup> Discussion with a member of the above family, the Damascene lawyer, Nâzir Mu'ayyad al-'Azm, in June 1990. Family history is analysed by Schilcher 1985, 140-147, 209, 211, 218.

<sup>69</sup> *Daftar qarârât* (n.d.), (Family and mixed waqf liquidation register) register n° 1, case 131/13, liquidation file for Ahmad Mu'ayyad waqf dated from 20 March 1950 and 23 April 1950. For an analysis of the process of the liquidation of family and mixed waqf in independent Syria under the regime of Husnî al-Za'im: Deguilhem, 1994, 129-134.

As an aside to the central question of the present research which centres around the change in the nature of waqf that was envisaged (unsuccessfully) by the Mandate government, some family endowment beneficiaries supported the idea of selling the assets which belonged to their family's waqf, and thereby liquidating the waqf in question, either in order to have complete freedom in their management of those properties or simply for obtaining revenues through their sale. For example, it is reported that, for some waqfs, such as for the Munjak Pasha endowment, the number of beneficiaries were so high that each recipient only received but token amounts of revenue. In relation to this, it was said that the *nâzir* of this waqf, 'Atâ Allâh al-'Ajlânî, bought and distributed match-boxes to each beneficiary according to the portion of the revenues allocated to him or to her; it was impossible to do otherwise because of the multiple beneficiaries of that endowment.<sup>70</sup>

For these very reasons, according to information which, admittedly was perhaps somewhat biased, Ahmad al-Qâsimî, former director of the Ministry of Waqf at the end of the 1930s (who had begun to work for the Ministry in 1919) explained that many beneficiaries of family waqf supported the Mandate programme to liquidate *waqf dhurrî* and to put the family endowment properties up for public sale – with first options going to the beneficiaries.<sup>71</sup>

The ulama opposed to any form of change in the waqf system such as those who belonged to the Jam'iyyat al-'ulamâ' and the Râbitat al-'ulamâ' as well as individuals who did not belong to any particular organisation, countered the arguments to liquidate the traditional endowment system with the position that corrupt endowment managers could be replaced without dissolving the concerned foundations themselves.<sup>72</sup> They warned time and time again that liquidation of *waqf dhurrî* was but a first step in the dissolution of the entire Islamic endowment system – especially the public/charitable waqf – which would inevitably, they emphasised, undermine Islamic society. In this, they stressed their opposition to the liquidation of waqf in any form.<sup>73</sup>

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<sup>70</sup> Shafiq Bey 1982.

<sup>71</sup> Ahmad al-Qâsimî 1989.

<sup>72</sup> *Tahdhîr min 'umr khatîr* 1946, 1.

<sup>73</sup> *Bayân mu'tamar al-'ulamâ'* 1357/1938, 7.

A notable point of dissension between the Mandate programme on waqf and the ulama who were opposed to it concerned the categorisation of *waqf sahîh* and *waqf ghayr sahîh*, briefly indicated above.<sup>74</sup> These classifications of endowments were, in fact, at the heart of numerous conflicts dating back to the Qânnûn al-Arâdî, traditionally associated with Sulaymân al-Qânnûni, which pitted political authority against the religious, the state against the ulama. As mentioned, a classification of waqf property as *sahîh* indicated that the base (*asl*) of that property was privately-owned (*milk*) and that the endowment was therefore placed under *shârî'a*, i.e. theoretically under the control of decisions taken by the ulama whereas a classification of a waqf as *ghayr sahîh* ultimately put the assets of that endowment under the aegis of the state since *ghayr sahîh* meant that the base of the asset belonged to the state since it had originally been *mîrî* property held with a *sanad al-tâbû* contract.<sup>75</sup> The Jam'iyyat al-'ulamâ', however, claimed that property purchased from the state treasury, the *bayt al-mâl*, was perfectly legitimate to be used as waqf assets: that, in essence, there was no difference between endowments that were classified as *waqf sahîh* or *waqf ghayr sahîh*. Both were perfectly acceptable in the same way – on a more specific note, the ulama here were defending the principle that certain foundations classified as *waqf ghayr sahîh* that had been endowed for the Takiyya Sulaymâniyya in Damascus were now being claimed by the state as falling under its jurisdiction whereas the ulama protested that this waqf belonged to their domain.<sup>76</sup> In this, some ulama claimed that a foundation created from purchased *bayt al-mâl* assets was *waqf sahîh* but others insisted that it was, in fact, *waqf ghayr sahîh*, that the ultimate control over those properties belonged to the state.<sup>77</sup>

#### *Ulama opposition to waqf reform and the National Bloc*

On a more strictly political level, the ulama who opposed the Mandate waqf reform programme sometimes solicited or received support from some members of the Nationalist Bloc which used the issue of opposing waqf reform as a political weight with which to seek favour amongst ulama groups and endowment administrators and

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<sup>74</sup> *Ibid.*, 6-20.

<sup>75</sup> Deguilhem 1986, 91, 106-111, 133-134.

<sup>76</sup> Chaoui 1928, 45-46.

<sup>77</sup> *Bayân mu'tamar al-'ulamâ'* 1357/1938, 6-15; *Bayân al-jam'iya al-ghurâ'* 1940.

beneficiaries. In their discourse against French mandate rule, the Bloc alleged that French attempts to re-organise the Islamic waqf system actually represented efforts to control endowment revenues and harm the unity of the Islamic community.<sup>78</sup> However, by the mid to late 1930s, the Jam‘iyat al-‘ulamā’ and the Râbitat al-‘ulamā’ began to turn away from the National Bloc movement when they recognised the secular character of the nationalist movement.<sup>79</sup>

The French Mandate government in bilâd al-Shâm was but one attempt, on the part of a political authority in the Muslim Mediterranean to try and control waqf wealth and the accompanying socio-economic and political power and prestige. Local opposition effectively halted the realisation of the waqf reform programme in Mandate Syria but this attempt was to come to full fruition in Syria under the regime of Husni al-Za‘îm who successfully broke apart the traditional endowment system.<sup>80</sup>

### *The nature of waqf in independent Syria: a break in the tradition*

A radical infrastructural change in the nature of Muslim waqf,<sup>81</sup> i.e. the breaking of the sacred bond between the founder of an endowment and the chosen beneficiaries, was made possible in Syria with the coming to power, at the end of the 1940s, of individuals and groups which did not have institutional, socio-political or family allegiance to the traditional endowment system. It was only this coming to power of entirely new elements in the political hierarchy during the first years of independent Syria that the state was able to officially and quite thoroughly revolutionise certain elements in the society among which figured prominently the dismantling of the traditional waqf system in the country<sup>82</sup> which, up until then, had functioned in bilâd al-Shâm since early Umayyad times – albeit with changes and

<sup>78</sup> Longrigg 1958, 265.

<sup>79</sup> Khoury 1984, 524 and note 50.

<sup>80</sup> Deguilehem 1994.

<sup>81</sup> As in Ottoman times, the Christian and Jewish waqf largely remained outside of state reforms.

<sup>82</sup> There remains, however, the question of the “clandestine” waqf that were never registered with the authorities and which obviously escaped the new rules governing the foundations.

modifications – but changes which had never fundamentally altered the nature itself of waqf specifically in relation to the *wāqif/a-mustahiqq* bond.

This organic change in the infrastructural configuration of the endowment was contingent upon transformations wrought by the coup d'état in Syria carried out by the general Husnî al-Za'îm in March 1949.<sup>83</sup> The presence of a military commander at the head of the government who had taken over the reins of power by a coup d'état, the first of many to come,<sup>84</sup> marked a profound change in the ruling organisation of the country – one that was to have far-reaching and long-lasting social, political and economic effects. No longer was the head-of-state invariably associated with the traditional ruling elite: he no longer automatically belonged to the large property-owning families or the influential commercial class nor did he necessarily have ties with the ulama who, up until that point, had formerly administered significant portions of *waqf khayrî* assets and revenues apportioned out to the beneficiaries indicated by the endowment founders.

But, this is not to say that al-Za'îm, who came from a modest Kurdish family in Hama, was able to unseat the traditional ruling structure without relying on substantial support from other sectors in Syrian society (not to speak of support from outside the country). General al-Za'îm, in fact, assumed power thanks to a combination of forces composed not only of groups from within the army but also by nationalists disappointed with the Mardam Bey and 'Azm governments, shopkeepers and tradesmen anxious for a larger portion of the pie as well as former employees in the various bureaux of the Mandate government.

In a nutshell, al-Za'îm represented both a very real and a psychological rupture with the past. He owed nothing to the traditional ruling infrastructure of Syria which allowed him to undertake deep-rooted changes in the country, among which was the possibility to upturn the traditional waqf system in the country. Yet, in redefining the endowment system, in turning it into something very different than it was before especially in relation to the irrevocable breaking of the founder-beneficiary bond and the transformation of all ulama and others working in waqf-subsidised centres (*mosques, madrasas, dârs al-hadîth*, etc.), into state employees, al-Za'îm never completely alienated

<sup>83</sup> Fansa 1982.

<sup>84</sup> Picard 1980; Heydemann 1999; Landis 1998.

many sectors of the ulama from his projects. Recognising the need for ulama support, in particular, with regard to the population at large which continued to associate waqf with religious and charitable objectives, Husnî al-Za‘îm named ulama to positions of responsibility within the Ministry of Waqf, closely allying, as the Mandate government had done before him, the ulama with his program to liquidate the traditional endowment system. But, of course, although many groups and individuals amongst the ulama opposed this change in the endowment structure that was brought about by al-Za‘îm, they were essentially helpless in translating their opposition into action.

### *Juridical change in the nature of waqf*

A series of laws, the first of which was the above-mentioned law n° 76 passed on 16 May 1949, promulgated under the regime of Husnî al-Za‘îm totally transformed the waqf system in Syria. Similar to the process followed by the French Mandate government, law n° 76 required that each waqf be registered, its beneficiaries and administrators identified, its properties described and its stipulations (*shurûts*) investigated in order to verify them. During this process, the court and the Ministry of Waqf was obliged to petition all beneficiaries and administrators of each waqf at least three times by advertising in the newspapers, posting notices in the court hall and in the entranceway of the Ministry of Waqf.

Although the legislation was not a straightforward nationalisation of all waqf assets in the country in the sense that those assets did not become public property, it did call for the outright sale of the family private *waqf dhurrî* foundations via public bidding of the property, using the time-honoured method of *istibdâl*. Following verification that the assets were indeed possessed by the endowment in question, the buyer of such assets, both built and agricultural real-estate, was obliged to pay the court costs of the concerned litigation as well as paying 10% of the purchase price to the Ministry of Defence (this legislation coming on the heels of the 1948 defeat with Israel) and 5% to the Ministry of Waqf. The remainder paid by the buyer went to the former beneficiaries as compensation for their loss.<sup>85</sup> No longer would a particular waqf's assets pay for the beneficiaries of that foundation.

As far as concerns the public charitable *waqf khayrî*, the assets were not sold off as in the case for a family endowment, but all the

<sup>85</sup> Takrîtî 1974, 312; Kaylânî 1981, 793-795, 804-809.

assets from the totality of the *waqf khayrî* were pooled together from which the state paid salaries to mosque and *madrasa* personnel, the maintenance of religious buildings and complexes and other expenses entailed in running the religious sites in the country.<sup>86</sup> The state and not the appointed *nâzirs* or *mutawallis* was now responsible for running the administrative aspects of these foundations, the state – under the Ministry of Waqf – took over all the decisions in relation to investing the assets for the public foundations and, finally, it was now the state which appointed the personnel in the waqf-subsidised religious and public centres whereas this was previously the domain of the individual waqf administrators.

For the mixed *waqf mushtarak* where the revenues of an endowment were divided between public and private beneficiaries, the part of the revenues stipulated for the public beneficiary would be honoured and incorporated under the Ministry of Waqf amongst those revenue-generating resources of the *waqf khayrî* while those assets equivalent to the private part of the waqf's resources would be sold off through public bidding. If no share was specified, the court was to decide the amount which was not to exceed 25% of that waqf's revenues and that part of the endowment was to be re-registered with the Ministry of Waqf as *waqf mazbût*.<sup>87</sup>

#### *Public opinion on this revolution in waqf status*

Law n° 76 and the subsequent legislation on waqf caused a veritable sensation in the press in Syria. Details about the law were published and so were reactions to the legislation. One of the prominent newspapers, *Alif Bâ'*, owned by Husnî al-Za‘îm's brother-in-law, Nazîr Fansa, printed the full text of law n° 76, proclaiming it to be, needless to say, a law of great social value. The editorials in this newspaper emphasise that, with the arrival of Husnî al-Za‘îm at the head of the state, Syrians are now independent and able to change old laws that are harmful to the country and to replace them with more appropriate ones.<sup>88</sup> In relation to law n° 76, the newspaper deplored the fact that many waqf beneficiaries no longer received their allotted shares and that the administrators often, in fact, diverted revenues into their own pockets. The newspaper concluded that the new laws on waqf would

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<sup>86</sup> *Jallûl* 12 November 1992.

<sup>87</sup> *Kaylânî* 1981, 794.

<sup>88</sup> *Alif Bâ'* n° 8013, 18 May 1949.

definitely benefit the country by ending the “harmful and outdated waqf system”.<sup>89</sup> *Alif Bâ'* also published articles in favour of the resignation of individuals who occupied positions of *mutawallî* for the public waqf and it supported Za‘im’s legislation which placed *waqf khayrî* under the Ministry of Waqf to be administered directly by it.<sup>90</sup>

Copies of the new laws, editorials and readers’ responses were also printed in the rest of the Syria newspapers such as *al-Ayyâm*, *al-Akhbâr*, *al-‘Ilm*, *al-Kifâh* and others. But, these were all carefully screened according to the censorship laws under al-Za‘îm (and continued under Shishaklî).<sup>91</sup>

### Conclusion

The institution of waqf drastically changed in many countries bordering the southern and eastern Mediterranean after independence was attained during various point in the 20<sup>th</sup> century. Shortly after independence, the traditional endowment system in the newly-independent countries underwent a tremendous upheaval, reflecting new political and economic exigencies of state agendas for the future. Although the system of waqf experienced infrastructural changes in most of the predominantly Muslim countries in the Mediterranean basin from Albania to Egypt to Morocco, the present research adopts a micro-historical approach in order to closely study details of this process of change in one country and, indeed, of the revolutionary transformation of waqf in Mandate and independent Syria.

In order to do so, the study relies on both unpublished and published primary sources emanating from Syria, such as, for the Mandate period, pamphlets, memoranda and tracts from the 1920s to the 1940s that were issued in Syria by two ulama associations, the *Jam‘iyat al-‘ulamâ’* and the *Râbitat al-‘ulamâ’*, in reaction to waqf reforms pursued by the Mandate government. The publications printed by these two associations in their different branches scattered throughout Syria, demonstrate that there was organised action which opposed the Mandate plans to nationalise waqf in *bilâd al-Sham*, an opposition which succeeded in thwarting the Mandate programme in this regard. As for the independent period and, in particular, the several months under Husnî al-Za‘îm in the spring and summer of 1949, this

<sup>89</sup> *Ibid.*, n° 8012, 18 May 1949.

<sup>90</sup> *Ibid.*, n° 8035, 12 June 1949.

<sup>91</sup> Van Dam 1979, 40-41; Landis 1998; Heydemann 1999.

study mostly uses juridical and official government publications in addition to newspaper articles for the purpose of analysing the successful nationalisation of waqf in Syria.

Finally, as an end point to the research on the transformation of the nature of waqf and the break in its tradition, a six-year period (1989-1996) dating from the last decade of the 20<sup>th</sup> century was chosen in order to study the official daily and long-range policies followed by the Syrian Ministry of Waqf, as based on primary information printed in the *Nahj al-Islâm (The Path of Islam)*,<sup>92</sup> the official organ of this Ministry.

Using these sources, this research follows through the major structural changes in the nature of waqf in contemporary Syria from the Mandate period (1920-1946) up through the nationalisation of the foundations in Syria in May 1949 under the regime of Husnî al-Za‘îm in addition to looking at some of the policies undertaken by the Syrian Ministry of Waqf – policies that are funded by the nationalised endowments. In particular, this study focuses upon the revolutionary change in the endowment system that was an immediate and definitive result of the nationalisation of the foundations in Za‘îm’s Syria, namely, the fact that a founder of a given public waqf and the revenues accruing from it were no longer associated with the beneficiaries originally chosen by the endowment founder, making this an irrevocable break in the traditional model of waqf.

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<sup>92</sup> Published by the Syrian Ministry of Waqf from the end of the 1970s at an average rate of three to four issues per year, this revue was founded in large part as a counterweight to Muslim Brotherhood activities in Syria, which of course represented an extreme threat to the very existence of the state

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### Abbreviations

AAS	<i>Asian and African Studies</i>
AHROS	<i>Arab Historical Review for Ottoman Studies</i>
CEDEJ	Centre d'Etudes et de Documentation Economiques, Juridiques et Sociales (Cairo)
IFAO	Institut Français d'Archéologie Orientale (Cairo)
IFEA	Institut Français d'Etudes Anatoliennes (Istanbul)
IFEAD	Institut Français d'Etudes Arabes de Damas (Damascus)
IJMES	<i>International Journal of Middle East Studies</i>
JESHO	<i>Journal of the Economic and Social History of the Orient</i>
MES	<i>Middle Eastern Studies</i>
MESA	Middle East Studies Association
REI	<i>Revue d'Etudes Islamiques</i>
REMMM	<i>Revue des Mondes Musulmans et de la Méditerranée</i>
RMM	<i>Revue du Monde Musulman</i>

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## Les waqfs dans la société mamlûke : réflexions à partir de quelques cas<sup>(\*)</sup>

*Khaled KCHIR<sup>(\*\*)</sup>*

Cette étude partira de l'exploitation croisée de documents waqf et de données laconiques relatives aux waqfs, glanées dans les dictionnaires biographiques et dans les chroniques, pour essayer de cerner la place centrale de l'institution waqfie, dans la société mamlûke des XIIIe, XIVe et XVe siècles. Elle sera abordée en tant que réceptacle/institution organique déterminant un tissu de liens dialectiques entre richesses/biens et les acteurs sociaux, selon leurs positions dans les processus de la production des biens et de la reproduction des rapports de production. Cet aspect de la problématique, sera traité dans la première partie réservée aux fondateurs. L'administration des biens sous cette forme, leur gestion et les abus dont ils font l'objet seront étudiés dans une deuxième partie. Enfin, nous essayerons de mesurer l'impact des fondations sur les villes moyen-orientales à la fin du Moyen Âge.

### *Introduction*

Outre les waqfiyyas publiées par M.M. Amine, nous avons utilisé le livre de Maqrîzî, al-Hitat comme une méta-source. Grâce à cet ouvrage datant du IXe / XVe siècle, nous avons pu aborder les waqfs indirectement : l'auteur précise en effet, que pour la description du Caire et de ses édifices, il a utilisé les documents *waqfs* en les résumant. Pour une meilleure connaissance des fondateurs et des conditions d'établissement des *waqfs*, nous avons eu recours aux chroniques de Maqrîzî, Ibn Habîb, Ibn Iyâs, ainsi qu'aux dictionnaires biographiques d'Ibn Hagar et de Safadî.

Les données recueillies suggèrent quelques pistes d'interprétation sur cette société, où le pouvoir politique des Mamlûks

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<sup>(\*)</sup> il s'agit d'une communication présentée par l'auteur au Workshop VI « Networking Across the Contemporary Mediterranean Trust Proprieties, Revenues and Social Political Alliances Between North Africa, the Middle East and Europe » Coordonné par Randi Deghilhem et Abdelhamid Henia dans le cadre de la *Second Mediterranean Social and Political Research Meeting*, Organisé par l'European Institute- Robert Schuman Center for Advanced Studies, à Florence, les 21-25 mars 2001.

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### *I/Les Mamlûks, des fondateurs parmi d'autres*

Si la religion constitue le cadre d'organisation théorique des sociétés islamiques médiévales, on essayera de démontrer, sur le plan pratique, que les contours des *waqfs* dessineront une super-institution dont la fonction est d'inclure et de structurer ces sociétés, malgré la différence entre les stratégies des gouvernants et celles des gouvernés.

En effet, les Mamlûks sont des éléments allogènes qui détiennent le pouvoir politique et militaire et disposent de tous les instruments coercitifs. Très tôt, ils prennent conscience que pour s'intégrer il leur fallait improviser un écheveau de canaux et de relations avec leur nouvelle société. L'appropriation des biens, surtout immeubles, où les membres de la caste mamlûke essayeront d'investir par tous les moyens est un des canaux les plus importants.,

Le recours aux fondations *waqfs* est une manière d'essayer de préserver des biens dont l'acquisition n'est pas irréprochable, et impossible à transmettre aux descendants. Leur transformation en *waqfs hayrî* s'imposait ou presque ! Aussi est-on en mesure de parler d'un rapport ambigu à la propriété privée.

Les gouvernés en revanche, fondent leurs *waqfs* –en général *ahlî-* afin d'échapper aux convoitises des agents du pouvoir politique et d'assurer aux descendants des revenus sûrs.

Ces deux logiques complémentaires, celle des *waqfs ahli* et celle des *waqfs hayrî* permettront à la société de trouver un équilibre, certes fragile, mais nécessaire à sa cohésion.

Il reste à connaître la nature des fondations et leurs bénéficiaires, pour pouvoir confirmer ou infirmer les *stratégies patrimoniales* de chaque groupe social.

Dans la caste *mamlûke*, la compétition entre les princes pour l'acquisition de biens et l'accumulation des richesses menaient souvent à des exactions aux dépens des propriétaires. Il est indéniable que ces pratiques se faisaient « *ès qualité* », car les *mamlûks* se considéraient les maîtres de la situation.

Dans le cadre de ce rapport avec la société, la séparation entre fortune privée et bien public devient presque artificielle. Si on pousse plus loin cette hypothèse, en insistant sur le fait que « l'Etat » n'assure pas certains services « publics », les membres de la caste dirigeante deviennent les véritables investisseurs.

Selon un principe éthico-politique tacite du don, le crâneau de l'établissement du *waqf*, devient presque une obligation. Certes, les impôts existent, mais le pouvoir politique ne peut qu'apprécier cette pratique sociale en la consacrant. Ainsi, le circuit de la circulation des richesses est plus ou moins « fermé », puisque l'argent accumulé par les membres de la caste *mamlûke*, est réinjecté dans l'immobilier, pour servir la communauté ou une famille donnée.

A titre d'exemple, le sultan *Muhammad b.Qalâwûn* fonde deux *waqfs ahli*, parmi des dizaines qu'il a dû établir.

En tant qu'individu d'origine allogène, adoptant les pratiques locales, ce sultan fonde un *waqf* à son profit puis, après sa mort, au profit de ses descendants. Ces derniers jouiront des rentes à parts égales, sans distinction de sexe<sup>1</sup>.

Cette fondation relève à la fois d'une stratégie individuelle et d'une stratégie politique ; elle est aussi un indice du début d'enracinement des *Mamlûks* dans la société syro-égyptienne, à partir de la troisième génération.

*Muhammad b.Qalâwûn* illustre un autre type de relation entre individu-fondateur et réseau de fondation mi-familial, mi-politique, en octroyant à son *mamlûk* préféré *Baktamur al-Sâqî*, non pas un *iqtâ'*, mais un *waqf*, dont bénéficiera la descendance de *Baktamur*.

En tant qu'individu, le sultan est parfaitement conscient des dangers qui guettent son protégé, après sa disparition. Une pareille décision s'explique par l'acquisition de *Baktamur*, comme *mamlûk* isolé et indésirable ; son mariage forcé avec la concubine préférée du sultan est probablement à l'origine du privilège qu'il lui accorda, par la fondation d'un *waqf ahli*. La stratégie est donc d'assurer à *Baktamur* et à son fils *Ahmad*<sup>2</sup> une rente protégée contre les éventuelles velléités des

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<sup>1</sup> *Waqfiyya* publiée par M.M.Amine en annexe : T,II357sq.

<sup>2</sup> Enfant, Ahmad était tellement choyé par le sultan que les Cairote le considéraient comme son propre fils !

successeurs du sultan, ses propres fils légitimes ! La disparition prématurée du prince, qui de retour du pèlerinage en 733, meurt avec son fils, en a voulu autrement ; le *waqf* profitera aux autres descendants de *Baktamur*, frères présumés d'*Ahmad*.

En tant que politiques, la plupart des sultans et des princes ont surtout fondé des *waqfs hayrî*.

A propos du même sultan A. Raymond écrit qu' on ne retrouve véritablement le fil d'une histoire du Caire qu'avec *Nâsir Muhammad* ...dont le long règne s'étend sur un demi-siècle [1293-1340]...*Nâsir* put donner libre cours à l'amour des constructions qui le caractérisa de toute évidence : Maqrîzî estime qu'il dépensa ...environ 36 millions de dirhams par an<sup>3</sup>.

Les *Mamlûks* abusaient souvent de leur position pour intimider les propriétaires à leur concéder des terres ou des maisons comme c'est le cas pour l'Emir *Sirgatmis* en 756, qui s'appropria des maisons construites sur un ancien fief de b.*Tûlûn*<sup>4</sup>.

En 720, le sultan Muhammad b.*Qalâwiûn* achète au *Bayt al-mâl*, le village de *Batqû*<sup>5</sup>, près de Jérusalem pour le transformer en *waqf*, en faveur du Prince *Baktamur* et de sa descendance le 13 muharram 721<sup>5</sup>. Le *nazar al-waqf* sera assuré par un des membres de la famille. Il s'agit donc d'un *waqf* sultanien institué en faveur d'un particulier, aux dépens du domaine de l'Etat. C'est dire la complication du rapport entre « public » et « privé » au sein de l'Etat mamlûk.

Pour fonder une *hânaqâh*, le prince *Âqbugâ* exproprie les *banû al-Hillî*. Les matériaux de construction sont volés ou impayés. Sur le chantier, on mobilise maçons et artisans gratuitement<sup>6</sup> !

Un cas extrême signalé par *Magrîzî*, remet en cause l'idée même de piété par rapport à une logique de pouvoir politique et de concentration de la richesse. Comme instrument de pouvoir, les

Sur l'origine du *waqf*, voir le paragraphe suivant.

<sup>3</sup> R, 122-4. Voir *infra* l'estimation des édifices construits à l'époque du sultan Muhammad.

<sup>4</sup> H, II403.

<sup>5</sup> Le document *waqf* a été publié par M.M.Amine en annexe de T, II345 sq.

<sup>6</sup> H, II384.

fondations *waqf* obéissent à une logique de compétition effrénée entre des membres influents, briguant la « prise en charge » de la société, pour une meilleure emprise sur les centres décisionnels.

Dans le cas cité, le prince *Gamâl al-Dîn al-Ustâdâr* (m.812), s'empare d'un des *waqfs* de la princesse Baraka : en l'occurrence une *qaysâriyya* à deux étages. Il la rase, et fait construire à sa place sa *madrasa*. Il utilise des matériaux de remplacement nobles (marbre, bois, grilles en cuivre plaquées or ou argent) de la *madrasa* du sultan Sa'bân, « achetés » au sultan *Hâggî* pour la modique somme de 600 dinars ! Et *Maqrîzî* de conclure : sans compter le riche fonds *waqf* de la bibliothèque, dont les volumes portent le sceau du *tawqîf*. Ce n'est qu'une fondation de spoliation<sup>7</sup>.

### Défunts, turbas ou la quête de la mémoire

En manque d'enracinement, les Mamlûks ne vont pas se contenter de leur image de sauveurs de l'islam. Ils prennent conscience de l'importance de se fabriquer une mémoire glorieuse. Les traces des Ayyûbides étaient là et ils n'avaient qu'à les suivre. Les *turba* vont fleurir, pour consolider l'image du pouvoir en place. Ces « lieux de mémoire » sont en général préparés, du vivant des sultans ou des hauts dignitaires.

On contourne l'interdit religieux, en spécifiant que ces lieux sont aménagés pour la récitation du Coran, sur les tombes des défunts ; mais *de facto*, on aboutit au culte des morts, pratiqué par des *qurrâ'*, des *sûfîs* et même des *'ulamâ'*, qui acceptant objectivement et symboliquement le pouvoir *mamlûk*. Les descendants des fondateurs abonderont dans ce sens, afin d'affermir la mémoire parentale, faute d'une mémoire ancestrale, interrompue depuis l'importation des jeunes esclaves.

Cette volonté n'échappe pas à *Maqrîzî* qui conclut que le but de l'assignation de serviteurs dans la *Qubba Mansûriyya* est de veiller aux honneurs royaux, comme du vivant du sultan<sup>8</sup>.

<sup>7</sup> H, II79 ;402.

<sup>8</sup> H, II380.

En 810/1403, le sultan Faraḡ consolide les *waqfs* de la madrasa Zâhirîyya, où sont enterrés son père, le sultan Barqûq, sa mère, ses frères et sa grand-mère<sup>9</sup>.

Les fins tragiques et les aléas politiques empêchaient parfois l'enterrement de certaines personnalités dans leurs *turbas*. Maqrîzî cite l'exemple de Yûsuf al-Dawâdâr qui édifie des *turbas* dans plusieurs villes. Il ne sera enterré dans aucune d'elles, car son corps n'a jamais été retrouvé ! Ce prince a par ailleurs créé plusieurs autres *waqfs* : un *khan* à Gazza, une *madrasa* à Damas, une *hânaqâh*, un *rab'*, une *qaysâriyya* et une *turba* au Caire.

D'après le document publié par Amine<sup>10</sup>, le *wâqif* est un personnage important, puisqu'il a joué les premiers rôles en tant que régent. Il s'agit du chef d'état-major de l'armée, Yalbugâ b. 'Abd Allah al-Nâsirî. Il fonde une *turba* ouverte à la sépulture de tous les fidèles, et établit pour son entretien des *waqfs* constitués de 3 terres agricoles dans la région de Qalyûb, dans les environs du Caire, en 765/1364 (moins de trois ans avant sa mort).

Yalbugâ conduit une révolte contre son maître, le sultan Hasan (755-762) qu'il fit exécuter. Par la suite, il dépose le sultan Muhammad b. Hâggî (762-764) et désigne Sa'bân en 764/1362-3. Ainsi, dans cette situation de régence, il devient le détenteur du pouvoir et, implicitement, le sultan<sup>11</sup>.

Il se constitue une fortune colossale (le revenu quotidien de ses biens est estimé à 2000 dinars) et ordonne la confiscation des biens des églises et l'expropriation de tous les Chrétiens, suite à leur soutien à l'expédition franque contre Alexandrie en 767/1365. Son fanatisme pour le hanéfisme, le mènera à tenter une réforme socio-religieuse en donnant la préséance au *sayh al-Islâm al-Hanafî* aux dépens de son homologue *shâfi'ite*. Mais son exécution lors de sa tentative de désigner un nouveau sultan le mena à sa perte en 768/ 1366 et empêchera cette tentative de réformer la hiérarchie religieuse.

Une attitude particulière chez les princes mérite réflexion : la constitution de patrimoines immobiliers de manières plus ou moins

<sup>9</sup> S, VII96. On voit qu'on ne remonte pas au delà de trois générations.

<sup>10</sup> C, n°6,423-439.

<sup>11</sup> D,IV438.

illicites les incitait à s'en « débarrasser » avant leur mort. Ils s'en réservaient le profit matériel de leur vivant, leur disparition, « restituant » ainsi, quoiqu' imparfaitement, les biens à la communauté. C'est la logique même du système des rentes viagères, bien assimilé par les éléments *mamlûks*.

### Notables civils et waqfs *hayrî*

Les *waqfs hayrî* n'étaient pas l'apanage des éléments turcs. Les plus riches parmi les notables locaux fondent ce genre d'institutions. Nous citerons les exemples de commerçants, d'un '*alim* et d'un eunuque.

Dans la grande « catégorie » générale des notables locaux, on peut inclure les riches commerçants, que S. Denoix, dans son article méthodologique, classe à part, la notabilité pouvant s'acquérir, entre autres, par l'argent. Certains commerçants sont étrangers, comme *ra'is al-tuggâr al-Hawâgâ Ibrâhîm*, qui investit 50.000 dirhams. pour fonder une *madrasa*. Quand il meurt en 806, il laissa une grosse fortune, dont le sultan Farag spolie 100 000 dirhams.

Trois *madrasa* al-Harrûbiyya sont fondées par deux riches commerçants al-Harrûbî : l'oncle et le neveu ; sans compter l'édification d'une *turba* privée et quatre immeubles, par l'oncle Muhammad<sup>12</sup>. Dans ses *waqfiyyas*, ce dernier insiste sur l'exclusion des 'Agam de la gestion de biens.

Muhammad b.Musallim, le *kabîr al-tuggâr*<sup>13</sup>, grâce à la fortune de ses parents, se spécialisera dans le commerce international. Il entretenait des relations permanentes avec ses agents, en leur fournissant des capitaux, en Inde, en Ethiopie, au Takrûr et dans d'autres régions. Conformément à son testament, ses héritiers fondent la *madrasa* Musallamiyya, en 776.

'Alî b.Muhammad al-Sarâbîsî, notable richissime fondera la *hânaqâh* Sarâbîsiyya, sans compter d'autres *waqfs* charitables.

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<sup>12</sup> H, II370. Ce commerçant est d'origine modeste, il devient très riche grâce au commerce.

<sup>13</sup> Il hérite cette fonction de son grand père maternel, car son père était un modeste porteur, dont la vie se métamorphosa depuis son mariage. H, II401.

La fortune immobilière d'un 'âlim de la deuxième moitié du XIII<sup>e</sup>, est illustrée par sa fondation d'une *madrasa* au Caire en 663, en lui réservant plusieurs terres agricoles et des immeubles au Caire.

La course aux fondations poussera même un eunuque, le *tawâsî* Bilâl, à fonder en 647, une institution réservée aux *huddâms* d'origine africaine : *Zâwiyat al-huddâm* Habas. Cette initiative originale traduit une conscience sociale évidente et une identité revendiquée et défendue matériellement, dans le cadre d'une fondation d'entraide spécifique. Ce projet semble combler un vide, pour une catégorie démunie et marginalisée, dans un réseau complexe d'institutions d'« assistance sociale » où cette classe domestique ne se retrouve pas<sup>14</sup>.

#### *Prédominance des waqfs *ahlî* chez les catégories moyennes locales*

Malgré la participation relative de l'élite civile locale à la fondation de *waqfs* publics, les petits et moyens propriétaires restent fidèles à leurs propres familles. Leur ancrage dans la société leur dictera un souci de solidarité intra-familial. Relativement à l'abri des exactions-confiscations, souvent décidées par les sultans et les princes, les *wâqif-s* se souciaient de garantir à leur descendance des ressources, d'où la préservation des patrimoines familiaux.

Un exemple de l'extrême fin du XV<sup>e</sup> illustre bien cette tendance générale.

A partir d'une *waqfiyya* établie en 903/1498<sup>15</sup>, nous avons essayé d'aborder l'initiative d'un acteur social tout à fait ordinaire. Le *wâqif* est un certain *Muhammad b. Ali b. Abd Allah al-Dahhân al-ma'rûf bi-b. Qudayh*

Au niveau onomastique, le document attribue au *wâqif*, à son père et à son grand-père des *laqab-s* en *Dîn*, ce qui atteste qu'ils jouissaient d'une certaine notoriété.

La fondation est l'œuvre d'un artisan : en l'occurrence, un peintre. Il appartient à un groupe social soucieux de fructifier ses capitaux en dehors des *waqf-s*<sup>16</sup>.

<sup>14</sup> Un cadre de sociabilité pareil, a dû jouer un rôle pour le développement de la culture de cette catégorie.

<sup>15</sup> C, n°7,441-462

<sup>16</sup> Denoix, 35.

Les bénéficiaires sont : la fille du wâqif et ses enfants ainsi que sa demi-sœur li-l'umm, après la disparition du wâqif. Cette clause prouve la place de la femme-mère, dans les relations fraternelles. La descendance matrilinéaire est ici déterminante pour la conservation du patrimoine familial. Ce qui laisse penser que l'origine du waqf est peut-être un héritage de la mère commune.

### L'ouverture de la société sur les éléments d'origine chrétienne

Outre les Turcs, la société syro-égyptienne était ouverte aux éléments Chrétiens, en les attirant des marges vers le centre.

Etrangers d'origine, les éléments turcs vont contribuer à l'ouverture de la société et à forger une nouvelle identité culturelle, dont l'islam reste la colonne vertébrale. La restructuration de l'administration, nécessitera le recrutement de secrétaires compétents, notamment parmi les Coptes. Pour gravir la hiérarchie politico-administrative et exercer certaines hautes charges, la conversion à l'islam s'imposait. Certains n'hésiteront pas à renier le christianisme afin de s'assurer de grandes carrières. Devenus musulmans et disposant de fortunes consistantes, la pratique des *waqfs* s'imposait à eux.

Ce sont des actes qui viennent parfaire et prouver l'adhésion totale à l'islam. Même si leurs mobiles diffèrent de ceux des mamlûks, le résultat est le même pour le corps social, à savoir, la mise à sa disposition d'institutions de bienfaisance et d'assistance. Les sources évoquent un certain nombre de fondations de hauts fonctionnaires d'origine chrétienne.

*'Abd Allah b. al-Sanî'a Gibriyâl* se convertit à l'islam en 701. Il connaît une ascension fulgurante à Damas, où on lui confie en 710, le *nazar* de la Grande mosquée, des prisonniers et des *awqâf*, en remplacement d'*b.Sasrâ*, un grand notable damascène. Ensuite, on le nomme *wazîr*. En 718, il fonde une mosquée à Damas, puis un *bîmâristân* à *Rahba* ainsi qu'une *tahâra* au *Biqâ'*<sup>17</sup>.

*Sâkir b.Guzayl al-Baqrî* est un copte converti. Il fonde la *madrasa Baqriyya* au Caire, après une carrière où il a entre autres assuré *nazar al-awqâf wa-l amlâk wa-l Dahîra al-Sultâniyya*<sup>18</sup>. Il

<sup>17</sup> T, II219 ; A, II683.

<sup>18</sup> H, II391.

assura aussi la fonction de *mustawfi madrasat* Hasan. Son neveu deviendra ministre. Ses biographes ajoutent que jusqu'à sa mort en 776, les Chrétiens recouraient à lui !

Nous reviendrons au cas de '*Abd al-Karîm b. Hibat Allah*', avec plus de détails dans la partie réservée à l'administration.

### Les femmes et la fondation des waqf-s :

*Sagarat al-Durr* est l'initiatrice des princesses turques de la période *mamlûke* dans la pratique des *waqfs*. Elle fonde au terme du règne des Ayyûbides, la *Qubba* où a été enterré *al-Malik al-Sâlih*. Elle confie *nazar al-waqf* à *b.Hinnâ* pour l'entretien du bâtiment et la rétribution des lecteurs du Coran<sup>19</sup>.

La parenthèse exceptionnelle qu'a constitué le court règne de la sultane '*Ismat al-Dîn Malikat al-Muslimîn Umm Halîl Sagarat al-Durr al-Sâlihiyya*', prouve l'exclusion des femmes musulmanes du champ public en général et du champ politique en particulier. Toutefois, la force de cette norme a été déjouée et contournée, puisque certaines femmes réussirent, en tant qu'individus, à investir le public et à déployer leur stratégies personnelles, forçant le consentement social. Les créneaux qu'elles choisissent vont leur permettre de participer, activement aux affaires de la cité. L'un touche à la transmission du savoir (j'en ai fait l'étude dans un article à paraître) et l'autre, à la transmission des biens. Leur rôle dans les processus de transmission dans les deux champs est loin d'être passif. Une femme en possession de biens immobiliers et qui fait le choix délibéré de faire profiter les générations futures de l'usufruit, est porteuse d'un projet social, quelque soit l'étendue du cercle des bénéficiaires. Les femmes s'imposent donc par ce moyen, en offrant des services à une société, qui a fait de l'assistance une composante/ un vecteur de solidarité rodé depuis des siècles.

Les données statistiques fournies par S. Denoix, confirment l'hypothèse de la « spécialisation » des princesses turques dans les fondations *hayrî*<sup>20</sup>. Une approche purement onomastique, permet de

<sup>19</sup> H, II375.

<sup>20</sup> « Pour une exploitation d'ensemble d'un corpus. Les waqfs mamelouks du Caire » dans R. Deguilhem, *Le waqf dans l'espace islamique...* p.29-44

dégager 24 noms d'origine *mamlûke*, et 11 noms arabes de *wâqifa*. Bien qu'il ne s'agisse pas d'un échantillon représentatif, 8 fondations sur ces 11 ont eu lieu pendant le troisième quart du IX<sup>e</sup>/XV<sup>e</sup><sup>21</sup>. Même si on tient compte du hasard, qui a dû jouer pour la conservation des documents et leur classement archivistique, l'explication par la conjoncture s'impose. La deuxième moitié du XV<sup>e</sup>, a en effet été marquée par une crise dans la longue durée, annoncée en 1453 par la prise de Constantinople par les Ottomans qui finiront par chasser les *Mamlûks* en 1517.

D'après les dictionnaires biographiques d'*Ibn Hagar* et de *Safadî*, cinq femmes fondent des *waqfs*. Malgré la non représentativité de ces cinq biographies, ces exemples viennent renforcer la même hypothèse : les princesses agissent selon la tradition de leur caste, à savoir la fondation de *waqfs hayrî* ; les deux princesses, non encore intégrées, de par leur appartenance au sommet de la hiérarchie sociale, fondent respectivement une *turba* et une *madrasa*.

Les notables syriennes et égyptiennes restent fidèles à leur réseau familial, en constituant des *waqf-s ahlî*, au bénéfice de leur descendance. Chaque fondatrice consolide ainsi sa position et celle de son groupe.

La *madrasa Qutbiyya* est un *waqf* posthume, fondé conformément au testament de la princesse *'Ismat al-Dîn Mu'nisa al-Ayyûbiyya* (603-693) connue par ses largesses et sa charité.

Obéissant à une stratégie connue et à la tradition, Baraka, mère du sultan Sa'bân effectue le pèlerinage en 770. L'année suivante elle fonde une *madrasa*, pour parfaire ses œuvres pieuses. Elle meurt en 774<sup>22</sup>. En règle générale, la fondation des *waqfs* intervient quelques années avant la mort des *wâqifs* ou *wâqifas*, à l'âge du retour aux bonnes actions !

D'après *Maqrîzî*, l'héritage a fait l'objet d'un litige qui dégénéra en guerre entre le sultan et le second mari de Baraka, qui y trouva la mort.

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<sup>21</sup> C, documents n°122,150,154,156,157,176,177et 183.

<sup>22</sup> D, I474 ; H,II400; C, 13.

*Tugây*, la première épouse du sultan *Muhammad b.Qalâwûn* fonde la hânaqâh Umm Ânûk avec plusieurs *waqfs*. Ce lieu sera très vite habité par des *sûfî* et des *qurrâ'*.

*Al-Sitt al-Galîla al-Kubrâ Tatar bint al-Sultân Muhammad b. Qalâwûn*, épouse de *Baktamur al-Higâzî* fonde en 761 un grand édifice composé de la *madrasa al-Higâziyya*, d'un *maktab*, d'une bibliothèque et d'une *qubba*, dotés de plusieurs grands *waqfs*. La princesse *Aydakîn* fonde au Caire la *madrasa Sagîra* en 751<sup>23</sup>.

Le *ribât al-Bagdâdiyya* est construit en 684, sur ordre de la fille du sultan Baybars, *Tadkâr Bây*, en l'honneur de *Sayha Zaynab b.al-Bagdâdiyya*. C'est un véritable établissement de réinsertion sociale qui va abriter les femmes divorcées et/ou insoumises à leurs maris. Elles sont tenues d'y rester jusqu'à leur remariage ou la réintégration de leurs foyers. La création de cette institution éducative prouve bien que cette Turque de la deuxième génération est au service de sa société, défendant son ordre. Sans le canal du *waqf*, cette œuvre n'aurait pas été possible. Par ailleurs, c'est un moyen de contrôle en douce de ladite société, mais aussi un terrain où les princesses peuvent apporter leur contribution à l'organisation de la famille, sans recours à l'institution judiciaire directement.

### Dâr al-Islâm : un territoire sans frontières

D'un point de vue géo-politique, les fondations *waqfs* sont des biens transnationaux. Leurs revenus transgressent les frontières, et assurent le fonctionnement d'institutions à distance. La propriété immobilière étant libre, tout Musulman peut acquérir des biens n'importe où, et déclarer leurs revenus au service d'une institution choisie. A ce titre, ce sont les lieux saints de l'islam qui sont les plus grands bénéficiaires : *al-Haramayn al-Sarîfayn*.

Sans multiplier les exemples, il suffit de citer la fondation établie en faveur de lecteurs du Coran à La Mecque et à Jérusalem par le Sultan mérinide. Lors du pèlerinage de son épouse, en 738/1338, son *wakîl* acheta un immeuble à cette fin<sup>24</sup>.

<sup>23</sup> H, II394.

<sup>24</sup> A, III389.

## *II/ Gestion, administration des biens waqf*

### **La gestion**

Une clause redondante dans les *waqfiyya* attire l'attention. Après l'énumération des ayants droit et les différentes rubriques des dépenses, on spécifie presque toujours que les excédents des rentes des *waqfs*, doivent être distribués aux pauvres. Dans d'autres cas le *fâ'id al-waqf*, appelé aussi *bâqî ray' al-waqf*, revient aux descendants, malgré le statut *hayrî* de la fondation (*waqf* de la madrasa de *l'Ustâdâr*, évoqué ci-haut).

Selon le vœu de Ya'bugâ, la *waqfiyya* stipule que le surplus provenant de l'exploitation des biens, après l'accomplissement des dépenses prévues dans la *turba*, servira à rémunérer d'autres *qurrâ'* pour la lecture du Coran (conformément à la clause initiale de la fondation).

On constate qu'une pareille pratique, empêchera toute possibilité d'accumulation de capital, à une époque où l'Europe s'engageait sur une nouvelle voie qui la mènera vers le mercantilisme. En termes économiques, la pratique des *waqfs* est une entrave à l'accumulation du capital, et à l'investissement dans d'autres secteurs.

L'explication de cette disposition est à chercher dans ce que Cahen appelle *la conception musulmane de la richesse*<sup>25</sup>. L'esprit d'initiative reste très limité, le contexte politique international ne l'a aidant pas à se développer. Cette conjoncture profitera aux villes italiennes qui, par leurs relations commerciales avec le Levant verront leurs intérêts croître dans le bassin oriental de la Méditerranée.

Dans le meilleur des cas, le *nâzir* est tenu de réinvestir dans l'immobilier. D'après une clause de la *waqfiyya* de *hânaqâh Siryâqûs*<sup>26</sup>, l'épargne prévue concerne uniquement la rubrique des frais d'entretien des différents bâtiments, fixés à 2000 dirhams. Si l'épargne atteint 10000 dirhams, au terme d'exercices successifs, le *nâzir* doit acquérir

<sup>25</sup> Cf. Cahen, « Réflexions sur le *waqf* ancien »

<sup>26</sup> Publiée en annexe dans T, II415.

un immeuble de cette valeur, pour l'intégrer au *waqf*<sup>27</sup>. Le plus important est de veiller à entretenir et à préserver le capital immobilier initial, avant de penser à l agrandir. Seules les dépenses qui le concernent peuvent générer des biens immobiliers.

La minutie avec laquelle est conçue la gestion des différentes rubriques du budget, prouve qu'on en est présence de « techniciens » du droit et de la gestion.

Dans beaucoup de carrières, le cumul de *wikâlat bayt al-mâl* ou du *nazar al-dawâwîn* avec *nazar al awqâf* n'est pas exceptionnel.

### Abus et mauvaise gestion

La mise en valeur des qualités de certains magistrats ou *nâzir*, concernant leur intégrité et leur probité, prouve que la règle ne correspond pas tout à fait à ce que les auteurs relèvent d'assez exceptionnel.

A tous les échelons de la société, qu'on soit au centre ou en province, on accordait une importance capitale aux méthodes de gestion des revenus et aux litiges se rapportant à leur partage, entre les ayants droit légitimes.

Suite à un litige mal réglé par le *Qâdî al-qudât*- cumulant *nazar al-waqf*- à Alep, il est convoqué au Caire, suite à une plainte. On lui apprend que son jugement a été mal rendu<sup>28</sup>.

A travers des mentions indirectes et le non dit dans certaines biographies de *qâdî al-qudât*, on peut déduire que la gestion des *waqfs* n'était pas souvent saine.

A propos de *hâkim Dimasq* b. Mazrû'(m.726), l'auteur de la *Tadkira* écrit qu'après onze ans d'exercice, il mit en valeur les *waqfs* et rendit les droits à leurs destinataires légitimes<sup>29</sup>. Cette qualité morale, semble être exceptionnelle.

<sup>27</sup> Au verso du document, on mentionne l'acquisition d'une minoterie, de 2 ateliers de tissage et de 5 boutiques, en 841/1438. L'institution a été fondée en 725. Après plus d'un siècle, il est indéniable que la valeur du dirham a changé !

<sup>28</sup> T, II304.

<sup>29</sup> T, II164.

En évoquant les procédures judiciaires pour la validation du *waqf* de la *madrasa* de Gamâl al-Dîn l’Ustâdâr, Maqrîzî condamne les décisions des *qâdî* qui n’hésitent pas à annuler un jugement prononcé par eux ; puis à le valider de nouveau ! Après la mort du *wâqif*, son frère Sams al-Dîn marie sa fille au secrétaire du nouveau Ustâdâr, et réussit à établir un faux document où il est désigné *nâzir*. La clause ajoute que le *nazar* reviendra à ses descendants, après sa mort ! Un courageux *sûfi* résident dans la madrasa contestera cette falsification et rappellera que le *nazar* devrait revenir au *Kâtib al-Sîrr* du sultan.

Cette affaire révèle bien la situation des *waqfs* à la fin du Moyen Âge puisqu’elle traduit : l’ampleur des exactions ; la compétition entre les princes ; les moyens légaux pour fonder les *waqfs* (achats, alliances matrimoniales...) et/ou illégaux (confiscations, falsification des documents, corvées) ; la soumission de l’appareil judiciaire à la volonté (politique ou personnelle) des princes ; excentricité des producteurs par rapport aux enjeux de l’appropriation. Seuls, les locataires des *rab’* profitent de ce genre de convoitises.

Concernant les abus, nous estimons qu’indépendamment des tentations suscitées par les revenus juteux, il existe dans les documents certaines clauses qui « autorisent » objectivement les abus et les excès.

A titre d’exemple, le *nâzir* du *bîmâristân* al-Mansûrî est seul habilité à fixer les salaires du médecin en chef, des médecins, des surveillants, des infirmiers et des aides soignants, en tenant compte de la conjoncture, des besoins des malades... et du rendement de chacun d’eux...selon ses propres appréciations.

Plus loin, on spécifie qu’en cas de baisse des revenus, il incombe au *nâzir* d’établir les priorités entre les rubriques, en privilégiant les dépenses les plus urgentes<sup>30</sup>. En revanche, s’il enregistre des excédents, il en dispose et les affecte selon les nécessités et les besoins.

Ces latitudes deviennent des brèches aux abus et aux malversations, ou à des erreurs d’appréciation qui peuvent déboucher sur des erreurs de gestion irréparables.

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<sup>30</sup> T, I365-8.

## L'administration

Outre que les *waqfs* créent des emplois, ils permettent également de recruter un nombre considérable d'administrateurs et de secrétaires: *nâzir*, *musidd*, *mutasarrif*, *musârif*, *kâtib(s)*, *amîn*, *sâhid*, *hâzin* etc... D'autre part, le recours aux *qâdîs* et aux notaires est un rouage clé, pour garantir le bon fonctionnement des *waqfs*.

La charge du *nazar al-waqf* a constitué un enjeu de taille, quel que soit le statut du *waqf*. Lors de certaines fondations, certains sultans s'autoproclament *nâzirs* eux-mêmes, et désignent leurs successeurs, parmi leurs descendants<sup>31</sup>. Ainsi, grâce au crâneau du *nazar*, les descendants- privés d'héritage- pouvaient jouir des biens de leurs ascendans, bien qu'on soit dans le cadre de fondations *hayrî*.

Dans le document n°6, publié par Amine dans son *Catalogue*, la limite entre le « privé » et le « public », concernant la gestion est définie : en cas d'impossibilité de gestion par les descendants directs du *wâqif*, le document spécifie une hiérarchie de *nâzirs* potentiels parmi les *arbâb al-qalam* : le *dawâdâr*, sinon le *ra's nawbat al-gamdâriyya*, sinon le *hâgib al-huggâb*, sinon , c'est le sultan qui se charge de désigner le gérant compétent.

Ibn Habîb évoque le cas d'un prince ayyûbide mort en 688, qui se contente à la fin de sa vie de cette charge, dans la *madrasa* et la *turba* de sa grand-mère Umm al-Sâlih<sup>32</sup>. Ce cas représente une fondation publique dont la gestion est « privée »(familiale) ! Le gérant doit sa fonction, moins à sa qualité politique de prince –on est sous le règne des Mamlûks- qu'à sa position agnatique.

Certains *nâzirs* deviennent très puissants, du fait de leur position privilégiée à la tête de réseaux/ nébuleuses gravitant autour des fondations qu'ils dirigent. Plus que le contrôle des recettes et des dépenses, ils ont d'autres prérogatives : secondés par les intendants, ils peuvent recruter les fonctionnaires du *waqf*, choisir les fournisseurs et les prestataires de services et même sélectionner les *fuqarâ' sûfi*, pouvant s'établir dans les *madrasas*, les *ribâts* et les *hânaqâhs*.

<sup>31</sup> T, I369; II382-3.

<sup>32</sup> T, I124.

A partir d'une institution-type, en l'occurrence un hôpital, on peut résumer les prérogatives du *nâzir* comme suit :

\* location des immeubles pour une durée ne dépassant pas trois ans, pour un montant supérieur ou égal à celui convenu, avec l'obligation de tirer le meilleur profit des baux ;

\* la bonne répartition des revenus des *waqfs*, pour couvrir les dépenses prévues : entretien des bâtiments, équipement (literie, matériels...) ; approvisionnement (médicaments, nourriture) ; payement des salaires ; pompes funèbres.

Pour la fondation des *waqfs*, les sultans ne choisissaient pas leurs représentants au hasard.

Le "procureur" du sultan Muhammad b. Qalâwûn, au nom duquel il fonde les *waqfs* est 'Abd al-Karîm b. Hibat Allah<sup>33</sup>. Ce dernier a connu tout comme Baktamur- une carrière mouvementée et fulgurante. Copte chrétien d'origine, il se convertit adulte et passe, après la mort de Baybars al-Gâsnakîr, au service du nouveau sultan, suite à une bien difficile intercession, moyennant le payement d'une grosse somme et la vente des biens de son ex-protecteur, dont le montant est partagé entre la fille de Baybars et *Bayt al-mâl*. Il est le premier à porter le titre de *nâzir al-hâss*. Il gagne la confiance de son nouveau maître, devient son *wakil* et garde le trésor chez lui. Au nom du sultan, il fondera plusieurs *waqfs* dont *Hânaqâh Siryâqûs* et le *Bimâristân al-Mansûri*, dont les revenus abonderont, suite à l'assainissement de la gestion.

A titre personnel, il fondera ses propres *waqfs*, dont les mosquées al-Qubaybât et al-Qâbûn, lors d'une visite à Damas, en Safar 718<sup>34</sup>. Son intérêt particulier pour le commerce, explique ses investissements-*waqfs* pour la réfection et l'entretien du réseau routier et des points d'eau dans les zones désertiques. D'après al-Yûsufî cité

<sup>33</sup> A,III :142.

<sup>34</sup> Après son limogeage en 723 et la confiscation de ses biens meubles et immeubles, la valeur de ses *waqfs* a été estimée à 6 millions de dirhams. A Alexandrie on lui trouve 50 mille dinars, et des marchandises d'une valeur de 500 mille dinars. A Damas il dispose de 1,6 million de dirhams et 25 mille dinars grâce à ses activités commerciales ; sans compter sa fortune au Caire !

par b.Hagar : il a proposé au sultan de s'associer au commerce. Il contrôla strictement l'argent, qui abonda<sup>35</sup>.

Il est significatif de relever que de pareilles charges sont confiées à des experts enrôlés dans la gestion des biens personnels des sultans, y compris les *waqfs*, quitte à les obliger à se convertir, « pour nécessité de service ». En 723-4 b. Hibat Allah sera limogé puis « suicidé ». Le bruit circulera qu'il était à cheval entre deux religions<sup>36</sup> ! Mais les vraies raisons de cette disgrâce, selon la plupart des sources, seraient ses largesses somptueuses, dépassant celles du sultan.

Profitant de ses responsabilités, un haut fonctionnaire comme b. Hibat Allah s'ingéniait à faire fructifier sa fortune dans le commerce international, en créant les conditions propices à son développement<sup>37</sup>, conscient de ses limites dans d'autres secteurs. La distinction entre public et privé est difficile à tracer dans cette stratégie.

Pour ne pas faillir à la tradition, ses *waqfs* s'imposent à la fois, comme des générosités dont il fallait faire bénéficier sa nouvelle religion et comme garanties contre les confiscations et la misère pour ses descendants. A ce titre, ces fondations sont des éléments d'équilibrage d'une fortune- semblable à tant d'autres- accumulée en un quart de siècle. Pour légitimer son inculpation, on fera appel à des « témoins » qui déclareront qu'il a acquis ses *waqfs* avec l'argent du sultan !

Ses biographes ne manqueront pas de relever son intérêt pour la science du *Hadît*. Il financera deux missions scientifiques pour inviter au Caire la *Sayha Sitt al-Wuzarâ'* et al-Haggâr, en vue de transmettre leurs versions du *Sahîh al-Buhârî*.

<sup>35</sup> D,II404.

<sup>36</sup> T,II :132 ; S III : 61.

<sup>37</sup> D'après le D,I :403, il finance l'intermédiation entre l'Etat mamlûk et Abû Sa'îd, jusqu'à la conclusion d'un traité de paix. Depuis, la *Hutba* à Tabriz est prononcée au nom de Muhammad b. Qalâwûn. Ibn Hagar nous surprend en lui consacrant une deuxième biographie (D,II :401), comme pour insister sur son origine copte et sa conversion à l'âge adulte.

D'autres princes comme Sargatmis, malgré leur droiture dans le contrôle de gestion des *waqfs*, terminaient leurs carrières expropriés sous la torture. Dans la biographie qu'il lui consacre, Safadî note avoir lu, gravé sur le mur de la *madrasa* al-Sultâniyya à Alep, de la main de Sargatmis, un vers où il prédit sa fin – par ailleurs assez « ordinaire » pour l'époque : La vie récupèrera éternellement ce qu'elle offre ;

Ah, si sa générosité n'était qu'avarice !<sup>38</sup>

Certains Mamlûks tenaient, contrairement à d'autres, à exclure leurs descendants du *nazar* de leurs *waqfs hayrî*. Cette décision est parfaitement fidèle à la logique de ces *waqfs* ; car dans le cas contraire, les descendants profiteraient indirectement de la gestion de biens laissés par leurs ascendants.

Maqrîzî relate que des descendants du sultan Baybars ont essayé en vain, de reprendre la gestion du *waqf* de la Zâhîriyya. D'un commun accord, les *sayhs* hanéfites et sâfi'îtes les en empêchèrent, comme pour éviter qu'une pareille anomalie se renouvelle.

Dans toutes les grandes villes, le *nazar* devient le monopole de certaines « dynasties » de notables locaux. A Alep, on retrouve par exemple les Banû Saqr.

Pour les *waqfs ahlî*, b.Habîb nous cite l'exemple du *waqf* des Banî al-'Agamî, géré par 'Abd al-Rahmân b.al-'Agamî (m.716), puis par ses trois fils : Muhammad, Ahmad et 'Abd al-Mu'min<sup>39</sup>.

### *III/ Effets socio-économiques des waqfs*

Nous avons vu que les gouvernants sont des acteurs politiques, mais aussi des acteurs économiques et sociaux, à côté des autres fondateurs, grâce aux créations d'emplois dans les différents secteurs entraînés dans et autour des *waqfs*. Ils jouent ainsi le rôle d'éléments de régulation, malgré leur marginalité dans le processus général de la production de la richesse, sous toutes ses formes. Avec le temps, certains prennent goût à la l'agriculture, comme Sunqur al-Sa'dî, adorant l'agriculture... ; il aménage le village al-Nahriyya, qu'il reçut à titre de fief<sup>40</sup>.

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<sup>38</sup> A, II558. C'est nous qui traduisons.

<sup>39</sup> T, II79 ; 207.

<sup>40</sup> H, II397.

Bien que décrit comme un système rigide et considéré comme un facteur de stagnation...<sup>41</sup>, le *waqf* a longtemps garanti aux sociétés musulmanes la production et la répartition de la richesse, et a influencé les circuits économiques. Plusieurs secteurs sont fouettés par effet d'entraînement : bâtiment, carrières, menuiserie, peinture, ferronnerie, cuvrerie, importation du bois, etc... ainsi que l'artisanat. La main-d'œuvre employée par les différentes corporations est considérable. Un secteur entier du bâtiment s'est développé par l'édification d'une immense infrastructure de boutiques, échoppes et grands ateliers, institués en *waqfs* et dont les baux servent à entretenir toutes sortes de fondations ou à subvenir aux besoins des ayants droit.

L'autre secteur organiquement lié au système est l'agriculture. Des propriétés de différentes étendues sont transformées en *hubus*, de la petite parcelle, au village, en passant par le verger.

La superficie des *Ahbâs* ou *rizaq al-ahbâsiyya*<sup>42</sup> en Egypte est estimée en 740- c'est le chiffre officiel soumis au sultan- à 130.000 *faddân*. Faute d'estimation des deux autres catégories (*hukmiyya* et *ahliyya*) et de la superficie globale des terres exploitées, on n'est pas en mesure d'apprécier le pourcentage des terres *waqfs*.

D'après la *waqfiyya de hânaqâh Siryâqûs*<sup>43</sup>, le gérant ne peut pas sous-louer les terres agricoles, sauf si cela ne porte pas préjudice aux producteurs. L'intermédiaire redouté ne devrait pas exiger des tenanciers des baux plus élevés que ceux consentis directement avec le *nâzir*. On imagine mal ce dernier traiter directement avec tous les producteurs, vivant loin des villes. Le recours aux intermédiaires s'imposait inéluctablement.

Ce type de faire-valoir indirect, peu soucieux de l'amélioration des rendements agricoles, suscite l'émergence d'une catégorie d'intermédiaires- parasites, comme créature même du système.

<sup>41</sup> A.RAYMOND, *Le Waqf dans l'espace islamique*, « Préface » p.11-12, où il évoque les conclusions classiques, excessivement pessimistes, sur l'économie du *waqf* et sur sa gestion.

<sup>42</sup> H, II295-6.

<sup>43</sup> T, II :405.

### Enseignement et culte

En fondant des *hânaqâh*, *madrasa* et mosquées, les Mamlûks se présentent non seulement comme des bâtisseurs mais aussi comme pourvoyeurs d'emplois divers et variés. Dans ces institutions, outre les administrateurs de leurs *awqâf*, professeurs, prédicateurs, prêcheurs, *qurrâ'*, *mu'ids*, étudiants ou *sûfis* bénéficiaient de toute une gamme de rémunérations : salaires, pensions, bourses ou simples aides. Dans les documents de fondation, on retrouve la liste des ayants-droit. (Les autres emplois gravitant autour de ces nébuleuses socio-économiques, ont déjà été abordés).

Grâce à la gestion efficace des *waqfs*, *suyûh* et étudiants de la *hânaqâh Siryâqûs*, percevaient les pensions les plus élevées, à la seule condition d'être en dehors de tout circuit rémunérateur.

D'après le document de sa fondation, il est clairement notifié que le *Sayh* perçoit un salaire mensuel de 100 dirhams et 200 dirhams/an<sup>44</sup>, pour l'achat d'un nouveau costume ; sans compter son logement de fonction et ce qu'il perçoit en nature.

Quant aux quarante *fugarâ' sūfi* qui y vivent, ils touchent 40 dirhams/mois et 30 dirhams/an pour les habits. Ils perçoivent par ailleurs une multitude de primes en nature et en espèces, selon les tâches accomplies( nettoyage, ménage, cuisine, appel à la prière, direction de la prière etc...). La pension de 40 dirhams /mois, est appelée « *ma'lûm 'an al-tasawwuf* ». Objectivement, cette désignation ne pouvait que contribuer à l'émergence d'une *identité soufie*, chez des individus cantonnés dans un lieu fermé, consacrant leur vie aux prières, invocations et aux chants liturgiques. La culture de l'époque ne tardera pas à être marquée par le phénomène *soufi*, grâce aux innombrables *hânaqâh*, *ribâts* et *zâwiya* inaugurés entre le XIII e et le XV e siècles.

La suite du document nous révèle une institution colossale dotée d'un *hammâm* et d'une grande cuisine. Le bâtiment et ses annexes peuvent être abordés comme des centres de consommation d'une multitude de produits et de moyens (bois, clous, ustensiles divers, bêtes de somme, fourrage, chaux, pierres, riz, viande, blé, fruits et légumes, sucre, huile, remèdes, etc...). A ce titre, on peut imaginer le nombre des

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<sup>44</sup> T,II409. Le juge mentionne en marge que ce montant a été raturé, pour être dédoublé !

producteurs de tous ces produits travaillant pour répondre aux demandes de cette fondation et de ses semblables.

D'un autre côté, on ne doit pas perdre de vue, que le numéraire accumulé pour effectuer toutes les dépenses, provient des rentes des *waqfs* c'est à dire d'autres secteurs économiques rentables, évoqués ci-dessus. En 736, lors de la fondation de sa *hânaqâh*, Qawsûn décide d'y fixer un *Sayh* et un grand nombre de *sûfîs*, avec des émoluments consistants<sup>45</sup>. L'exemple de la *madrasa* Zâhirîyya fondée par le sultan Baybars en 662, illustre encore une fois, le souci des fondateurs de rétribuer obligatoirement tous ses enseignants, afin d'assurer la meilleure gestion des revenus des *waqfs*<sup>46</sup>.

### Le secteur sanitaire

Les hôpitaux occupent une position centrale au sein du réseau des fondations charitables. Ils correspondent parfaitement à l'idée même d'assistance sociale, dans la mesure où on y prodigue les soins nécessaires à tous les malades.

Le personnel actif au sein du *bîmâristân* al-Mansûrî est constitué de plusieurs médecins, d'un ophtalmologue, un chirurgien, des préparateurs de médicaments, des aides soignants, des infirmiers, des femmes/hommes de ménage et des cuisiniers. A ces praticiens des soins, s'ajoutent les différents administrateurs, comme pour toute fondation d'assistance. En somme, une ruche offrant des services inestimables à la société cairote<sup>47</sup>.

A travers la liste des bénéficiaires des soins, la *waqfiyya* nous brosse en fait, un tableau exhaustif des catégories sociales, vues par les pouvoirs publics dans trois cercles concentriques, dont le centre est le Caire:

\*les *Ahlî* : tous les Musulmans résidant au Caire, dans sa banlieue ou en Egypte

\*les *Garîb* : tous les Musulmans arrivant de l'étranger (Etrangers).

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<sup>45</sup> H, II425.

<sup>46</sup> H, II378-9.

<sup>47</sup> T, I365-8.

- \*hommes et/ou femmes
- \*vieux/jeunes/ filles/garçons
- \*riches/pauvres
- \*nobles/commun des mortels/célèbres/ordinaires
- \*gouvernants/gouvernés
- \*maîtres/esclaves
- \*délinquants
- \*faibles/bien-portants.

#### **Pour un Islam « construit en dur »**

Au cours des quatre derniers siècles du Moyen Âge, la conception d'un islam comme simple communauté de fidèles est sensiblement dépassée. Tant pour les fidèles que pour les infidèles, l'islam s'autoproclamait à travers la pierre, c'est-à-dire dans des monuments de plus en plus élevés. Ainsi, les fidèles trouvaient, selon leurs penchants et leurs commodités, à la fois des lieux de culte, et des lieux de sociabilité. A titre d'exemple, les quatre rites sunnites sont dotés de *madrasa-s* spécialisées<sup>48</sup> pour répondre à des besoins, créés par cette même dynamique d'édification.

Pour des éléments fraîchement islamisés, il fallait faire preuve de générosités au profit de leur religion adoptive. Ainsi les édifices religieux constituent les traces matérielles de l'adhésion des anciens esclaves à leur nouvelle religion. De ce point de vue, les *mamlûks* sont de véritables édificateurs.

Les fondations pieuses peuvent être considérées comme des repentirs, par des princes souvent mêlés aux complots et aux liquidations physiques des éléments entravant le développement des stratégies des groupes de pression gravitant dans la cour sultanaise.

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<sup>48</sup> Sans rentrer dans les détails, nous remarquerons que la multiplication des lieux de culte et d'enseignement, comme traces matérielles, a largement contribué à alimenter les débats théoriques et les *desputatio* entre les représentants des différentes écoles de pensée.

Le *waqf* fondé par Yalbugâ al-Nâsirî<sup>49</sup>, pour rétribuer des lecteurs de Coran jour et nuit, n'est autre qu'une manière de demander pardon à Dieu.

Une étude reste à faire sur les ingénieurs et les entrepreneurs à l'époque mamlûke, mentionnés ici et là, à l'occasion de l'annonce d'une fondation ou d'une inauguration.

### Un tissu dévotionnel extrêmement dense

L'accroissement du nombre des mosquées grandes et petites, *madrasa*, *ribâts*, *hânaqâhs*, *turbas* a fait que le maillage du tissu cultuel s'est resserré à un point tel que les prieurs dans un lieu dérangeaient ceux de l'édifice mitoyen. Ce phénomène est déploré par Maqrîzî<sup>50</sup>. On pourrait en conclure que cette infrastructure dépasse les besoins des fidèles et que la compétition entre les fondateurs n'est pas seulement déterminée par des soucis de réponse aux demandes des centres urbains. Quant aux campagnes, lieux de la production de la richesse, elles restent défavorisées.

Sur le plan monumental, il est indéniable de constater que “*la culture waqfie*” a largement contribué à transformer le paysage urbain des villes moyen-orientales, en consolidant et en perpétuant l'antiquité de la tradition monumentale. Pour un islam menacé par les Croisés et les Mongols, il fallait affirmer sa puissance par des édifices de pierre. Sultans, princes et hauts dignitaires rentreront dans une espèce de compétition, essayant de construire plus et mieux que leurs prédécesseurs ou contemporains. Ils créent ainsi une infrastructure culturelle de viviers qui permettront de développer la culture islamique.

Rien que pour Le Caire et avec une extrême rigueur, A. Raymond a pu identifier et localiser cinquante-quatre mosquées et *madrasa* construites entre 1293 et 1340, soit plus du quart des 198 monuments de ce type identifiés pour l'époque mamelouke<sup>51</sup>.

Outre cette transformation de l'urbanisme islamique, certaines fondations ont constitué de véritables noyaux d'urbanisation. Maqrîzî cite le cas d'une ville créée autour de *hânaqâh* Saryâqûs à partir de

<sup>49</sup> C, 423-439.

<sup>50</sup> H, II394.

<sup>51</sup> R, 124. Cinq siècles et demi après Maqrîzî, Raymond complète le recensement de sa source écrite, bien en deçà de la réalité !

725. Un siècle après, il témoigne de sa prospérité et de l'exonération de ses commerces, du fait de la proximité du lieu saint<sup>52</sup>.

### ***Conclusion***

Ces réflexions à partir de quelques cas montrent la centralité de l'institution des *waqfs* dans l'organisation sociale pendant la période *mamlûke*. On peut ajouter également que ces pratiques touchent moins aux institutions religieuses, qu'à l'ensemble de l'organisation sociale.

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### **Abréviation utilisées**

- A : *A'yân al-'asr wa a'wâن al-nâsr.*  
D : *al-Durar al-kâmina fî ayân' al-mi'a al-tâmina.*  
H : *al-Hitat al-Maqrîziyya.*  
S : *al-Sulûk li-ma'rifat duwal al-mulûk.*  
T : *Tadkirat al-nabîh fî ayyâm al-Mansûr wa-banîh.*  
C : Catalogue de M.M. Amine

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<sup>52</sup> H,II422-3.

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دعم لسيره الفكر الإسلامي المعاصر



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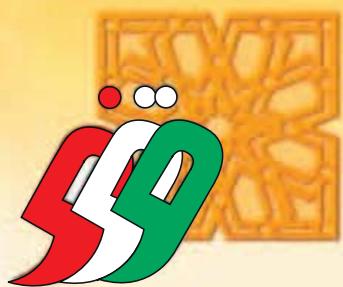
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No. 4 -year 3 - Rabee Al Awwal 1424 AH, May 2003



## On the Nature of Waqf

Pious Foundations in Contemporary Syria : A Break in the Tradition

Dr. Randi DEGUILHEM



## Les waqfs dans la société mamlûke:

réflexions à partir de quelques cas

Khaled KCHIR

ISSN 1609-4662

Issued by Kuwait Awqaf Public Foundation