

Islamic Institutions in Jerusalem

Arab and Islamic Laws Series

Series General Editor
Dr. Mark S.W. Hoyle

This book will be published
as the fifteenth volume in the Series.

The titles published in this series are listed at the end of this volume

Islamic Institutions in Jerusalem

Palestinian Muslim Organization under Jordanian and Israeli Rule

by

Yitzhak Reiter



KLUWER LAW INTERNATIONAL
The Hague/London/Boston

In Cooperation with the Jerusalem Institute for Israel Studies

Published by Kluwer Law International
Sterling House
66 Wilton Road
London SW1V 1DE
United Kingdom

Sold and distributed in the USA and Canada
by Kluwer Law International
675 Massachusetts Avenue
Cambridge MA 02139
USA

Kluwer Law International incorporates
the publishing programmes of
Graham & Trotman Ltd,
Kluwer Law & Taxation Publishers
and Martinus Nijhoff Publishers

In all other countries, sold and distributed
by Kluwer Law International, Distribution
Centre
P.O. Box 322
3300 AH Dordrecht
The Netherlands

Cover: Qubat al-Silsila
Photograph by David Silverman

ISBN 90-411-0382-1
Series ISBN 1-85333-414-6

© Kluwer Law International 1997

**British Library Cataloguing in Publication Data and Library of Congress Cataloging-
in-Publication Data is available**

This publication is protected by international copyright law. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Table of Contents

Preface and Acknowledgements	vii
Chapter 1. The Structure under Muslim and Non-Muslim Rule	1
Chapter 2. The Judiciary – <i>Sharī'a</i> Courts	11
Chapter 3. Pious Endowments	23
Chapter 4. Resources of Islamic Activity: Assets, Budgets, Services and Employees	47
Chapter 5. Economic Development of <i>Waqf</i> Properties	65
Chapter 6. Holy Places	87
Conclusions	97
Bibliography	105
Index	109

List of Tables and Figures

Tables

1. Cases of East Jerusalem Muslims presented in the Jaffa Shari'a Court	16
2. Public endowments in Jerusalem, 16th Century	25
3. Endowments founded in Jerusalem until 1572	26
4. Total endowments founded under Jordanian rule 1948–1967	29
5. Endowments founded under Israeli rule 1967–1993	30
6. West Bank Department of Endowments' budget 1967–1982	50
7. West Bank Department of Endowments' expenditure	52
8. Department of <i>Awqāf</i> building and renovations' budget 1967–1976	53
9. Budget of the al-Muḥaddath <i>Waqf</i> 1404–1406 H (1984–1986 C.E.)	54
10. Budget of the <i>Waqf</i> of Muḥammad 'Issā Shitaya for 1989	54
11. Department of Endowments' staff – 1967 and 1976	55
12. Department of Endowments' employees in 1982	56
13. Jordanian educational institutions in East Jerusalem	62

Figures

1. Jerusalem: the Old City and its vicinity	48
2. Organizational Structure: Holy Places and Islamic Affairs Council	59

Preface and Acknowledgements

Examining Islam in contemporary Jerusalem, where a severe political struggle exists primarily between Muslims and Jews over the future of this holy city, is sufficient to lead any scholar to explore the nature of the institutional structures within the Islamic religious apparatus. After the June war in 1967, when Jerusalem's Palestinian Muslims became a religious minority in the city under non-Muslim Israeli rule, the theoretical question of how Muslims should organize religious life under non-Muslim rule emerged for the second time in the twentieth century. Practical solutions to the new political situation were of the utmost urgency. The first (introductory) chapter deals with the structure of the Islamic religious apparatus in Jerusalem and the changes introduced, first during the transition from British to Jordanian rule, between 1948–1967, and later from Jordanian to Israeli rule from 1967 to the present (1994).

While it is true that Islam encompasses all aspects of the believer's life, in modern times, when state legislation has begun to affect religious affairs, be it Muslim Jordan, Jewish Israel, or even the newly created independent Muslim Palestinian Authority, the sole remaining field still subordinate to Islamic law – the *sharī'a* – is personal status law including privately managed endowments. The function of the *sharī'a* including its judiciary body, the *Sharī'a* Court, is addressed in Chapter 2. The *Sharī'a* Court in East Jerusalem has remained a traditional and protracted legacy of the Ottoman Empire, adopted by both the British authorities in Mandatory Palestine and later by Jordan. The focus of this chapter is the function of the *Sharī'a* Court under the special political situation that was created after the war in 1967 when Israel decided not to touch the existing *Sharī'a* Courts in Jerusalem, but rather to place administrative constraints upon the Muslim population in order to subjugate them to the competing *Sharī'a* Court, located first in Jaffa and later in West Jerusalem, subordinate to Israeli law and supervision.

One of the traditional Islamic institutions that saw its complete demise in some Islamic countries and its deterioration and partial abolishment in others, is the institution of the pious endowment or *waqf*. The historical importance of this institution was recognized by the most recent generation of Islamicists and is

illustrated by the increased number of studies devoted to *waqf*. The importance of this institution rests with the fact that it serves as the primary financial resource for religious activity. In the present text, the *waqf* institution is examined from three different perspectives which provided the basis for an earlier book published in Hebrew.¹

Chapter 3 reveals the renaissance of this institution in Jerusalem after 1967 denoted *inter alia* by the number of newly founded endowments. Chapter 4 illustrates the economic role of *waqf* as a resource for Islamic religious activity in Jerusalem while also bringing to the surface the details of the network of mosques and preaching services, religious education institutions, religious welfare institutions for orphans and the underprivileged as well as the pilgrimage campaign organized by the religious apparatus. Chapter 5 is devoted to the existential problem of this institution within the framework of a modern economy. It deals with the way Jerusalem's Muslims, both the population at large and the religious establishment, meet the challenge of economically developing *waqf* assets. This issue is a continuation of a similar methodological study I undertook on the same subject but based on Jerusalem during the period of British rule from 1917–1948.² Finally, Chapter 6 categorizes the sites holy to Islam in Jerusalem including places of worship. Explanation is provided regarding Jordanian, Israeli and Palestinian policies toward these holy places in light of the severe political struggle for domination of and sovereignty over these places in particular and over the city in general.

The purpose of the book is to add to the body of knowledge that we have on Islamic institutions, rather than to the theoretical framework. The main sources for this study are the two Islamic archives located in Jerusalem: the *Sijill* (records) of the Jerusalem *Sharī'a* courts and the Division of Islamic Heritage (*Qism al-Turāth al-Islāmī*) in Abū Dīs. The latter contains the administrative documents of the Department of Endowments, a body which organizes Islamic activity and services in the city.³ Access to these archives was made possible by permission from the late Jerusalem Mufti and head of the Supreme Muslim Authority, Shaykh Sa'ad al-Dīn al-ʿAlamī, to whom I am most grateful. Many others in Jerusalem's Muslim establishment assisted me during my research period. Among them I would like to mention Mr. Zayn al-ʿĀbidīn al-ʿAlamī of the *Sharī'a* Court of Appeals, Shaykh As'ad al-Imām, former *Qāḍī* of Ramallah and Dr. Ḥamad Yūsuf, Director of the Division of Islamic Heritage Archives. My gratitude to all of them.

The study was completed under the auspices of the Jerusalem Institute for Israel Studies with a grant from the Charles H. Revson Foundation, New York.

¹ Yitzhak Reiter, *Islamic Awqāf in Jerusalem 1948–1990* (Jerusalem: The Jerusalem Institute for Israel Studies, 1991).

² Yitzhak Reiter, *Islamic Endowments in Jerusalem under British Mandate* (London and Portland OR: Frank Cass, 1966), pp. 171–208.

³ For a description of these archives see Reiter, *Islamic Endowments in Jerusalem*, in the introduction.

The Jerusalem Institute for Israel Studies has always been a home for me and I would like to use this opportunity to express my gratitude to everyone on its staff, most notably, Professor Avraham (Rami) Freidman, chair, and Ms. Ora Achimeir, director, for their personal encouragement. It is my duty as well as my pleasure to thank the Harry S. Truman Institute for Research and the Advancement of Peace at the Hebrew University of Jerusalem. This institute has endorsed and funded my studies throughout my M.A. and Ph.D. Its director, Professor Moshe Ma'oz served as a member of the review committee, on behalf of the Jerusalem Institute, for the first version of this study. Professor Aharon Layish of the Department of Islamic and Middle Eastern Studies at the Hebrew University of Jerusalem deserves special thanks for his consultation at the early stages of this study and his guidance throughout my academic career. My other colleagues in the department and at the Institute for Israeli Arab Studies at Beit Berl encouraged me during many stages of my work and I would like to express my appreciation to all of them.

At least three chapters of this book are revised from the Hebrew version entitled *Islamic Awqāf in Jerusalem 1948–1990*. These chapters were originally translated by Mr. Russell Harris to whom my warm thanks are due. I would also like to express my full-hearted gratitude to Ms. Kimberly Katz for her editorial efforts concerning the book's reorganization. Any remaining errors belong to the author. Finally, it is my pleasure to thank Ms. Hamutal Appel of the Jerusalem Institute for Israel Studies and Ms. Cécile Insinger of Kluwer Law International for taking care of the publication's process.

Yitzhak Reiter
Jerusalem, 1996

Chapter 1

The Structure under Muslim and Non-Muslim Rule

In the wake of new political borders created after World War I, Muslim populations formerly belonging to the Ottoman Empire were in need of a new religious structure to take the place of the vacancy created by the demise of the Ottoman Dynasty. Previously, the Ottoman Sultans had fulfilled the role of the caliph who held both religious and political duties in Muslim territories under his rule. The Ottoman *Shaykh al-Islām*, who had also served as the Grand Mufti, headed the religious apparatus which included the following aspects of religious life: the *fatwākhāne* organ of all *muftis*, the *Sharī'a* Courts, and the *Waqf* administration (since the second half of the 19th century known as the Ministry of *Waqf*) which administered and supervised a variety of religious institutions and services.¹

Each new-born Muslim state, whether independent or under colonial or mandatory rule, had to construct its own system of religious life in light of the new circumstances. After a long period in which the Muslim state or ruler was responsible for providing religious needs, a situation arose in Palestine and other regions of the former Ottoman Empire in which the new state/ruler was non-Muslim, thus leading to the question of how to administer Muslim religious affairs under non-Muslim sovereignty. Can a non-Muslim regime operate Islamic Sharī'a Law in matters of Muslim personal status? Is it legitimate from an Islamic point of view that a non-Muslim government appoints *qādis*, *muftis* and other religious functionaries?

In the context of Palestine, a crucial political factor was added to the religious one. The political struggle between the Arab and Palestinian national movement and the Zionists over the same piece of land combined a mixture of religious and national arguments and considerations. In addition to this, there was an inter-Muslim/Arab debate for control of the West Bank and the eastern part of Jerusalem (including the holy places in the Old City) between Jordan under the leadership

¹ For an overview of the Islamic structure in the Ottoman Empire, see H.A.R. Gibb and H. Bowen, *Islamic Society and the West* (London: Oxford University Press, 1950) 10–12 and chapter 3; John Barnes, *An Introduction to Religious Foundations in the Ottoman Empire* (Leiden: E.J. Brill, 1987).

of the Royal Hashemite family on the one hand and the Palestinian leadership on the other.

The following deals with structural changes of the religious apparatus in Jerusalem in the transition period from non-Muslim British Mandatory rule to Muslim Jordanian rule in 1948 and then again to non-Muslim Israeli rule in 1967. First we shall illustrate the structure of Islamic religious life under non-Muslim rule. A comparison will be made among other Muslim countries governed by colonial or mandatory non-Muslim powers and the Islamic structure in British Mandatory Palestine. Finally, changes under Jordanian and Israeli sovereignty will be addressed.

The British were not alone in their colonizing endeavors nor were they alone in dealing with the problem of being a Christian European colonizer in a Muslim land. Sharing in this dilemma were the French, the Russians, the Dutch, the Italians and the Austrians. Each foreign power set out to answer the question posed by its own occupation – how to create a system in which a minority foreign power rules over an indigenous population belonging to another religion – especially where religious affairs are concerned.

To address the delicate issue of a non-Muslim power ruling over a Muslim population the French employed a not so delicate approach. Essentially the entire French judicial system supplanted that of the existing system in Algeria, including, for a time, the abolition of the Muslim *Shari'ah* Courts. Heeding Muslim protests, the French backed off from their policies, although not entirely. The Muslim religious judiciary was reinstated, though not without limitations, including French supervision in the form of centralized control. Furthermore, in the arena of *hubūs* (the term for *waqfs* in North Africa), the French, finding the institution inhibiting toward development of the economy, confiscated properties, invalidated the concept of inalienability and subsequently legalized the selling and purchasing of *hubūs* properties.²

The Russian situation appears not to differ very much from their colonial counter-parts in other areas of the world. Central Asia's Muslims also were forced to accept certain conditions subject to Russian authority. Religious authorities received their appointments by the Czar and were curtailed in their powers. Muslims were not permitted to operate communally beyond the provincial level and, finally, the *waqf* administration fell under the control of the regime.³

In areas occupied by the British, such as India, Egypt, Cyprus and the Sudan, the British overlords handed over nothing in the way of responsibilities to their subjugated populations. In instances whereby Islamic law did not satisfy British interests, they set out to create new laws to combat any inconsistencies. Usually

² Uri M. Kupferschmidt, *The Supreme Muslim Council – Islam under the British Mandate for Palestine* (Leiden: E.J. Brill, 1987), 8.

³ *Ibid.*, 9.

this took place in affairs outside of the realm of religious affairs as those issues generally were dealt with by the believers themselves.⁴

Prior to 1914, the British ruled in Cyprus under agreement and in cooperation with the Sublime Porte. The situation in Cyprus became convoluted upon Ottoman departure in 1914 when the British took over as the sole sovereign by serving as colonial administrators on the island. As was often the case, the British claimed that they were protecting the interests, especially the religious interests, of the Muslim population, in this case a minority. The former situation witnessed a sort of cooperation in Muslim affairs. Nominations came from the Ottoman rulers while appointments came from the British overlords. Following the Ottoman departure, all affairs were left to the approval or disapproval of the British. They, furthermore, managed to find a role for themselves in the administration of *waqf* properties by appointing two delegates to manage them, one British and one Muslim. These two representatives, in addition to all *Waqf* Department affairs in Cyprus, eventually fell under the total financial control of the British authorities.⁵

Egypt's religious affairs also fell sway to British administrative and fiscal control. Initial British involvement in the field of Muslim affairs found only corruption and mismanagement due to limitations placed on the system by Egyptian rulers under Ottoman sovereignty. The British had paid little attention to the *Sharī'a* Court system, for example, as it concentrated its efforts in the realm of civil affairs. By 1913, Kitchener, as British Consul-General in Egypt, succeeded in regulating the Ministry of *Waqfs*, naturally through the vehicle of British supervision.⁶

In Iraq and Syria, where British and French administrators, respectively, sought to reform the system of religious affairs, consideration was given to merging the civil and *Sharī'a* judicial systems. Their replacing the Ottoman sovereigns gave them a measure of control over these systems. This control, however, was coupled with differing degrees of cooperation with the local rulers. The Mandatory powers limited the jurisdiction of the *Sharī'a* Courts. Iraq and Syria saw changes in the venue for adjudicating matters of personal status issues. Confusion emerged as to whether to move these affairs under the authority of the civil court system or leave them in the *Sharī'a* Court system. Legislation regarding this was enacted and later suspended in French Mandatory Syria. In Iraq, personal status affairs of the Shi'īs was initially transferred to the civil courts. Later, Shi'ī *qadis* were appointed to deal with these matters.⁷

In the realm of *waqf* affairs in these two Mandatory controlled areas, the approaches were somewhat different. In Iraq in 1920, a Ministry of *Waqfs* was

⁴ G.H. Bousquet, *Du droit musulman et de son application effectif dans le monde* (Algiers: Imprimerie Nord-Africaine, 1949), 94–95.

⁵ Kupferschmidt, 10. See also C.W.J. Orr, *Cyprus under British Rule* (London: Zeno, 1972).

⁶ Kupferschmidt, 10–12.

⁷ *Ibid.*, 14–15.

established by the British to fill in the role vacated by the Ottomans upon their departure from the region. The staff was Iraqi but the supervision was British. The British position of Inspector-General, who supervised this ministry, was eliminated in 1929 and the ministry became the responsibility of an Iraqi Director-General who answered only to the Prime Minister. In the hands-on administration of *waqfs* in Iraq, there was relatively little interference by the British.⁸ The French in Syria did not follow British methods in Iraq. The French had hoped, similar to their experience in Algeria, to make the system of *waqf* more economically sound. They were met with such fierce opposition by the local Muslims that these plans were never implemented. The situation that evolved is that described by Kupferschmidt. "In 1921 a Contrôle General des Wakfs Musulmans as well as a Conseil Superieur des Wakfs were instituted . . . the former body as an executive arm, the latter with supervisory and juridical powers – both composed of Muslims, laymen as well as *‘ulamā’*."⁹

The British in Jerusalem

Religious organization under the British Mandate for Palestine took a somewhat different form than it had under any other Mandatory or Colonial Power during the lengthy adventures of Western powers in foreign lands. It was only after some two hundred years of involvement/interference in various Muslim lands that the British conceived of the notion of the Supreme Muslim Council and set out to implement it. This new experiment came only at the end of their colonizing missions. The difficulties of justifying their religious relationship to the Muslim population perhaps came to a close with the creation of the Supreme Muslim Council – the first of its kind in the history of Islam. The new council, while perhaps satisfying the needs of the British and arguably the Muslims, also raised controversy as it traditionally had no place in Islamic history.

To provide some background to the phenomenon of the Supreme Muslim Council, conceived in Palestine under the League of Nations' mandated British occupation of the area, one must look briefly to the situation in Bosnia-Herzegovina under Austrian control. The ruling power in this region, under pressure from the Muslim community, devised a system which granted the Muslims some autonomy in managing their own affairs. Bosnia-Herzegovina's Muslims' fear of interference in the realm of religious affairs was thus matched by the Austro-Hungarian legal initiative to create "an administrative and supervising body, called *Vakf-Mearif* (Endowments for Education) *Assembly*, [which] was

⁸ Great Britain, Colonial Office, *Special Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Progress of Iraq during the Period 1920–1931* (London, 1931), 249–250; The Iraq Directory (Baghdad, 1936), 124–128.

⁹ Kupferschmidt, 14–15.

chosen by the Muslim population.”¹⁰ While not an exact predecessor to the Palestinian Supreme Muslim Council, many of its functions and duties resembled that of the *Vakf-Mearif Assembly*.

One has to view the British notion of non-interference in Muslim religious affairs within the context of the British policy of a Jewish National Home in Palestine. The organization of the new structure of Islamic affairs in Mandatory Palestine was done with full consent of the Palestinian leadership in the framework of the “Committee of Muslim Religious Affairs” established by the British High Commissioner in November, 1920, and composed of seven British civil servants and nine Muslim religious figures. The outcome of that committee far from matched the position of the British officials who believed that the government should keep control and supervisory power over the *Sharī'a* Courts and the *Waqf* administration, including the right to appoint *qadis*, *waqf* clerks and other religious functionaries. Kupferschmidt notes that the Supreme Muslim Council (SMC), which was finally established by the British, “was an act of appeasement toward the Palestinian Muslims . . .” and was installed by Britain’s first Jewish High Commissioner in Palestine, Herbert Samuel.¹¹

The order empowering the Supreme Muslim Council, signed by the High Commissioner on 20 December 1921 and published in the Official Gazette on 1 January 1922, granted the Muslim Council complete autonomy in matters of Muslim religious affairs. The areas of authority of the Supreme Muslim Council were as follows:

1. To administer and supervise Muslim endowments; to prepare and endorse the annual *waqf* budget and to bring it to the attention of the government (for information only, not for approval).
2. To suggest candidates for the position of *qadi* in the local *Sharī'a* Courts and to appoint them after receiving government approval. If the government refused to approve the nomination of a candidate, its refusal had to be justified within 15 days.
3. To appoint local *muftis* from a pool of three candidates suggested by a special selection committee in accordance with specific considerations set out by the Supreme Muslim Council (the *Mufti* of Beer Sheva was chosen by the heads of the Bedouin tribes).
4. To appoint the general director of the endowment administration and its clerks and functionaries as well as all the workers in institutions funded by the *Waqf* including the religious courts.
5. To supervise the general endowment committee and the committees and administrations of the local *Waqf* offices.

¹⁰ *Ibid.*, 13.

¹¹ *Ibid.*, 17.

6. When necessary, to dismiss endowment administrative or *Shari'a* court clerks or anyone working in an institution funded by the endowment budget and to notify the government of the reason for such dismissal.
7. To demand the return, from the government to the Supreme Muslim Council, of all assets which were found, following investigation, to be under the ownership of any given *waqf*. Also responsible for carrying out the stipulations of the founder of the *waqfs*.
8. To change, amend and comply with any regulation regarding the administration of endowments or to publicize new regulations by informing the government of such a change in accordance with a specific procedure – by a majority decision of two-thirds of the members of the selection body and the consent of the government.
9. To endorse unanimously *waqf* asset transfers [either *istibdāl* (exchange) type or *hikr* and *ijāratayn* (long-term leases)] before seeking a decision from the religious court.¹²

In October, 1937 Ḥājj Amīn al-Ḥusaynī was dismissed from his job as Chairman of the Supreme Muslim Council and from his duty as Chairman of the Central Endowments' Committee. The responsibilities of the Supreme Muslim Council with regard to endowments were transferred by Defence Regulations (Muslim *Waqf*) 1937 to a government committee with three members headed by Judge Green.¹³ This committee was empowered with supervisory authority over the activities of the Supreme Muslim Council and its budget, approving all SMC expenses whether small or large. Over time the government ceased taking much interest in the activities of the Council and by the end of the Mandate period three members of the government committee were Muslim functionaries.

The Jordanians in Jerusalem

The initial Jordanian position in 1948 was to continue with the Mandate state of affairs. A 1949 Order authorized the Supreme Muslim Council to continue its activities in matters of endowments in East Jerusalem and the West Bank with all the powers it had before 1937.¹⁴ Within the framework of the union of the two banks of the Jordan River in 1951, the Order empowering the SMC was rescinded and the Jordanian *Waqf* Law of 1946 was extended to cover the West Bank.¹⁵ Under this law, the Chief *Qadi* (*Qāḍī al-Qudā*) of the Kingdom headed the *Shari'a* Judiciary and the Supreme Endowments' Committee which administered

¹² Yakov Shim'oni, *Arvei Eretz Yisrael* (Tel Aviv: Am Oved, 1947), 88.

¹³ *Official Gazette* 730, Appendix B: 973.

¹⁴ Order dated 1.12.49, *Official Gazette* 1002, 392.

¹⁵ Order dated 22.4.51, *Official Gazette* 1062, attachment 1, page 39 which became valid on 1.5.51 Law No. 61 of 1951.

the *waqf* budget as a central fund. The Prime Minister approved the *waqf* budget and appointed the general director of the *waqf* with the agreement of the King.¹⁶

The Jordanian *Waqf* Law of 1966 placed the administration of the *Waqf* in the hands of a government Ministry for Endowments and Islamic Affairs. In this ministry there was an Endowments and Islamic Affairs Council appointed by the government and was invested with responsibility for approving transactions in *waqf* assets, construction on *waqf* lands and dealing with disputes in *waqf* matters. Income from *waqf* was transferred to a central fund supervised by the Council and spent according to a budget approved by the government. By law, the council could be headed by the Chief *Qadi* of the Kingdom, or a minister appointed for this purpose. Since 1973, there has been a division between the Jordanian *Sharī'a* court system, headed by the *Qādī al-Qudā* at the level of minister, and the Ministry of Endowments, headed by a Minister for *Waqf* Affairs.

After 1950, Jordan had successfully integrated the West Bank and East Jerusalem's *Sharī'a* courts and Endowment Administration into its existing system. During Jordanian tenure in this region essentially two major changes took place. First, West Bank and East Jerusalem Islamic affairs were subordinated entirely to the Islamic organ in Amman and second, the Hashemite's rivals, the Ḥusaynīs, were replaced with other prominent Palestinian families in the religious apparatus with some exceptions.

The Israelis in Jerusalem

Israeli policy *vis-à-vis* Islamic religious affairs is perhaps best understood by examining its attitude toward Islamic institutions in the State of Israel after 1948. The communal organization of Muslims in Israel after 1948, in contrast to the Mandate period, lacked autonomy and the potential for creating a national leadership from among the ranks of the religious establishment. The religious affairs of Muslims in Israel proper are subordinate to the laws of the Knesset; the jurisdiction of *Sharī'a* has been consolidated by means of the *Qadis'* Law in 1961.¹⁷ *Qadis* are appointed by the president of the state, by recommendation of a committee made up of two ministers and seven public figures, some of whom are Muslims. The committee is headed by the Minister of Religious Affairs, who serves as chairman and also establishes *Sharī'a* court procedures. From the point of view of material law, the *qadis* bend to the laws of the Knesset even in matters which contradict *Sharī'a* law, as is the case in settling the minimum marriage age or outlawing polygamy. Most *waqf* property in Israel has been declared absentee property, according to the Law of Absentee Property of 1950, and handed over to a government custodian.¹⁸ According to a 1965 amendment, however, some

¹⁶ Law No. 25 of 1946.

¹⁷ A. Layish, "The Muslim *Waqf* in Israel," *Asian and African Studies*, 2 (1966): 44.

¹⁸ *Ibid.*, 55.

of the property has been released and placed at the disposal of the committees of local Muslim trustees, who are subject to close government supervision.¹⁹ The members of the Muslim clergy are employed by the Ministry of Religious Affairs as government employees (they were not recognized as such until the mid-eighties). This ministry handles matters of construction and maintenance of mosques and Islamic cemeteries in coordination with local non-profit religious organizations, the *Waqf* trustee committees in the five cities (Haifa, Acre, Jaffa, Lod and Ramla), and the municipal councils in Arab settlements.²⁰

After the 1967 war, the application of Israeli law and administration in East Jerusalem, as well as the Ministry of Religion's attempts to enforce Israeli law on the religious affairs of the Muslim community, served to accelerate the establishment of a new Muslim body. On 24 July 1967, twenty-two political and religious figures from Jerusalem convened and sent a memorandum to the military governor of the West Bank. They claimed that because East Jerusalem forms an inseparable part of the Jordanian Kingdom, its annexation by Israel was illegal. On this occasion, they declared themselves to be a "Supreme Muslim Authority" (*al-Hay'a al-Islamiyya al-'Ulya*).²¹

The signatories authorized Shaykh 'Abd al-Ḥamīd al-Ṣā'ih to serve in his capacity as *Qadi al-Quda* of the West Bank, as set down in Jordanian laws. They also authorized Shaykh ḥilmi al-Muḥtasib to act as the director of the *Sharī'a* Courts. The *Mufti* of Jerusalem, Shaykh Sa'd al-Dīn al-'Alamī, was co-opted as a supplementary member on the *Sharī'a* Court of Appeals and the *Qadi* of Jerusalem, Shaykh Sa'id Sabri, was co-opted onto the Endowments and Islamic Affairs Council and the Committee for the Renovation of the al-Ḥaram al-Sharīf. The signatories to the memorandum, who claimed that they were the Muslim Authority, announced unilaterally the authorization of the *Sharī'a* Court of Appeals in Jerusalem to act with all the authority of the Endowments and Islamic Affairs Committee, as set down in Jordanian law, and to act with all the authority vested by the general director of the *waqf*.

In this letter, the founders of the Muslim Authority claimed that "the *sharī'a* determined clearly that the Muslims must take the initiative to run their religious affairs themselves, in cases such as these . . ." This claim, however, finds no support in the *sharī'a* – Islamic law never mentions a situation in which the Muslims live as a minority under non-Muslim rule. According to precedents dating to the first centuries of Islam, in fact, when a region under Muslim rule was conquered, the Muslim residents were obliged to resettle in an area under Islamic

¹⁹ For more on the *waqf* in Israel after 1965, see Y. Reiter, "*Ha 'arakhat Hareforma be-Mosad ha-Heqdesh ha-Muslemi – ha-Waqf be-'Acco*" (An Assessment of the Reform in the Islamic Endowment Institution in Israel – The *Waqf* in Acre), *ha-Mizrah he-Hadash*, 32 (1989): 21–45.

²⁰ M. Dumper, *Islam and Israel: Muslim Religious Endowments and the Jewish State* (Washington, D.C.: Institute for Palestine Studies, 1994), 43; Reiter, *ibid*.

²¹ David Farhi, "The Muslim Council in East Jerusalem and Judea and Samaria since the Six-Day War," *ha-Mizrah he-Hadash*, 28/1–2 (1979): 3–21 (Hebrew).

rule (*Dār al-Islām*).²² The Muslim Authority, however, justified its deviation from the classical *Sharī'a* concept by viewing the Israeli rule of East Jerusalem as only a temporary occupation that was bound to end. As noted above, the signatories to the Authority accordingly appointed themselves “the Muslim authority responsible for Muslim affairs in the West Bank including Jerusalem, until the conquest is over.” The Palestinians had a similar attitude toward the Mandate; they saw it as merely a passing phase. The Council founders told Israeli officials verbally that they regarded the situation in Palestine during the British Mandate as a definite precedent, since the British did not ask to replace the authority of the Ottoman *sharī'a* sovereign, who at the time of Ottoman rule was *Shaykh al-Islām*.

The Israeli government has allowed Muslim figures in East Jerusalem and the West Bank to run Islamic institutions autonomously. The new Muslim authority in Jerusalem, *al-Hay'a al-Islāmiyya al-'Ulyā*, differs in essence from the Supreme Muslim Council of the Mandate period. It was founded by the leaders of the local Muslim population themselves whereas the Council of the Mandate period was created by the British. Furthermore, it was based neither on Israeli nor Jordanian law. According to these legal systems, the Muslim authority had no authority whatsoever. (The legitimacy of the Mandate Supreme Muslim Council, in contrast, was based on British law.) Because its head and some of its members also fulfill official functions according to Jordanian law, the *Hay'a* is able to execute its resolutions pertaining to the *Sharī'a* legal system or the Endowment Administration. Until 1993, the head of the new Muslim Authority in 1967 also served as deputy to the Chief *Qadi* in Jordan for East Jerusalem and the West Bank, as well as the Chairman of the Muslim Endowment Council (*Majlis al-Awqāf*) in these areas (subordinate to the Jordanian Minister of Endowments). The most important aim of the council is to protect the Muslim holy places in Jerusalem from takeover by Israel. Thus, the council does not discuss current issues pertaining to the administration of Muslim religious affairs; rather, as a local political body, it handles matters of political significance *vis-à-vis* the Israeli or Jordanian authorities.²³ For the most part, the Muslim Authority protests Israeli acts in Jerusalem which in its view have harmed Palestinian and Muslim interests. It serves as a representation of collective Palestinian interests in the city.

At times, the Muslim Authority has been convened in order to apply pressure on Jordan regarding certain issues. During the first stages of its existence, for example, the Council announced that “the Muslim existence in this holy city is not as conspicuous as it should be and as circumstances require,” and that the authorities in Amman provide too little direction and too little financial backing to their brothers in Jerusalem.²⁴ Jordan has not recognized the Muslim Authority,

²² See Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore, 1955).

²³ Reiter, *Islamic Awqāf in Jerusalem*, 21.

²⁴ Sa'd al-Dīn al-'Alamī, *Wathā'iq al-Hay'a al-Islāmiyya al-'Ulyā 1967–1984* (Documents of the Supreme Muslim Authority 1967–1984) (Jerusalem, n.d.), 41.

and contact with the religious establishment in East Jerusalem and the West Bank is maintained through Jordanian channels, namely those members who also served as religious clergy appointed by Jordan. Until 1993 the three main functions were headed by one person and the officials in his charge communicated with the Chairman of the Muslim Authority on legal Islamic matters in his capacity as deputy Chief *Qadi* and on land issues, hiring and firing of employees, and other administrative matters, in his capacity as Chairman of the Endowment Council in East Jerusalem and the West Bank.

In 1989, during the *Intifāda* (Palestinian uprising), the Council voted unanimously in favor of Anwar al-Khaṭīb to represent the pro-Jordanian faction, and Fayṣal al-Ḥusaynī to represent the PLO faction, as deputies to the Chairman of the Council. The consideration of local PLO activists in central, albeit few, positions signaled a change in Jordanian policy.²⁵ Ḥasan Ṭahbūb, for example, formerly the General Director of the *Waqf* Administration, was elected as the General Secretary of the Council. By 1992, the Council numbered fifty-one members. After the death of Shaykh Saʿd al-Dīn al-ʿAlamī in 1993, the Jordanian authorities distributed his duties among several persons. Shaykh Sulaymān al-Jaʿbarī was appointed to the position of *Mufti*; Shaykh ʿAbd al-Qādir ʿĀbidīn, *Qadi* of Jerusalem, was appointed as deputy to the chief *Qadi* of Amman in the West Bank; Shaykh ʿAbd al-ʿAzīm Salhab, the General Director of the *Waqf*, was appointed Chairman of the *Waqf* Council. The president of the Muslim Authority was left to an election by the Council's fifty-one members.

The tensions between Jordan and the Palestinians over Islamic religious affairs in Jerusalem were exacerbated following the Israeli-Palestinian Gaza-Jericho Agreement and the Israeli-Jordanian Peace Agreement of 1994. The agreement between Israel and Jordan included a clause that challenged the Palestinian Authority's claim to negotiate its future sovereignty over the Islamic holy places in the Old City of Jerusalem. As a result, the Palestinian Authority reacted by appointing Ḥasan Ṭahbūb – formerly a pro-Jordanian General Director of *Awqāf* and later President of the Supreme Muslim Authority – as head of the Religious Affairs Portfolio in the Palestinian Authority. Furthermore, Shaykh ʿIkrima Ṣabrī was named as *Mufti* of Jerusalem to replace the role of the Jordanian-appointed Shaykh ʿAbd al-Qādir ʿĀbidīn. To enforce Palestinian authority, the Palestinian Authority of Gaza and Jericho (PA) exerted pressure on the public not to enter ʿĀbidīn's office on the *al-Ḥaram al-Sharīf*. As an interim solution, the PA and the Jordanian government agreed that Jordan should continue to finance the salaries of Jerusalem's religious functionaries while the PA will bear responsibility for all religious matters in the rest of the West Bank.

²⁵ Until the Israel-PLO agreement of May 1994, Fayṣal al-Ḥusaynī was the most prominent political figure in the West Bank and Gaza.

Chapter 2

The Judiciary – *Sharī'a* Courts

Several legal situations occur daily in Jerusalem which illustrate the fractured nature of the *Sharī'a* Court system. What essentially exists in Jerusalem under Israeli rule is a dual functioning *Sharī'a* Court system. Israel operates an Israeli *Sharī'a* Court, initially based in Jaffa and located there until 1987, at which time it moved to its present location in the western part of the city. This court is bound by the laws and regulations of the State of Israel.¹ East Jerusalem has a Jordanian-Palestinian administered *Sharī'a* Court which submits to the laws and legislation of the Hashemite Kingdom of Jordan.² Both are used by Muslim litigants in matters concerning a variety of personal status issues and *waqf* affairs. The situation existing today in Jerusalem, until a final status of the city is accorded based on agreement between Israel and the Palestinians, is depicted by a competition between the two courts, a situation created by the war in June, 1967 and perpetuated by current political circumstances.

In contemporary times, the jurisdiction of the *sharī'a* and the system of *Sharī'a* Courts are primarily restricted to personal status matters and pious endowments. All other matters, including some of those mentioned above have become, in the twentieth century, matters which are dealt with by state legislation, often based on *Sharī'a* law. The Hashemite Kingdom of Jordan, for example, adopted the Ottoman Family Law of 1917 as well as the Ottoman Procedure Law of the *Sharī'a* Courts of 1917.³ The *Sharī'a* Courts of Jerusalem and the rest of the territory under Jordanian rule between 1948–1967, all of the territory comprising the east and west banks of the Jordan River, functioned according to these ratified Ottoman laws. Amendments to these laws were implemented by civil servants in the Office

¹ For the *sharī'a* in Israel see Aharon Layish, *Women and Islamic Law in a Non-Muslim State* (New York, Toronto and Jerusalem: John Wiley and Israel Universities Press, 1975); idem, "Muslim Religious Jurisdiction in Israel" in *Asian and African Studies*, 1 (1965): 49–79; idem, "Qādīs and Sharī'a in Israel" in *Asian and African Studies*, 7 (1971): 237–272. For the *Sharī'a* in Jordan see idem "Maḥkama" in EI², vol. 4, 29–31.

² Lynn Welchman, "Family Law under Occupation: Islamic Law and the *Sharī'a* Courts in the West Bank," in Ch. Mallat and J. Connors (eds.), *Islamic Family Law* (London, Dordrecht, Boston: Graham and Trotman, 1990): 93–115.

³ Both laws were enacted on 25 Tishrin al-Awal 1333 Mali.

of the Chief *Qadi* in Amman rather than by independent jurists (*fuqahā'*) or *muftis*. The East Jerusalem *Sharī'a* Court of today is almost a direct continuation of that which operated under Jordanian rule between the years 1948–1967. Because the Palestinians regarded and continue to regard, Israeli rule in the eastern part of the city as temporary, they decided to continue the subordination of the *Sharī'a* Court system to the Jordanian system in all matters including material jurisdiction, administration, nominations and the budget.

The East Jerusalem court operates on and implements Jordanian laws, most notably the 1946 Law of Inheritance, the 1959 Law of *Sharī'a* Court Procedures, the 1951 Law of Personal Status and the 1966 Law of *Waqf*, Holy Places and Religious Affairs. Even after 1967, laws enacted in Jordan were implemented in East Jerusalem and West Bank *Sharī'a* Courts such as in the case of the 1976 Family Law which replaced the 1951 Law of Personal Status. Its geographical jurisdiction includes 20 West Bank Palestinian villages around Jerusalem. The *qadi* executes two types of actions: the first type deals with *ahkām*, or decisions, in disputes such as divorce and alimony, custody rights, inheritance rights and disputes over *waqf* management and entitlement, while the second type addresses notarial issues (*hujaj*), including, *inter alia*, nominations, approvals, and permits.

Until the unification of the two banks of the Jordan after 1948, East Jerusalem's *Sharī'a* Court continued to function according to British Mandatory laws. The Jordanian Law of 1951⁴ subjugated the Jerusalem district *Sharī'a* Court to the Office of the Chief *Qadi* in Amman. This law also abolished the Palestine *Sharī'a* Court of Appeals which until that time had operated in the holy city. In the same year the Jordanian *Sharī'a* Court of Appeals was established and situated in Amman with the stipulation that, in case of need, it would hold session in Jerusalem. Also that same year, Jordan enacted the Law of Family Right⁵ which replaced an earlier 1947 Jordanian law based on the Ottoman Family Law which had been valid in Palestine during the British Mandate. In 1952 the Jordanians established a Law of Procedures for *Sharī'a* Courts⁶ to replace the Ottoman Law of 1917 which had survived throughout the Mandate period. This law was later amended in 1959.

Remaining in the city after the war in 1967 were some of the senior officials in Jerusalem's Muslim religious apparatus. Shaykh 'Abd al-Ḥamīd al-Sā'ih and Shaykh Ḥilmī al-Muḥtasib were two of the representatives of the West Bank *Sharī'a* Court under the supervision of the Hashemite Kingdom. Shaykh Sa'īd Ṣabri was the city's *qadi* and Shaykh Sa'ad al-Dīn al-'Alamī served in the role of *Mufti* of Jerusalem. Following the war, the Israeli Ministry of Religious Affairs tried immediately to apply Israeli legislation to East Jerusalem, to incorporate East Jerusalem *qadis* into the existing Israeli *Sharī'a* judicial system which submitted

⁴ Law no. 41 of 1951, *Official Gazette*, 1057 of 1 March, 1951.

⁵ Law no. 92 of 1951, *Official Gazette*, 1081 of 16 August, 1951.

⁶ Law no. 10 of 1952, *Official Gazette*, 1101 of 1 March, 1952.

to the laws of the State of Israel. East Jerusalem Muslim officials were required to sever their connections from the West Bank judicial system as well as from Jordanian law. Furthermore, these officials were required to move the *Sharī'a* Court of Appeals, serving the West Bank, from Jerusalem to another location in the West Bank while simultaneously accepting subordination to the Israeli *Sharī'a* Court of Appeals located, as noted, first in Jaffa and later in West Jerusalem.

The Muslim political and religious establishment in the eastern part of the city reacted to Israeli actions by taking steps to operate the *Sharī'a* judicial system entirely independent of Israel. In the founding document of the Supreme Muslim Authority, Shaykh ʿAbd al-Ḥamīd al-Sāʿih was vested with authority to serve as Chief *Qadi* of the West Bank. The West Bank *Sharī'a* Court of Appeals was established and located in East Jerusalem by nominating the Jerusalem *Mufti* as the third *qadi* of this court in place of the Jordanian East Bank *Qadi*, as was the case before 1967. The third amendment to the Jordanian law of 1951⁷ states that one *Sharī'a* Court of Appeals, based in Amman, should operate throughout the entire Jordanian Kingdom.⁸ Shaykh Ḥilmī al-Muḥtasib received the proxy to act as Director of West Bank *Sharī'a* Courts (*Mudīr al-Sharī'a*).⁹

The Israeli government was not comfortable with the unilateral steps taken by the Muslim population in East Jerusalem. After 1967 it was recommended, by a committee of senior government officials, that Israel should persuade the *qadis* in East Jerusalem to accept nominations to senior posts in the Israeli *Sharī'a* judiciary system. This connection between the Muslim judicial system in Israel and the one existing in East Jerusalem would take place following agreement by the East Jerusalem religious apparatus to make amendments in *Sharī'a* law in order to complement Israeli law, similar to the Jordanian Law of Personal Status. The government, however, rejected these recommendations.¹⁰ Israeli policies that were established were based upon passive non-recognition of the *Sharī'a* Court system in East Jerusalem. Additionally, these policies encouraged subjugation of the Muslim population in the eastern part of the city to the Israeli *Sharī'a* Court by imposing administrative constraints. In order to obtain an Israeli identification card, laissez-passer, and resident status, one had to apply and register his/her personal status in the Israeli *Sharī'a* Court.

It was clear that after June, 1967, the three *qadi* composition of the *Sharī'a* Court of Appeals, from both banks of the Jordan, would be impossible to continue, and as such, the founders of the Supreme Muslim Authority in Jerusalem in July, 1967, composed the West Bank and Jerusalem *Sharī'a* Court solely of Jerusalemites and West Bankers. Only 10 years later did Jordan pass a new law approving two separate *Sharī'a* Courts of Appeal, one in Amman and one in

⁷ See footnote 4.

⁸ *Official Gazette*, no. 1082, September 1, 1951.

⁹ Farhi, 11–12.

¹⁰ Reiter, *Islamic Awqāf in Jerusalem*, 16.

Jerusalem.¹¹ The former would serve the East Bank – Jordan, while the latter was to deal with matters of the West Bank. By the passage of this law, the Jordanian authorities reasserted their domination of the *Sharīʿa* system in East Jerusalem and the West Bank, with the West Bank belonging to the Hashemite Kingdom and East Jerusalem forming an integral part of the West Bank. Following this legislation, the Jordanian *Qāḍī al-Quḍā* made nominations to the Jerusalem-West Bank Court of Appeals.¹² The local Jerusalem religious establishment, dissatisfied with this composition, sent a delegation to Jordan to protest these nominations. They managed to convince the Jordanians to overlook Palestinian non-compliance with the new nominations. This difference reinforces the autonomy of the Palestinian Muslim leadership in Jerusalem and its drive to maintain control of Muslim affairs in the city despite Jordanian political interests. The Court of Appeals in Jerusalem, located separately from the lower court in the post-1948 business area of Salāḥ al-Dīn Street, is found on *al-Ḥaram al-Sharīf* compound, emphasizing its symbolic significance. In 1990 this court dealt with 48 appeals from East Jerusalem (from 112 verdicts given by the lower court) and 171 appeals from the West Bank.

On a daily basis, however, the *Sharīʿa* judiciary is completely subordinate to and dependent upon Jordan as is noted in the following case. In 1986, five brothers from a Jerusalem Maghribī (of North African origin) family endowed a family-owned house in Silwān, a former village south of *al-Ḥaram al-Sharīf*, as public *waqf* for the benefit of the Association for the Aged. The heirs of one of the brothers regarded the dedication of property as *waqf* harmful to the beneficiaries' inheritance rights. After their father's death, it was suspected that the children, in collaboration with *Sharīʿa* Court employees, destroyed the original endowment deed (*waqfiyya*) found in the *sijill*. The issue, when discovered, led to the suspension of two court employees – according to instructions from the Chief *Qadi* in Jordan. Additionally a criminal case in Jordan was filed against members of the endower's family who were suspected in the action as well as against the *Sharīʿa* Court workers. All those involved in the affair were called a number of times to appear in Amman in order to be investigated or to present testimony in the case.¹³ Jordan's ability to judge residents of East Jerusalem (and the West Bank) and to impose punishments stems from the fact that it controls the distribution of wages among *Sharīʿa* Court workers (and throughout the rest of the system of employees appointed via the Jerusalem *Waqf* Department). Moreover, Jordan has

¹¹ Regulation 20 of 1977, *Official Gazette*, no. 2695, April 16, 1977. This replaced the 1951 regulation which designated Amman as the permanent seat and provided that "a *Sharīʿa* Court of Appeals shall be constituted in both Amman and Jerusalem. These regulations aimed to unite both banks of the Jordan River into one apparatus headed by Amman's Chief *Qadi*." Welchman, 110.

¹² Nominations to the *Sharīʿa* Courts in East Jerusalem and the West Bank following 1967 were also made by the Jordanian Chief *Qadi*, Welchman, 97.

¹³ The author traced this case's progress during his research in the *Sharīʿa* Court archives which commenced in 1987 and was completed in 1990.

detering sanctions even against those Jerusalem and West Bank residents who are not counted among the employees receiving their salary from this institution as it (Jordan) possesses the power to deprive the right of entry into its borders to anyone it chooses.

Issues of Dual Registration

Israeli law does not recognize the East Jerusalem *Sharġa* Court and as such, the court's judgements cannot be implemented nor enforced by the Israeli Execution Offices. The Israeli Ministry of Religious Affairs has instructed the Execution Offices in Jerusalem and the West Bank not to implement decisions issued by the East Jerusalem *Sharġa* Court.¹⁴ As a result, the Muslim population is forced to apply to the Israeli *Sharġa* Court in matters of personal status and *waqf*. Appellants who wish to execute the *qadi's* verdict approach the Israeli legal system as do people dealing with matters of personal status documents necessary in order to obtain various papers from the two state authorities, including Jordanian passports on the one hand and Israeli identification on the other. Essentially there is no avoiding registration in both courts. In a number of cases, the Israeli *Sharġa* Court serves as an alternative for Jerusalem Muslims, who turn to it when they are dissatisfied with the verdict issued by the East Jerusalem court, or when they determine in advance that no possibility for obtaining assistance exists in the East Jerusalem court. In 1987, the files of 729 East Jerusalem residents were registered in the Jaffa court – 67% of the total files (1096) recorded in East Jerusalem. The significant percentage of files (one-third of the files in East Jerusalem) pertaining to West Bank inhabitants outside the present Israeli boundaries, illustrates that there are very few Muslims who approach only one of the two *Sharġa* Courts.

Thirty-three percent of the cases brought before the Jaffa *qadi* in 1975 in comparison to 18.5% in 1987 were post factum marriage certificates necessary for verification of marital status. Some of the cases brought before the Jaffa *qadi* dealt with divorce and the legal effects stemming from this, such as the claim for alimony, the dower and the financial well-being of the children as well as the actual custody rights to one of the parents. In 1987, 18.5 percent of the files of East Jerusalem residents in the Jaffa court dealt with divorce and the ensuing deliberations between the couples. Twenty-eight percent were claims for alimony or child support and 6.5% dealt with child custody. Six percent were claims for the dower. The Israeli *Sharġa* Court is the sole authority capable of issuing an order delaying the departure of the husband from the country if he does not fulfill his obligation to support his wife and children. In fact, women from East Jerusalem often utilize these rights to prevent their husbands from traveling to Jordan or

¹⁴ Ya'akov Meron, "The Religious Courts in the Administered Territories" in M. Shamgar (ed.), *Military Government in the Territories Administered by Israel 1967–1980* (Jerusalem: Alpha Press, 1982), 1:365; Welchman, 95.

Table 1. Cases of East Jerusalem Muslims presented in the Jaffa *Shari'a* Court

Issue	Jaffa 1975		Jaffa 1987		East Jerusalem 1987	
	# of cases	%	# of cases	%	# of cases	%
1 Approval of marriage and descent	169	33	128	18.5	33	4.7
2 Divorce	90	17	127	18.5	59	8.4
3 Alimony/child support	118	22	195	28	21	3
4 Dower	13	2	43	6	2	0.2
5 Obedience	15	2	25	2.5	18	2.6
6 Inheritance	18	2.5	32	4	252	36
7 Custody	49	9	28	3.5	40	5.7
8 Guardianship	7	1.5	45	6.5	2	0.2
9 <i>Waqf</i>	8	1.5	21	3	34	4.9
10 Conversion to Islam	12	2	27	3.5	17	2.4
11 Confirmation of marital status	24	3	–	–		
12 Approval of age for marriage					16	2.3
13 Miscellaneous	16	4.5	58	6	207	29.6
14 Total	523	100	671	100	700	100

any other place as this is often the only effective sanction imposed on non-compliant husbands. Four percent of the cases in the Jaffa court concerning East Jerusalem residents were inheritance cases to be implemented by the Execution Authorities whereas those decisions taken in the East Jerusalem court were and are not executed by Israel. One very interesting type from among all the cases is the claim presented by husbands in East Jerusalem to compel their wives into obedience (*Tā'a*).¹⁵ In 1987, 25 requests of this type were presented to the Jaffa court. An application of this type is a right accorded only to husbands, who may thus force into action the verdict which requires a woman – who is declared a rebellious wife and has fled to her father's house – to heed and return to her husband's house. Obedience cases, though, are generally a defense mechanism utilized by a husband when a charge of non-payment of his wife's alimony is filed against him.

A comparison of the files in East Jerusalem and Jaffa reveals that East Jerusalem Muslims turn to the East Jerusalem court more often for cases dealing with marriage, divorce and the rights of women and children as a result of the cessation of a marriage. It is to the Jaffa or West Jerusalem court, on the other hand, that they turn more often for cases of inheritance or *waqf*.

¹⁵ For more on *Tā'a*, see Layish, *Women and Islamic Law*, 91 ff.

Marriage

Marriage is another legal state for which registration is also done in duplicate by an authorized clerk (*ma'dhūn shar'ī*) in each of the two respective courts. Marriage registration in the East Jerusalem court requires a Jordanian passport and any other necessary Jordanian documents while, in the Israeli court, it requires official registration in the Israeli censor according to the name appearing on the Israeli identity card. (This identity card affords the bearer the right to National Insurance in Israel.) In 1975, 1031 marriage contracts were registered in East Jerusalem, of them 40 polygamous marriages. In contrast to that, 1648 marriage contracts were registered in 1987. In the East Jerusalem *Sharī'a* Court, 14 local people were authorized by the *qadi's ma'dhūn* to perform marriages.¹⁶ The *Sharī'a* Court, in which one of these people is employed, registers one-quarter of all marriage contracts. Indeed, in 1987, the East Jerusalem court approved 33 marriage contracts that had been previously registered only in the Jaffa *Sharī'a* Court.

Waqfs

In the case of pious endowments (see next chapter), for example, in which its beneficiaries belong to different families or different family branches, the system of the *Sharī'a* Court becomes somewhat convoluted. Embodying the essence of this political challenge in Jerusalem's *Sharī'a* Courts is the following situation. In February, 1974, Ghālib Maḥmūd al-Nashashībī, a member of a prominent Palestinian family in Jerusalem, discovered, only a week after his appointment as administrator, *mutawallī*, of the two Yamānūlī family endowments by the *qadi*, that two other persons, one from the al-Khālidī family and one from the al-Bakr family, had been appointed to the same position. Following an inquiry, he learned that an additional nomination had been issued by the Israeli *qadi* in the Jaffa *Sharī'a* Court.¹⁷ Augmenting his disappointment was the reality that, legally, according to Israeli law, implemented in East Jerusalem shortly after the war, the only valid nomination was that of the Israeli Jaffa *Qadi*.

Some of the endowment deeds were also recorded simultaneously in both East Jerusalem and Jaffa. In Jaffa, during the period of 1967–1987, 29 new endowments were registered compared with the 90 *waqfs* registered during the same period in East Jerusalem. Of those 29 endowments only three were registered solely in Jaffa (not at all in East Jerusalem). Perhaps one of the reasons for this is due to the conflicting nature of relations between the founders and the Muslim religious establishment in Jerusalem. Additional applications by Muslims from Jerusalem, to the Jaffa *Sharī'a* Court, dealing with *waqf* were submitted by *waqf* beneficiaries who felt they were deprived of their entitlement by *waqf* administrators when

¹⁶ Author's data collected from the *Sharī'a* Court registers.

¹⁷ Jaffa *Sijill* 458/83; Jerusalem *Sijill* 622/47/196.

they did not receive any assistance from the East Jerusalem court. Those people requested that the *qadi* arrange an investigation of the *mutawallī*'s accounts concerning the *waqf*, and dismiss him or compel him to transfer to them the part they deserve from the *waqf*'s usufruct. The judgement imposed by the Jaffa *qadi* can be the opposite of that which was given in Jerusalem. It is necessary to emphasize, however, that the number of these cases is indeed limited.

The most common type of application to the Jaffa *qadi* concerning *waqf* affairs is the appointment of *mutawallīs*. Most of the applications, secondary registration for issues previously registered in East Jerusalem, receive a separate administrative procedure in front of the Jaffa *qadi*. A minority of cases are found there because the Jaffa *qadi* appoints a *mutawallī* after the initial appointment by the East Jerusalem *qadi*. The present Israeli *Qadi* of Jerusalem, Shaykh Ziyād ʿAsaliyya, admits that in spite of the fact that, according to Israeli law, he is not permitted to recognize any document or action carried out by East Jerusalem *qadis*, he accepts their nominations of *waqf mutawallīs*. Shaykh ʿAsaliyya exclaims that "the East Jerusalem *qadis* know better than me who fits the position. They have better measures to check a candidate's qualifications according to the founder's stipulations in the endowment deed. They have a nomination committee to decide who among the beneficiaries is most qualified (*arshad*) for the job."¹⁸ Previously there had been cases in which a certain Israeli *qadi* had recognized an East Jerusalem *qadi*'s actions, but it must be noted that this occurred solely by the personal initiative of that *qadi*.¹⁹ Since 1994, Shaykh ʿAsaliyya has been instructed by the president of Israel's *Sharīʿa* Courts, Shaykh Aḥmad Nātūr, to recognize nominations of the East Jerusalem Court for the office of *mutawallī*, accepting the nomination document as testimony for the candidate's qualifications rather than a nomination letter.²⁰

Administrative constraints require that the East Jerusalem court also recognize the existence of the Israeli *Sharīʿa* Court in the western part of the city (or in Jaffa until 1988). For example, when a Muslim bearing Israeli citizenship requests to marry someone from East Jerusalem and decides to register the marriage in the East Jerusalem court, this court requests certification of marital status (to verify if the person is unmarried) which must be brought from the Jaffa/West Jerusalem court. After receiving verification, the *qadi* approves the age for marriage and legally changes the Israeli citizenship to "Arab," a point which seems to be a requirement of the Jordanian authorities.

¹⁸ Question/Answer session between the Shaykh and Hebrew University students, Jerusalem, December 13, 1994.

¹⁹ Welchman, 107.

²⁰ Interview with Shaykh Aḥmad Nātūr, April 3, 1995.

Implementing Israeli Social Legislation

One of the arguments brought up by the Muslim religious establishment against including the East Jerusalem *Sharī'a* Court in the Israeli *Sharī'a* Court system centered around Israeli legislation in social matters. Material law implemented in the East Jerusalem *Sharī'a* Court is based on the general stipulations of *sharī'a* law combined with Jordanian state laws, which are mostly based on the *sharī'a* regulations.²¹ These laws, currently applied in the Palestinian *Sharī'a* Court in East Jerusalem, are at odds with the social legislation of the Israeli Knesset which, *inter alia*, has not sanctioned polygamy and has restricted the minimum marriage age. Israeli social legislation, in effect, sought to improve the status of women in Israel without singling out Muslim women in particular. The reality of imposing these kinds of laws in East Jerusalem was somewhat selective and limited in nature.

Following is an overview of the main reforms submitted by the Israeli Knesset. These laws deal primarily with women's rights in contemporary society and address such issues as the minimum age requirement for marriage, polygamy, one-sided divorce against a woman's will, and women's property rights following divorce. Further laws challenged child custody issues and traditional succession of property both in *mulk* (completely privately owned property) and in *mirī* (government owned property with possession and benefits granted to the holder) property. These legal statutes, which, if not adhered to, have, by law, intervention methods within the Israeli judicial system including criminal punishments.²²

According to the Jordanian Family Law of 1976, the minimum age for marriage is 15 years for a girl and 16 years for a boy. The Marriage Age Law of 1950, legislated by the Israeli Knesset set the minimum age for marriage at 17 years for a girl – 16 if the district court finds extenuating circumstances justifying this – based on a 1960 amendment, and 18 years for a boy. Despite the passage of this law, which is based on the Ottoman Family Rights Law, post-1967 East Jerusalem witnessed a large number of marriages involving a wife under the age of 17. Very rarely do complaints from these marriages reach the police, neither from one of the spouses nor from one of their family members. When the wife reaches the age of 17, the couple applies to the Jaffa/West Jerusalem *Sharī'a* Court in order to register the marriage and in many cases to officially register any children born into the marriage.

In 1977, in contrast to the Jordanian legislative sanction of bigamy, the Israeli Criminal Law code adopted a punishment for anyone engaging in bigamy or anyone involved in arranging this kind of marriage. In spite of Israeli legislation to combat this, the East Jerusalem *Sharī'a* Court continues to arrange marriages

²¹ For the legacy of Ottoman, British and Israeli laws see R.H. Eisenman, *Islamic Law in Palestine and Israel* (Leiden: E.J. Brill, 1978).

²² A. Layish, "The Status of the *Sharī'a* in a Non-Muslim State – The Case of Israel," *Asian and African Studies* 27 (1993): 171–187.

of a bigamous or polygamous nature. As mentioned above, in 1975, for example, some 40 cases of polygamous marriages were recorded. Enforcement of this law in Israel occurs only upon registration of an official complaint to the police, either by the first wife or one of her relatives - these situations are relatively few. A man wishing to take a second wife generally reaches an agreement with his first wife in advance in order to avoid any complications.

The Israeli Property Relations between Spouses Law of 1973 was occasionally imposed in East Jerusalem, at the initiative of one side to the quarrel from among the heirs. If a quarrel breaks out, for example, between the wife of the deceased and his children from another woman, the wife may turn to the district court in Jerusalem in order to receive half of the community property acquired during the marriage. The success of this for the woman is noted by the frequency of this type of claim. These laws, however, are generally not applied in East Jerusalem as the authorities do not make special efforts to enforce them. By comparison, it must be noted that the Knesset laws regarding personal status affairs of Muslims in Israel are rarely enforced as many difficulties exist in doing so. In the case of women's inheritance, for example, even the *sharī'a* norm, according to which a woman inherits half a share of her collateral, is avoided as a result of social pressure and in many cases she inherits nothing.

Administrative Affairs

Political conditions which arose after 1967, stemming from the fact that most Palestinians in East Jerusalem were Jordanian citizens, forced the *Sharī'a* Court in East Jerusalem to begin to handle administrative duties, in addition to its other functions. Under these existing political circumstances, a resident of East Jerusalem who wishes to visit certain Arab states is required by the laws of those countries to obtain papers defining his personal, moral and financial status, issued by the *Sharī'a* Court with Jordanian agreement. To prevent the visitor from overstaying his/her welcome, the authorities require a certificate indicating the financial support of family members, called *ṛāla*, which is furnished by the *qadi*. Another type of permission given by the *Sharī'a* Court to travelers to Arab countries is the certificate of integrity (*shahādat ḥusn sulūk*). According to Jordanian law, when a Muslim with Jordanian citizenship wants to marry someone with different citizenship, the local *qadi* must certify his personal status and his nationality. This certification is called *khulū mawānī wa-tajāwwuz 'an al-jinsiyya* and insures the absence of any legal obstacles between a man and a woman of different nationalities. Another modern type of permission stems from the Saudi governmental requirement for pilgrims to Mecca to obtain *Sharī'a* Court permission, or *maḥramiyya*, for the particular relative accompanying women on the Ḥajj journey. The first certificate of this type registered in the Jerusalem *sijill* is dated 18 September 1975. In view of these above-mentioned procedures, one

might understand how most of the *qadi*'s time is devoted to bureaucratic issues which have no connection to his capabilities as a judge.

Following King Hussein's disengagement declaration from the West Bank in 1988, the East Jerusalem *Sharī'a* Court became a Jordanian administrative stronghold. The issuing of passports, birth certificates and the rest of the documents required by the Jordanian Interior Ministry was transferred from the Chamber of Commerce to the *Sharī'a* Court where special clerks were brought in to deal with these matters. The East Jerusalem *Sharī'a* Court, among its many other roles, became a branch of the Jordanian Interior Ministry. East Jerusalem's *Sharī'a* Courts, as well as other courts on the West Bank, were never given the financial and administrative support to fulfill all of the bureaucratic responsibilities that were added to the everyday functions of litigation and permission granting for various actions. The many bureaucratic tasks handed over to the *qadi* in the last twenty years do not permit the *qadi* and his staff the time needed to fulfill all their duties.

It seems that in view of Jordanian financial restrictions, the Kingdom did not regard the *Sharī'a* Courts as a high priority among its activities. Court fees are sent to Amman and are taken into account in the Jordanian financial register of the Office of the Chief *Qadi*.²³ The *Sharī'a* Court of Jerusalem, according to its chief secretary in the 1980s, Zayn al-ʿĀbidīn al-ʿAlamī, functioned on a fixed income which was based on its annual income of approximately \$15,000. From this sum came the payment of salaries for the *qadis* and other staff members. A *qadi* could be expected to take home about 300 Jordanian Dinars (JDs) (\$500) while a secretary netted approximately 150–200 JDs (\$300). The Jordanian administration nominates the *qadis* and all other officials. Every minor change in the position or income of an employee requires the approval of a Jordanian Ministry official. Any breach of discipline or breaking of the law may lead the persons involved to a court in Jordan, whether they are officials or civilians.

The major problem of the Islamic judiciary in Jerusalem (and the West Bank) is one of education. Since 1948, the level of *sharī'a* education has been very low. As a result of this, the Office of the *Mufti* experienced a new phenomenon in this region during the present century. This once respected position or office declined in stature and importance for two main reasons. First, the Grand *Mufti* of Jerusalem during the British Mandate period, Ḥājj Amīn al-Ḥusaynī, was not learned in Islamic law. His legal opinions were thus limited to political issues as were those of other local *muftis*. Muslims, nowadays, requiring *fatwās* (legal opinions), apply to *muftis* in order to clarify legal issues and reach at a decision to a dispute in order to prevent the need for appearance before the judge. Jordanian law encourages solving disputes by application to *muftis* as a means to alleviate the number of cases in the *Sharī'a* Court system. The Kingdom facilitated this step

²³ Welchman, 98.

by lifting the payment requirement from those applicants who sought adjudication from the *mufti*.

Most of Jerusalem's *qadis*, since the beginning of Jordanian rule in the city, were educated in colleges equivalent to secondary schools based on European codes of education. None of them graduated from al-Azhar University or any other well-respected institute of Islamic higher education. This fact clouded the image of the *qadis* in the eyes of the local population. The higher classes of society almost never appear in court. In case of need, they send a lawyer to represent them. Moreover, even the lower classes do not respect the *qadis* as is illustrated by the daily quarreling which takes place between the *qadi* and the litigants.

Most Jerusalem or West Bank *qadis* graduated from an Islamic college in the West Bank or in another Arab country. The present *qadi* of East Jerusalem, Shaykh Ya'qūb Shabāna, for example, graduated from the *Sharī'a* Faculty at the University of Qaṭar. The very fact that none of them received a high level of Islamic education such as that of al-Azhar in Egypt deeply affects the status of the court in the eyes of the local population. Many sects of the population do not utilize the court to settle family disputes as they prefer arbitration under customary law, especially during the *Intifada* when no centralized authority prevailed among the Palestinians of the West Bank and the Gaza Strip.

Chapter 3

Pious Endowments

Public, Religious and Political Aspects of *Waqf*

*Waqf*¹ (plural *awqāf*), a pious act made according to the principles of Islamic law, is enacted by the endowment of personal property, with its usufruct being designated for charitable aims (either public or private). The word *waqf* in Arabic comes from the triliteral root *w-q-f* which means ‘stand.’ This term implies, from its initial authorization, the non-permissibility of any attempt to transfer the rights connected to its designated assets. This includes the transfer of ownership or possession, long-term leases, and mortgages on the property, but *excludes* income-generating short-term leases on the property. The income from the assets must be used for purposes declared by the founder in his endowment deed – the *waqfiyya*.²

Throughout the Muslim world the *waqf* as a Muslim institution has been on the decline, beginning in the 19th century and increasing in the 20th century. Family *waqf* was abolished in some Islamic countries, while in others, the administration of public *waqf* was nationalized and put under state control. Recent research shows a steep decrease in the number of new endowments in the 20th century. In Israel, for example, almost no new *waqfs* have been founded since the establishment of the state in 1948.³ Since 1967 in East Jerusalem, however, the picture is somewhat different due to reasons illustrated below.

The institution of the *waqf* is the product of an old social order. Many of the functions fulfilled by the *waqf* in the Middle Ages became meaningless in the modern period. The *waqf* filled a gap created by the concept of the Islamic state, in which there was no provision of public services. Private initiative established service-oriented institutions and supported them by endowing assets through the *waqf* system. In the modern state, which acknowledges its duty to provide public services, no apparent need exists for *waqf* expressly endowed for public purposes. Modern society provides alternatives to the *waqf* through wills, trust funds, and

¹ Kupferschmidt notes that “in the local parlance of Jerusalem ‘the *Waqf(s)*’ even meant the body managing the public endowments, namely the Supreme Muslim Council,” 102.

² For a general description of the *waqf*, see W. Heffening, art. “*Waqf*” EI¹, vol. 4: 1096–1103.

³ Reiter, “The *Waqf* in Acre . . .,” 43–45.

other various legal mechanisms. These alternatives can more readily meet their founders' aims, without their assets being subjected to potential financial risks existing within the *waqf* institution.

Religious Significance of Acts of Endowment

The founding of a *waqf* is deemed an act of religious significance in Islam. This act is considered one of charity and kindness, even if the beneficiaries of the endowment are the founder himself and his family. An act of charity, such as the founding of a *waqf*, is one method by which to perpetuate a man's legacy after his death. This act of charity entitles him to a reward in the hereafter and thus, belief in such acts plays a significant part in motivating Muslims to endow their property as *waqf*.⁴

Due to the religious aura of the institution of *waqf*, we can assume that the ratio of *waqfs* founded near the holy sites of Islam will be greater than those in other places, stemming from a belief that closeness to a holy place brings the person who performs a charitable act closer to his God. The Jerusalem historian, Mujīr al-Dīn, recounts that Sultans and rulers (most notably Ayyūbids and Mamlūks) endowed assets (in and outside Jerusalem) for the benefit of the Dome of the Rock and the al-Aqṣā Mosque, with the stipulation that the income therefrom would pay for a clergyman to read chapters from the Quran in the al-Aqṣā mosque to help their souls rise and thus gain their reward in the hereafter.⁵

The sanctity of Jerusalem in Islam cannot be separated from the political element expressed in the competition existing between the three monotheistic religions, which, in modern times, is coupled with nationalist rivalry. The monumental building of the Dome of the Rock on al-Ḥaram al-Sharīf, by the Caliph ʿAbd al-Mālīk ibn Marwān (685–705), reflects the desire to stress the importance of Jerusalem in Islam, especially to Christians and Jews, beyond the area's religio-historical importance to these groups.⁶ Later on, a literature of eulogies on Jerusalem developed in Islam, which served to forward this aim.⁷ Muslim interest in Jerusalem grew following the expulsion of the Crusaders from Palestine. Saladin himself, who conquered Jerusalem from the Crusaders, founded public institutions in the holy city and endowments to financially support them. Among Saladin's *awqāf* was the *al-Khanqā' al-Ṣalāhiyya*, founded in

⁴ Shlomo D. Goitein and A. Ben Shemesh, *Islamic Law in the State of Israel* (Jerusalem, 1957), 156 (Hebrew); For the question of the motivation for founding an endowment, see Yithhak Reiter, "Family *Waqf* Entitlements in British Palestine (1917–1948)," *Islamic Law and Society*, 2/2 (1995): 11–20.

⁵ Mujīr al-Dīn al-Ḥanbalī, *al-Uns al-Jalīl bi-Ta'rikh al-Quds wal-Khalīl* (Amman, 1973) 2: 100.

⁶ On the sanctity of Jerusalem, see Emmanuel Sivan, "The Sanctity of Jerusalem in Islam" in M. Sharon (ed.), *Notes and Studies on the History of the Holy Land Islamic Rule* (Hebrew) (Jerusalem: Yad Yitzhak ben Tzvi, 1986), 35–42.

⁷ Yitzhak Hasson, "The Literature of Eulogies on Jerusalem in Islam," in M. Sharon, op. cit., 43 (Hebrew).

1189 bearing his name. It served as a center of attraction encouraging Muslim mystics (*ṣūfīs*) to settle in Jerusalem. The endowment included five worked parcels of land, four wells, three underground warehouses and a bath-house, and was intended for the benefit of the sufi shaykh who lived there. Previously, in 1188, Saladin had founded another endowment, which dedicated the income from the two villages of Tūr Zayta (al-Tūr which is on the Mount of Olives), and Abū Dīs, for the benefit of a sufi shaykh – Aḥmad ibn Abu Bakr al-Hakārī, his son ‘Alī and their descendants.⁸ It is no surprise that a ruler such as Saladin founded endowments in Jerusalem particularly for the benefit of sufi shaykhs. These shaykhs were considered fountains of knowledge who drew many faithful followers and attracted Muslims to come and settle in Jerusalem.⁹ As part of the endowment, Saladin set aside a sum of money for people to read from the Quran after his death and to pray for his soul to rise. Later Mamluk and Ottoman rulers often followed Saladin’s example.

At the end of the 15th century Mujīr al-Dīn counted 65 religious institutions in Jerusalem, including religious schools (*madrasa*), or different types of Sufi places of worship such as: *zāwiya*, *ribāṭ*, *khanqā’*, and others. The upkeep for these institutions was furnished by Ayyūbid and Mamlūk rulers’ endowments founded in Jerusalem. Mujīr al-Dīn pointed out that still many other similar institutions existed in Jerusalem but failed to mention them by name.¹⁰ According to a 16th century land survey in Palestine (see Table 2) there were 86 endowed institutions in Jerusalem. According to the following breakdown, 68% of these were public endowments, about half of which were endowed for the benefit of sufi institutions.

Table 2. Public Endowments in Jerusalem, 16th Century¹⁴

Sufi institution ¹¹	Madrasa	Tomb ¹²	Quran readers	Other ¹³
27 (46%)	16 (27%)	7 (11%)	5 (8%)	4 (7%)

⁸ Mujīr al-Dīn, op. cit., 100.

⁹ On the colonial function of the *waqf* for the benefit of sufi shaykhs, see Aharon Layish, “*Waqfs and Sufi Monasteries in the Ottoman Policy of Colonization: Sultan Selim I’s Waqf of 1516 in Favor of Dayr al-Asad*” in the *Bulletin of the School of Oriental and African Studies*, 50, 1 (1987): 61–89.

¹⁰ Mujīr al-Dīn, 2: 33–49.

¹¹ The category of Sufi institution includes: *zāwiya*, *rabāṭ*, *khānqā’*, *takiya*, sufi shaykh and his descendants.

¹² The category of tomb includes: *turba*, *maqām*, *walī*.

¹³ The category of ‘other’ public institutions includes two endowments for the benefit of a hospital in the name of Saladin (*al-bīmāristān al-ṣalāhī*), one for the benefit of an orphanage and one for the benefit of the Jerusalem water system.

¹⁴ Muhammad Ipshirī and Muhammad Da’ūd al-Tamīmī, *Awqāf wa Amlāk al-Muslimīn fī Fīlasṭīn*,

Table 3. Endowments founded in Jerusalem until 1572 (according to period of rule)

Period	Ottoman		Burjī Mamlūk		Bahri Mamlūk		Ayyūbid		Para-Ayyūbid		Unknown		Total
	924–980 H		794–923 H		649–793 H		584–648 H		492–583 H				
	1517–1572		1390–1517		1250–1390		1187–1250		1099–1187				
District	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
Jerusalem	16	19	25	29	12	14	4	5	2	2	27	31	86
Rest of Palestine	17	12	72	50	9	6	1	–	2	2	43	29	144
Total	33	14	97	42	21	9	5	2	4	1	70	30	230

The sanctity of Jerusalem in Islam and its designation as a place of pilgrimage, contributed to the founding of endowments for the benefit of pilgrims and wayfarers. These endowments primarily included a complex comprised of a sufi *zāwiya* and refuge, with the income from the endowments paying for their food and board. The Mamlūk Sultan al-Malik al-Zāhir Baybars, in 1264, for example, founded the khān al-Zāhir which he had erected, supported by the benefits from a *waqf* endowment which included half of the village of Lifta and other villages in the area of Damascus. He stipulated in the *waqfiyya* that anyone coming to the *khān* was to be given bread and sustenance.¹⁵ The *waqf* of Abū Midyan al-Ghawth, founded in 1320, was intended to provide for the needs of Maghribīs who came and settled in Jerusalem and were living in the Maghribī *zāwiya* in the area of the Western Wall and in houses in the Maghribī neighborhood, most of which belonged to the *waqf*.¹⁶ Up until the 16th century, 37% of all endowments in Palestine were founded in Jerusalem. Most of the *awqāf* in Palestine before 1572 were founded during the Mamlūk period (principally during that of the Burjī Mamlūks) (see Table 3).

Most of the founders of endowments in Jerusalem, up to the end of the Mamluk period, were rulers and leading personages. In their deeds of endowment, a large number of them assigned an allowance for Quran readers to pray for their souls and for the perpetuation of their names.

In the ledgers of the *Sharī'a* Court in Jerusalem there are now more than 2,000 endowments listed. This figure indicates that throughout the Ottoman period about four or five new *awqāf* were founded every year in Jerusalem. An analysis of the number of endowments and the number of Muslim inhabitants of the city, during the Ottoman period, as opposed to other large Ottoman cities, shows that in

Istanbul: The Islamic Conference Organization, 1982; D.S. Powers, "Revenues of Public Waqfs in Sixteenth Century Jerusalem," *Archivum Ottomanicum*, 9 (1984): 163–202.

¹⁵ Mujir al-Dīn, 2: 87.

¹⁶ For the *waqfiyya*, see Muḥammad As'ad al-Imām al-Ḥusaynī, *al-Manhal al-Ṣāfi fī al-Waqf wa-Aḥkāmihī* (Jerusalem, 1982): 72.

Jerusalem there were many more endowments per capita than in other cities such as Istanbul, Cairo, Aleppo and Bursa.¹⁷

The Political Role of Waqf

The sanctity of Jerusalem and its status in Islam meant that the *waqf* in this city was destined to become a central institution, and as such a large proportion of the land in the city dedicated as *waqf* acquired a respected status according to sacred law. Public institutions were usually funded by *waqf* income, while the property of many families were endowments founded by their predecessors. In recent times, the religio-political position of *waqf* in Jerusalem has also taken on a political-nationalist overtone. The struggle over land, characterizing the nationalist struggle in Palestine, between the Zionist Movement and the Arab Palestinian Movement, provoked the Palestinian leadership to attempt to use *waqf* properties as a buffer against land sales to Jews.

In the Mandate period, the Supreme Muslim Council used the income from *waqfs*, incidentally administered by them, to purchase land. They primarily acquired land under common ownership (*mushāʿ*) in order to hinder its sale.¹⁸ One of the means employed by the Mandatory Supreme Muslim Council was to convince the public to turn their property into *waqf*, as *waqf* assets could not be sold without the consent of the *qadi*. In this way, they thought they would be able to stop land being sold to Jews.¹⁹ Ḥājj Amīn al-Ḥussaynī issued a *fatwā* (legal opinion) which called on the government, *inter alia*, to allow *mīrī* land (state-owned) to be turned into *waqf*, an act which contradicted the *sharīʿa* and the Ottoman Land Law which stated that *mīrī* land could not be endowed as *waqf* (as abstract ownership belonged to the state).²⁰

The struggle also found expression in the purchase of land near the *al-Ḥaram al-Sharīf*'s Islamic holy sites in Jerusalem and in the areas around Arab neighborhoods. *Qadis* in Mandate Jerusalem dismissed administrators of family endowments (at the request of the Supreme Muslim Council) for having rented *waqf* assets near Mount Zion to Jews or for having neglected *waqf* lands in the neighborhood of Talpiot on the border of Arab Baq'a.²¹ The Supreme Muslim

¹⁷ On the endowments in Cairo, see: Daniel Crecelius, "Incidences of Waqf – Cases in Three Cairo Courts", *Journal of the Economy and Social History of the Orient*, 29 (1986): 182ff; in Istanbul: Omer L. Barkan and E.H. Ayverdi, *Istanbul Vakıfları Tahrir Defteri Tarihi*, 953, (1546), (Istanbul, 1970); in Aleppo: Ruth Roded, "The Waqf in Ottoman Aleppo," in Gabriel Baer and G. Gilbar, *Social and Economic Aspects of the Waqf* (London: Oxford University Press, [forthcoming]).

¹⁸ Yehoshu'a Porath, *The Palestinian Arab National Movement 1929–1939, from Riots to Rebellion* (London: Frank Cass, 1977), 97–98.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Jerusalem *Sijill* 502/232/101 – for the *waqf* of Mūsā ʿAqaba; 466/9/175 for the *waqf* of *al-Zāwiya al-Fakhriyya*.

Council purchased family *waqf* buildings near the Temple Mount for the benefit of the *waqf* of the *al-Ḥaram al-Sharīf*.²² This was done in order to assure central control over those assets as well as out of fear that the assets of loosely-supervised family *waqfs* could fall into the wrong hands. One of the central issues in the struggle over *waqf* assets near the holy sites in Jerusalem was the quarrel over the incident of the Western Wall plaza, belonging to the *waqf* of Abū Midyan. In the Mandate period this quarrel turned into violent country-wide disturbances. The Western Wall incident illustrated the political sensitivity of Jerusalem in general and the problem of specific *waqf* assets in the city in particular.

Creating New Endowments

In 1948, when East Jerusalem passed into Jordanian rule, the nationalist struggle over land and assets in Jerusalem temporarily ceased. Muslim rule over *al-Ḥaram al-Sharīf* abated the religious and political tension over the question of Jerusalem which had escalated during the period of non-Muslim British rule. The Dome of the Rock and the al-Aqṣā Mosque remained in a neglected state for some years until the substantial renovations which took place in the middle of the sixties. Incidentally, following the return of Muslim rule to East Jerusalem, from 1948–1967, only 16 *waqfs* were founded there during the nineteen years of Jordanian rule, all of which were family endowments (see Table 4). The total assets of the 16 *waqfs* which were endowed in Jerusalem during this period included 15 residential houses, one hotel (Hotel Ritz) totalling 235 rooms, 34 shops and 4 building plots.

The Israeli takeover of East Jerusalem in 1967, with the extension of Israeli rule to the eastern part of the city including the Old City, renewed the religio-political struggle over the status of Jerusalem. After a decline in the activities of the *waqf* which had been felt throughout the period of Jordan's rule, new circumstances arose which restored the *waqf* and its status as a central and important institution in the lives of the Muslim population of Jerusalem.

The demographic struggle in Jerusalem has even led to an increase in Arab immigration to the city. In this situation, the *waqf*, as a charitable institution, served the Muslim struggle by encouraging Muslim immigration to the city. In the twenty-three years of Israeli rule (from June 1967 to the end of 1990), 90 new endowments were set up in Jerusalem (compared with only 16 in the Jordanian period!). That translates into an average of four new endowments per year. Twenty-five of them (29%) are public endowments, a very high ratio when one considers that in the Jordanian period not a single public *waqf* was endowed. The increase in the rate of family endowments founded after 1967 is even more impressive (see Table 5).

²² See *Sijill* 502/232/101, 458/138/119, 445/2/111, 505/71/745.

Table 4. Total endowments founded under Jordanian rule 1948–1967

No.	Date	Name of endower	Assets	Shares	Site
1	7.3.66	Zuhrī ʿAbd al-Ḥafīz Sarandāḥ	Small house 3 stories	3 1/2	Jewish Quarter
2	8.1.58	Ḥājj ʿAbd Al-Muḥsin Husayn ʿĀbidīn	1 1/2 houses (38 rms)	1+1/2	Wādī Jawz and Damascus Gate
3	4.6.59	"	House 24 rooms	1/2	Damascus Gate
4	11.6.62	"	House 3 stories	Full	"
5	16.4.63	Nūr al-Hudā ʿAbd al-Qādir ʿUthmān Ghūsha	1.3 flats + 3 rms	Full	"
6	9.7.63	Fuʿād ʿAbd al-Qādir al-Duwaik	4 flats, 12 rooms	Full	Jerusalem
7	30.7.63	Fawzī Yūsuf al-Munayyar	1.1 flat & 2 houses	Full	Jerusalem
8	22.8.63	Subḥī ʿAlī Yūsuf al-Ḥallāq	House (12), shop (8)	Full	Al-Sāhira
9	27.8.63	Muṣṭafā Qasim Muṣṭafā al-Tarahī and 3 brothers	52 rooms, 10 shops	Full	Ṣalāḥ al-Dīn Street
10	17.9.63	Yaʿqūb Muṣṭafā al-Halawānī	House 11 rooms	Full	Jerusalem
11	2.10.63	ʿAbd al-Raḥmān Muḥammad ʿUthmān al-Nawawī and his wife	Shop and 9 rooms	Full	Wādī Jawz
12	5.2.64	Ḥājj Muḥammad Hassan al-Zuʿabī al-Khalīlī	House 12 rooms	Full	Jerusalem
13	27.5.64	Muḥammad ʿAbd al-Ḥalīm Amīn al-Shaʿar	Flat 4 rms, 4 shops	Full	Nablus Road
14	22.2.65	Aḥmad Ḥasan Rāghib Muḥsin	House 7 rooms	Full	Birkat Isrāʿīl
15	27.10.65	Ḥājj Kāmil Sulaymān Barakāt and 3 brothers	Hotel 30 rooms, shop (12)	Full	Bāb al-Zahra
16	18.9.63	Ḥājj ʿIdd Muḥammad Husayn ʿĀbidīn	House 2 stories	Full	Jerusalem

Table 5. Endowments founded under Israeli rule 1967–1993

No.	Date	Founder	Type	Assets	Shares	Site
1	8.11.71	Ishāq Muḥammad al-Takrūrī	Family	2 houses 9 rooms	Full	Wādī Jawz
2	24.6.70	Zulaykha and Fāṭima ʿAlī al-Kuṭub	Family	house 9 rooms + trees	Full	Jerusalem
3	12.6.68	Jamīl Aḥmad Ḥasan Nāṣir and wife	Family	3 dunams / 2 houses 12 rooms	Full	Shaykh Jarrāh
4	3.7.68	Farīda Shaykh ʿAbdallāh al-Ramlawī	Public for orphanage	House (3 rooms)	Full	Ra's al-ʿĀmūd
5	15.4.69	Heirs of Salīm Sālīh Abū Ghayth	Public for Nabī ʿUzayr	House 2 rooms	Full	ʿAyzariyya
6	20.10.68	ʿAbd al-Fatāḥ Dāʿūd Asʿad Badriyyah	Family	3 houses 33 rooms	1/2 + 1/4	Wādī Jawz
7	2.7.68	Hājj Khalil Muḥammad Mūsā al-Dabbāgh	Family	2 houses 14 rooms	2/3 + 1	al-Saʿdiyya
8	16.5.71	Maḥmūd Muḥammad Abū ʿUbayd	Family	House 19 rooms and garage	Full	Damascus Gate
9	31.3.71	Hājj ʿAlī Muḥammad ʿAlī al-Shāmi	Family	House 30 rooms and garage	Full	Wādī Jawz
10	10.3.71	Musa ʿAbdallāh Muḥammad Jawda	Family	House 6 rooms and 3 stores	Full	Wādī Jawz
11	19.7.70	ʿAbd al-Raʿūf Jalāl al-Dīn ʿAbd al-Razzāq al-ʿAlamī	Family	House 12 rooms and garage	2/7	al-Sāhira
12	19.5.70	Shaykh Khalil Badr al-Dāʿūdī	Family	2 houses 13 rooms and trees	Full	al-Shiāʾkh
13	3.8.71	Muḥammad Yaʿqūb Ḥabrumān	Public for al-Ḥaram	A small section of two houses	1/12	Bāb Ḥuṭṭa
14	1.9.71	ʿArfan Muṣṭafā Ḥusaynī Abu al-Saʿūd	Family	House 8 rooms	Full	Jerusalem
15	4.10.71	Hājj Ishāq Sulaymān Abū Khadīr	Family	2.5 houses 46 rooms	1/2 + 2	Shuʿafāṭ
16	6.12.71	Naʿīma Mūsā Nusaybah	Public for al-Muqāṣid hospital	House 22 rooms 3 stores	Full	Shuʿafāṭ
17	6.3.72	Hājj Warad ʿAlī Barakāt	Public for al-Rām	House 3 rooms	Full	al-Rām
18	25.12.73	Fātima Muḥammad ʿAbduh	Family	House 3 rooms	Full	al-Sāhira
19	22.11.74	Shaykh Asʿad al-Imām al-Ḥusaynī	Public for a library	1,040 books	Full	al-Ḥaram al-Sharīf
20	14.4.74	Hājj Ishāq Yāsīn Siyām	Family	Dunam; 2 houses 6 rooms	Full	al-Thawrī
21	17.7.74	Mahā Saʿīd al-Ḥusaynī wife of ʿAbd al-Raḥīm Nusayba	Family	4 rooms she bought from her mother	Full	al-Sāhira
22	25.6.75	Hājj ʿAbd al-Jabbār ʿAbdallāh Farāḥ	Family	2 dunams; house 8 rooms	Full	al-Rām

Table 5. *Continued*

No.	Date	Founder	Type	Assets	Shares	Site
23	14.4.76	Hājj Rashīd Yūsuf Rashīd Ḥamūda	Family	House 22 rooms	1/2	Shaykh Jarrāh
24	3.6.76	Muḥammad ʿĀtif ʿAbd al-Qādir al-Duwaik	Family	House 20 rooms	Full	Wādī Jawz
25	14.10.76	Hayfa Saʿīd Ibrāhīm Bakhīṭ al-Ḥusaynī	Family	House 4 rooms	Full	al-Sāhira
26	14.10.76	Ruqaya Saʿīd Ibrāhīm Bakhīṭ al-Ḥusaynī	Family	House 4 rooms	Full	al-Sāhira
27	21.11.76	ʿArab ʿUrābī al-Rashāq	Family	House 9 rooms	Full	Bāb Ḥuṭṭa
28	3.2.77	Hājj Ḥusayn Hasan Muṣṭafā Nijm	Family	House 22 rooms, 2 stores	Full	Wādī Jawz
29	2.4.77	Dawlat al-Hājj Dīb Munayyar	Family	House 13 rooms	Full	Damascus Gate
30	7.5.77	ʿAbd al-ʿAzīm Muḥammad Abū Harawān	Family	2.2 dunams 6 rooms, one store	Full	Silwān
31	23.6.77	Hūda ʿĀtif wife of Fayḍī ʿAlamī	Public for al-Muqāṣid hospital	4 dunams House 3 rooms one store	Full	Qalandiya
32	28.6.77	ʿAbd Dāʿūd al-ʿAkārī	Family	House 6 rooms	Full	al-Ṭūr
33	10.1.78	Sāʿib ʿAbd al-Rahmān Muṣṭafā al-Nashashībī	Family	2 houses 13 rooms	Full	al-Sāhira
34	28.2.78	Salwā ʿAbd al-Karīm Abū Mīnshār al-Ḥirbāwī	Public – orphanage	House 6 rooms 2 stores	1/2	Silwān
35	22.10.78	ʿAbd al-Muʿṭī Muḥammad al-Quṭub	Family	House 20 rooms	Full	Bayt Hanīna
36	24.10.78	Malīh ʿAbd al-Hallāq Yūsuf Makawī “al-Kharūf”	Family	House 17 rooms	9/24	Wādī Jawz
37	4.12.78	Nihād ʿAlyān ʿAbd al-ʿAzīz Abū Gharabiyya	Public Ibʿmiyya College	4.7 dunams	Full	al-Ṭūr
38	20.2.79	Mūsā Fayḍī Mūsā al-ʿAlamī	Public – Dar al-Ṭifl	1.8 dunams	Full	Shaykh Jarrāh
39	28.2.79	Ḥasan Jamāl Muḥammad Salāh al-Ḥusaynī and 2 brothers and 2 sisters	Family	71 dunams house 8 rooms	Full	Bayt Ṣafāfā
40	6.3.79	Anwar ʿAbd al-Ḥay ʿAbd al-Fattāh al-Khatīb and Hind al-Ḥusaynī	Public – Dār al-Ṭifl	8.8 dunams 4 large houses	Full	Shaykh Jarrāh
41	9.4.79	Wafīyya Sharīf Salīm al-Ḥusaynī	Public – Dār al-Ṭifl	821 meters near Dār al-Ṭifl	Full	Shaykh Jarrāh
42	17.3.79	Mūsā Sulaymān Naʿamān al-Bashīṭī	Family	House 9 rooms	Full	Shuʿafāt
43	9.5.79	ʿAwda Darwīsh al-Malāʿibī	Family	House 10 rooms	Full	ʿAnātah
44	23.5.79	ʿAbd al-Rahīm Muṣṭafā Fakhr Rashīd al-Balbīsī	Family	2 houses 21 rooms	Full	Wādī Jawz and Silwān
45	3.7.79	Muṣṭafā Ḥasan Muṣṭafā Nijm	Family	145 meters 11 rooms	7/28	Wādī Jawz
46	29.8.79	Muṣṭafā ʿAbdallāh al-Ṣūsh al-Qawāsma	Family	3 houses 24 rooms	Full	Bayt Hanīna

Table 5. *Continued*

No.	Date	Founder	Type	Assets	Shares	Site
47	13.5.80	Dīb Muḥammad Muṣliḥ al-Yaman	Family	House 7 rooms Store	Full	ʿAyn Asīlah
48	7.12.80	Dāʿūd Salīm Khalīd Saʿīd	Family	House 5 rooms Store	Full	Bāb Huṭṭa
49	9.12.80	Shaykh Saʿd al-Dīn al-ʿAlamī	Family	2 houses 36 rooms 4 stores	1 + 1/3	al-Sāhira
50	25.1.81	Ishāq and Fāṭima ʿArif Muḥī al-Dīn al-Khatīb	Public <i>al-Ḥaram al-Sharīf</i>	House 6 rooms 2 stores	3/5	Shaykh Jarrāḥ
51	17.3.82	Hājj Tawfīq Ḥasan Asʿad Abū Zahra	Family	2 houses 18 rooms 8 stores	Full	Shuʿafāṭ
52	7.7.82	Anwar Nusayba and Nuzhat Yaʿqūb al-Ghusayn	Public for the <i>Gil al-Amal</i>	3 dunams frame of bldg., 620 m.	Full	al-ʿAyzariyya
53	8.12.82	Zulaykha Ishāq ʿAbd al Qādir al-Shihābī	Public – Women’s Union	Large public building	Full	al-Sāhira
54	16.5.83	Muḥammad Nāṣir al-Dīn Fuʿād Muḥī al-Dīn al-Nashashībī	Public Dar al-Tifl	House 11 rooms 1.1 dunams	Full	Shaykh Jarrāḥ
55	1.6.83	Hājj ʿAbd al-Ḥafiz Muḥammad ʿAbd al-Ḥafiz al-Tamīmī	Family	House 5 rooms	Full	Bāb Huṭṭa
56	4.7.83	Ustayn Ibrāhīm Abū Dahīm	Public Islamic College	2.4 dunams for building	Full	Jabal Mukabbar
57	20.11.83	Muḥammad Farīd Muḥammad al-ʿAjḷunī	Public	67 manuscripts in the <i>Qism al-Turāth al-Islāmī</i>	Full	al-Aqsa
58	26.11.83	ʿAbdallāh Mūsā Abū Sabitān	Family	House 28 rooms	Full	al-Ṭūr
59	9.1.84	Iyyād Muḥammad Aḥmad Abū Sirḥān	Public for a mosque	Ground floor	Full	Jabal Mukabbar
60	29.3.84	Jamīl ʿAlī Aḥmad ʿAlān and others from the educational committee	Public for a boy’s school	4 dunams	Full	Jabal Mukabbar
61	6.12.84	Hājj Maḥmūd Muḥammad Maḥmūd al-Arnaʿūt	Family	6 stores 4 apartments 13 rooms	Full	Bab Huṭṭa
62	19.12.84	Shakīb Qāsim Muṣṭafā al-Tarahī	Family	House 10 rooms	Full	Shuʿafāṭ
63	6.1.85	Shaykh Rashīd Masʿūd ʿAbd al-Wahāb	Family	House 8 rooms	1/2	Bayt Hanīna
64	17.2.85	Bahiyya Hāshim Maḥmūd Nijm and her sister Najīyya	Family	House 4 floors	24/40	al-Saʿdiyya
65	24.2.85	Jamīl ʿAlī Aḥmad ʿAlān and others from the education committee	Public girl’s school	5 dunams	Full	Sawāḥra West
66	24.3.85	Hājj Mūsā Saʿīd al-Ghālī	Public for mosque	Mosque	Full	al-Rām
67	25.4.85	Hājj Aḥmad Ibrāhīm al-Shaykh	Family	Dunam 2nd floor	Full	al-Thawrī

Table 5. *Continued*

No.	Date	Founder	Type	Assets	Shares	Site
68	7.8.85	Hājj Aḥmad Ibrāhīm al-Shaykh	Family	1st floor	Full	al-Thawrī
69	14.10.85	Aḥmad Salīm Ṣālīḥ Ḳāshūr	Family	House 15 rooms	Full	Wādī Jawz
70	27.10.85	Kuthar Shukrī al-Sharīf wife of Salīm al-Sharīf	Public for orphans	Stocks worth 1000 JDs	Full	'Jat' Company
71	22.3.86	Ḳabdallāh Ḳabdallāh al-Ṣūsh and his 4 brothers	Public for Elderly Associat'n	House 18 rooms	Full	Silwān
72	2.8.86	Nijma Mūsā Siyyām	Family	House 4 rooms	Full	Ḳisawiyya
73	15.7.86	Shaykh Ḳalī Maḥmūd al-Ṭazīz Rep. – Chamber of Commerce	Public	293 meters for building	Full	al-Sāhira
74	24.8.86	Dr. Dā'ūd Muḥammad Dā'ūd al-Khalīdī	Public for the poor	House 6 rooms	Full	Near the Western Wall
75	14.5.87	Mūsā Ḳarīf Tawfīq Za'tara	Family	House 10 rooms	Full	al-Rām
76	4.6.87	Ḳarīf Sulaymān Mūsā al-Bashīṭī	Family	House 15 rooms	Full	al-Rām
77	27.3.88	Amīna Khalīl Ḳalī Ḥamūda	Family	1/2 dunam	Full	Wādī Jawz
78	29.6.88	Hasab Sālih Ḳabd al-Rahman al-Ḳabbasī	Family	House 4 rooms	Full	Silwān
79	6.9.88	Heirs of Ishāq Muḥammad al-Mawsūs	Family	House 5 rooms 2 stores	Full	SaḲdiyya
80	6.10.88	Muḥammad Ḥasan Ḥusayn JaḲfar	Family	House 4 rooms	Full	SaḲdiyya
81	16.10.88	Fawzī Yūsuf al-Munayyar	Family	House 6 stores, 2 apts.	Full	Wādī Jawz
82	21.10.88	Mūsā Maḥmūd Mūsā al- Khalīs	Family	Apartment and store	Full	al-Silsilah
83	7.8.89	Heirs of Muḥammad Ḳalī Qāsim	Erection Islamic Educat'l Institution	Land and building	Partial	Ra's al-Ḳāmūd
84	11.9.89	ḲUmrān YaḲqūb Muṣṭafā al-Ḥalawānī	Family	House	Full	Wādī Jawz
85	14.12.89	Ḳalī Asad Ḳabd al-Laṭīf Faritakh	Family	Large public building	Full	Shaykh Jarrāḥ
86	1.1.90	Aḥmad Muḥammad Abū al-Hawa	Family	House	Full	al-Ṭūr
87	18.6.90	Yusra Muḥammad Ḥusayn Abū al-Hawa	Family	House	Full	Jerusalem

Endowments Registered Solely in the Jaffa Court

88	6.2.84	Aḥmad Maḥmūd DaḲmas	Family	House 5 apartments	Full	Bayt Hanīna
89	22.1.72	Ishāq Zakariyya	Family	House 7 rooms	Full	Wādī Jawz
90	6.10.85	Ḳabd al-Muṭalīb Ḳabd al- Salām Abū Ramīla	Family	House	Full	Jerusalem

The creation of *waqfs* during the Israeli period has increased at a rate four times greater than during the Jordanian period, and is the highest thus far in the twentieth century in Jerusalem. It is an exceptional phenomenon, when viewed against the background of the decline of *waqf* endowments in the Muslim world in general, a phenomenon characterizing the modern era. One of the natural reasons for the increase in *awqāf* apparently springs from the fact that the Muslim population of Jerusalem during the Israeli period doubled from 67,000 in 1967 to 145,000 in 1991 and reached 160,000 in 1995. However, the population increase alone does not explain the tendency toward founding new *awqāf*. The political circumstances created in Jerusalem by the war in 1967 launched the *Waqf* institution into a central position in Palestinian society as it worked toward autonomy and nation building. This is clearly noted by the significant increase in the founding of public endowments compared to previous periods during the present century (in the Mandate period only 10% of the endowments were public).

The increase in the founding of family endowments springs chiefly from social, religious and psychological factors (such as the founder's desire to perpetuate his name).²³ In the Israeli period, however, the number of family *waqfs* has risen due to the Muslim public's trust in the institution of *waqf* and its inviolability from Israeli rule. The Muslim public sees the expropriation of the area of the Western Wall and the Jewish Quarter (see chapter 6) as an extraordinary incident.

The aims of family endowments are manifold. Shaykh As'ad al-Imām, a senior figure in the Jerusalem Muslim religious establishment, links the decline in the founding of family endowments during the Jordanian period to social factors. According to him, the Israeli conquest brought about moral, fundamental (*khalūqiyya*) changes and a fear of what the future may bring. People in this situation reveal a greater tendency to endow their property, whether in order to effect an act of charity which, according to their religious faith, may bring them a reward, or to prevent their children or heirs from splitting up, frittering away, selling or losing their property.²⁴ For example, Ḥājj Kāmil Barakāt (Table 4 no. 15) endowed the Ritz Hotel, which he owned together with three brothers, out of a fear that his children would sell it and squander the money.²⁵

Waqf and Public Associations

One of the reasons for the rise in the importance of *waqf* in post-1967 Jerusalem was political, stemming from the need of donors from Arab countries and the Palestinians themselves to maintain their control over public institutions. The *waqf* system was utilized here to achieve this goal. One successful method, newly

²³ Layish, "The Muslim *Waqf* in Jerusalem After 1967: Beneficiaries and Management," *Varia Turcica*, 26 (1994): 145–168.

²⁴ Interview dated 23 June 1990.

²⁵ *Ibid.*

created, was the transfer of public associations into *waqfs*. During the Jordanian period, charitable institutions had been established with the aim of creating, developing and providing social welfare services to the population, according to the Unions and Welfare Bodies Law no. 65/7 of 1965. It seems that this law was more in accord with the aims of voluntary organizations whose identity was nationally-based rather than religiously noted in the inclusion of Arab Christians in the Associations' spheres of activity. After 1967, these associations operated legally for some years and managed their assets with no restraints. After a few years, however, the associations' administrations decided to register their assets as *waqf* for the benefit of the associations.

In 1979 an agent of the *Dār al-Ṭīf al-ʿArabī* (Arab Children's Association), an association aimed at establishing institutions and schools for children of martyrs, orphans and needy children, and educating them until they could support themselves, appeared in the *Sharīʿa* Court and applied to register 1,876 square meters of land as *waqf* for the benefit of the association. The head of the association, Hind bint-Ṭāhir Shukrī al-Ḥusaynī, was appointed as the administrator, *mutawallī*, of the *waqf*.²⁶ Two weeks later Hind al-Ḥusaynī and another prominent local leader, Anwar al-Khaṭīb, appeared as representatives of the association and requested to register all of the association's assets as *waqf*. The assets include 8,811 square meters of land near the American Colony Hotel, on which there is a two-story house of 16 rooms; an additional two-story house of 18 rooms; a large house of 32 rooms (not including a dining-room), a library, a reading room and storerooms; a new house with a sports hall and 21 residential rooms. The stipulations of the endowment afforded the association the right to add assets and to draw on them as well.²⁷ Furthermore, the *tawliya* office, or the board of administrators, was to be chosen, from time to time, by the administration of the association, rather than by the *qadi* as *sharīʿa* law requires. Likely, this was the first case in which an endowment was not made on a personal basis, but rather by an association acting under civil law. This action parallels Jewish and Christian endowments founded in the Ottoman Empire in the second half of the 19th century, when it was forbidden for non-Muslims to unite in Ottoman associations and thus they registered their institutions' assets as *waqf* in the names of the heads of those institutions.²⁸

In 1982, another prominent Palestinian leader, Anwar Nusayba (as legal advisor) and Nuzha al-Ghusayn appeared in the *Sharīʿa* Court as representatives of the *Jīl al-Amal* association (Generation of Hope Association), which aimed to care for children, orphans and the poor, and establish institutions to serve them. They

²⁶ *Sijill* 601/156/53.

²⁷ *Sijill* 601/163/59.

²⁸ On the endowments of Jews and Christians see Ron Shaham, "Christian and Jewish *Waqfs* in Palestine during the late Ottoman Period," *Bulletin of the School of Oriental and African Studies*, 54, 3 (1991): 460–472.

made an application to register all the association's assets as *waqf*, for the benefit of the association, according to association regulations. The endowment stipulated that two of the (female) members of the administration would serve as *mutawallīs*; the *qadi* would appoint the most capable (*al-arshad*) from among the members of the association's administration in consultation with the administration. The endowed assets included land in al-ʿAyzariyya (approximately 3 dunams), a building of 620 square meters, and anything to be built on the plot. Here, too, it was stated that the association had the right to add or take from the assets.²⁹

In the same year, the Arab Women's Association, *Jamaʿiyyat Ittiḥād al-Nisāʾ al-ʿArabi*, also registered its assets as *waqf*. The chairwoman of the association's administration, Zulaykha al-Shihābī, appeared in the *Sharʿa* Court and endowed the association's assets, which included the al-Rūḥa high school, the mother and child center, a clinic and a craft and weaving center.³⁰ In 1986 the Chamber of Commerce, *Al-Ghurfa al-Tijāriyya*, listed as a public institution according to the Chamber of Commerce Law no. 41 of 1949 and amended by Law 21 of 1961, applied to register as *waqf*, 293 square meters of land, on which they were about to build their offices, on Hārūn al-Rashīd street. The assets were registered by the chairman of the Chamber, ʿAlī al-Ṭazīz, and the administration was handed over to him and Fāʾiq Barakāt (director of the Chamber), with their successors to be chosen by the Chamber's administrative council.³¹

These associations have, until now, acted as secular institutions/alternatives to the *waqf*. Since the eighties they have been continuously registering their assets as *waqf*, thereby placing their assets under the constraints of *sharʿa* law which prevents their assets from being used according to economically sound criteria. We have, thus, the peculiar situation in which a corporation acts on the basis of two different legal systems: *sharʿa* and civil law. The *sharʿa* has been forced to accept significant concessions in favor of civil law. First, it recognizes an association which has been set up according to Jordanian civil law (which has no legal validity in Jerusalem according to the legal situation in Israel) as a body which can endow assets. Second, it has also recognized that the association itself chooses the *mutawallīs* according to its association regulations. Finally, it has recognized that non-Muslims (Christians) may also benefit from the income of a *waqf* which has been founded by the Muslims who run the association.

The advent of a new phenomenon, based on this principle, emerged with the establishment of new institutions and their endowment as *waqf* from the outset, probably upon instruction from Jordan. Al-Ibrāhīmiyya College was established with the owner of the land endowing the property and everything which may be built on it, with the stipulation that it be managed by the Department of

²⁹ *Sijill* 615/160/171.

³⁰ *Sijill* 620/118/445.

³¹ *Sijill* 635/127/274.

Endowments (which is subordinate to the Jordanian Ministry of *Waqf*).³² Parallel to this development is the new system in which private individuals endow a *waqf* for the benefit of civil associations which operate based on civil law. People have often endowed their property to *al-maqāsid al-khayriyya al-islāmiyya* which operates a hospital for Muslim needy.³³ One man endowed his property to the *bayt al-rahma lil-musinnin al-muslimin* Association for the construction of an old-age home.³⁴

The endowment of assets by associations and public institutions during the eighties stems primarily from political reasons. External factors are linked to financial assistance from the governments of Jordan, Saudi Arabia and the Gulf States, which had agreed to support Palestinian public institutions in East Jerusalem. The infusion of money was conditional upon the assets being registered as *waqf* in order to assure their immunity to political changes, to Israeli control and Palestinian and Arab political influences, undesirable to the donor.

The Administration of the *Waqf*

Two of the three ways by which the present and future administrator of the endowment is chosen is by the benefactor himself. The founder of an endowment can either name someone personally (*ex officio*), or set criteria by which the administrator will be chosen such as “the eldest of my (male) children,” or “the most capable of my offspring.” The third route is by designation from the *qadi*. Quite often the job of administrator passed from father to son. From a theoretical point of view, the main criterion for determining suitability was administrative capability, but in practice, the beneficiaries were the people who suggested an acceptable candidate to the *qadi*. In most cases, the candidate would be the oldest among the beneficiaries who enjoyed the greatest share of the *waqf* income.³⁵ The *qadi* had the supreme authority to administer and supervise *waqfs*, and other matters (such as transactions in *waqf* assets). The administrator of the endowment, and the supervisor if there was one, was not authorized to take action without receiving permission from the *qadi*. The *qadi* also had the right to dismiss a *mutawallī* who overstepped his role, even if the *mutawallī* was the founder himself.³⁶

The *sharī'a* does not recognize a central *waqf* administration. There is also an explicit ban on using the income from one *waqf* to fund the expenses of another,

³² *Sijill* 601/109/30.

³³ *Sijill* 583/73/232, 596/135/160.

³⁴ *Sijill* 631/162/71.

³⁵ According to Muhammad Qadrī Pāsha, *Qānun al-ʿAdl wal-Inṣāf fī al-Waqf*, 3rd edition, (Cairo: Bulaq, 1902), clause 154: *al-murād bil-rushd huna ḥusn al-taṣarruf bil-mal* (the term *rushd* here means the correct administration of money/property).

³⁶ Qadri, clause 248.

if their purposes are not identical.³⁷ In spite of the religious ban, in various periods there were attempts by the authorities to centralize the administration of *waqfs*. These centralization attempts, more prevalent in the nineteenth-century, are connected with the reforms carried out by the Ottomans since the 19th century.³⁸

Waqf administration reforms were distinguished between family and public *waqfs*. In the nineteenth-century Ottoman state a central endowment administration was created which later became a government ministry.³⁹ In every district of the empire a Department of Endowments was established which was subordinate to the Ministry. Family or public endowments, in which the administrator was appointed by the Sultan, continued to be run by private *mutawallīs*, and were subjected to supervision by the Ministry of *Waqf* and/or the *qadi*.

The endowments which were administered by the Ministry of *Waqf* were called *awqāf madbūta*, and had attached to them some state endowments which were called *awqāf mulhaqa*. Endowments remaining in the hands of private *mutawallīs*, according to the wishes of the founder(s) in the endowment deed and under the complete supervision of the religious court, were mainly family endowments called *awqāf ghayr madbūta*. The transfer of the *awqāf madbūta* to the state was legally effected with a writ of appointment stating that the *qadi* would hand over administration of the public *waqfs* to the director of the Department of Endowments. This took the place of *mutawallīs* appointed by him in the past, or functionaries named by the founder of the *waqf* in his deed of endowment. Later, the transfers were effected by civil legislation.⁴⁰

During the Mandate period the Ottoman administrative structure of the *waqf* was preserved in Palestine, albeit with one difference. The British allowed the Supreme Muslim Council to take over the role of the Ottoman authorities (the Ministry of the *Waqf* and *Shaykh al-Islām*) in the administration of public endowments and the supervision of family endowments. The order empowering the Supreme Muslim Council, signed by the High Commissioner on 20 December 1921, and published in the Official Gazette on 1 January 1922, granted the Muslim Council complete autonomy in *waqf* affairs. The Supreme Muslim Council, in effect, took over in most *waqf* matters where the Ottoman government had left off. The British essentially gave the Supreme Muslim Council religious autonomy, and endowments were decisively administered by the Council outside the supervision of the British government.⁴¹

³⁷ Omer Hilmi Efendi, *A Treatise on the Laws of Evkaf*, trans. C.R. Tyser and D.G. Demetriades (Nicosia, Government Printing Office, 1899), clause 340.

³⁸ For the administration of *waqfs* during the end of the Ottoman period, see Haim Gerber, *Ottoman Rule in Jerusalem 1890–1914* (Berlin: Klaus Schwarz Verlag, 1985) 171–209.

³⁹ See Barnes.

⁴⁰ Muḥammad Abū Zahra, *Muḥādarāt fī al-Waqf*, 2nd ed. (Cairo, 1971), 332; Yitzhak Reiter, *Islamic Endowments in Jerusalem*, chapter 1.

⁴¹ Kupferschmidt, 28, terms this “unwarranted autonomy.”

At the outset of Jordanian rule in Jerusalem the initially Ottoman- and later Mandatory-accepted religious apparatus was adopted and continued. A 1949 Order authorized the Supreme Muslim Council to continue its activities in matters of endowments in East Jerusalem and the West Bank with all the powers it had before 1937.⁴² As a result of efforts to unite the two banks of the Jordan in 1951, the Order empowering the Supreme Muslim Council was rescinded, and the Jordanian *Waqf* Law of 1946 was extended to include the West Bank and Jerusalem.⁴³ Under this law, the Chief *Qadi* of the Kingdom heads the Supreme Endowments' Committee, which administers the *Waqf* budget as a central fund. The Prime Minister approves the *Waqf* budget and appoints the general director of the *Waqf* in consultation with the King.⁴⁴ In 1955, *Waqf* regulations were passed (replacing previous regulations dating from 1952), which fixed the responsibilities of the endowments council, the general director of the *Waqf*, the treasurer of the *Waqf*, and the directors of the local departments of the *Waqf* administration. Under these regulations local *Waqf* committees were also established, headed by the *Waqf* treasurer, whose responsibilities included supervision of the leasing of *waqf* assets, of vital reforms and implementation of suggested methods to improve *waqf* income. Minor changes, principally with regard to government authority, were effected in 1962 and 1966.⁴⁵ This was the extent to which the Jordanian regime went in reforming the institution of *Waqf*.⁴⁶ In the Jordanian Ministry of Endowments there are various departments for the administration of religious affairs in general and for those of the West Bank and East Jerusalem in particular. Civil servants in the Jordanian Ministry have a counterpart in East Jerusalem who carries out the same functions and serves officially as an aid.

Law 36 of 1982 amended sections of the *Waqf* Law of 1966 by giving the Endowments and Islamic Affairs Committee the authority to determine the general policy of the Ministry and the investment policy of the *Waqf*. Thus the responsibilities of the Council are those of administering schools and *waqf*-funded colleges of *shari'a* law. The Department of Endowments is also responsible for the holy sites, religious officials in mosques and the sermon system, religious education and the Hajj.⁴⁷ Hasan Tahbūb was the director of this department for

⁴² Order dated 1.12.49, *Official Gazette* 1002, 392.

⁴³ Order dated 22.4.51, *Official Gazette* 1062, attachment 1, page 39 which became valid on 1.5.51. Law no. 61 of 1951.

⁴⁴ Law no. 25 of 1946.

⁴⁵ Law no. 45 of 1962, *Official Gazette* 1949, p. 1359 dated 17.11.62 which was superceded by regulations dated 1.7.63, *Official Gazette* 1696, p. 800. See Nissim Dana, *Anshei hadat bamimsad hamuslemi bagadah hamaf'aravit bitqifat hashilton hayardeni* (The Muslim Religious Establishment in the West Bank during the Jordanian Period) (Hebrew University, The Institute for Asian and African Studies, Jerusalem, 1971, unpublished).

⁴⁶ A. Layish, *Hamimsad hadati hamuslemi bagadah hamaf'aravit batqufa hayardeni* (The Muslim Religious Establishment in the West Bank during the Jordanian Period) (Medina, Memshal veyahasim Beinleumiym, autumn 1977), 97-108.

⁴⁷ Farhi, 15.

the Jerusalem district (*ma'amūr awqāf al-quds*) during the Jordanian period and continued to serve in this position after 1967. He was later appointed general director of the *Waqf* in the West Bank and Jerusalem and since late 1994, he holds the portfolio of Religious Affairs in the Palestinian Authority, in addition to his election to the office of President of the Supreme Muslim Authority (1992).

The Department of Endowments does not have any supervisory authority over the *mutawallīs* of family endowments. These latter are appointed by the *qadi* upon recommendation by the *waqf*'s beneficiaries and are only subordinate to the supervision of the *Sharī'a* Court. However, when a *mutawallī* is dismissed or resigns, and before another person is appointed to the position by the beneficiaries, the *qadi* transfers the management of the administration temporarily to the Department of Endowments, which levies a management fee of 10% of the endowment's income. This temporary administration can continue for many years, provided someone suitable can not be found among the beneficiaries to take on the job of *mutawallī*. In spite of the division of authority between the Department of Endowments and the *Sharī'a* Court, the *qadi* can be influenced to dismiss the *mutawallī* and transfer the management of a *waqf* temporarily to the Department of Endowments, if for some reason the decision has been accepted by the upper echelons of the Muslim establishment in Jerusalem, with the backing of the Jordanian Ministry of Endowments, to take over the running of a specific family endowment. Such action has been taken in the past, in exceptional cases only, when there has been some suspicion that the *mutawallī* was trying to transfer the assets of a *waqf* to Jews. In every family *waqf*, the endowment deed contains a condition stating that if there are no longer any descendants of the family, the benefits of the *waqf* may be used for a specific public purpose or a general public purpose, such as for the poor. When the founder's last descendent dies, the running of the *waqf* passes to the Department of Endowments, and the endowment changes into a *waqf maḍbūt* designated for public needs.

The appointments of junior and senior functionaries to the staff of the Department of Endowments, until 1994, was only made with the approval of the government of Jordan. Senior functionaries in the administration of the Department of Endowments were mostly from urban and well-connected families in Jerusalem (some former Hebronites) such as ʿAlamī, Ḥusaynī and Tamīmī, with a pro-Jordanian orientation.⁴⁸ In addition, there are, on the staff of the Department of Endowments and among the religious officials in the mosques of the West Bank, many people (particularly in junior positions) affiliated with Islamic Opposition groups.

⁴⁸ For the role of distinguished families in the Jerusalem *Waqf* institution during the Ottoman period, see Gabriel Baer, "Jerusalem's Families of Notables and the *Waqf* in the Early 19th Century" in David Kushner (ed.), *Palestine in the Late Ottoman Period* (Jerusalem and Leiden: Yad Yitzhak ben Zvi and E.J. Brill, 1986), 109–122.

Administration of the Waqf in Israel up to 1967

The state of *Waqf* administration in Israel during the period from 1948 to 1967 differed from earlier periods. Most of the *waqf* assets in Israel were defined as “absentee properties” in accordance with the Absentee Properties Law of 1950, as a result of the registered administrators’ (the Supreme Muslim Council, *ma’mūr al-awqāf* or the *mutawallis*) absence from the country. There were relatively few endowments, whose administrators remained within the borders of Israel after the war in 1948 for various reasons. Those endowments with administrators still in the country after the war continued to be run under the supervision of the *Sharī’a* Courts with no government interference. Most of the “absentee” *waqf* assets were transferred to the Custodian of Absentee Property, who then transferred them to the government development authority for state development purposes. Urban endowments were transferred to the Ministry of Religion (as an agent of the custodian), who administered them by means of local advisory committees made up of Muslim notables and clergy.⁴⁹ That was, and still is until today, the status of *waqf* assets in West Jerusalem.

Between the years 1948 and 1967, there was one case in which the *mutawallis* in East Jerusalem refused to forego assets located in the western part of the city. The issue was the *waqf* of Abū Midyan (a public endowment which was not *maḍbūt*) – which had rights to all the lands of ‘Ayn Kārim – an area of approximately 150,000 dunams containing the ‘Ayn Kārim and Qiryat Hayovel neighborhoods. At least 8,000 dunams were appropriated by the government to build the Hadassah Hospital, the Yad Vashem Institute and residential housing in Qiryat Hayovel. In the eastern sector of the city, this same *waqf* owned the Western Wall plaza and the Maghribī neighborhood near it. Due to this *waqf*’s connection with Algeria (whence the founder of the endowment came, as well as additional contributors to this *waqf*), the government of France, ruling Algeria at that time, saw itself as the representative of the *waqf*’s interests. With regard to ‘Ayn Karim, during the Mandate period there had been cases between the *Waqf* administration and the British government, in which the government did not recognize *waqf* ownership of the land in question, but only the *waqf*’s right to receive the tithe. Following French diplomatic intervention, the British, during the Mandate period, paid 500 Palestine pounds annually to the *Waqf* administration, via the French consulate in Jerusalem, without recognizing the *waqf*’s ownership. Following an application from France, the government of Israel agreed to continue this custom, taking into account currency fluctuations. In 1960, the *waqf mutawallis* authorized an Israeli lawyer, through the French consulate, to demand the income from *waqf* assets which were found in the western side of the city. The case was heard in the local court in Jerusalem and lasted approximately two years. After France left Algeria,

⁴⁹ On the *waqf* in Israel, see Layish, “The Muslim *Waqf* in Israel”; Dumper, *Islam and Israel*; and Reiter, “The *Waqf* in Acre.”

it ceased to deal with the matter and the case was dropped.⁵⁰ The subject became public knowledge at the beginning of the sixties, and when it became known in East Jerusalem, the *mutawallis* were fired for having agreed to accept reparations for the appropriation of *waqf* assets, since “a *waqf* cannot give up its ownership of assets.”⁵¹

In 1965, the Israeli Parliament passed an amendment to the Law of Absentee Property.⁵² According to the law, the government could appoint trustees to manage *waqf* properties in a number of cities which have Muslim *waqf* property and a Muslim population. Jerusalem was not included in those cities, but the government was authorized by law to designate additional places, where trusteeships might be established. According to the law, the custodian could release *waqf* property into the hands of the board of trustees who were free to behave as if they were the owners. In exchange for assets not released by the custodian, the custodian would expend sums of money for various purposes determined by law including the establishment of religious institutions, health-care, and education.

Israel and the Administration of Waqf in Jerusalem after 1967

In November 1967, an Israeli intergovernmental committee proposed integrating all Islamic institutions (*Sharī'a* Courts, *waqf* and other institutions) along with the Muslim clergy of East Jerusalem into the Israeli system of Islamic affairs, under the laws of Israel (the *qadis* Law of 1961 and Amendment no. 3 to the Absentee Property Law of 1965). The proposal implied a declaration of East Jerusalem *waqf* assets as absentee property by imposing Israeli law on the eastern part of the city and appointing heads of the Muslim religious establishment in Jerusalem to a trustee committee to administer public *waqf* property according to the Absentee Property Law (instead of by the Muslim Authority as it existed at that time). The assets of family *waqf*, by law, would be put under the complete ownership of the beneficiaries. The proposal, however, was not accepted. Irrevocable opposition by the Muslims contributed to the crystallization of Israel's policy of non-interference in the realm of religious affairs of non-Jewish religious communities in Jerusalem, including those of the *Waqf* Department. The government of Israel decided not to impose the Absentee Property Law in East Jerusalem, according to which it would have been necessary to transfer to a government custodian all *waqf* assets in which the administrators were deemed absent by law. [As a result of Israeli policy *vis-à-vis* the *Sharī'a* judiciary in Jerusalem, a kind of competition arose between the two *Sharī'a* Courts handling the affairs of Muslims in the city: the Israeli court and the Palestinian one. The existence of two courts led to some confusion in *waqf* matters as stated in chapter 2.]

⁵⁰ *Ha'aretz*, 7.11.60, 29.1.61, 4.11.62.

⁵¹ *Sijill*, 558/77/27.

⁵² Absentee property law (amendment no. 3) (release of endowment assets and their use).

A comparison of the Palestinian court *sijill* from East Jerusalem and the Israeli court *sijill* from Jaffa during the period from 1967–1987, shows that 23 out of 90 founders of *waqfs* from East Jerusalem during the stated period registered their *waqfiyya* a second time in Jaffa. Some of the *waqfiyyas* were registered in Jaffa some years after they were registered in Jerusalem. In the years 1967–1987 the *Sharī'a* Court in Jaffa dealt with 145 cases connected with *waqf*, compared with 320 presented to the *Sharī'a* Court in East Jerusalem. Most *waqf* documents in Jaffa (81) were deeds of appointment for the post of *mutawallī*. A similar number of deeds of appointment were issued in East Jerusalem in the same years, but some of the Jaffa deeds of appointment were not registered in East Jerusalem, since the *mutawallis* preferred the legal security afforded by the Israeli *Sharī'a* Court whose decisions are recognized by the law and therefore have means by which to be enforced. A model comparison between the deeds of appointment issued in Jaffa and Jerusalem gives us information about the number of cases in which the two courts, in one week, appointed different people as *mutawallis* of the same *waqf*.⁵³ In 1983, two cousins were appointed by the East Jerusalem court as the *mutawallis* of the *waqf* of Maḥbūba al-Khālīdī. Within ten months, following an application to the religious court in Jaffa, the *qadi* of Jaffa “set things straight” with the Jerusalem court and appointed the *mutawallī* who had been appointed in Jerusalem.⁵⁴

The possibility of applying to the Israeli *Sharī'a* Court, for civil representation, was exploited by two Muslim elements from Jerusalem in order to contest the *waqf* administration founded by Saladin. It was the consequence of a conflict carried out in the Mandate period between the family of Abū al-Faḍl al-ʿAlamī, the beneficiary and owner of the rights of *mashyakha* to *al-khānqā al-ṣalāhiyya*, and the Department of Endowments, which considered this *waqf* a public endowment. In January 1969 Shaykh Muḥammad ʿAbd al-Muʿṭī Amīn al-ʿAlamī, whose father was the *Shaykh al-Zāwiya* during the Mandate period, managed to get himself appointed by the *Sharī'a* Court in Jaffa as the *mutawallī* of the *waqf*. Al-ʿAlamī presented the *qadi* of Jaffa with a petition signed by Jerusalem notables which stated that the job of directorship of the *waqf* was open, despite the fact that the *waqf* had been run since Mandate times by the district director of endowments in Jerusalem. The director of the Jerusalem *Waqf* Department – Ḥasan Ṭahbūb – tried at first to appeal against the decision through another man from the family of al-ʿAlamī. When he did not succeed with this, he, himself, filed an application with the Israeli Supreme Court and the Israeli *Sharī'a* Court in his position as director of the *Waqf* in Jerusalem, and succeeded in having the decision overturned. Al-ʿAlamī

⁵³ Jaffa *sijill* 452/83, Jerusalem *sijill* 622/47/196.

⁵⁴ See rulings of the *Sharī'a* Court in Jaffa 28/69, 149/69, 263/72, 660/75, 141/76; rulings of the *Sharī'a* Court of appeals 20/72, 42/75 and the rulings dated 2.4.70, 2.2.71; State of Israel Supreme Court of Appeals 110/70, ruling 24(b), p. 57; State of Israel Supreme Court of Appeals 256/71, ruling 26(a), p. 505; State of Israel Supreme Court of Appeals 14/75.

was astonished that the courts in Israel recognized the position of “Director of the Jerusalem *Waqf* Department” based on Jordanian and/or Mandate and Ottoman legislation, a position which disregards legislation imposing Israeli law on East Jerusalem. In al-ʿAlamī’s applications to the Supreme Court he requested that the management of the *waqf* be taken away from the “Director of Endowments in Jerusalem,” as Israeli legislation does not recognize the decree which established the Supreme Muslim Council during the Mandate period. The Supreme Court directed him to the *Shariʿa* Court, and the *qadi* of Jaffa ruled (January 1977) that the government of Israel had not, in fact, effected any change in the status quo in matters relating to the administration of endowments in East Jerusalem and, accordingly, the *qadi* did not see any reason to respond to the request of al-ʿAlamī to change the way the *waqf* had been run for more than sixty years, unless the Muslim court could prove that the present administration of the *waqf* was embezzling funds. This was one of the rare occasions when a Palestinian official from the Department of Endowments in East Jerusalem applied, on his own initiative, to the Israeli *Shariʿa* Court in Jaffa. The Israeli *Shariʿa* Court, for its part, gave its seal of approval to a decision of the Department of Endowments in East Jerusalem which operates, de facto, according to Jordanian law.⁵⁵

In a number of cases, beneficiaries of a *waqf* who believe that they have been deprived by a *mutawallī*, have applied for support from the Israeli *Shariʿa* Court. In the aforementioned period, there were 14 accounting (*muḥāsaba*) actions between *mutawallīs* and beneficiaries registered in the Jaffa *Shariʿa* Court. The court judged nine claims presented by beneficiaries for the dismissal of a *mutawallī*, and five claims to determine the amount of *waqf* income due to them based on the founder’s stipulations. Matters connected with the ongoing administration of the *waqf* such as a change in the character of assets, repairs, transactions in the assets of a *waqf*, a *mutawallī*’s salary, the taking out of a loan for a *waqf*, etc. were dealt with by the East Jerusalem court alone. As stated in chapter 2 above, the Israeli *Shariʿa* Court represents a refuge for the Muslims of East Jerusalem, to which they can turn when they are not satisfied with the decisions of the *Shariʿa* Court of East Jerusalem, or when they believe from the outset that their chances in the East Jerusalem court are nil.

In principal, both the sanctity and status of Jerusalem in Islam have been the main factors in the founding of more endowments, per capita, comparatively, than in other large cities of the Ottoman Empire, throughout its centuries as sovereign of the Islamic world. Numerically speaking, more than two thousand acts of *waqf* have been endowed over a period of five hundred years. The small number of new endowments during the Jordanian period reflects a general trend in Islamic countries in which the *waqf* is being pushed into total obsolescence by modern institutions. Unexpectedly, the *waqf* underwent a renaissance in Jerusalem after 1967, for political reasons, based on the fact that Jerusalem, following the capture

⁵⁵ *Book of Laws* 491 dated 28.8.67.

of its eastern part by Israel, became the focal point of a national-political struggle between the Arab and Muslim world on the one hand and Israel and the World Zionist movement on the other.

The process of turning public associations' properties, which operate under civil law, into *waqf* is a unique phenomenon, which can be viewed only through the political prism of the special political circumstances which have arisen in Jerusalem since 1967. The registration of real estate as *waqf* affords the local Muslim community, and its financial supporters, with legal and public security from undesirable political elements. For political reasons, the *Sharī'a* Court has been willing to take the rare step of waiving its right to approve the appointment of the *waqf's mutawalli*, and has enabled the various associations' administrations to choose a *mutawalli* according to civil law, that is, by democratic process. The *waqf*, an essentially religious institution, has been co-opted into the national struggle over the character and political future of Jerusalem. Both preserving existing *waqf* assets and endowing new assets for various public purposes have helped the population of East Jerusalem to preserve, to some extent, the Islamic character of the city and to increase Muslim migration to it.

The renewal of endowing *waqf* in Jerusalem after 1967 is particularly striking in view of the fact that Muslims in the State of Israel have made almost no new endowments since 1948 until the present day. The Islamic movement in Israel, which has amassed many supporters since the eighties, has not expressed much interest in the institution of *waqf*. The most probable reason for this would seem to be the Muslim public's lack of trust in Israeli governmental policies toward *waqf* in the State of Israel. The *waqf* in Israel has been mainly defined as "absentee property," and thus transferred to government control. A small number of assets have been unfrozen and are administered by government-appointed Muslim trustees, in whom little trust is placed by the Muslim public as a result of attempts to sell off *waqf* assets in Jaffa and other places.⁵⁶ The striking difference between Muslim society in East Jerusalem and in Israel, concerning their need for the institution of the *waqf*, emanates from the lack of exposure of Jerusalem's Muslims to Israeli society and the influences of modernization, compared to the Arabs in Israel. Since 1967, the *waqf* in East Jerusalem has served as a means of binding the Muslim community together, a community which has isolated itself from the non-Muslim government and has not come to terms with Israeli sovereignty. All of these factors point to the revival of the institution of the *waqf* under Israeli rule, an institution which lay dormant during the Jordanian period. This significant revival is somewhat reflective of the *waqf's* golden days during the centuries of Ottoman rule in the region.

⁵⁶ See Reiter, "The *Waqf* in Acre."

Chapter 4

Resources of Islamic Activity: Assets, Budgets, Services and Employees

In traditional Muslim societies, such as the one existing in Jerusalem, the *Waqf* Office still provides the main source of funding for the city's religious activities. This prolonged legacy, stemming from the Ottoman state, is based upon an earlier perception of the state in which the provision of public services was not incumbent upon the government.¹ This task, then, is fulfilled by the initiative of private individuals or members of the ruling elite, often by the founding of *waqf* properties.

Assets Administered by the Department of Endowments

Under the British Mandate, the revenues from public *waqf* assets in Palestine, approximately 150,000 Palestine pounds, were sufficient to operate the entire religious apparatus in Mandatory Palestine. Jerusalem's share of the total public *waqf* income was only 3.5–5%, in contrast to 25% of the entire Islamic religious apparatus, employees, renovations and activity which were located in Jerusalem.² Despite this knowledge, the scope of *waqf* assets in Jerusalem in particular, and Mandatory Palestine and present-day Israel and the West Bank and the Gaza Strip as a whole, is an issue for which there is still no thorough written record. During the Mandate period neither the Supreme Muslim Council nor the British government published data on *waqf* assets, and as such, it appears that no precise data existed. The Supreme Muslim Council and the British government carried on a protracted argument over assets which the Supreme Muslim Council claimed were public *waqf* which, as such, should be maintained under its administration. Eventually an agreement was reached between the two bodies. It may be assumed that the Supreme Muslim Council knew what its assets (mainly public *waqf*) were, but, in the realm of family endowments, estimated to have been between 40 and 50% of the total *waqf* land in the country, there are no clear data.³

¹ For the Ottoman legacy, see Gibb and Bowen.

² Calculated from Kupferschmidt, 173–178.

³ Kupferschmidt, 107–111; Reiter, *Islamic Endowments in Jerusalem*.

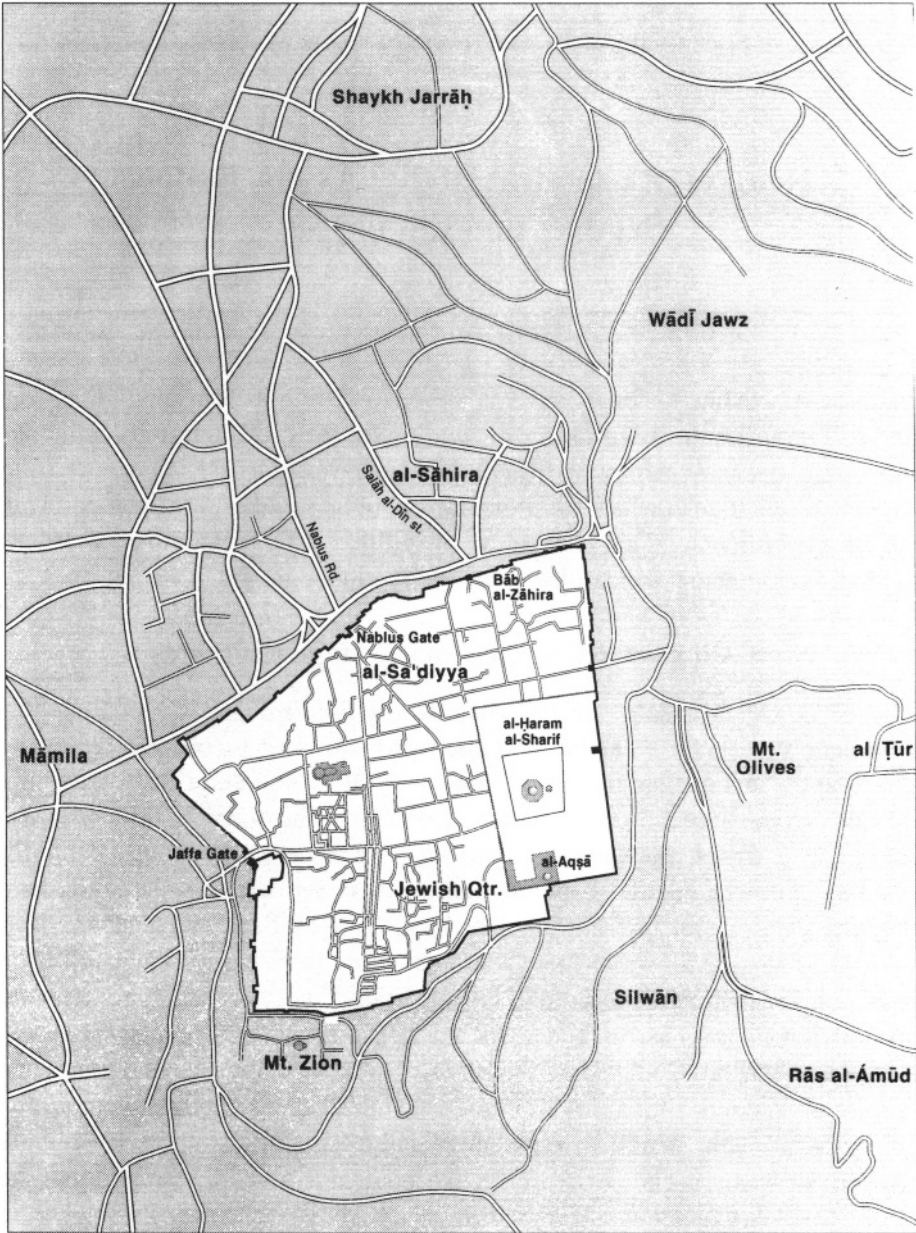


Figure 1. Jerusalem: the Old City and its vicinity.

A considerable part of the area of the Old City was *waqf* at the beginning of the Mandate period. According to an estimate by experts in the Muslim establishment, about 80% of the assets in the Old City were *waqf*.⁴ As the city spread outside the walls at the end of the 19th century, one can detect a process of divesting *waqf* lands at the periphery of Jerusalem and acquiring assets in new areas of the city, particularly in the area of Bāb al-Zahra (often called al-Sāhira), an area today comprising the business center of East Jerusalem: Salāḥ al-Dīn street and the roads branching off from it.

An examination of rental income from *waqf* assets in Mandatory Jerusalem administered by the Supreme Muslim Council reveals that in comparison to the large amount of assets of the *waqf*'s public holdings, the extent of assets which generated revenues was extremely limited. The study shows that the Department of Endowments in Jerusalem, in the 1930s, managed 334 properties comprised of 198 shops, ten houses, two coffee shops, one khan, one bath house, six plots of land and the lands of Solomon's Pool in addition to another pool, the Palace Hotel, the offices of the *Sharī'a* Appeals Court and a bakery. Altogether these *waqf* assets earned 4,446 Palestine pounds.⁵

Today, *waqf* assets administered by the Department of Endowments consists of the following: 376 shops, of which two-thirds are in the Old City markets with the remaining 129 shops located in the business district of Bāb al-Zahra; 466 dwelling units of which approximately 75% are found in the Old City (see Figure 1). Of that number, 48 units serve as Department of Endowments and Supreme Muslim Authority offices. Another 76 units are rented on a long-term basis to the Jerusalem Municipality. The remaining 116 units (one-fourth of the dwelling units) also serve as offices in the Bāb al-Zahra area. A number of large compounds rented on a long-term basis include the old Central Bus Station and surrounding shops, a car park near Bab Ḥuṭṭa, four large houses rented to various banks, five hotels, the *Sharī'a* Court building on Ṣalāḥ al-Dīn Street, several school buildings rented by the Municipality and others.⁶

Many other properties owned by the Department of Endowments generate only nominal rents as they were initially leased, many years ago, on long-term agreements (*hikr*). These include 625 shops, 172 homes, 19 workshops, 22 businesses and 30 additional buildings used for various purposes. From these assets, the Department of Endowments receives only symbolic rents. *Waqf* properties with religious purposes in Jerusalem, administered by the Department, but not generating revenue, include 65 mosques, a number of *zāwiyas*, the *al-Haram al-Sharīf* Compound, three active cemeteries, a number of saints' tombs, 27 water fountains (*sabīl*), 34 water wells and nine educational institutions.

⁴ Interview in May 1990 with Shaykh As'ad al-Imām.

⁵ *Qism al-Turāth al-Islāmī* 58/10, 13/39/2.

⁶ The data are based on Issa Khater, "Waqf in der West Bank," unpublished Ph.D. dissertation, Philipps Universität, Marburg/Lahn, 1987), 197–200.

Table 6. West Bank Department of Endowments budget (JDs) between 1967 and 1982⁷

Year	Income	Expenditures	Supplement from Jordan
1967	130,389	129,375	–
1976	271,955	823,992	552,037
1977	382,389	951,356	568,967
1978	347,604	1,051,070	703,466
1979	428,702	1,476,137	1,047,435
1980	495,949	1,824,681	1,328,732
1981	232,368	2,379,459	2,147,091
1982	362,437	2,607,486	2,245,069

The *Waqf* budget in Jerusalem for 1967, as endorsed by the Jordanians before the 1967 War, was 76,039 JDs from a total 130,000 JDs for the entire West Bank. A sharp distinction occurred between British Mandate and Jordanian domination of the West Bank. Under Jordanian rule, tithes were no longer collected on rural *waqf* properties causing a decline in public *waqf* revenues. Under these new circumstances, urban *waqf* assets in Jerusalem accounted for 60% of the *waqf* income from all of the West Bank. This forced the Jordanian government to transfer allocations specifically for religious activity to compensate Jerusalem's religious establishment for the loss of revenue generated previously by the tithes system.

Income

The usual sources of income of the Department of Endowments are based on annual rentals of *waqf* assets or long-term leases of *waqf* assets. In cases of family endowments in which the *mutawallī* has been dismissed, or the position is currently not staffed, the Department of Endowments temporarily administers them according to Jordanian law and sees fit to levy 10% of the *waqf*'s income for this administration. Entrance fees to the al-Ḥaram al-Sharīf comprise an important component of the Supreme Muslim Council's income. Officially these are not

⁷ *Bayyān al-Awqāf al-Islāmiyya fī al-Ḍaffa al-Gharbiyya Khilāl 'Ashr Sanawāt min 1967–1976*, an internal pamphlet prepared under Hassan Tahbūb, director of the *waqf* in 1978 by 'Ikrima Ṣabrī, 'Adnān al-Ḥusaynī, 'Abd al-Rāhīm al-Khayyāt, and Widā' Tahbūb [hereafter *Bayyān 1967–1976*], 16; *al-Quds, Idārat al-Awqāf al-Islāmiyya al-ʿAmna, Bayyān al-Awqāf al-Islāmiyya fī al-Ḍaffa al-Gharbiyya Khilāl 'Ashr Sanawāt min 1977–1982* edited by Munīr 'Abdalla 'Uthmān, (Jerusalem, n.d., 131) [hereafter *Bayyān 1977–1982*]. On 15 June 1967, one Jordanian Dinar was worth \$2.50 U.S. On 1 April 1976 one Jordanian Dinar was worth \$3.00 U.S. and finally, on 1 April 1982 one Jordanian Dinar was worth \$2.30 U.S.

called entrance fees but, rather, payment for a guide booklet of the compound (*dalīl al-ḥaram al-sharīf*).

The sharp difference in 1976 between income and expenditure, noted in Table 6, comes from a supplementary grant from the Jordanian government. Since the seventies, the government of Jordan has subsidized the Department of Endowments' budget which funds most expenses and all salaries. Beginning in 1972, five years after Israel's capture of the West Bank including Jerusalem, a significant increase in the grant was felt, based on the current tide of political circumstances. During the first ten years of Israeli rule in Jerusalem, Jordan transferred one million JDs to the Department of Endowments, increasing their budget six fold (600%) during this period. The increase in the difference between income and expenditure explains, to a great extent, the political power which Jordan wielded in the West Bank and East Jerusalem.

In the Jerusalem district income from *waqf* assets provide 60% of the Department of Endowments' budget for each of its seven districts throughout the West Bank (218,389 Dinars out of 362,437 Dinars for 1982 mentioned above in Table 6). This can be attributed to the relatively high income earned from entrance/guide fees to the Temple Mount, which, in 1982, was 102,440 Dinars comprising about 47% of the earned income in the Jerusalem district alone and 28% of the total income of the Department of Endowments on the West Bank. In 1976, entrance/guide fees soared to 176, 640 JDs. comprising 65% of the *waqf* income in the entire West Bank.

These data allude to a very low level of income from *waqf* assets in Jerusalem, considering the extent and nature of the assets.⁸ They also illustrate the Department of Endowments' poor management of *waqf* assets under its control. Income data for 1982 reveals that a quarter of the *waqf* shops in Jerusalem (most of them in the Old City) generated less than 100 JDs (\$150) annually, while only 11.5% of them gave a return of 500 JDs (\$750) or more from rent.⁹ The main reason for this is that most of the assets are subjected to rent restrictions and the Tenant Protection Law (Jordanian and Israeli Law¹⁰). A considerable number of residential units are rented as low-income housing to families requiring welfare assistance. This serves only to perpetuate weak management of *waqf* assets. It seems that the financial injections from Jordan since the seventies have not encouraged the local administration of the Endowments Department to manage the sources of income more efficiently.

For 24 years, the Department of Endowments has refrained from demanding rent from the (Israeli) municipality of Jerusalem for *waqf* assets held by the

⁸ This can be compared with the wealth the Supreme Council enjoyed during the Mandate Period from the assets of *waqf*, see Kupferschmidt, 168.

⁹ Khater, op. cit.

¹⁰ For an explanation of the earliest rent restriction in Palestine, see Reiter, *Islamic Endowments in Jerusalem*, p. 39 and the sources mentioned there.

Table 7. West Bank Department of Endowments' expenditure (JDs) for 1974 and 1976¹¹

Type of expenditure	1974 (actual)	1976 (budget)
Wages	318,933	577,537
Administration	59,224	202,650
Building & equipment	48,450	20,650
Grants	12,387	23,000
TOTAL	438,994	823,992

municipality in East Jerusalem including the central (bus) station opposite the Damascus Gate and a number of educational institutions. Rental amounts agreed upon with the Jordanian municipality, at the time, are relatively low and the Department of Endowments has done nothing to demand more realistic and up-to-date sums from the municipality of Jerusalem. Finally, in 1991, the Department of Endowments presented the municipality with a demand for a retroactive rental payment and subsequently reached an agreement with the Municipality for payment. Table 7 shows that a large part of the Department of Endowments' budget goes to the payment of salaries and various administrative expenses with only a small part directed toward development and grants. In 1982, for example, salary expenses made up 82% of the total expenses of the Department of Endowments.

Expenditures

In the first decade after the Israeli takeover of the eastern part of the city, the total spent on building and renovation of *waqf* property in Jerusalem was extremely low compared to the total budget of one million JDs. The former Jordanian Minister of Endowments, 'Abd al-'Azīz al-Khayyāṭ, stated in August 1989, that Jordan was spending six million Dinars (approximately nine million U.S. dollars) per year since 1967 to fund the Department of Endowments in Jerusalem and the West Bank. According to him, between 1967 and 1989, Jordan had spent 138 million Dinars funding *waqf* institutions on the West Bank¹² including educational institutions supported by the Hashemite Kingdom.

Table 8 concerning building and renovation works in the West Bank between 1967–1976, shows that almost one-half of the building and renovations budget was allocated toward educational institutions. Furthermore, 76% of part of the West Bank's budget was invested in Jerusalem. It should also be noted that considerably more money was invested in developing commercial assets (22%) than in developing or maintaining holy sites (4%).

¹¹ *Bayyān 1967–1976*.

¹² *al-Quds*, 11 August 1989.

Table 8. Department of Awqāf – building and renovations budget 1967–1976¹³

Type of work	Amount (Dinars)	Percentage (of WB budget)
Renovation of places of worship in Jerusalem	12,092	4
Renovation of commercial <i>waqf</i> assets in Jerusalem	65,613	22
Purchase of cars in Jerusalem	6,821	2
Renovation and establishment of educational institutions in Jerusalem	139,959	48
<hr/>		
SUB-TOTAL – COST OF WORKS IN JERUSALEM	224,485	76
Building of commercial property outside Jerusalem	41,747	15
Renovation of mosques outside Jerusalem	25,128	9
Unknown	1,184	–
TOTAL	292,544	100

Family Endowments – Assets and Budgets

The *waqf maḍbūṭ* assets, administered by the central administration of the Supreme Muslim Council, do not include family *waqf* assets which in Mandatory Jerusalem numbered approximately 250 active endowments. Between 1967–1990 another 90 were founded. Since most endowments of this type generally included a residential unit and sometimes an additional business unit, the total extent of family endowment assets in Jerusalem can be estimated at approximately 350 residential units with a similar number of businesses including shops, workshops, a number of hotels and some empty building plots.

The budget of family endowments is not summarized or compiled in a way that can be estimated. Endowments only include an accounting break-down when required by the *Sharīʿa* Court. Following are two budget samples of family endowments. The first sample, Table 9, the al-Muḥaddath *waqf*, represents most family *waqfs* in Jerusalem. The average income of this *waqf* in the mid-eighties was 700 JDs (approximately \$1000 U.S.). The second sample, Table 10, reflects a very affluent family *waqf* with an annual income until 1989 at nearly 100,000 JDs (\$150,000 U.S.).

¹³ *Bayyān 1977–1982*, 131.

Table 9. Budget of the al-Muḥaddath *waqf* (in JDs) 1404–1406 H (1984–1986 C.E.)¹⁴

Type of income	Amount	Type of expense	Amount
Rent for 1404 H	370.7	Lawyer's commission	285.8
Rent for 1405 H	678.7	Fees and taxes	174.3
Rent for 1406 H	744.7	Miscellaneous	79.9
Repayment of <i>mutawalli</i> 's debt	351.4	Renovations	1242.0
		Commission of <i>mutawalli</i> 10%	162.4
		Dividends to beneficiaries	201.0
TOTAL	2145.5	TOTAL	2145.5

Table 10. Budget of the *waqf* of Muḥammad 'Issā Shitaya for 1989 (in JDs)

Income		Expenses	
Balance from previous year	13,463.783	Maintenance and renovation	1,167.303
Balance of rents from previous year	1,060.000	Various services	2,965.048
Rental from new building	24,320.000	Miscellaneous	1,914.919
Rental from old building	20,095.730	Legal expenses	357.000
Rebate for services	2,481.500	Government taxes	11,135.168
Tax rebate	1,908.000	<i>Mutawalli</i> 's salary 5%	4,702.501
Income from parking lot	28,464.297	Parking attendants	5,426.497
Sale of tenant rights ¹⁵	21,000.000	Ongoing	940.000
Tax and services rebate	190.000	Dividends	38,500.000
		Balance for beneficiaries	45,836.874
TOTAL	112,945.310	TOTAL	112,954.310

¹⁴ East Jerusalem *Sharḥa* Court, 29 November, 1986. The table shows that only a small percentage of the budget (less than 10%) went to the beneficiaries. Most of the income was spent on renovations and payments of various expenses. Since the *waqf* had a high debt in the sum of 7,254.1 Shekels, the *mutawalli* exchanged it for Dinar-linked leases which, according to him, was to the benefit of the *waqf*. The *waqf* owed the *mutawalli* the sum of 18,100.55 shekels.

¹⁵ Under the "Law of Protected Tenants", the tenant has the right, upon leaving a rental property, to sell his/her rental "rights" either back to the *waqf*, which has the first right of refusal, or to another tenant. In this case both the original tenant and the *waqf* receive a portion of the income accrued from the sale of these rights.

Table 11. Department of Endowments' staff 1967 and 1976¹⁶

Year	Non-permanent staff	Number in Jerusalem	Permanent clergy	Number in Jerusalem	Total employed
1967	51	20	598	154	774
1976	66	25	744	188	888

Estimation of the yearly incomes for approximately 350 family *waqfs* in Jerusalem with a minimum endowment capital of \$1000 brings the total revenue for family endowments to nearly \$350,000–\$500,000.

Staff of the Department of Endowments

The Department of Endowments' role in East Jerusalem is not limited to managing and administering *waqfs* and other Islamic activities. This office serves as the second largest public employer both in Jerusalem and in the West Bank. Nearly 2,000 families are supported by employment in this department. In 1976, for example, the staff of the Department of Endowments numbered 888 in Jerusalem and the West Bank, a small increase from the 774 employees in 1967.

In Table 11, the data show that members of the clergy comprise three-quarters of all those employed by the Department of Endowments. In Jerusalem they constitute 46% of the staff, since the general administration of the *waqf*, which employs many administrative workers, is located in the city. Furthermore, there is a considerably high number of guards for the *al-Ḥaram al-Sharīf* compound. Finally, most educational institutions belonging to the *waqf* are located in this district. Approximately 36% of all the Department of Endowments' staff are employed in the Jerusalem district. In 1976, in addition to the temporary staff, the Department of Endowments employed 1,846 permanent staff. The large number of staff, in part, stems from the increase, as mentioned, in the garrison of guards at the *al-Ḥaram al-Sharīf* to 110 and to 29 in the *al-Ḥaram al-Ibrāhīmī* in Hebron.¹⁷ In 1982 the number of staff declined to 1,579.

In 1982 the staff of the Department of Endowments in Jerusalem was broken down in the following manner:

¹⁶ *Bayyān* 1967–1976.

¹⁷ *Bayyān* 1977–1982, 132 ff.

Table 12. Department of Endowments' employees in 1982 (according to status)

District	Permanent staff		Temporary staff		Total
	with benefits	without benefits	under 60 years old	over 60 years old	
Jerusalem	88	218	102	65	473
Hebron	75	125	51	43	294
Bethlehem & Jericho	27	40	14	15	96
Ramallah	27	41	18	32	118
Nablus	60	91	40	79	270
Tulkarm	53	39	20	19	131
Jenin	30	54	13	24	121
Orphanage	17	7	45	7	76
TOTAL	377	615	303	284	1579

Administrative: 226 (47%) (including guards and technical jobs)

Religious: 271 (46%)

Educational: 30 (8%) (not including 76 orphanage workers in Jerusalem)

Total: 527

In the 1980s the number of the West Bank Department of Endowments' staff again increased and reached nearly 2,200 according to the following breakdown:¹⁸

Clergy in mosques and *zāwiyas*: 1,290 (59%)

Administrative: 283 (13%)

Guards: 175 (8%)

Religious teachers in schools: 450 (20%)

The increase in the number of staff stems from the employment of non-permanent staff in positions of guards or teachers, funded by a budget of small grants. Added to this is another 120 staff in the religious court system who receive their wages from Jordan and do not depend on the apparatus and budget of the *waqf*.¹⁹ The wages of employees working in the Muslim religious system are not high. A *qadi*, for example, earns between 300 and 500 Dinars monthly depending on his position, and an *Imām* or middle-level clerk earns between 150–300 Dinars

¹⁸ *Bayyān 1977–1982*, 132 ff.

¹⁹ See Chapter 2 on *Shari'a* Courts.

monthly. Evident here is the primary role of the *waqf* serving as the largest public employer in East Jerusalem with over 500 persons in its employ. Its role outside of this realm is minimal.

Educational Institutions and Services

Islamic religious services in East Jerusalem between 1967 and 1994 have been subordinated administratively and budgetarily to the Jordanian Ministry of Endowments. This Ministry handled religious matters for all Jordanian citizens, including those in East Jerusalem and the West Bank. The chief officials in the Ministry delegated responsibility to their counterparts in East Jerusalem working in the Department of Endowments and Islamic Affairs, employees considered official deputies or assistants to their colleagues in Amman.²⁰ The interrelationship between the local Muslim establishment in Jerusalem and the Jordanian authorities in Amman is often clouded by different perspectives on various matters. The local leadership views its needs somewhat differently to the Jordanian government. Consequently, there are frequent instances in which contact by means of special emissaries between Jerusalem and Amman is necessary to settle discrepancies. This section, in presenting an overview of the Jerusalem Department of Endowments and Islamic Affairs' religious services provided throughout East Jerusalem and the West Bank, demonstrates the political presence and power held by this office.

Functions of the Department of Endowments are governed by Section 2(c) of the *Waqf* Law of 1966.²¹ This law defines the following areas falling under responsibility of the Jerusalem Department for Endowments and Islamic Affairs as follows:

1. Islamic endowments
2. Mosques
3. Schools and religious educational institutions
4. *Sharī'a* colleges
5. Muslim cemeteries
6. Hajj affairs
7. *Iftā'* affairs (drawing up of *fatwās* or legal opinions)

The local Muslim establishment, however, sees the functions of this department somewhat wider than those defined by Jordanian law. In an internal document, written by the general director of the Department of Endowments in 1977, the functions of the Department of Endowments were defined as follows:

- a. Maintenance of mosques and *waqf* assets, guarding, developing and administering them.

²⁰ Reiter, *Islamic Awqāf in Jerusalem*, 22.

²¹ Jordanian Law, no. 26 of 1966, *Official Gazette*, 12 May, 1966.

- b. Enlarging the role of the mosque to fulfill its Islamic educational mission.
- c. Instilling a spirit of sacrifice and solidarity amongst the population, strengthening morale through the principles of Islamic faith and the propagation of its tenets.
- d. Developing Islamic moral values, instilling them in both public and private Muslim life.
- e. Supporting Muslim public activity, religious education and the establishment of religious educational institutions and schools for teaching of Qur'an.
- f. Propagating Islamic culture and preserving Islamic heritage, explaining the contribution of Islamic civilization to the development of man, the development of religious consciousness and encouraging Muslims to practice their faith.²²

The latter wider definition of the role of the Department of Endowments enables it to engage in broad educational and social activities funded by *waqf* income.

Organizational Structure

The Department of Endowments is composed of a number of sections with local branch offices located in seven administrative districts throughout the West Bank (see Figure 2). The central office includes the following: the chairman's section; the administrative section; financial section; sermons and guidance section; restoration, maintenance, documentation and research sections.²³ The local administrative districts in the West Bank are, in addition to the central office in Jerusalem, Bethlehem and Jericho, Hebron, Ramallah and al-Bira, Nablus, Tulkarm and Jenin. At the beginning of the 1980s, the Jordanian Minister of *Waqf* decided that the director of the Jerusalem district Department of Endowments (Ḥassan Tahbūb) would also be the General Director of the Department of Endowments on the West Bank, thus merging the administration in Jerusalem with the general administration on the West Bank. This continued for a number of years until the mid-eighties when Tahbūb was no longer director. Every district has a primary council, responsible for relations with the central administration in Jerusalem, along with a number of other working departments including archives, income, expenses, secretarial, and emissaries.

Religious Education Services

The Department of Endowments' religious education system operates on a number of levels: Universities/Colleges; High Schools; Elementary Schools and Evening Education. Following are the institutions which existed in 1982: the Islamic

²² *Bayyān 1967–1976*, 7.

²³ Part of this is based on *Bayyān 1977–1982*.

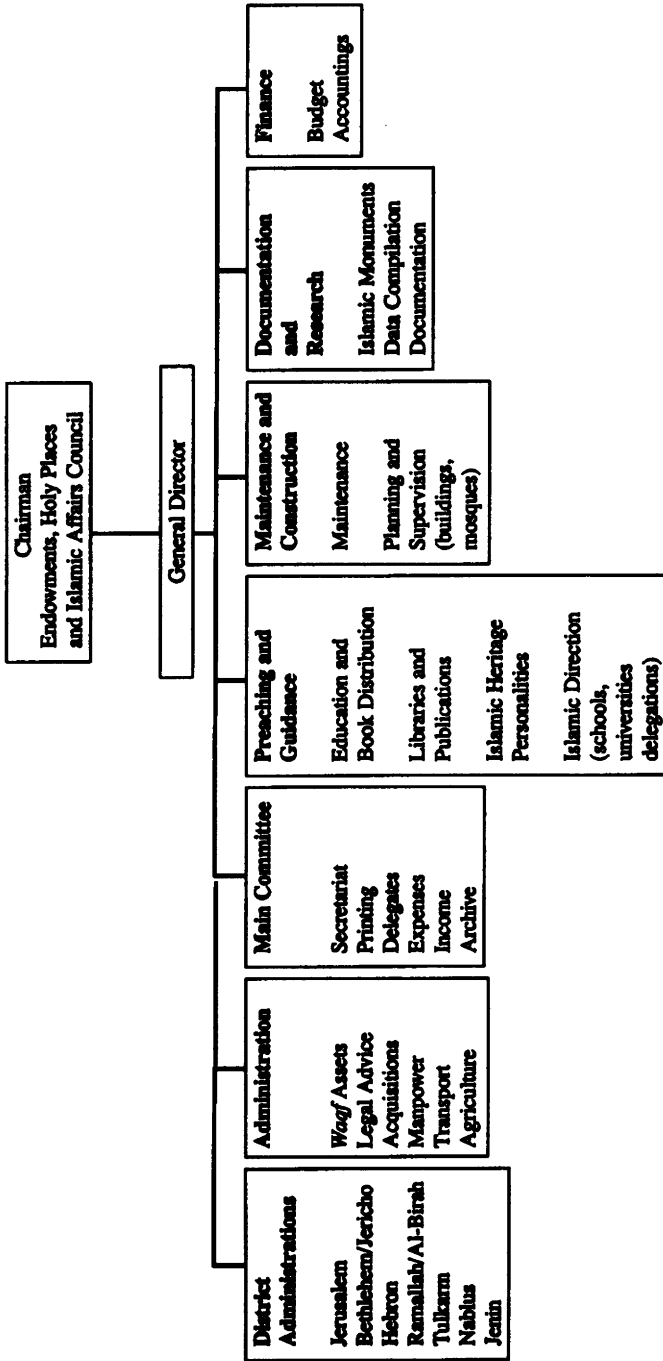


Figure 2. Organizational structure of the Department of Endowments

College in Bayt Hanīna (*kuliyat al-daʿwā wa uṣūl al-dīn*), founded in 1980 as part of the Arab University of Jerusalem, was built and funded by the Department of Endowments with contributions arriving via the government of Jordan. The 29 staff members employed in the college are paid by funds from the Department of Endowments. The Islamic College graduated its first (B.A.) class in 1983.

At the college level, the Department of Endowments funds two *Sharīʿa* colleges, one in Jerusalem and one in Qalqilya. *Al-Maʿhad al-sharʿī*, a college founded in Abū Dīs, an environ of Jerusalem, in 1975 with Department of Endowment funding, functions to prepare clergy for mosques and functionaries for the religious branch of the Department of Endowments. Each incoming class has 30 students who spend 2 years at the school receiving a room and board allowance. This institution employs 17 people. The second college in Qalqilya founded in 1978 by the Department of Endowments, operates on similar principles as the institution in Abū Dīs. It seeks to prepare staff for the religious branch of the Department of Antiquities with the assistance of 12 staff members. Similar to the college in Abū Dīs, 30 students enroll each year for a period of two years. In 1982 a new branch for women opened with 68 students entering in that year.

On the level of secondary school education, the Department of Endowments funds two religious high schools in Jerusalem. Furthermore, it participates in funding religious teaching jobs in a number of other West Bank high schools run by local charitable associations.²⁴ Al-Aqṣā religious high school for boys is the first of these two schools. This school, comprised of three classes with 71 pupils and 11 staff members graduated its first group of pupils in 1960/61. The second of the two is al-Aqṣā religious high school for girls also maintaining 71 pupils with the assistance of seven staff members.²⁵

The Department of Endowments is the only funder of the Muslim orphanage's elementary school. The Muslim Orphan School, founded in 1922, had as many as 311 orphans in 1976. In 1982 it numbered 234 pupils and 60 staff. At the end of the 1970s, the Department of Endowments, with the help of the Jordanian government, founded a new vocational orphanage on 13 dunams of *waqf* land in al-ʿAyzariyya at an investment of half a million Dinars. A third orphanage was also founded in Jerusalem in the neighborhood of Dāhiyat al-Barīd. The Department of Endowments began building a girls' school in al-Rām on a *waqf* plot of 6,431 square meters, also at an investment of half a million Dinars. An

²⁴ *Bayyān 1977–1982*.

²⁵ Several schools in the West Bank schools are partly subsidized by the Department of Endowments through the support of religious education teachers. The Hebron religious high school, operated by a charitable association, receives supervision by the Department of Endowments only regarding the religious curriculum. The Islamic high school in Nablus is also operated by a charitable association with eight teachers out of 19 total staff members funded by the Departments of Endowments. Jenin's religious high school has six out of the eight teachers receiving Department of Endowments funds. Al-Bira's religious high school, founded in 1980 with funding from the Department of Endowments, is somewhat different in that all its staff belong to the *waqf*.

additional orphanage in Wādī Jawz was built in a building consisting of 786 square meters acquired by the Department of Endowments at a renovation cost of 14,000 Dinars.

In the seventies, the Department of Endowments established educational institutions for night classes in which people learn Qur'an and *hadith*, or Islamic tradition. The first *Dār al-qur'an al-karīm* was founded on the *al-Haram al-Sharīf* in Jerusalem in 1972. By 1982 twelve Qur'an schools had been established on the West Bank. A typical course consists of four lessons per week, one hour per lesson for a period of two years including yearly examinations. Anyone 12 years of age or older can participate in the lessons. The first *Dār al-ḥadīth* was also founded on the *al-Haram al-Sharīf* in the seventies. By 1982 four other similar institutions were founded on the West Bank. The course is held on two levels: classes 1–5 and class 6 and above. The total educational services supported by the Department of Endowments thus include two colleges, two high schools, one primary school and two night school courses.

Since 1967 non-religious educational institutions known as “the Jordanian schools” have operated throughout the West Bank. They were operated by a joint committee of the PLO and Jordan, with Jordanian funding through the vehicle of the Jordanian “Department of the Occupied Territories.” About one-third of the teachers were of long-standing and received their wages from the Jordanian Ministry of Education. In order to cover-up the real source of funding (the joint committee) and to present Jordanian authority over these institutions, the public was informed that these institutions belonged to the Department of Endowments, even though no formal connection existed in any way. Despite Jordan's severance of links with the West Bank in 1988, it had an interest in the continued funding of these educational institutions. As such, Jordan decided to transfer a special budget to these schools via the Department of Endowments, a body acting solely as a channel for the transfer of these monies. To facilitate this, the director of the non-religious educational network in Jerusalem, Ḥusnī al-Ashhab, a long-time educator, was co-opted onto the Endowments and Islamic Affairs committee.

Since 1967 Jordan has controlled these institutions, with the Jordanian appointed director managing to preserve a moderate political stance. During the *Intifāda* period, various PLO elements engaged in power struggles in the schools in an attempt to secure control. Data on the number of institutions, pupils and teachers are carefully guarded. The total number of institutions is estimated at 17, encompassing all levels of education (see Table 13), including the two technical colleges: *Kuliyyat al-umma* in Bayt Hanīna and *Kuliyyat al-mujtamā'*. This group of institutions includes three Muslim orphanages in Jerusalem and the *al-fatāt al-lāji'a* school. According to this estimate, there are approximately 12,000 pupils and 500 teachers. The total staff wage estimate is approximately 3–4 million Dinars (2 million U.S.\$) annually. Most teachers do not receive wages as official

Table 13. Jordanian educational institutions in East Jerusalem

No.	Name of school	No. of classes	No. of pupils	Classes	Site
1	Nizāmiyya for girls	36	1,230	K-12	Bayt Hanīna, Nablus Road
2	al-Fatāt al-laji'a for girls A	24	893	"	Wādī Jawz, near Rockerfeller Museum
3	al-Fatāt al-laji'a for girls B	18	620	1-12	"
4	Dār al-awlād for boys	9	386	1-9	Wādī Jawz, near Mamuniyya School
5	al-Umma for girls	20	1,200	1-9	Dāhiyyat al-barīd
6	al-Umma for boys	13	550	10-12	"
7	al-Rawḍā al-ḥadītha for girls	16	682	K-9	Shaykh Jarrāh
8	al-Shābbāt al-muslimāt for girls	16	733	pre 6-9	Wādī Jawz, near dār al-Ṭīf
9	al-Aqṣā al-shar'īyya for boys	8	170	10-12	<i>al-Ḥaram al-Sharīf</i>
10	al-Aqṣā al-shar'īyya for girls	8	185	10-12	<i>al-Ḥaram al-Sharīf</i> , and the Old City
11	Dār-al-aytām for boys	75	2,400	1-12	Al-wād
12	al-Nahḍā al-islāmiyya for boys	7	200	K-6	al-Sharaf
13	Dār al-aytām for boys	6	180	"	Near YMCA
14	Rawḍat al-zuhūr, mixed	8	245	pre 6-9	Ṣalāh al-Dīn St, near district court
15	Rawḍat jabal-al-zaytūn, mixed	4	150	K-1	al-Ṭūr
16	Sawāḥira Association, mixed	7	330	K-6	East Sawāḥira
17	Riyād al-aqṣā al-islāmiyya, boys-girls	60	2,000	"	Scattered around all parts of East Jerusalem 1. Bāb al-Zahra 2. <i>al-Ḥaram al-Sharīf</i> 3. Dāhiyyat al-barīd 4. al- ^c Ayzariyya 5. Ṣūr bāhir
TOTAL		335	12,154		

Note: al-Riyād al-aqṣā (no. 17) educational institutions are funded from a number of sources, chiefly by the local *zakāt* committee which includes some of the members of the Endowments Council in Jerusalem. The remainder of the funding comes from Jordan and the Gulf states.

staff, but rather in the form of grants (*mukāfa'a*). The students in these institutions either pay no fee, or mere token fees.

The libraries and publications section of the Department of Endowments,

founded in 1981, functions to develop and maintain Islamic libraries, and publish religious publications. The two main libraries are the al-Aqṣā mosque library, opened in Jerusalem in 1976, and the al-Ḥājj Nimr mosque library in Nablus. This section of the Department of Endowments also publishes a religious periodical entitled *Hudā al-Islām*.

The Islamic Heritage section, with approximately a dozen staff members, operates from the Islamic College building in Abū Dīs. It consists of an archive covering some of the late Ottoman period through the end of the Jordanian period. It includes the archives of the Supreme Muslim Council, a library of various other manuscripts and a general Islamic library. This section occasionally issues publications on historical subjects for internal distribution only. Also preserving Islamic heritage, although directly subordinate to the main administration of the Department of Endowments, is the Islamic Museum on the al-Ḥaram al-Sharīf, originally founded during the Mandate period, and recently reopened in 1980.

Sermons and Guidance Committee

Each district administration has a guidance supervisor, who prepares a monthly plan to visit preachers in the mosques and organize periodic meetings of preachers and *Imāms* to discuss pertinent issues. From an educational standpoint, the Sermons and Guidance Committee (*al-wāʿz waʿl-irshād*) is the most important of all the Department of Endowments' various committees. This committee deals with the organization and provision of educational and religious services to the population of East Jerusalem and the West Bank. It supervises *Imāms*, preachers and religious education in the mosques while helping to organize religious ceremonies including the organization of prayer in al-Aqṣā mosque during the month of Ramadan.

Essentially, the task of the *Waqf* department is to adequately operate and fund the city's religious activities. In Jerusalem, the *waqf* properties administered by this department generate meager revenues due to poor management. This is reflected in the provision of services by this office as well. With the political changes effected after 1967, the goals of the department changed as well. The department sought to increase its endowments and properties and engage in institutional investment in the city, in other words, to develop the city's public institutions and services as part of the institutional building process of Palestinian society. The combination of the national/political struggle and the inadequate level of economic growth in the eastern part of the holy city limited the nature and extent of economic development activities connected with *waqf* property.

Chapter 5

Economic Development of *Waqf* Properties

The previous chapter revealed the large gap existing between the considerable number of assets belonging to public and family *waqfs* compared to the small sums of revenues generated by them. Previously unknown sources of income, namely entrance fees to the *al-Haram al-Sharīf* shrines, generate the biggest source of income for the Department of Endowments in Jerusalem, in addition to special financial injections from the Jordanian government. This chapter deals with those problems, inherent in Islamic Law, which led to the above-mentioned gap on one hand, while highlighting, on the other, the mechanisms which developed, especially after 1948, to overcome traditional *sharī'a* restrictions enabling new methods to emerge for economic development of *waqf* assets. It is such new methods that helped maintain the *Waqf* institution as an important resource for Islamic activity as well as playing a central role, nationally, for Jerusalem's Palestinian population.¹

The *waqf* system itself is based on two central principles intended to insure the founder's wish: first, perpetuation of the founder's purpose (i.e. the beneficiary of the endowment) which is, in itself, an act of charity from which the founder derives religious favor; and second, perpetuation of the assets which are endowed by the founders with a particular character and designation at the time of endowment – assets which are intended to be a sort of living memorial to the founder and his action. These two basic principles have an internal contradiction. By nature, every asset decays over time therefore it is not always possible to preserve and maintain the asset solely from its income. A man endows a grove of date palms, for example, for charitable purposes. As time passes, the grove ceases to bear fruit and the land becomes infertile. Under these circumstances the endowment's director cannot develop the land as the *waqf* has no additional resources to help maintain the original asset. If the endowment director does not sell the land or lease it out to someone else and use newly accrued monies to maintain funding

¹ The subject of transactions involving *waqf* properties was first extensively explored in this author's book, *Islamic Endowments in Jerusalem*. For the historical and legal background, as well as the situation in Mandatory Jerusalem, see chapter 7.

for the endowment, a situation is created in which the *waqf* may cease to exist.²

The above, a classic example of Ḥanafī law, was argued by Ḥanafī jurists at the beginning of Islam, when such a problem arose.³ Since the inception of *waqf* in Islam until the present day, the chief concern has been to preserve existing assets and to perpetuate the endowment's existence. Contemporary economic conditions no longer permit the maintenance of this Muslim institution as there is continuous pressure for economic development. The *fuqahā* (jurists) in Islam found a way to overcome restrictions in the *waqf* system (as will be shown below) in order to perpetuate it and preserve the value of the endowment. Preservation of this system, however, contradicts effective economic development. Researchers dealing with this issue have concluded that the *waqf* is a recipe for economic stasis.⁴ It is quite difficult to perpetuate the original purpose of the endowment without altering the character of its original asset, illustrating the internal contradiction inherent in the *waqf* system.

The basic principle, insuring the perpetuity of the *waqf*, is maintained by a strict ban on the sale of the endowment's original assets or any other type of financial transaction such as leasing, renting (for more than a year of an urban property or three years for agricultural assets), pawning, assignment of rights, or mortgaging of assets *inter alia*.⁵ The fact that a *waqf* asset is dedicated as a living memorial to the founder further necessitates the ban on changes to the original character of the *waqf*'s assets. An additional reason for the legal prohibition on improvements to *waqf* assets is the potential for exploitation by *waqf* directors of their positions. Cases have been recorded in which *mutawallīs* have undertaken non-vital renovations claiming to improve *waqf* assets when, in reality, these so-called 'improvements' have served to earn them private profit at the expense of the *waqf*'s beneficiaries. In defense, however, of necessary renovations, the ban forbidding them may sometimes be detrimental to the well-being of the *waqf*. Such renovations may not cost much and their improvement may increase the income from the room's rental. This simple example of sterile law confirms scholars' belief that the *waqf* is an economically harmful institution.

In family *waqf*, by contrast, the asset can be improved and its original character changed, if the beneficiaries consent.⁶ It is not stated whether this must be by majority agreement or unanimous consent, but it appears that the general agreement of all the beneficiaries is sufficient. More than once beneficiaries have filed claims in the *Sharī'a* Court to have a *mutawallī* dismissed for having carried

² Reiter, *Islamic Endowments in Jerusalem*.

³ Al-Khaṣṣāf, *Kiṭāb Ahkām al-Awqāf* (Cairo 1904), 22.

⁴ For example of this, see Goitein and Ben Shemesh, 169–170; Gabriel Baer, *The History of Land Ownership in the Middle East* (London: Oxford University Press, 1962), 77–79; Avraham Garnovsky, *Ha-mishtar ha-qarqa'i be-eretz yisra'el* (Tel Aviv: Dvir, 1949), 127–130.

⁵ Qadrī Pāsha, clause 3.

⁶ Qadrī Pāsha, clauses 412, 236.

out renovations which changed the original character of the asset.⁷ Fear of such action, at times, inhibited *mutawallīs* from undertaking renovations to *waqf* assets. In a family endowment with tens or hundreds of beneficiaries, there is no effective way to gain all the beneficiaries' consent for improvements to its assets, an act which would mean suspended income in the short term for the sake of increased income in the long run. Beneficiaries tend not to make economic calculations for the long term. In addition to this, the director of the *waqf* must deal with family rivals making it, in effect, impossible to gain the consent of all the *waqf*'s beneficiaries. The founders of a family *waqf* do, however, have an alternative. They can choose to have the original asset preserved at any price, perhaps even at the loss of the *waqf* itself, or have the purpose of the *waqf* maintained, with the possibility that its assets are liable to change in the future.

Inherent Contradictions of Muslim *Waqf*

The tension between the two contradictory principles of the *waqf* has found expression in Islamic legal writings throughout the ages. The *fuqaha'* found a way of circumventing the essential restrictions of the *waqf*, forbidding, altering or selling *waqf* assets as these restrictions seem difficult to maintain in Muslim society. Early in Islam, legal mechanisms were developed which enabled people to sell *waqf* assets and overcome the economic damage inherent in the basic understanding of the *waqf* system. Despite historical evidence of various transactions of *waqf* assets, based upon established conditions under which this may take place, this does not satisfy the claim that Islam overcame the basic financial restrictions of the *waqf* system and that no economic stasis in *waqf* assets existed. The existence of such specific legal instances does little to prove a notable change in the institution itself.

In order to examine whether *awqāf* stagnate to the point of cessation or not, it is necessary to examine this in practical terms. Since the various types of transactions were all subject to endorsement by the *qadi*, we can learn much about this matter from the *sijill* (register of the *Shari'ah* Court), noted also in other studies of *sijill* which examine the practices of the *waqf* institution in Jerusalem at the end of the Ottoman period and during the Mandate period.⁸ These findings illustrate wise management, on behalf of the *qadis*, based on developing economic and social conditions. During this period, scores of changes and transfers of *waqf* assets were made with the general aim geared at nurturing the buds of economic development. Another study on the *waqf*, in present-day Acre (1965–1985), suggests that a *waqf*, subject to the authority of the *Shari'ah* Court, conforms to modern economic methods.⁹ Apart from these studies, research on the question of stasis or economic

⁷ See for example, *sijill* 527/168/59 of 29.2.52.

⁸ Reiter, *Islamic Endowments in Jerusalem*, chapter 7 and the sources mentioned there.

⁹ Reiter, "The *Waqf* in Acre," 21–45.

development of *waqf* assets based on the deeds of the *sijill* is extraordinarily limited.

The period under present discussion has completely different circumstances, both from a political and an economic point of view. From a political point of view, Jerusalem had returned to Arab Muslim rule after thirty years of non-Muslim British rule. From an economic perspective, East Jerusalem witnessed significant development under Jordanian rule as the government helped to rebuild damage from the 1948 War by giving grants for building and development. One result of this development was the establishment of a flourishing commercial center in the neighborhood of Bāb al-Zahra, chiefly in Ṣalāḥ al-Dīn Street and the roads branching off from it. It is interesting to examine how this economic boom affected the religious establishment and all others dealing with *waqf*. Does Muslim rule foster a more conservative influence? Are the *qadis* and others involved in the subject of *waqf* bound to legal norms which do not accord with modern economic factors, or do they feel at liberty to effect change and bring the *waqf* up to date with modern reality?

In 1967 Israel gained control of East Jerusalem and the east part of the city was once again subjected to non-Muslim rule. After a short period of hesitation, the government of Israel took it upon itself not to interfere in non-Jewish religious affairs, including the endowment affairs of East Jerusalem's Muslims. It granted religious autonomy to them and even sanctioned continued Jordanian rule, to a significant degree, in the religious establishment, administered from the distant capital of Amman. What consequences did the change of power in Jerusalem have on the assets of various *waqfs*? Did it cause stagnation, or did political change speed up economic development? As mentioned earlier, the chief momentum building in the eastern part of the city took place during the Jordanian period. By the time Israel took control of the area, most of East Jerusalem's land was already built up and served various purposes. The chief development after 1967 took place in the rural peripheries of East Jerusalem, in areas where there were essentially no *waqf* assets.

In order to illustrate the importance of those two questions as well as its ramifications on the development of the city, we must consider a particular *waqf*, founded in the last century, whose assets were exclusively parcels of land primarily used for seasonal agriculture and located outside the then borders of Jerusalem, where Ṣalāḥ al-Dīn Street now runs. If the directors of the *waqf* had abided by the rules of Muslim law and had continued working the land until today, noting the area's inclusion within the refurbished business area of the city, without changing its purpose or character, the *waqf* would have reaped only meagre income. The *waqf* may, in fact, have gone bankrupt when, as a result of civil legislation, taxes were imposed on lands within restored municipal areas. On the other hand, the *waqf* could have reaped significant benefits if a hotel or commercial center had been built on the site. One may envision the damage which the *waqf* system can

cause to the municipal economy of a city like Jerusalem, where a considerable part of its land is *waqf* property, if the religious establishment administering and supervising endowment properties displays conservative tendencies. An effort from the Muslim establishment to bring the management of *waqf* assets more in line with modern economic conditions could contribute to the development of the city and be advantageous for the people running the endowments as well as the endowments' beneficiaries.

Economic Development of *Waqf* Properties

During the years 1948–1988 the *Sharī'a* Court issued one hundred permits for the execution of transactions, improvements or economic development works of *waqf* assets. Ninety-one permits were issued during Jordanian rule from 1948–1967 while only nine have been issued since 1967. Below are details of the findings according to the type of activity.

Character Change of Waqf Assets

Between 1948 and 1990, 21 applications for character changes to *waqfs*, or improvement of assets, were filed at the *Sharī'a* Court – 16 of them during the Jordanian period and five during the period of Israeli rule. The following example illustrates the short-sightedness imposed by the ban on altering the character of the asset. The *mutawalli* of the al-Dajānī *waqf* filed an application with the *qadi* for permission to install a window in a wall of a shop near the Damascus Gate, which had previously been an oil factory. The *mutawalli* had reached an agreement with the lessee of the property according to which he would carry out the work at his own expense and, in exchange for permission to do so, he would pay a yearly increase of five dinars. Both parties agreed that, at the end of the rental period, the lessee would block up the window and restore the property to its original state.¹⁰ It seems that the director of this endowment took the trouble of entering this clause into the agreement in order to demonstrate fulfillment of his obligations to the principles of *sharī'a* law. As may be expected, the window was not blocked up at the end of the rental period and the *qadi* had no means to enforce this amendment.

Proceedings for such an action begin with an application by the director of the *waqf* to the local *qadi* in Jerusalem. The *qadi* appoints a committee of independent experts who visit the property and prepare a detailed report, with the assistance of the *waqf* engineer or a municipal engineer, on the state of the property and the requested changes. When convinced of the need for change, the *qadi* hands the application over to the *Waqf* Ministry in Jordan for approval. When the Ministry gives its approval, a formal procedure is carried out in front of the *qadi*, whereby

¹⁰ *Sijill* 545/31/58 dated 20.7.57.

the *mutawallī* brings witnesses to prove any necessary legal requirements. Only then is a permit issued for structural changes.

Sometimes changes to property were carried out without gaining the required permit from the *qadi*. In one case the director of the al-ʿAnbūsi *waqf* appeared before the *qadi* and requested a retroactive permit for construction by the lessee of two *waqf* shops on Ṣalāḥ al-Dīn Street into one. The director claimed that the new changes (*iḥdāthāt*) did not harm the *waqf*, but, rather, would increase its rental income by 10 Dinars annually.¹¹ Properties run by the Department of Endowments have also undergone changes to their original character when increased income from them was deemed necessary. In such cases, *maʾmūr al-awqāf* was required to file an application with the local building and planning committee in order to enlarge a number of *waqf* shops, for example, or to change their character by cutting new doorways.¹²

Extensions to Existing Waqf Properties

The above-mentioned applications for change have primarily been initiated by the lessees. Most of the applications, however, for a change in the character of *waqf* property were of a different type. In most cases, *waqf* directors had exploited the need for renovations to a property in order to make improvements to it or to extend or develop it in such a way which would enable the property to earn him more income. The director of the al-Rayis (family) *waqf*, for example, received a permit to reconstruct a room which had fallen down. He agreed to lend the endowment the sum necessary to carry out the renovations (170 Dinars). In retrospect, it became clear that the *mutawallī* did not just reconstruct the room but added three extra rooms to the property at a cost of 350 Dinars and filed an application with the *qadi* for consent only after the construction was completed. The *qadi* not only granted permission for the extension but also granted the *mutawallī* the right to receive his return investment from the endowment's income.¹³ It should be noted that, according to the law, the *qadi* should have dismissed the *mutawallī* for having carried out work to the property without a permit, an event that would have happened had one of the beneficiaries filed a complaint with the *Sharīʿa* Court.

Making improvements and extending existing *waqf* properties was also widespread in other, principally family, endowments.¹⁴ In many cases, permits were retroactively requested and granted for structural changes to *waqf* properties and, furthermore, it seems that such permission was not difficult to obtain. It would have been impossible to undo structural changes to a property and the *qadi*

¹¹ *Sijill* 566/49/74 dated 10.6.65. The rent of one shop was 200 Dinars and the second was 130 Dinars.

¹² *Qism al-Turāth al-Islāmī* 13/64/6, 197/20.

¹³ *Sijill* 545/77/21 dated 24.3.58.

¹⁴ *Sijill* 563/143/219 dated 19.11.64; *sijill* 636/113/491 dated 15.11.86; *sijill* 545/90/47 dated 1.7.58; *sijill* 563/71/93 dated 23.6.64.

did not wish to punish the administrators who had carried out the changes or to make them pay the whole cost of the works which had been carried out, albeit without approval. As such, the lessee of a shop belonging to the al-Sāfūṭī family *waqf* added an extra 82 square meters to a property originally 25 square meters, by digging a basement. According to the *mutawallī*, the work was carried out by the lessee without his consent. Since the change could not be undone, he requested that the additional room be given a permit. After the *qadi*'s investigatory committee found that the construction did not harm the original property, he granted the permit on condition that the lessee guarantee to pay for any future damage caused by the construction.¹⁵

Limited Term Rental

One accepted method for gaining development capital for *waqf* properties during the Jordanian period was to encourage investment by assigning the property to an investor for a number of years, either rent-free or at a nominal rent. The length of the period was determined by the ability of the investor to recoup his investment and get a reasonable profit from it. Some agreements stated that, at the end of the period of usage, the lessee would have the right to extend the lease at a reasonable rent. Buildings constructed and developed by the investor came under full ownership of the *waqf*'s administration at the end of the lease period. As stated, according to Islamic *waqf* laws, it is forbidden to rent out an urban *waqf* property for longer than one year, unless the property is in ruins and in need of vital renovation. It seems, however, that, when necessary, *waqf* laws could be set aside in order to deal with current economic realities.

The buildings of the Shitayya *waqf* in the center of Ṣalāḥ al-Dīn Street were one of the largest building operations of *waqf* properties in Jerusalem during this period. This endowment operated two building projects consecutively: one begun in 1957 and the second in 1967. The former was a plot which had stood empty for many years. The *mutawallīs* received a building permit from the *qadi* for seven shops on an area of approximately 340 square meters, at a cost of 3,740 Dinars. Part of the stated cost was to be funded by an act of exchange (*istibdāl*). The exchange was based on the sale of a plot of 833 square meters on the same street by bid a year earlier¹⁶ while the remainder was to be funded by endowment income.¹⁷ The projected income from the shops was estimated at approximately 1,000 Dinars annually. The *mutawallī* subsequently received a permit to build three more shops.¹⁸ Realizing that development expenses exceeded the first budget by 30%, one of the *mutawallīs* appeared in court to apply for permission to take out a

¹⁵ *Sijill* 636/113/491 dated 15.11.86.

¹⁶ *Sijill* 541/186/107, dated 24.10.56.

¹⁷ *Sijill* 545/19/31 dated 13.4.57.

¹⁸ *Sijill* 545/24/81 dated 11.9.57.

loan of 2,100 Dinars for further building purposes. He emphasized that following completion of the additions, the *waqf*'s income would increase by 1000–1600 Dinars annually.¹⁹ Due to the financial situation of the *waqf*, which excluded the possibility of receiving a development loan, the *mutawallis* were forced to find an alternative way to develop another area of the same *waqf* on the same street. He decided to mortgage it to two investors for a period of ten years. The developers would build five shops and at the end of the mortgage, the shops would revert to the ownership of the *waqf*. Rents from the shops were estimated at approximately 700 Dinars per year.²⁰ Four years after they received a permit to build the shops, the *mutawallis* applied for a permit to build a further 12 offices above the shops, an area of 360 square meters at a cost of 4,860 Dinars. The *mutawallis* received the beneficiaries' consent to invest *waqf* income in the amount of 2,000 Dinars and to use 850 Dinars from the annual rent to pay back a loan of 2,010 Dinars.²¹

In May 1967, the *mutawalli* filed a blueprint for the second building project on *waqf* land consisting of 4.65 Dunams. These plans included 15 shops, 9 storerooms, 31 offices, and a 147-room hotel with 10 large apartments attached to it. In the first stage, the plans called for the building of 12 shops and another 12 street level store-rooms at a cost of 22,148 Dinars. Funding was to come from endowment income in the bank, which stood at 12,037 Dinars, with the remainder from letting the asset for a number of years with an advancement of rents, and, if necessary, from a loan. (According to the estimate, the expected income was 120 Dinars from each store-room and at least 500 Dinars from each shop). In his application, the *mutawalli* pointed out that the land was in an area of potential tourist and commercial development, and its value was going up by the day.²² In 1985 the *mutawallis* received a loan of 20,000 Dinars to build new buildings on the land at a cost of 33,000 Dinars. The *mutawalli* stated that he himself was prepared to lend 10,000 Dinars interest-free in order to pay back an interest-bearing loan. Thus he obliged himself to cover the debt on the new property's income in a way which was not detrimental to the other beneficiaries of the *waqf*.²³

Loans

Taking a loan for development needs is an issue not mentioned in Muslim legal literature. The interest of pre-modern jurists did not include the possibility of economic development, noting economic conditions of earlier periods. Later law collections mention the permissibility of borrowing by *waqf* directors or even lending capital, from his personal resources, to the *waqf*. This type of loan

¹⁹ *Sijill* 545/122/109 dated 12.11.58.

²⁰ *Sijill* 545/123/110 dated 19.11.58.

²¹ *Sijill* 557/42/61 dated 10.7.62.

²² *Sijill* 571/160/89, dated 18.5.67.

²³ There is no reference to the expenses being approved, *sijill* 626/141/12 dated 8.1.85.

(*istidāna*) is always mentioned in connection with the essential need of renovating or reconstructing *waqf* assets. On no occasion is there mention of a possibility to increase the *waqf*'s assets beyond those originally endowed.

In the early fifties, Jordan established a fund for the reconstruction of war damage. The fund was run by the Development Council (*majlis al-ġmār*) which granted guaranteed loans, for reconstruction needs and building and development at an annual interest rate of four per cent. The Jerusalem *sijill* reveals that many family endowments took advantage of this new fund to develop and broaden *waqf* assets. The *mutawallīyya* of the al-Ṣalīḥ family received a loan of 950 Dinars from the fund to rebuild a war-destroyed *waqf* building in the Shaykh Jarrāḥ neighborhood, with loan repayment arranged in ten annual installments. The permit application stated that the new building's income would not be less than 150 Dinars annually. The *qadi* approved the action and stipulated that a public bid for the work be published and furthermore, that it be carried out under his close supervision. Payments were to be made to the contractor at various stages of the building's construction.²⁴ The loan was originally intended for the reconstruction of destroyed property, although it appears that, in this case, the newly-built property was worth more than the original building.

Waqf assets under Department of Endowments administration also underwent renovation and reconstruction. In 1957, several such properties including an orphanage, the *waqf* offices, the al-ʿUmariyya School under lease to the government, and a number of mosques, shops and residential units were renovated. Five years later a building from the al-Rashīdiyya *waqf*, rented to the Jordanian Ministry of Education known as the al-Rashīdiyya school, underwent renovation. In 1960 the offices of the Islamic Congress, a building on the *al-Ḥaram al-Sharīf* which served as a boarding school for pupils at the Islamic College, various houses in the Old City and other buildings, were also renovated.²⁵

Long Leases (Ḥikr)

The system of long leases developed in Islam as a method for dealing with ruined *waqf* properties. This system evolved since *waqf*, as a general rule, does not have independent resources to renovate its assets. Islam's jurists passed judgements allowing the transfer of *waqf* assets by means of various leases, based likely on traditional methods which existed in various regions and had received a legal seal of approval. Leasing is permitted only after the following conditions are met. The property must be in absolute ruins, yielding nothing, and if left unreconstructed will become entirely worthless. An asset such as agricultural land, for example, can only be leased if the yield has diminished to the point where it costs more to maintain than it is actually producing and if it cannot be subjected to a temporary

²⁴ *Sijill* 541/126/259 dated 16.11.55.

²⁵ *Qism al-Turāth al-Islāmī*, carton 338, 184/20, 13/58/6, 183/20, 13/56/60.

share-cropping contract (*muzāraʿa*). Furthermore, it cannot be rented out for a longer than usual period in order for it to be developed. If all of these conditions are satisfied, the *waqf* land may be leased. Upon receiving an application to lease *waqf* property, the *qadi* must ascertain the physical state of the asset and the impracticability of any other possibility such as renovation with *waqf* monies, loans, long rentals with payment in advance, tenancy (in the case of land), or exchange (*istibdāl* – in the case of a building) before approving the lease.²⁶

It was apparent during the Mandate period that the traditional leasing system of *hikr*, *ijāratayn* and *muqāṭaʿa*, was disappearing and in its place a more modern civil system of leasing was developing. The new system was intended to enable the development of unexploited *waqf* lands (mainly agricultural) which otherwise would not have produced any income. On such land, heavy taxes were usually imposed.²⁷ The circumstances of lease actions at this time, mostly initiated by the Endowments Department, indicate that the aim of a lease was to foster the exploitation of unused or empty land by attracting investors to finance the development of those lands in which the *waqf* had no interest.

The only case between the years 1948–1990 in which a *waqf* building was leased for a long period, was exceptional in its circumstances. The building in question, close to the *al-Ḥaram al-Sharīf*, belonged to the *waqf* of the al-Khaṭīb family. The building was in a dilapidated state and the endowment had no funds to renovate it. In 1984, the Department of Endowments seized the opportunity to fund its renovation. In exchange, it came to an agreement with the director of the family endowment that the building would be at its disposal during the lease period. During the first ten years of the lease, it would pay the endowment a token rent of 100 Dinars a year, and thereafter a proper rent. Before the *qadi* gave his approval, consent had been previously given by the Department of Endowments' special "Committee for the Renovation of Family Endowments" – a new committee established after 1967.²⁸ The Department, with an interest in the building due to its proximity to the *al-Ḥaram al-Sharīf*, acted on this matter out of public concern rather than economic interest.

Change of Usage

In some cases, leasing land also entailed a change of use, a concept forbidden by the *sharīʿa*. One type of asset which the *waqf* administration turned into an income-bearing asset, was non-active cemetery land. This policy, accepted in Jerusalem during the Mandate period, was continued by the Endowments Department during Jordanian rule in the city. Building in the Bāb al-Zahra Cemetery became such a profitable enterprise that the Department of Endowments did not refrain from

²⁶ Qadri Pāshā, clause 332.

²⁷ Reiter, *Islamic Endowments in Jerusalem*.

²⁸ *Sijill* 624/127/159 dated 26.5.84.

moving graves, even those of historically important men, in order to develop this land. The result of this was the construction of the *waqf* building on Ṣalāḥ al-Dīn Street, today serving as the office of the *Sharī'a* Court. The Department of Endowments planned and implemented a project to build a two-story building on that cemetery plot of 210 square meters – the first floor there housed four shops with space above it for nine office rooms. A building erected to the north of it, by the Department of Endowments, solely from its own investment, was erected in the same fashion. It became clear, during the process of construction, that additional graves needed to be moved in order to lay a sewage pipe, a stipulation of the municipality. The Chief *Qadi* in Amman tried unsuccessfully to reach an agreement with the head of the municipality. This particularly interesting letter from the general supervisor of the Department of Endowments in Jerusalem, Ḥasan al-Dajānī, dated 26 July 61, to the Acting Chief *Qadi* in Amman is quoted in full below:

The Department of Endowments has intended for a number of years to build a row of shops in the eastern part of the Muslim Cemetery at Bāb al-Zahra in Jerusalem because of the great demand for rental of such shops which, after their construction, will be in the heart of the commercial district. The Department of Endowments has already been working for a year to move graves from the edge of Ṣalāḥ al-Dīn Street to the mound at the eastern side of the cemetery. However a number of graves are delaying the completion of the project, mainly that of ‘Abdallah Mukhliṣ, one of the *waqf* directors in the Mandate period, and in my opinion moving these graves and preparing the ground for construction will take three to four weeks of continuous work. The neighbors of the *waqf* plot to the north, the Shitayya family, have already managed to put their land to good use by building very nice shops on it with offices, above which have been rented to the Cairo-Amman Bank *inter alia*, and, since there has been such great demand the competition has put the market rent per shop at over four hundred Dinars. Herewith it is my intention to point out the value of the *waqf* land and its situation. This is a good opportunity, which could bring great benefit to the Department of Endowments, if it manages to build on this section of the cemetery. The free area, which today is situated between the *Sharī'a* Court and the building of Yūsuf al-Najjar, also constructed on *waqf* land, would enable the building of 13 shops, and we shall try to build each shop with an area of 12–14 square meters, thus the roof of the shops will be suitable for the offices which will be built above it. In my opinion, this building, when finished and rented out, will bring the Department of Endowments rents which will cover all the *waqf*'s building expenses within five years alone. I am putting this project at the top of all development projects, although there are also other valuable projects which can be examined and presented to you and to the honorable members of the Endowments Council if you so desire.

It must be emphasized that the initiative was local and not sent from Amman. The letter was sent two days after the Acting Chief *Qadi* had visited the site accompanied by Ḥasan al-Dajānī.²⁹

Two other buildings were built by the Department of Endowments on the same street by means of a long-term lease. The buildings were rented out five years in advance to the Committee for the Renovation of al-Aqṣā Mosque and the Dome of the Rock. The Jordanian Chief *Qadi*, serving as chairman of the Renovation Committee which rented these particular buildings, wrote to the head of the Endowments Council in 1957 informing him that his committee was prepared to lend 15,000 Dinars in advance to build new offices for the Renovation Committee. According to the plans, the Department of Endowments constructed two buildings – one on an area of 500 square meters and the second on 250 square meters. The former had eight apartments consisting of four rooms each, while the latter had 12 office rooms with annexes. At the end of the five-year term, the Renovation Committee was required to evacuate the premises.³⁰

Other examples of structures built on cemetery land include the chamber of commerce on Ḥārūn al-Rashīd Street, built in 1963 on land of the al-Ghuzāt Cemetery.³¹ Another was that of the Central Bus Station building, erected in 1953 on land opposite the Damascus Gate, by the Department of Endowments and rented to the municipality of Jerusalem for a term of 30 years. At the beginning of 1967, the municipality built a floor of offices on top of it at a cost of 8,000 Dinars in exchange for an agreement to lease the shops for 17 years, at the end of which the offices would be returned to the *waqf*. Apparently this project had great significance among members of the religious establishment as the *Qadi* of Jerusalem, along with the head of the municipality, was present at the meeting during which the project was approved.³² A final example is the post office building at the corner of Ṣalāḥ al-Dīn Street, built by the Department of Endowments at its own expense. When the first floor of the building was finished, the Department of Endowments built extra rooms on top of it and rented them to the government. The post office building and the rooms on top of it were rented to the Jordanian government in 1957 for 2,540 Dinars annually.³³

Another example indicating the economic orientation of the Endowments Department occurred in 1954, at which time the general supervisor of the *Waqf* in Jerusalem wrote to the local planning council stating that the department wanted to rezone land in al-Ṭūr, *arḍ karam al-bāsha*, from agricultural to building. The reasons given for their request were as follows: 1) a scarcity of land for development and building following the war; 2) a decline in the economy hindering

²⁹ *Qism al-Turāth al-Islāmī*, 23/20, 13/57/10.

³⁰ *Qism al-Turāth al-Islāmī*, 24/20, 13/57/10.

³¹ *Qism al-Turāth al-Islāmī*, carton 338, 192/20, 13/60/6.

³² See letter of Rawḥī al-Khaṭīb dated 20.12.66 in *Qism al-Turāth al-Islāmī*, 27/20, 13/66/10.

³³ *Qism al-Turāth al-Islāmī*, carton 338, 22/20, 13/56/10, 183/20, 13/56/60.

development; 3) the need to bypass a building ban imposed during the Mandate period to prevent Jews from building there; 4) a need to make up for the *waqf*'s budget deficit; and 5) narrow zoning of Jerusalem at that time.³⁴

Fund-Raising

One method to increase the economic value of *waqf* assets is by fund-raising, a development method permitted only for endowments with a public character and run by *mutawallis*. The *mutawallis* of the Maghribi *waqf* of Abū Midyan, for example, set out to raise capital by taking a fund-raising trip to the countries of North Africa. In 1953 the *mutawallis* invested 3,500 Dinars, collected during the North Africa trip, to reconstruct a destroyed house in the Old City, and build two shops on the ground floor of the same building. On another *waqf* plot, formerly a vegetable garden in the Maghribi district, they erected a building later rented out as a police station with a shop attached to it. On a similar plot they built another building including two one-room apartments.³⁵ In 1964 the same *mutawallis* purchased land in Amman as an investment for the *waqf* and applied to the *qadi* in Jerusalem for a permit to spend 80 Dinars on a building plan for the land and incidental expenses (*nafaqāt ṭāri'a*). The land was intended for two- or three-story houses, in the hope that the directors of the *waqf* would be able to execute this plan in the future by means of a loan.³⁶

Exchange and Sale of Waqf Assets

The main mechanism developed by Muslim jurists to overcome restrictions of the *waqf* system and the stagnation of assets was by exchange – *istibdāl*. The system of *istibdāl* requires two legal pretexts prior to the exchange of *waqf* assets. The central pretext (*musawwigha*) is that of necessity (*ḍarūra*). Necessity is defined as a situation where, similar to the system of *ḥikr* (long leases), the property is in complete ruins, highly dilapidated, and has ceased to be of any value, or in the case of land – where its income has diminished and cannot meet expenses (taxes, debt-collecting, etc.).³⁷ The main difference between *istibdāl* and *ḥikr* is that despite the pretext of necessity, the *qadi* will not approve an act of *istibdāl* unless it can be proved to him that the *waqf* will derive some benefit (*manfa'a*, *maṣlahā*) from the action. *Istibdāl*, thus, is conditional upon the existence of two fundamental conditions: necessity and benefit.³⁸ In a regular act of exchange (property for property), the substitute property must be in a site no less desirable

³⁴ *Qism al-Turāth al-Islāmī*, carton 379, 20/20, 13/54/10.

³⁵ *Sijill* 541/28/62 dated 3.3.55.

³⁶ *Sijill* 563/70/92 dated 21.6.64.

³⁷ Qadrī Pāshā, clause 133.

³⁸ *Ibid.*

than the original property.³⁹

A further development concerning the act of *istibdāl* deals with actual financial transactions in cases of *waqf* property not exchanged for another property. In this case *waqf* assets may be sold for money which is then invested over time in the purchase of new property for the *waqf*. In legal literature, this form of *istibdāl* was later termed *istibdāl bil-nuqūd* or *istibdal bil-darāhim* (exchange for money or Dirhams) and was rather widespread in Mandatory Palestine.⁴⁰ In the Jordanian period a tradition of *istibdāl* exchange or sale permits existed based on the *waqf*'s level of benefit from such an act. A formula had been found enabling people to overcome traditional *waqf* restrictions which may have doomed the *waqf* to economic stagnation.

Exchange (Istibdāl)

The sale or exchange of *waqf* assets for development needs is a vehicle by which the Department of Endowments could streamline the administration of their assets. An example of this can be found in the Department of Endowments' exchange of a parcel of land, located in a commercial area on Ṣalāḥ al-Dīn Street, for a nearby plot. The required justification of necessity was explained by the plot's size as "too narrow and long to be suitable for building or development." The plot which the Department of Endowments acquired by the act of exchange enabled it, in the language of the *qadi*'s permit, to build shops on it which would bring the *waqf* approximately 400 Dinars annually.⁴¹

Compromise in Cases of Ownership, Quarrels and Expropriations

One condition by which *waqf* assets may be sold is if foreigners have occupied the asset and refuse to release it.⁴² Under these circumstances, it may be better to reach a compromise with the protesters than to engage in court litigation for years. Positive proof of ownership of *waqf* properties is not always ascertainable and, as such, the case may become embroiled in a complicated legal battle. At least one such case occurred in Jerusalem during the Jordanian period. The *waqf* of *al-zāwiya al-fakhriyya* included a piece of land at least 15 Dunams large in Silwān. Twenty-five villagers had occupied the land for quite a number of years, apparently due to neglect by the *waqf* directors who had done nothing to develop the land. Upon application to the *Sharī'a* Court, the endowment director received permission to reach a compromise with the villagers by which to sell the land to them at the low price of ten Dinars per Dunam. The agreement received

³⁹ *Ibid.*, clause 134.

⁴⁰ On *istibdāl*, see Reiter, *Islamic Endowments in Jerusalem*, chapter 7.

⁴¹ *Sijill* 557/103/32 dated 213.3.63.

⁴² Qadrī Pāshā, clause 135.

legal religious sanctioning by means of *istibdāl*.⁴³ Similar permits for the sale or exchange of *waqf* properties have become more frequent due to circumstances of modern legislation which was enacted based upon the need of state and municipal authorities to expropriate land for development purposes for the benefit of the general public.

Shifting of Border and Expropriation

One large expropriation by the Jordanian government in 1963 met resistance from the family's *mutawallīs*. The government expropriated a large piece of land from the *waqf* of Muḥammad al-ʿAlamī on the Mount of Olives for tourist development, with the goal of building the Intercontinental Hotel. The administration of the family *waqf* had been temporarily given to the Department of Endowments due to a family quarrel over the *mutawallīship*. The Jordanian government, at this juncture, seized the opportunity to expropriate the land. Sheikh ʿAbd al-Ḥamīd al-Sāʾih, chairman of the Endowments Committee, along with the other members of the Muslim establishment at the time, did not criticize such an action. This action fostered family unity as they compromised and recommended appointing two people to the post of *mutawallī*. The newly nominated *mutawallīs* expressed their opposition by refusing to accept compensation for the expropriation or even the *istibdāl* permit issued by the *Sharʿa* Court. Their refusal was justified by the claim that the land was to be used for secular purposes not in accordance with *sharʿa* laws, including serving alcoholic drinks in the hotel. The forthcoming compensation, approximately a quarter of a million JDs, was deposited by the government into an Amman bank in the *waqf*'s name. To this day, the *mutawallīs* still refuse to draw on the money. It appears that the *mutawallīs* estimate the expropriated land's value to be much higher than the Jordanian government appraiser's assessment at the time, justifying their unrelenting stance.⁴⁴ The family, the beneficiary of the *waqf*, is aware of considerable financial losses caused by non-use of the compensation monies – an act which occurred more than thirty years ago.⁴⁵

Sale of Assets for Investment in Construction

The main method utilized to enable economic development of *waqf* assets was the *istibdāl* mechanism of selling properties. The monies accrued from the sale of *waqf* assets were subsequently invested in building works. The intent was investment and development of the remainder of the *waqf*'s assets both by renovating them and, principally, by building on other parts of the *waqf*'s land which had since

⁴³ *Sijill* 571/9/75 dated 12.3.66.

⁴⁴ Interview dated 23.6.90 with Shaykh Asʿad al-Imām.

⁴⁵ Interview dated 18.3.90 with Zayn al-ʿĀbidīn al-ʿAlamī.

been included within the municipality's building zone.⁴⁶ This system permitted the *waqf* to earn twice from the sale: once from the sale itself and a second time from the act of construction, a more economic-based investment than buying existing property. A third alternative was to develop another of the *waqf*'s plots by construction. *Waqf* directors thus became project-contractors serving to enrich the *waqf*'s funds as well as the beneficiaries (and sometimes themselves as well). The *Shari'a* Court granted permits for the sale of *waqf* assets, explicitly stating that the monies must be invested in construction projects for the *waqf*.

***Waqf* Assets and Urban Planning**

The *shari'a* ban on effecting changes to or transferring *waqf* assets contradicts the principles of modern urban planning. *Waqf* property is different from privately-owned property and, as such, forces urban planners to thoroughly consider all possible options before circumventing *shari'a* restrictions. The difficulties inherent in urban planning in areas abundant with *waqf* properties vary depending on each particular asset and its character. Urban planners must consider whether the asset consists of urban land or buildings; whether the planning is of a public or private nature; whether expropriation of land is involved; and finally, whether the asset is a cultural or a holy site.

The status of holy sites, including mosques, religious buildings and cemeteries, evoked various Islamic legal opinions regarding the possibility of implementing a change in usage. If a mosque or cemetery is still functional, no possibility exists to effect any change in usage. Opinions are divided, though, concerning a mosque which has fallen into ruin and is no longer used, as well as a cemetery which has fallen into disuse over a period of years.

As mentioned above, during the Jordanian period, no serious obstacles existed which interfered with the expropriation of *waqf* land for economic development. This has also been the case under Israeli rule in East Jerusalem as noted in the expropriation of *waqf* lands by the Israeli authorities for the construction of roads or for national purposes, namely in the Jewish Quarter of the Old City and the Western Wall Plaza. The Jerusalem Municipality experienced problems, however, whenever a project was planned on an old Muslim cemetery or holy site.

The majority view of the Ḥanafī school, the accepted Islamic law school in Palestine, states that no mosque or cemetery receives a status of eternal sanctity, or *ḥaram* such as that accorded to holy places found in Mecca, al-Madīna, the *al-Ḥaram al-Sharīf* in Jerusalem or the *al-Ḥaram al-Iḫfāhīmī* in Hebron. These areas remain holy because they are used and maintained as holy sites, but, the moment they cease to serve this purpose, they can be desanctified or re-zoned. A ruined mosque not in use may be demolished, on condition that the rubble is

⁴⁶ Reiter, *Islamic Endowments in Jerusalem*, p. 181.

used to build a new mosque on a site beneficial for nearby Muslims.⁴⁷ As for a cemetery, the majority view states that when a cemetery has not been used for a generation, or the bones buried there have already turned to dust and become part of the earth, its usage may be changed perhaps for agricultural purposes or building land.⁴⁸

Whether the modern town planner can utilize this possibility afforded to him by the *Sharī'a* does not depend entirely on religion. Political and social circumstances also play a significant role. One of the famous cases involving cemeteries was that of the Mamila Cemetery (*maqbarat al-mujāhidīn*) during the British Mandate. In 1927 Shaykh 'Abd al-Razzāq al-'Alamī, Shaykh Sa'īd Kassāb and Ḥasan al-Budayrī lodged a complaint against the president of the Supreme Muslim Council and the director of the Department of Endowments in Jerusalem (*ma'amūr al-awqāf*) for having disinterred bones and transferred them elsewhere, during the building of a number of shops and apartments. In addition to that, work was also begun on the Palace Hotel, all on the grounds of the cemetery in Mamila and Bāb al-Zahra. The representative of the Supreme Muslim Council claimed that the jurists were divided on this issue, quoting various opinions by local Ḥanafī jurists, who permitted the action. However the court decided not to compete with the issue of religious law and rejected the claim on a procedural point.⁴⁹

The central question regarding urban planning and *waqf* assets deals, principally, with empty *waqf* land in the middle of an urban area. Within greater (Israeli defined) Jerusalem municipal boundaries there is a considerable amount of agricultural *waqf* land originally endowed during the Ottoman period. As time passed, these areas fell within the urban boundaries of the city and most of them ceased to be used according to their original purpose. The *waqf* also owns urban lands acquired by means of exchange deals.⁵⁰ Naturally, the continued existence of empty urban land can hinder the city's efficiency and cause planning authorities to re-evaluate their purpose and role in the area. A necessary distinction must be made between land zoned for business and housing and land designated for public use. Urban land designated for business and housing is zoned by the planning authority with the owners having sole rights to file an application to develop the land. In the case of *waqf* land, only the director of the *waqf* can initiate building on the *waqf*'s land. The sole problem is to find sources of funding to implement the construction. Since the *waqf* has difficulty raising funds, the length of time that *waqf* land remains empty or undeveloped is usually longer than it would be in private hands, despite high taxation on urban land. This reality hinders economic development in the city. To the detriment of the *waqf*, endowment directors who

⁴⁷ Judgment of the Mufti of Egypt with regard to the Great Mosque in Haifa dated 1 April 1981, see *Jumhuriyyat Miṣr al-'arabiyya, Wizārat al-'Adl, Dār al-Ifṣā'*, *sijill* 115/113 no 112.

⁴⁸ *Sijill* Haifa no. 5, attachment 76/6.

⁴⁹ *Qism al-Turāth al-Islāmī*, carton 378, 13/26/10, 3/20, *sijill* 444/19/95 and 420/25/105.

⁵⁰ Often these deals exchanged agricultural land for buildings in urban areas.

manage to exploit *waqf* land for their own benefit also managed to raise funds for such exploitation.

Discussion

In my earlier book on *waqf* in Jerusalem under the British Mandate, I concluded that the widespread view regarding the total stasis of *waqf* assets and the economic damage caused, both to them and to the Palestinian national economy, is incorrect. The findings on Jerusalem during the British period showed that *waqf* assets are not frozen and can be transferred without too much difficulty. Actions taken until the end of the Mandate period were primarily intended to preserve these assets. Most transfers of *waqf* assets were executed for physical and economic reconstruction of the original assets. It was during the Mandate period in which the first signs of a business-like approach appeared conforming with modern economic conditions and fostering economic development.

Post-1948 East Jerusalem witnessed an upswing in building development. Real estate with *waqf* status, previously outside the area designated for building, housing and business, soon became part of the new and developing commercial center. A similar situation also occurred as the city grew during the Mandate period. One factor speeding up the development of *waqf* assets, primarily agricultural land which was later included in the municipal building area, was state intervention via administrative and civil legislation. Modern legislation of city planning processes coupled with the imposition of a high property tax on land within the city limits, in essence, compelled the *waqf* to adapt to modern conditions. In many cases, the only alternative to development would have been for the *waqf* to cease to produce until such time as it disappears. If the *waqf* directors did not show any effort toward making changes in *waqf* assets, the state came and, by means of expropriation laws for public use, compelled them to give up their original assets and acquire others (often worth much more) with the compensation monies.

The *qadis* and the religious establishment (the Supreme Muslim Authority, the Jordanian Ministry of Endowments) not only allowed transfers and development of *waqf* assets, but also facilitated and encouraged this. They concerned themselves not with the dry statutes of the *shari'a waqf* laws, but rather insuring the effective execution of transactions. Furthermore, the government of Jordan was interested in developing *waqf* assets and thus engaged in transactions and development activities with the *waqf* assets it administers. One must note that during the Jordanian period, despite it being one of typically modern economic development, pressure for economic development emerged. Preservation of existing assets, which characterized the pre-modern period, took a back seat to development needs. Pressure for development was so great that the Department of Endowments found a way to expropriate and redesignate old and important cemeteries for the erection of new buildings or offices. Such pressure led the *waqf* to plan the

development of its assets over the course of many years by investing its monies in building plans, unfreezing and redesignating land and later registering the new subdivisions in the land registry.

The new norm of changes and transfers of *waqf* assets, created during the Jordanian period, persuaded endowment directors to engage in development and building of *waqf* assets, often without *Sharī'a* Court consent. In effect, sidestepping the *qadi* did little harm, since, during this period, not a single *mutawalli* was dismissed based on this infraction and, in fact, these infractions were often retroactively sanctioned upon the receipt of a complaint from a beneficiary. This type of complaint, however, was rare and findings show that the beneficiaries were often not even questioned.

The only economic development activity worth noting after 1967 is the building project of the Shitayya *waqf*, which had received a loan to build a type of commercial center on Ṣalāh al-Dīn Street. Apart from the sale of a plot belonging to the al-ʿAlamī *waqf* by means of *istibdāl* to the Association of the Arab Women's Union, all nine other activities registered after 1967 were changes or additions to assets, undertaken at the initiative of lessees, and approved retroactively by the *Sharī'a* Court.

During the Israeli period there has been a decrease in development of East Jerusalem *waqf* assets, with a number of reasons contributing to this decline. One explanation stems from a halt in the construction of new areas of the city since, by 1967, most land in the eastern part of the city had already been built up. Since 1967, building activity has been concentrated in the rural peripheries of the city, areas without many *waqf* assets. Another reason for the decrease in development, attributed to political factors, is the subjugation of Arab/Muslim East Jerusalem to non-Muslim rule. This change, however, has had little effect on the Muslim religious system or the religious establishment. The government of Israel granted the Muslim religious establishment a sort of autonomous status concerning religious affairs, in which Israel refrained from interfering. The *qadis* and the Supreme Muslim Authority, a supervisory body re-established after the war in 1967, were given the power of independent decision-making in all religious affairs, including *waqf* issues. The extent of East Jerusalem Muslims' faith in the inalienable status of *waqf* property and its immunity from the Israeli government, was expressed by the large number of new endowments founded after 1967. Despite the autonomous status accorded by Israel, the Palestinian Muslim religious establishment was not independent. Its subordination to and dependence on the Hashemite Kingdom continued. New political circumstances caused a renewed demographic competition in Jerusalem including a competition for possession of real estate. The Jordanian government forbade the sale of assets to Jews and proclaimed that anyone selling to Jews would be tried for treason. Exemplifying this is the case of the al-Imām *waqf*. In 1973, its *mutawalli* leased out al-Khatūniyya land, south of the *al-Ḥaram al-Sharīf*, to the Israel Antiquities Department for

archeological excavations and was consequently dismissed from his job as a *qadi* and put on trial in Amman.⁵¹

The great sensitivity over the issue of property transactions in East Jerusalem has contributed to a general reduction in scope, especially with regard to transactions of *waqf* assets, initially subject to *Sharī'a* Court approval, and subsequently subject to approval by the *Qāḍī al-Qudā* in Amman. If a *mutawallī* executes a transaction or develops a *waqf* asset without a permit from the *qadi*, he is obliged to apply retroactively for a permit in order to prevent negative Jordanian reaction.⁵²

Since Israeli rule in the holy city, the members of Jerusalem's Muslim clergy view the dearth of *waqf* transactions and works of development stemming from bureaucratic difficulties inherent in gaining a building permit. Building activities, such as those of the Shitayya *waqf*, are, in their opinion, "irregular", and the fact that *waqf* directors have managed to get building approval from the authorities can be interpreted in various ways.⁵³ Municipality officials reject these claims. The director of the Nashashībī *waqf*, who manages the Pilgrims Hotel belonging to that endowment, claims that he could not get approval to build an extra floor on to the hotel. Israeli Jerusalem Municipal officials justify this by pointing to existing building regulations, dating from the Jordanian period, which forbid building over a certain height within 150 meters from the walls of the Old City.

Actions changing the character of *waqf* assets were primarily undertaken to enhance the original assets. Endowment directors have executed development projects to renovate assets receiving retroactive approval from the *qadi*. Assets held by protected tenants, have undergone development and improvements implemented by joint funding or by agreement between tenants and the *waqf*'s administration. Endowment directors themselves, living in *waqf* assets directed by them as a result of their being beneficiaries, have initiated improvements to these assets, often at the *waqf*'s expense. According to research findings, there has been a sizable number of occurrences in which the profits, accrued in the *waqf*'s funds, were used to purchase new assets for the *waqf* and increase its resources. This money, as well as money received from the sale of assets, has often been invested in building works, initiated and administered by endowment directors themselves. There is almost no obstacle preventing a *mutawallī*, who wishes to develop *waqf* assets, from executing activities for the benefit of the *waqf*. At the same time, the status of those *waqf* assets is still inferior compared to privately-owned assets, since any transaction or development activity is dependent on the initiative and business acumen of the endowment director and on the goodwill of the *qadi*, the Supreme Muslim Authority in Jerusalem and the Jordanian authorities.

⁵¹ The Jordanian newspaper, *al-Rā'i*, edition of 17 February 1973.

⁵² Interview dated 23 June, 1990 with Shaykh As'ad al-Imām.

⁵³ *Ibid.*

The accepted view of the Jerusalem *Waqf* as an institution with great economic power is entirely unfounded. Indeed throughout generations the extent of lands registered as *waqf* has grown, but *waqf* assets administered by the Department of Endowments are not an influential or central factor in the city's economy as their income is relatively insignificant. Even the extent of public services provided by the *waqf* in the eastern sector of the city is not large and is completely dependent on financial injections from Jordan and the Persian Gulf states. The chief significance of the Department of Endowments on the economy of East Jerusalem is its role as the second largest public employer in Jerusalem providing a living for 500 families in Jerusalem and approximately 1,500 other families in the West Bank.

Jordan injected some 6 million Dinars annually for the establishment and maintenance of educational and welfare institutions as well as for salaries. This funding continued even after King Hussein and the Jordanian Parliament declared Jordan's separation from the West Bank in 1988. Beginning in 1995, the Palestinian Authority replaced Jordan in funding most religious institutions in the West Bank, not including Jerusalem. Jordan's aim in continuing to fund staff wages of those employed in the religious apparatus combined with the provision of subsidized educational and welfare services is aimed at forcing the local Palestinian population to remain dependant on Jordan. Jordan's continued financial support of the religious establishment and the sites holy to Islam is explained by its intention to preserve for itself some means of influence in any future political solutions. Consequently, Article 9(2) of the Israeli-Jordanian Peace Accord includes the following statement: "... Israel respects the present role of the Hashemite Kingdom of Jordan in Muslim Holy Shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines ...".

Chapter 6

Holy Places

Jerusalem's importance for Muslims, with its two shrines, the Dome of the Rock and the al-Aqṣā Mosque on the *al-Ḥaram al-Sharīf*, is noted by its secondary position only to the holiest Islamic sites of Mecca and al-Madīna located in the Arabian Peninsula. Jerusalem earned this status in part as the first *qibla*, direction of prayer, only later being changed to Mecca. This chapter does not deal with the issue of Jerusalem's holiness in Islam during the fourteen hundred years since Muhammad's revelations until the present as it has been dealt with in many previous publications.¹ This chapter, rather, addresses the holy sites in Islam's third holiest city, their definition, administration and upkeep and their status under Jordanian and Israeli rule.

In addition to the more well-known sites on the *Ḥaram* mentioned above, there are many places of worship, among them 65 functional mosques, several sufi lodges, saints' tombs and cemeteries. Furthermore, many sites that served as places of worship or burial grounds that have not operated for many years according to their original purpose have become "cultural properties." Of special interest politically, especially after 1967, are those sites in Jerusalem holy to both Muslims and Jews, notably the *al-Ḥaram al-Sharīf* or Temple Mount, the *Ḥā'it al-Burāq* or the Western Wall and its plaza, saints' tombs and other sites in the Jewish Quarter of the Old City.

The polemic between "the issue of holy places" in Jerusalem and the definition of places described as "holy" finds its roots primarily in the twentieth century political debate which arose as a result of a series of international political decisions, not necessarily accepted by all indigenous peoples. Since Ottoman times, both Jews and Muslims have sought to emphasize Jewish or Islamic character in the holy city. The Muslim world at large supported the local Palestinian Muslim community to this end by providing the resources to renovate the structures on the *al-Ḥaram al-Sharīf*, an endeavor undertaken during the 1920s. The Jews,

¹ For the sanctity of Jerusalem in Islam, see Moshe Sharon (ed.), *Notes and Studies on the History of the Holy Land under Islamic Rule* (Jerusalem: Yad Yitzhak Ben-Zvi, 1976) (Hebrew) and the sources mentioned there.

for their part, tried to increase Jewish worship at the Western Wall, a situation which led to the riots of 1929.² After 1967, when the Christian communities in the city acted to preserve the Ottoman status quo in order to secure their position in Jerusalem, the Jews and the Muslims renewed their efforts at influencing the religious character of the city, each based, of course, on their respective affiliations. The *al-Ḥaram al-Sharīf* soon became the center of worship for Friday congregational prayers for the Palestinian Muslim community throughout the entire West Bank and the Gaza Strip. A special committee was convened with the goal of discovering old Muslim religious monuments which would serve as “renewed mosques.” In fact, the Islamic opposition groups claim that all of Palestine maintains the status of a holy place. For the Jews, the Western Wall Plaza and the Jewish Quarter of the Old City became regarded as national historic sites. This need to define Islamic holy places in Jerusalem serves as the impetus for the categorization of places which have religious significance in the eyes of Muslims.

The impact of the change of regime in East Jerusalem in 1967 – from Jordanian-Muslim to Israeli-Jewish – is unique when considering Jerusalem’s holy places as it focuses on a conflict between two religions, Islam and Judaism, which have similar pretenses. Both faiths purport to encompass all areas of their believers’ lives and dominate their daily routine. Neither permits separation of religion and state, political and spiritual authority. Accordingly, places holy to both religions are doubly significant; they have become focal points serving as political symbols in addition to religious ones. The holy places have been mobilized to strengthen the national consciousness of Zionist Israeli Jews and Muslim Palestinian (and incidentally Jordanian) Arabs. This nurturing of two foci of identity at the holy places – religious and political – makes the issue of these shrines exceedingly sensitive.

al-Ḥaram al-Sharīf

The focus of Islamic holy sites in Jerusalem is concentrated on the small compound of the *al-Ḥaram al-Sharīf*.³ This extraordinary holy complex enjoys the immunity status accorded to those Islamic sites entitled *Ḥaram*.⁴ *al-Ḥaram al-Sharīf* in Jerusalem is the third most important site in Islam. According to Muslim tradition, the prophet Muhammad completed his night journey (*al-Isrāʾ*) from Mecca to Jerusalem at the “farthest mosque” (*al-aqṣā*).⁵ In the course of this journey he tied his celestial horse *al-Burāq* to a place identified by the Jews as the Western Wall,

² Yehoshua Porath, *The Emergence of the Palestinian-Arab National Movement, 1918–1929* (London: Frank Cass, 1974), 258.

³ EI², art. “*al-Ḥaram al-Sharīf*.”

⁴ EI², art. “*Ḥaram*.”

⁵ Quran, 17:1.

whence he ascended to heaven (*al-mīrāj*).⁶ *al-Aqṣā Mosque*, on the *al-Ḥaram al-Sharīf*, was the first mosque built in Jerusalem by the Muslim conquerors; the Dome of the Rock was built by Caliph ‘Abd al-Malik ibn Marwān atop the stone known to the Jews as the Foundation Stone. Over the centuries, additional dozens of Muslim houses of worship were built on *al-Ḥaram al-Sharīf*, yet, the Temple Mount remains the most important holy site for Jews.

Judaism identifies the Temple Mount as the most holy site of the destroyed Solomonic and Herodian Temples; its special sanctity not disputed among Jews. There is, however, some disagreement among Jews as to whether Jews are allowed to step onto the Temple Mount and pray there. The Orthodox view, accepted by the rabbinical establishment in Israel, is that Jews have been barred from the Mount compound since the destruction of the Temple, because they cannot attain the obligatory state of ritual purity achieved by visitors to the Temple when it stood. One cannot rule out the possibility that this view, expressed by the Jewish religious establishment, was influenced by the political situation, i.e., the rabbinical establishment understands that exercising the Jewish right to worship on the Temple Mount may trigger large-scale violence.⁷ Yet, after the Israeli-Palestinian Oslo Declaration of Principle (DOP) of 13 September 1993, some Jewish religious functionaries began to call for a change in the previous position.

The British Mandate government acknowledged the special immune status of *al-Ḥaram al-Sharīf* on the de facto level, as expressed in several policies:

- a. Administration of *al-Ḥaram* was entrusted to the Supreme Muslim Council, without interference;
- b. The Council was allowed to charge non-Muslims admission to the Mount, a practice introduced in the 1920s to finance the renovation of *al-Aqṣā Mosque*;
- c. The police refrained from entering the *al-Ḥaram* area, entrusting security at the site to the *Waqf* administration.

This quasi ex-territorial status was never anchored in legislation; it existed under a policy that the Mandate government adopted in consideration of relations between Great Britain and its Muslim colonies.⁸ An examination of Israeli policy toward the holy places in Jerusalem shows that not all the shrines were given equal treatment. Among these sites, the Temple Mount or *al-Ḥaram al-Sharīf* was the central area of concern in Israeli policy. Although Israel never recognized an immune status for the Temple Mount, its de facto arrangements are not substantially different from those of the Mandate period.

Understanding the importance of the sanctity of *al-Ḥaram al-Sharīf* for hundreds of millions of Muslims world-wide, the Prime Minister of Israel

⁶ Ibid.

⁷ A minority of Jews, represented today by the ultra-radical “Temple Mount Faithful” movement, argues that Jews may and even must worship on the Temple Mount.

⁸ On extraterritoriality, see Shlomo Berkovitz, “The Legal Status of Holy Places in Palestine,” (unpublished Ph.D. dissertation, Hebrew University, Jerusalem, 1978), 203; 205.

announced in June, 1967 – within several weeks of the Israeli takeover – that the administration of the Temple Mount would be entrusted to the Muslim clerics.⁹ The Prime Minister's message to the Muslims sanctioning their continued administration of the *al-Ḥaram al-Sharīf* was meant to blunt the impact of newly enacted legislation permitting freedom of access and worship at all holy places for people of all religions. For Muslims, this legislation meant a revision of the status quo, since it gave Jews, too, free access to the Temple Mount reiterating the sanctity of the site for this group as well.

In order to avoid offending Muslim religious sensitivities and to prevent inter-religious contretemps, the Israeli government deliberately refrained from setting regulations concerning Jewish worship on the Temple Mount.¹⁰ The government went further by issuing guidelines for the police stationed in the area to prohibit Jewish public worship on the Mount, on the grounds of maintaining public order. The matter has been brought before the Israeli governing institutions and courts, which have tried to follow the middle road, balancing the duty to ensure freedom of access combined with the obligation to preserve public order. The Supreme Court of Israel has authorized the police to prevent Jewish public services or prayers that contain the “near certainty of harming public order.”¹¹

The Israeli government gave the Muslim religious administration a free reign to determine the opening hours of the gates, set rules of conduct on the Mount, and charge admission to non-Muslims. Even though the Muslims maintained autonomy in the administration of *al-Ḥaram al-Sharīf*, Israel took various measures to substantiate its sovereignty on the Mount in the realm of security and public order. The government made provisions for security at the *al-Ḥaram al-Sharīf*, dividing power between the police and the Muslim administrators of the site. The Israeli police guard the entrances to the Mount and the interior side of the ramparts while the *Waqf* guards are responsible for the *al-Ḥaram al-Sharīf* compound. The police have not succeeded in preventing all attempts by radical groups to desecrate the *al-Ḥaram al-Sharīf* and its devotional edifices.¹² The first such attempt was the fire set in al-Aqṣā in 1969. After this incident, the Israeli police set up a special detachment of Muslim policemen (under a Jewish commander) to safeguard the area. The same year, the Military Central Command confiscated the *Mahḳamah* building (*al-Madrassa al-Tankiziyya*), part of which, including the entrance, is situated outside the *al-Ḥaram* compound. Since then, the security forces have used this structure, which overlooks the Temple Mount and the Western Wall, to maintain public order there. The Israeli police also possess, for security purposes, a key to the Western Gate of the *Ḥaram*.

⁹ Meron Benevenisti, *Jerusalem: The Torn City* (Jerusalem: Isratypeset, 1976), 91.

¹⁰ Berkovitz, 165–167; 175; 216; 676–698.

¹¹ *Supreme Court of Justice* 292/83.

¹² *Ha'aretz*, 25 September 1989.

The Temple Mount/*al-Ḥaram al-Sharīf* is more than a shrine; it is also an important political symbol. This explains why, despite its sanctity, it has been exploited by both Jews and Muslims for political gain. In the first year of the Palestinian uprising, the *Intifāda*, beginning in December, 1987, demonstrations proliferated following Friday services. In violation of Israeli law hostile slogans were chanted, PLO flags were waved, Israeli and American flags were burned, and security forces and worshippers praying below at the Western Wall plaza were stoned. The police were forced to enter the *al-Ḥaram* compound and disperse the demonstrations.

Political exploitation on the Jewish side is not lacking either. On October 16, 1989, a procession onto the compound by the Temple Mount Faithful, a Jewish radical group, led by Gershon Salomon – during which a cornerstone for the Third Temple was demonstratively laid – confirmed Muslims' fears that this group intended to take over the *al-Ḥaram al-Sharīf*, demolish the edifices, and erect the Third Temple in their stead.¹³ One of the gravest incidents that ever took place on the Mount combined both inter-religious and political tension. On October 8, 1990, during the Jewish festival of Sukkot, when approximately 20,000 Jews were conducting services and other religious rituals at the Western Wall plaza, some 3,000 Muslims congregated on the Temple Mount and hurled stones at them from the top of the wall. One of the causes of this incident was tension generated by the intention of the Temple Mount Faithful to march to the Mount. As the police labored to restore order on the Mount, 17 Muslims were killed and many others were injured.

Another holy site sacred for both Jews and Muslims is the Western Wall and its plaza known to Muslims as *Hā'it Al-Burāq*. Judaism regards the Western Wall as the last remnant of the Second Temple which is the holiest site of worship. Muslims believe that the prophet Muhammad tied his horse *al-Burāq* to this wall before ascending to heaven. As early as August, 1929, the Western Wall plaza was the cause of bloody political/religious clashes between Jews and Muslim Arabs. On June 11, 1967, Israel's Defense Forces cleared away the Western Wall plaza and prepared it to serve as a synagogue. In the course of this action, and in others that followed, a cluster of old buildings known as the *Abū Midyan al-Ghawth Waqf* in the *al-Maghribī* Quarter was vacated and demolished.

Places of Worship and Pilgrimage

In addition to the Islamic sites mentioned above, Jerusalem also has several burial structures or crypts that are sanctified by the popular religion of both faiths. Such examples are the tomb of the Prophet Samuel (*al-Nabī Samwīl*), the crypt of

¹³ *Kol Ha'ir*, 20 October, 1989.

Simon the Just, Zedekiah's Cave, and the Tombs of the Kings.¹⁴ The tomb and Tower of David, the Tomb of Zechariah, Tombs of the Prophets, and the Tomb of Hulda the Prophetess attract pilgrims and are frequented on certain Jewish and Muslim festivals. However, the religious rituals conducted in these places – and indeed, their very sanctity – are acknowledged neither by Jewish nor by Muslim Orthodoxy. Accordingly, no friction has occurred between adherents of the two faiths in the matter of these places; peaceful coexistence usually prevails.

Noted in East Jerusalem are dozens of active Muslim houses of worship including 65 mosques, several sufi *zāwiya*, cemeteries, and hundreds of *Waqf* properties.¹⁵ The Muslim devotional structures in Jerusalem are administered by the *Dā'irat al-Awqāf*. The number of mosques in Jerusalem has doubled since 1967, thanks to the work of the above mentioned Muslim committee that locates buildings that had once served devotional purposes, renovates them, and puts them into use as mosques – in the context of the political struggle to preserve the Islamic character of the eastern sector of the town.

In the present generation, the *waqf*, perceived in Islam as an act of religious charity, has acquired the status of a devotional institution which sanctifies its properties. Basing themselves on this doctrine, some Palestinian Islamic elements have argued that all of Palestine is *waqf* – an endowment pledged to *Allah* and thereby sanctified, meaning that none of it may be yielded.¹⁶ The endowment of an asset as *waqf* is essentially a matter of rapprochement, *qurba*, with God, and in this role the *waqf* is considered a holy institution in Islam. Muslim jurists in Islam are divided as to the question of the status of assets which have been endowed as *waqf*. The prevailing opinion in the Ḥanafī school of law, the official school of the Ottoman Empire, was that abstract ownership of the assets reverts to God.¹⁷ This determination grants an eternal status to the act of endowment noted in the following two components:

1. The *waqf* purpose and/or its beneficiaries, who serve as a permanent source of reward for the founder in the next world; and
2. the endowed assets, as a living reminder of the founder.

Early in Islam it had become apparent that the second condition could not exist in all cases. New realities urged the Muslim jurists to develop a mechanism

¹⁴ See the list of holy places in Jerusalem compiled by the United Nations in 1949 found in Elihu Lauterpacht, *Jerusalem and the Holy Places* (London: The Anglo-Israel Association, 1968), 1, note 1.

¹⁵ Yitzhak Reiter, "The Muslims in Jerusalem – The Administration of Religious Affairs" in Ora Ahimeir (ed.), *Jerusalem – Here and Now* (Tel Aviv and Jerusalem: Defense Ministry Publications and the Jerusalem Institute for Israel Studies, 1994), 58; for mosques see Muḥammad al-Kafrāwī, *Masājid Bayt al-Maqdis* (Jerusalem: *Matba'at Rawān al-Tijāriyya*, 1983).

¹⁶ Article 11 of the Hamas (Islamic Resistance Movement) Covenant. See Reuben Paz, "The Islamic Covenant and its Meaning – Data and Analysis" (Tel Aviv: Tel Aviv University, The Moshe Dayan Center, 1988), 33–47.

¹⁷ Goitein and Ben Shemesh, 159.

to enable the assets of a *waqf* to be exchanged, reworked and even sold, provided that the monies therefrom be invested in the purchase of a new substitute property whose income would enable the endowment to continue.¹⁸ In contrast to the institution of the *waqf* itself, the assets of a *waqf* themselves are not holy and are not even cultural assets. In twentieth century Palestine, *waqf* assets were expropriated in exchange for reparations paid to the administration of the *waqf*, which bought substitute property whose income would continue to support the original beneficiaries and purposes of the *waqf*. Exchange and expropriation of *waqf* properties were done with the endorsement of the *Sharī'a* Court in Jerusalem during British and Jordanian rules. The question of whether a *waqf* asset is considered a holy place arose during the British Mandate period with regard to the status of the Western Wall Plaza. In 1929 the committee of enquiry into the Western Wall dilemma determined that “the assets of the *waqf* in such a case are not considered a holy site from a religious Muslim point of view.” A holy site is a (*waqf*) property which serves a religious purpose. Accordingly, the committee determined that the area of the Western Wall, even though a *waqf* asset, was, as a result of its secular use by Muslims, not a holy site of Islam.¹⁹

Jordanian and Israeli Policies

Under Jordanian rule, the holy sites in Jerusalem fell under the jurisdiction of the *Waqf* administration. This came as a result of the *waqf* status accorded to all these holy sites. Additionally, during the period under review, the *Waqf* department provided all religious services, including operation of mosques and other places of worship. The *al-Haram al-Sharīf* was poorly tended to during Hashemite rule due to economic constraints which did not afford resources for renovation and upkeep of the holy sites.

After the Israeli takeover of East Jerusalem in 1967, Israel's efforts were aimed at receiving international legitimacy for its annexation policy of the eastern part of the city. To achieve this Israel promised religious clerks of the Muslim and Christian communities autonomy in religious affairs. The *Waqf* authority managed the daily administration of the *al-Haram al-Sharīf* and other sites without interference. The Israeli authorities interfered only in cases when public order and security were challenged.

Israeli policy toward the holy places in Jerusalem and the West Bank is a derivative of post-1967 policy toward the territories in general. The general intent was to normalize relations with the Arab population, as expressed *inter alia* in the “open bridges” policy and non-interference in certain areas of life, especially in religious affairs. The general policy aimed at maintaining the status quo concerning

¹⁸ See chapter 5, section about exchange and sale of *waqf* assets.

¹⁹ S. Berkovitz, 472–473; p.470 sees *waqf* assets as holy assets; in my opinion it is not the assets of the *waqf* but the *waqf* itself which is holy.

the holy places (with a few exceptions described below) also stemmed from the need to maintain public order in the occupied territory and from apprehension that any breach of the status quo would rebound negatively against Israel in the international community. However, Israel was religiously and nationalistically driven to modify the Ottoman status quo, which, in Israeli eyes, had discriminated against the Jews in regard to the sites holy to them. These clashing foci of influence caused Israeli policy *vis-à-vis* the *al-Haram al-Sharīf*/ Temple Mount to take shape separately, as warranted by the character of this shrine, the intensity of its sanctity, and its centrality in the political consciousness of each of the local religious communities and the international constellation.

Another complex in which Israel altered the status quo was the Western Wall Plaza (see above) and the Jewish Quarter of the Old City, a small area which included a number of Muslim places of worship. The entire quarter was expropriated together with the Western Wall Plaza. Old buildings there were mostly demolished and the area has since been designated as a Jewish national site. As a result of the changes in the three above-mentioned Islamic holy sites, the question has been raised as to whether there is, in fact, an Islamic status quo equivalent to the Ottoman status quo granted to Christian holy places.

Status Quo for Islamic Holy Places?

The religious status quo is composed of entrenched privileges in specific holy places, resulting from a tradition of complex interrelations that coalesced among religious groups and ruling sovereigns over the years. These privileges govern the routine use of particular holy places and determine relations between religious groups and political authorities. Over a lengthy period of time, religious groups obtained new privileges and developed alternative binding norms and behavior patterns in the holy places. Therefore, the status quo, while accepted as law since the demise of the Ottoman Empire, has seen many tangible amendments. Any attempt to modify the current understanding of the status quo is liable to rupture public order and security in the holy places, the preservation of which has been recognized as an overarching duty. This is why the Israeli government has been motivated to preserve the status quo while allowing for a few exceptions in sites deemed important to Jews, either religiously or nationally.

The principle of the status quo, however, is incompatible with the idea of equality among religions and inconsistent with a liberal approach. The situation which coalesced in the past often discriminates against groups by withholding freedom of worship from them. The adherents of the various faiths are not satisfied with the status quo. Many groups strenuously object to the very existence of the status quo, arguing that it reflects a balance of forces that has vanished.

The case of Jerusalem, as illustrated here, is especially interesting because several sites in this city are holy to two faiths – that of the ruling people and

that of the ruled. The 1967 war brought a new government to East Jerusalem. Members of today's ruling authority had been among the ruled at the time the status quo concerning these places crystallized. Israel has sought to maintain the status quo and has even succeeded in doing so, except for several modifications and contractions that could not be construed as excessively blatant. Israel never admitted that it was modifying the status quo. The "Preservation of Holy Places Law," which ensured the rights of access and worship in the holy places, was itself a revision of the status quo ante. The above-mentioned modifications undertaken by Israel were easily justified by precedences set during Jordanian rule in Jerusalem. Israeli spokesmen and publications claim that the Jordanian regime had eradicated the Jewish ambience of the Jewish Quarter – demolishing 34 of the 35 synagogues and devotional buildings in the quarter, desecrating the Jewish cemetery on the Mount of Olives (including the destruction of most of the tombstones), and denying Jews unrestricted access to Jewish holy places, in contravention to the 1949 Armistice Agreement.²⁰ Israel, since 1967, has honored the general contours of the status quo, as manifested in the continued Muslim administration of the Temple Mount/*al-Ḥaram al-Sharīf* and the broad autonomy accorded to the *Waqf* administration and the *sharī'a* legal system.

The attitude of Israeli officialdom toward the Islamic establishment and institutions expresses a difference between the level of declarations and the de facto situation. The government of Israel recognizes neither the Supreme Muslim Council nor the Shari'a court system in East Jerusalem. Moreover, the Israeli authorities interact informally with the *Waqf* administration and the Supreme Muslim Council, acknowledging their right to determine the hours of entry to the Temple Mount/*al-Ḥaram al-Sharīf* and allowing the *Sharī'a* Court in East Jerusalem to operate undisturbed.

Finally, the religious domain is the only one in which the Arabs of East Jerusalem and the West Bank have been allowed to manage themselves. Israeli policy makers have regarded the continued autonomy in this regard unharmed to Israeli interests and consider it a reasonable price to pay for normalization. Within the general framework of the status quo, Israel has made several modifications that amount to exceptions. Israel's dilemma resulted in the maintenance of the status quo, coupled with minimal changes that the new circumstances required – refusal to accede to the existing order coupled with refusal to reject it. The result was a policy of compromise which, instead of rushing to impose a new order, sought to mitigate the disadvantages of the old order without savaging it altogether.

²⁰ Berkovitz, 236.

Conclusions

Islam in present-day Jerusalem is influenced more than ever by political activities and agendas. There is no single pattern of Islamic life in the holy city. Kupferschmidt, in his description of Islam in Palestine under the British Mandate, concludes that this period could be described as “Islam on the Defensive.” Islam however, at any given location and time, cannot be described in isolation. Under Jordanian rule, Islam in Jerusalem was affected by the discord between the Hashemites and local Palestinian religious figures, while under Israeli rule, the political role of Islam was accentuated. The defensive conception of Islam continued to exist under Israeli rule in Jerusalem, but alongside one of revivalism and radicalism. Under Jordanian and Israeli rule, orthodox Islam, represented by the traditional Muslim religious establishment, dominated Islamic life in Jerusalem, while popular Islam, found in the Sufi orders, declined.

The main issue concerning Islam in present-day Jerusalem is the rivalry over the future of the city’s holy places and the eastern part of the city, which includes the walled Old City in which many of these holy places are located. This issue is linked to the peace negotiations between Israel and the Palestinians which calls for a timetable for negotiating the Jerusalem question as part of the final solution. The issue is further linked to the clause in the Israel-Jordan peace agreement which insures priority to the Hashemite kingdom with regard to the holy places, because of its historic role as guardians of the Muslim holy places. The Muslim holy places have been administered autonomously since 1967, by Palestinian Muslims with Jordanian citizenship, who report directly to the appropriate ministry in Jordan’s capital of Amman.

Since the establishment of the Palestinian Authority in Jericho and the Gaza Strip, one can see tension between Jordanian and Palestinian authority in the holy city. One indicator of this tension is the dispute over the nominations of religious functionaries in Jerusalem. Jordan continued to nominate individuals to serve in Islamic institutions in the West Bank and East Jerusalem even after 1967, and continues to do so today in Jerusalem, in order to preserve Hashemite legitimacy as guardians of the holy places in the Old City. The Palestinian Authority, challenged

by the stipulations of the Israel-Jordan peace agreement, acted to undermine the Jordanian's position by making their own nominations to the same positions.

The structure of Islam in present-day Jerusalem, under non-Muslim Israeli rule, is unique. The religious activity in the city is run by institutions which are under the auspices of remote political entities: Amman and Gaza. The Supreme Muslim Authority functions as an independent, local Palestinian body which deliberates political issues related to religious affairs.

One of the main factors influencing Islamic life in Palestine in general, and Jerusalem in particular, is the state of religious education. The existing skeleton of an institutional framework for higher Islamic education harms the *Sharī'a* judiciary, and its public image, as is reflected in the low amount of confidence that the public places in this religious body. On the other hand, the Islamic colleges, founded for the purpose of training Muslim clerics, have become centers for radical Muslim groups and activities. A similar phenomenon occurred in the popular *Qur'an* and *Hadith* evening classes. As a result, Islamic radicalism has also become a major factor in Islamic life in Jerusalem during the last two decades.

As Islamic institutions are generally identified with the orthodox religious establishment, both a popular perspective on Islam, and a political (or radical) perspective, are entirely lacking. While this book deals primarily with the former, orthodox, view of Islamic institutions, brief mention is given, here in the conclusions, to the latter, popular and political views. Popular Islam has been known in Palestine since early medieval times. It spread largely among the Sufi orders, many of which were located around the *al-Haram al-Sharīf*, in the Old City of Jerusalem. The huge number of saints' tombs in this country indicate the extent of the role the Sufis played here. Under the British Mandate, the Supreme Muslim Council (SMC), as the representative of the orthodox Islamic establishment, worked to weaken the Sufi presence and importance throughout Palestine. The Sufi *zāwiyas* in Jerusalem received minimal support from the *Waqf* Administration which was under the control of the SMC, and as a result, their shaykhs were forced to seek donations from the *zāwiyas'* country of origin.

In Jerusalem, the strength of popular Islam was also attested to by the large number of people who came to participate in the ceremonies held at the tombs of saints. The most popular of the pilgrimage ceremonies (*ziyāras*) was the Nabī Mūsā Feast. Popular feasts, such as this one, involved the majority of Palestinian Muslim society, including Jerusalem's most prominent families, like the Ḥusaynīs. The Nabī Mūsā Feast, an expression of popular Islam, became, under the British Mandate and later on, for some years under Israeli rule, during the Palestinian uprising which began in 1987 – or the *Intifāda*, a political protest which the orthodox establishment of the SMC, and the *Waqf* Administration, used to mobilize the masses.

Two other Islamic popular feasts became important in post-1948 Jerusalem and in particular, under Israeli rule since 1967: the *Mawlid* (Birthday) of the Prophet

Muḥammad, and the *al-Isrā' wal-Mī'rāj* (Muḥammad's nocturnal journey into heaven) feast. The latter has an important political message as it symbolizes the holiness and importance of Jerusalem for Muslims. This feast celebrates the rise of the Prophet Muhammad, to heaven from a spot later identified with the *al-Aqṣā* Mosque, after tying his steed, *al-Burāq*, to what is believed by Jews to be the Western Wall of the Temple, and for Muslims the *al-Burāq* Mosque. Since the 1980s, the *al-Isrā' wal-Mī'rāj* feast has involved the entire Muslim community. Both feasts, the *Mawlid* of the Prophet Muhammad, and the *al-Isrā' wal-Mī'rāj* feast, have become part of normative orthodox Islam in Jerusalem. Since the British Mandate in Palestine, the SMC has increasingly encouraged the exploitation of holidays such as these, to achieve political ends, to receive the endorsement of the Muslim world for the Palestinian struggle for sovereignty in the holy land.

The first Islamic radical movement in Jerusalem was a branch of the Muslim Brethren, established in 1945 with Shaykh As'ad al-Imām as its secretary. At the beginning of the 1950s, Shaykh Taqī al-Dīn al-Nabahānī, established the *Ḥizb al-Tahrīr* in Jerusalem. The *Ḥizb al-Tahrīr* was a radical movement which acted against other Arab regimes and was opposed to Hashemite Jordanian rule in Palestine. The Sufis remaining in Jerusalem after 1967 were not attacked by orthodox or radical Muslims because of the political circumstances which arose under non-Muslim rule. Shaykh Jamāl al-Rifā'ī, the Shaykh of the al-Rif'iyya order in Jerusalem occupied a senior position in the religious (orthodox) establishment, as the Jerusalem deputy *Mufti*, and sometimes unofficial spokesman of the (orthodox) Islamic establishment. The three Sufi orders active today in Jerusalem are: the *al-Tijāniyya*, led by the al-'Alamī family, specifically by Shaykh Ḳhalīl, who also serves as the *al-Ḥaram al-Sharīf* chief servant (*Rā'īs al-Sadana*). The al-'Alamī family also possesses the *al-Khānqā' al-Ṣalahiyya*. The *al-Qādiriyya* established by Saladin, was headed by the late Shaykh Hāshim al-Baghdādī, and is located near the *zāwiya* on the Mount of Olives, in the al-Ṭūr neighborhood. The *al-Shādhiliyya* order is headed by Shaykh Ya'qūb al-Qirsh. This Sufi order became a radical organization and some of its members were arrested by the Israeli police.

The rise of radical movements in Jerusalem in the 1970s was financially supported by the Sa'udis, and international Islamic organizations which are financed by the Gulf States. These funds supported the establishment of the Islamic College in Bayt Hanīna in the northern section of Jerusalem. Although administered by the *waqf* and under Jordanian supervision, many teachers in the college were affiliated with the Muslim Brethren. As a result, a generation of students were educated according to the radical Islamic views of their teachers. Other smaller Islamic radical movements in Jerusalem were the *al-Jihād al-Islāmī*, which, in 1979, operated through the Young Muslim's club in Jerusalem. They published a pamphlet entitled *al-Nūr*. Another group, the *al-Tabligh wal-Dā'wa*, an organization based in Pakistan, concentrated on the revival of Islam through

missionary activity. Their efforts were very successful as can be attested to by the large number of Muslims who turned from a life of non-observance and became practicing Muslims.

The *Intifada* brought with it a rise in radical Islamic activity, and the establishment of the Gaza Palestinian group, led by Shaykh Aḥmad Yāsīn, the Islamic Resistance Movement – or *Hamas* – which contributed to the outbreak of this seven-year popular uprising and its spread throughout the West Bank and Gaza. This movement also reached into East Jerusalem, the heart of Palestinian political aspirations. Another minor radical movement the *Jihād*, led by Shaykh ‘Abdallāh ‘Azzām, was also established, but it was the *Hamas* in Jerusalem which was involved in suggesting activities to the National Palestinian movement and in particular to the United National Command led by PLO opponents. It announced separate days for general strikes, published separate pamphlets and was involved in terrorist actions against Israeli targets.

While other aspects of Muslim life reveal political differences, examination of Islamic institutions in Jerusalem under Jordanian rule between 1948–1967, and under Israeli rule from 1967 to the present, also reveals considerable continuity from the end of the Ottoman period to present day Israel. The *Waqf* Department continues to perform the duties of the Ottoman *Da‘īrat al Awqāf*, in addition to several added responsibilities, like handling issues concerning pilgrimages to Mecca and organizing religious ceremonies. The Department’s organization has become in religious guidance. The authority of the *Sharī‘a* Court has remained more or less as it was during the Ottoman period. The work style of the court, even the job descriptions of officials, like the *Bāshkātīb*, have remained unchanged. Ottoman laws, like the Family Rights Law, laws of procedure and of inheritance, were adopted, with only small changes, by the Jordanian government. The reason for this continuity, which extends throughout the twentieth century, derives from the excessive rigidity of the British Mandate government, which did not interfere with matters concerning the *Sharī‘a* Court. The British Mandate government assigned responsibility over all religious matters to an autonomous Muslim body – The Supreme Muslim Council. Jordan, at first, accepted the Ottoman model, as it was preserved during the British Mandate, however, the transition to Jordanian control over the West Bank and Jerusalem, led to the dissolution of the Supreme Muslim Council in 1951 and to the complete subordination of all Islamic religious matters in the region to the Office of the *waqf* in Amman.

When control of Jerusalem and the West Bank passed into Israeli hands, the Israeli government initially attempted to change the status quo, but without success. These attempts led to an unequivocal proclamation from Palestinian leadership in East Jerusalem on the establishment of a new Supreme Muslim Authority. Concern over strong response from the international Muslim community forced Israel to adopt a liberal policy regarding all Arab religious matters in East Jerusalem after 1967. Israel left autonomous control over religious

matters in the hands of both Muslims and Christians, much as the British had during their mandate. Additionally, through her policy of “open bridge diplomacy” with Jordan, Israel knowingly allowed Jordan to continue to fill a central position in the administration of Islamic affairs in Jerusalem and the West Bank, even after 1967. Moreover, included in the 1994 peace treaty between Israel and Jordan is a passage obliging Israel, when negotiating the final settlement with the Palestinians, to take into account the historic role of Jordan with regard to the holy sites in Jerusalem.

The Palestinian Muslims in East Jerusalem found, after 1967, a way to continue functioning under what they perceived as a situation of temporary, military conquest. Emphasizing the temporary nature of the situation allowed them to find a *modus vivendi* with both Jordan and Israel. The Supreme Muslim Authority has not filled a meaningful role since 1967. Its role was curtailed to protesting against what it saw as violations against international law. Its status derives from the fact that the head of the authority was assigned to the office as an official of the Jordanian government. As a result, he held in his hands executive authority over the endowments and over the *Sharī'a* Courts.

In the arrangements between the Palestinian religious establishment and Jordan, Palestinian representatives took pains to secure Jordanian support for most of their protests against Israel, and occasionally even received aid from the Jordanian authorities. The Jordanians were interested, along with others, in earning credit with the Palestinian community, with an eye on Jordan's future national or political status in the West Bank. Between the Israeli authorities and the (pro-Jordanian) Palestinian Islamic establishment an understanding developed based on the power limits of both sides. Israel is the stronger side with regards to military capability, but the Palestinians have greater ability to mobilize the masses, to endorse disruptions of order and cause damage to Israel's image in international public opinion. In this situation each side protects its “red-lines” and is willing to disregard matters of secondary importance; particularly anything concerning the management of *al-Ḥaram al-Sharīf* (the Temple Mount). Actions taken by the Israeli government make it possible to claim that the sovereignty over *al-Ḥaram al-Sharīf* is in Israeli hands, in spite of the fact that the site is administered by the *Waqf* Administration. Both sides have unofficially reached an understanding with relation to the opening hours of the site to visitors and VIPs, matters of construction and planning, matters of security and public order, and preventing Jews from actualizing their right to pray on *Har ha-Bayit*, which is enforced by the Israeli police (with the exception of past occasions during which individuals conducted modest prayer and made arrangements in advance).

Matters concerning the *Sharī'a* Judiciary are also conducted with cooperation and with mutual avoidance. Israel operates a *Sharī'a* Court in West Jerusalem which serves the East Jerusalem Muslim community, dealing mostly with matters concerning official Israeli documents. The Palestinians operate a *Sharī'a* Court of their own in East Jerusalem which belongs to the Chief Qāḍī Office in Jordan

(and since 1944 also a part of the Palestinian Authority) for needs concerning Palestinian and Jordanian official matters. Between the two *Sharī'a* Courts there is, officially, absolute non-recognition, but unofficially, each side takes into consideration the other side's authority. The Israeli *qadis* in West Jerusalem find a way to recognize the marriage certificates issued by Palestinian *qadis* in East Jerusalem by accepting the testimony of witnesses who signed at the bottom of the document, and who were approved by the *qadi*. The Palestinian *qadis* direct their clients to Israeli *qadis* in matters related to Israeli law.

In matters of personal status, the two courts represent two different social norms. The East Jerusalem court represents the Jordanian-Palestinian, traditional norm and the West Jerusalem court represents the Israeli norm, and is influenced by Israeli social legislation in matters of minimum age for marriage, polygamy, financial matters in divorce cases, forbidding the divorce of a wife against her will, etc.

One of the changes in the Islamic Judiciary is that the operations of the *Sharī'a* Court in East Jerusalem reflect the fact that the *qadis* are not graduates of the al-Azhar Institute, or an institute of similar quality, like the ones which existed during the Ottoman period, the British Mandate and under Jordanian rule. Another change is that a big part of the work of this *Sharī'a* Court is technical and deals with administrative matters, particularly as part of the Jordanian population registry (and since 1994 the Palestinian population registry as well).

Another important aspect of Muslim life in Jerusalem is the *waqf*. While the institution of *waqf* is on the decline throughout most of the Muslim world, in Jerusalem, it has been experiencing a surprising renaissance during the 27 years under Israeli rule. Israeli governmental policy of giving autonomy to the Muslim community, especially regarding the administration of religious affairs, has played a significant role in this growth. Under the current political circumstances, in which the Palestinian Arab minority in Jerusalem does not recognize Israeli sovereignty, the *waqf* has become an instrument for the unification of the Muslim community, which has tightened its ranks in the face of non-Muslim rule. The *waqf* serves the Arab population as a substitute for lacking governmental institutions. Its economic resources have been mobilized for the political struggle, and it serves as a means to preserve the Islamic character of East Jerusalem and to strengthen the Arab population's attachment to Islamic institutions. Additionally, the *waqf* provides a forum for local leaders and for the Jordanian government which funds them.

Traditional *Sharī'a* restrictions on transactions concerning *waqf* property made this institution seem destined for stagnation and degeneration. However, to address this problem, various mechanisms were developed to facilitate the preservation and economic development of these properties while still adhering to the principles governing the *waqf*, set forth in Islamic law. What has been examined in this study is the extent to which the management of *waqf* properties is attuned to the conditions and needs of a developing society and economy, the impact of political

circumstances on administrative patterns and property use, and the significance of the *waqf* in urban planning.

Jordanian government policies, and cooperation with the religious establishment, provided the means by which the *waqf* could adapt to modern economic conditions. As a result, the period of Jordanian rule in Jerusalem is noted for vigorous development and the creation of a thriving business district just outside the walls of the Old City. Transactions concerning and developments of *waqf* properties received active support from the *qadis* and the religious establishment, including the Supreme Muslim Council and the Jordanian Ministry of Endowments. This ministry had its own agenda concerning the development of various aspects of the city and even justified residential and commercial development in redesignated ancient cemeteries.

The role of the *waqf* in Jerusalem after 1967 was intensified because of diplomatic circumstances which made it an important tool in the hands of Jordan, and in the hands of the Palestinians, to realize their different political goals. The institution of the *waqf* has flowered since 1967, largely due to political circumstances. The *waqf* uses public institutions, and donors from the Muslim world, as a means to assure that unwanted political elements will not control Palestinian public institutions. The donating body sets as a precondition that his donation will be listed as an endowment and that the *qadi* will lay down the regulations for the nomination of administrators of such endowments, in accordance with conditions acceptable to the donor. The *waqf* is an important resource because it controls many assets, moreover it employs a relatively large percentage of the working people in the Old City, in sensitive and important cultural and religious areas. In spite of the fact that according to an estimation, 80 percent of the properties in the Old City and a large section of the business area of East Jerusalem, are in a status of *waqf*, they have primarily an historical not a functional value. Practically speaking, the number of *waqf* assets that bring income to the administration of the *waqf* is fairly small. Thus, it was possible for Jordan, even after 1967, to use the *Waqf* Administration as a means of protecting her influence in Jerusalem and the West Bank. Jordan provides funds for religious, educational and welfare institutions as means to direct the flow of money from the *Waqf* in Amman to East Jerusalem. The level of religious services in East Jerusalem is relatively high. The number of operating mosques in the city has doubled since 1967, mostly for political reasons, however the religious education system and the number of orphanages has also expanded.

Family *waqfs* enjoy relative prosperity, the study indicates that their income in Jerusalem was as high as the total income of the public *waqfs* which are under the control of the *Waqf* Administration. Relative security after 1967 allowed a large number of new dedications in spite of the fact that the *waqf* institution is disappearing in today's Muslim world. The family *waqfs* found a way to develop their assets and to conduct transactions with *waqf* property in spite of the well

known limitations of the Muslim law. The *qadis* allowed the family *waqfs*, and the public *Waqf* Administration, to develop almost without restrictions, additionally they have sought to adjust *waqf* management to meet modern economic conditions. *waqf* properties in Jerusalem have changed the local atmosphere; rented for long periods, their management brings in donations and removes the need for loans to support the economic development of the properties. The *qadis* have joined together in an effort to overcome these limitations while still remaining faithful to the spirit of the law, and have shown an amazing degree of openness and flexibility.

Contemporary issues facing Jerusalem's population, and those vying for political sovereignty over the holy city, are the same ones which have existed in the city throughout the centuries. Competition between religious, political and national powers has continued despite the many changes that have occurred in Jerusalem. In the twentieth century alone, Jerusalem has witnessed a change of sovereign powers four times: two Muslim powers, Ottoman and Jordanian, and two non-Muslim, British and Israeli. With every political change, Jerusalemites confront many of the same issues their ancestors encountered over the years.

The issue of holy places and religious institutions and affairs, is now awaiting another round of political settlements in the course of the Israeli-Palestinian negotiations on the final status of Jerusalem. Hopefully this time, the solutions found will be the outcome of mutual agreements and negotiations involving representatives of the different religious faiths and national parties.

Bibliography

Archives

Sijill – Records of the East Jerusalem *Sharīʿa* Court

Sijill Jaffa – Records of the Jaffa *Sharīʿa* Court

Sijill Haifa – Records of the Haifa *Sharīʿa* Court

Qism al-Turāth al-Islāmī – Archive of the Section for Islamic Heritage, Abū Dīs

Official Reports and Publications

al-ʿAlamī, Saʿd al-Dīn, *Wathāʾiq al-Hayʾa al-Islāmiyya al-ʿUlyā 1967–1984* (Documents of the Supreme Muslim Authority 1967–1984). Jerusalem, n.d.

Idārat al-Awqāf al-ʿĀmma, Bayyān al-Awqāf al-Islāmiyya fī al-Ḍaffa al-Gharbiyya khilāl ʿAshr Sanawāt min 1967–1976. Jerusalem, n.d.

Idarāt al-Awqāf al-ʿĀmma, Bayyān al-Awqāf al-Islāmiyya fī al-Ḍaffa al-Gharbiyya khilāl ʿAshr Sanawāt min 1976–1982. Jerusalem, n.d.

Official Gazette, British Mandate for Palestine

Official Gazette, The Hashemite Kingdom of Jordan

Official Gazette, The State of Israel

Report of the Commission Appointed by His Majesty's Government with the Approval of the Council of the League of Nations, to Determine the Rights and Claims of Moslems and Jews in Connection with the Western or Wailing Wall of Jerusalem. London, 1931.

Books and Articles

Abū Zahra, Muḥammad. *Muḥāḍarāt fī al-waqf*, 2nd ed. Cairo, 1971.

Baer, Gabriel. *The History of Land Ownership in the Middle East*. London: Oxford University Press, 1962.

Baer, Gabriel. "Jerusalem's Families of Notables and the *Waqf* in the Early 19th Century," in David Kushner (ed.), *Palestine in the Late Ottoman Period*. Jerusalem and Leiden: Yad Yitzhak Ben Zvi and E.J. Brill, 1986, 109–122.

- Baer, Gabriel and G. Gilbar. *Social and Economic Aspects of the Waqf*. London: Oxford University Press, [forthcoming]. Some articles are forthcoming soon in A. Layish (ed.), "Social and Economic Aspects of the Muslim Waqf," *Islamic Law and Society*, 4/3 (1997).
- Barkan, O.L. and E.H. Ayverdi. *Istanbul Vakıfları Tahrir Defteri Tarihi*, 953, (1546). Istanbul, 1970.
- Barnes, John. *An Introduction to Religious Foundations in the Ottoman Empire*. Leiden: E.J. Brill, 1987.
- Benvenisti, Meron. *Jerusalem: The Torn City*. Jerusalem: Isratypeset, 1976.
- Berkovitz, Shlomo. "The Legal Status of Holy Places in Palestine," (Hebrew) unpublished Ph.D. dissertation. Hebrew University of Jerusalem, 1978.
- Bousquet, H. *Du droit musulman et de son application effectif dans le monde*. Algiers, 1949.
- Crecelius, D. "Incidences of Waqf – Cases in Three Cairo Courts," *Journal of the Economic and Social History of the Orient*, 29 (1986), 175–189.
- Dana, Nissim. *Anshei hadat bamimsad hamuslemi bagadah hamad'aravit bitqufat hashilton hayardeni* [The Muslim Religious Establishment in the West Bank during the Jordanian Period] (Hebrew University, Institute of Asian and African Studies, Jerusalem, 1971, unpublished).
- Dumper, Michael. *Islam and Israel: Muslim Religious Endowments and the Jewish State*. Washington, D.C.: Institute for Palestine Studies, 1994.
- Eisenman, R.H. *Islamic Law in Palestine and Israel*. Leiden: E.J. Brill, 1978.
- Farhi, David. "The Muslim Council in East Jerusalem and Judea and Samaria since the Six-Day War," *ha-Mizrah he-Hadash*, 28/1–2 (1979) (Hebrew): 3–21.
- Gerber, Haim. *Ottoman Rule in Jerusalem, 1890–1914*. Berlin: Klaus Schwarz Verlag, 1985.
- Gibb, H.A.R. and H. Bowen. *Islamic Society and the West*. London: Oxford University Press, 1950.
- Goitein, Shlomo D. and A. Ben Shemesh. *Islamic Law in the State of Israel* (Hebrew). Jerusalem, 1957.
- Granovsky, Avraham. *Ha-mishtar ha-qarqa'i be-erets yisra'el* [Land Law in Palestine]. Tel Aviv: Dvir, 1949.
- al-Ḥanbalī, Mujīr al-Dīn. *al-Uns al-Jalīl bi-Ta'rīkh al-Quds wal-Khalīl*, vol. 2. Amman, 1973.
- Hasson, Yitzhak. "The Literature of Eulogies on Jerusalem in Islam" (Hebrew), in M. Sharon (ed.), *Notes and Studies on the History of the Holy Land under Islamic Rule*. Jerusalem: Yad Yitzhak Ben-Zvi, 1976, 43–68.
- Heffening, W. art. "Waqf" *Encyclopedia of Islam*, First edition, Vol. 4, 1096–1103.
- Hilmi, Omer. *A Treatise on the Laws of Evkaf*, trans. C.R. Tyser and D.G. Demetriades. Nicosia, 1899.
- al-Imām al-Ḥusaynī. Muḥammad As'ad, *al-Manhal al-Ṣafī fī al-Waqf wa-Aḥkāmihī*. Jerusalem, 1982.
- İpşirli, Muḥammad and Muḥammad Dā'ūd al-Tamīmī. *Awqāf wa Amlāk al-Muslimīn fī Filasṭīn*. İstanbul: The Islamic Conference Organization, 1982.

- al-Kafrāwī, Muḥammad. *Masājid Bayt al-Maqdis*. Jerusalem: Maṭbaʿat Rawān al-Tijāriyya, 1983.
- al-Khaṣṣāf. *Kitāb Aḥkām al-Awqāf*. Cairo, 1904.
- Khater, Issa. "Waqf in der West Bank," unpublished Ph.D. dissertation. Philipps Universität, Maarburg/Lahn, 1987.
- Kupferschmidt, Uri M. *The Supreme Muslim Council – Islam Under the British Mandate for Palestine*. Leiden: E.J. Brill, 1987.
- Kushner, David (ed.). *Palestine in the Late Ottoman Period*. Jerusalem and Leiden: Yad Yitzhak Ben Zvi and E.J. Brill, 1986.
- Layish, Aharon. "Maḥkama" in *Encyclopedia of Islam*, Second Edition, Vol. 6.
- Layish, Aharon. "Muslim Religious Jurisdiction in Israel," *Asian and African Studies*, 1 (1965): 49–79.
- Layish, Aharon. "The Muslim Waqf in Israel," *Asian and African Studies*, 2 (1966): 41–76.
- Layish, Aharon. "The Muslim Waqf in Jerusalem After 1967: Beneficiaries and Management," *Varia Turcica*, 26 (1994): 145–168.
- Layish, Aharon. "Qadis and Sharīʿa in Israel," *Asian and African Studies*, 7 (1971): 237–272.
- Layish, Aharon. "The Status of the Sharīʿa in a Non-Muslim State – The Case of Israel," *Asian and African Studies*, 27 (1993): 171–187.
- Layish, Aharon. "Waqfs and Sufi Monasteries in the Ottoman Policy of Colonization: Sultan Selim I's Waqf of 1516 in Favor of Dayr al-Asad," *Bulletin of the School of Oriental and African Studies*, 50, part 1 (1987): 61–89.
- Layish, Aharon. *Women and Islamic Law in a Non-Muslim State*. New York, Toronto and Jerusalem: John Wiley and Israel Universities Press, 1975.
- Layish, Aharon. *Hamimsad hadati hamuslemi bagadah hamāʿaravit batqufa hayardenit* [The Muslim Religious Apparatus in the West Bank during the Jordanian Period]. *Medina, Memshal veyahasim beinleumiyim* (autumn 1977).
- Meron, Y. "The Religious Courts in the Administered Territories," in M. Shamgar (ed.), *Military Government in the Territories Administered by Israel 1967–1980*, vol. 1. Jerusalem: Alpha Press, 1982.
- Orr, C.W.J. *Cyprus under British Rule*. London: Zeno, 1972.
- Paz, Reuben. "The Islamic Covenant and Its Meaning – Data and Analysis" (Hebrew). Tel Aviv: Tel Aviv University, The Moshe Dayan Center, 1988.
- Porath, Yehoshua. *The Emergence of the Palestinian-Arab National Movement, 1918–1929*. London: Frank Cass, 1974.
- Porath, Yehoshua. *The Palestinian Arab National Movement 1929–1939, from Riots to Rebellion*. London: Frank Cass, 1977.
- Powers, D.S. "Revenues of Public Waqfs in Sixteenth Century Jerusalem," *Archivum Ottomanicum*, IX (1984): 163–202.
- Qadrī Pāshā, Muḥammad. *Qānūn al-ʿAdl wal-Inṣāf fī al-Waqf*, Būlāq, 3rd edition, 1902.
- Reiter, Yitzhak. "An Assessment of the Reform in the Waqf Institution in Israel: The Case of Acre," (Hebrew) *ha-Mizrah he-Hadash*, 32 (1989): 21–45.
- Reiter, Yitzhak. "Family Waqf Entitlement in British Palestine (1917–1948)," *Islamic Law and Society*, 2/2 (1995): 1–20.

- Reiter, Yitzhak. *Islamic Awqāf in Jerusalem 1948–1990* (Hebrew). The Jerusalem Institute for Israel Studies, Jerusalem, 1991.
- Reiter, Yitzhak. *Islamic Endowments in Jerusalem under British Mandate*. London and Portland, OR: Frank Cass, 1996.
- Reiter, Yitzhak. "The Muslims in Jerusalem – The Administration of Religious Affairs," in Ora Ahimeir (ed.), *Jerusalem – Here and Now* (Hebrew). Tel Aviv and Jerusalem: Defense Ministry Publications and the Jerusalem Institute for Israel Studies, 1994. (Hebrew), 137–151.
- Roded, R. "The Waqf in Ottoman Aleppo," in G. Baer and G. Gilbar, *Social and Economic Aspects of the Waqf*. London: Oxford University Press, forthcoming.
- Shaham, Ron. "Christian and Jewish Waqfs in Palestine during the late Ottoman Period," *Bulletin of the School of Oriental and African Studies*, 54/3 (1991): 460–472.
- Shamgar Moshe (ed.). *Military Government in the Territories Administered by Israel 1967–1980*, vol. 1. Jerusalem: Alpha Press, 1982.
- Sharon, Moshe (ed.). *Notes and Studies on the History of the Holy Land under Islamic Rule*. Jerusalem: Yad Yitzhak Ben-Zvi, 1976.
- Shim'oni, Yakov. *Arvei Eretz Yisrael*. Tel Aviv: Am Oved, 1947.
- Sivan, Emmanuel. "The Sanctity of Jerusalem in Islam," in M. Sharon (ed.), *Notes and Studies on the History of the Holy Land under Islamic Rule*. Jerusalem: Yad Yitzhak Ben-Zvi, 1976, 35–42.
- Welchman, Lynn. "Family Law Under Occupation: Islamic Law and the *Sharī'a* Courts in the West Bank," in Ch. Mallat and J. Connors (eds.), *Islamic Family Law*. London: Graham & Trotman, 1990, 93–115.

Newspapers

Ha'aretz – Israel

al-Ra'ī – Jordan

Index

Note: For the names of *waqf* endowers between 1948–1988 see also Tables 4–5 (pp. 29–33).

- ʿAbd al-Mālik ibn Marwān (Caliph), 24, 89
 ʿĀbidīn, Shaykh ʿAbd al-Qādir (*Qadi* of Jerusalem and Chief *Qadi* of the West Bank), 10, 98
 Absentee property, 7, 41–42, 45
 Abū Dīs, viii, 60, 63
 Acre, 8, 67
Aḥkām (court decisions), 12
 al-ʿAlamī family, 40, 99
 al-ʿAlamī, Muḥammad Waqf, 79
 al-ʿAlamī, Shaykh ʿAbd al-Razzāq, 81
 al-ʿAlamī, Shaykh Khalīl, 99
 al-ʿAlamī, Shaykh Muḥammad ʿAbd al-Muʿtī, 43–44
 al-ʿAlamī, Shaykh Saʿd al-Dīn, 8, 9(n. 24), 10, 12
 al-ʿAlamī, Zayn al-ʿĀbidīn, 21, 79(n.45)
 Algeria, 2, 4, 41
 Amman, 7, 9, 12–14, 21, 57, 68, 74, 76–77, 84, 97–98, 100, 103
 al-Aqṣā High Schools, 60
 al-Aqṣā Mosque, 24, 28, 63, 87–90, 99
 al-Aqṣā Mosque Library, 62
 al-Aqṣā schools, 61–62
 Arbitration, 22
Arshad (most qualified for the position of *mutawallī*), 18, 36
 ʿAsaliyya, Shaykh Ziyād (Israeli *Qadi* of Jerusalem), 18
 al-Ashhab, Ḥusnī (Director of schools funded by Jordan), 61
 Association for the Aged, 14
 Association of the Arab Women’s Union, 83
 Austrian, 4
 Austro-Hungarian, 4
 ʿAyn Kārim (village and neighborhood), 41
 Ayyūbī(s), 24–26
 ʿAyzariyya (village), 36, 60
 al-Azhar, 22
 ʿAzzām, Shaykh ʿAbdallāh, 100

 Bāb al-ʿĀmūd see Damascus Gate
 Bāb Ḥuṭṭa, 49
 Bāb al-Zahra, Bāb al-Sāhira, 49, 68, 74–75, 81
 al-Bakr (family), 17
 al-Baghdādī, Shaykh Hāshim, 99
 Baqʿa (neighborhood), 27
 Barakāt, Fāʿiq, 36
 Barakāt, Ḥājj Kāmil, 34
 Bāshkātib, 100
 Baybars, al-Malik al-Zāhir, 26
 Bayt Ḥanīna (neighborhood), 58, 61, 99
 Bayt al-Rahma lil-Musinnīn al-Muslimīn (association and old-age home), 37
 Beer Sheba, 5
 Bethlehem, 56, 58
 al-Bīmāristān al-Ṣalāhī (saladin’s hospital), 25
 al-Bīra, 56, 60, 68
 Bosnia-Herzegovina, 4
 British (Mandatory rule), 2–4, 38
 al-Budayrī, Hasan, 81
 al-Burāq, see *Ḥāʾiṭ al-Burāq*

 Cemeteries, 8, 49, 57, 74–76, 80–82, 87, 92, 95, 103

- Central Asia, 2
 Central Bus Station (*waqf* asset), 49, 52, 76
 Central Endowments' Committee, 6
 Chamber of Commerce, 21, 36, 76
 Chief *Qādī*, see *Qādī al-Quḍā*
 Committee for the Renovation of Family Endowments, 74
 Committee for the Renovation of al-Ḥaram al-Sharīf (al-Aqṣā Mosque), 8, 76
 Committee of Muslim Religious Affairs, 5
 Council for Endowments and Islamic Affairs, 7–10
 Customary law, 22
 Cyprus, 2, 3
- Dāhiyyat al-Barīd (neighborhood), 60
 al-Dajānī, Ḥasan (*Waqf* Dept. Supervisor), 75–76
 Damascus, 26
 Damascus Gate (Bāb al-ʿĀmūd), 52, 69, 76
Dār al-Ḥadīth, 61, 98
Dār al-Qarʿān, 62, 98
Dār al-Ṭīfl al-ʿArabī (Arab Childrens Association), 35
Ḍarūra (necessity as a legal pretext), 77
 Disengagement declaration from the West Bank (1988), 21
 Dome of the Rock, 24, 28, 87, 89, 93
- Education (Islamic), 21–22, 57–61
 Endowments and Islamic Affairs Committee (also Council), 39, 76
- Family Law (Jordanian law of 1976), 12
 Family *waqf*, see *Waqf*
 al-Fatāt al-Lājiʿa School, 61
Fatwā (legal opinion), 21, 27, 57
Fatwākhāne (Ottoman office), 1
 French rule or government, 2–4, 41
Fuqahāʿ (jurists), 12, 66–67
- Gaza Strip, 22, 47, 88, 97–98, 100
 al-Ghurfa al-Tijāriyya, see Chamber of Commerce
 al-Ghusayn, Nuzha, 35
- Grand Mufti, 1, 21
 Green, Judge, 6
 al-Ghuzāt Cemetery, 76
- Haifa, 8
Ḥāʾiṭ al-Burāq, 87–88, 91, 99
Ḥājj, see pilgrimage
 Ḥājj Nimr Mosque library (Nablus), 63
 al-Hakārī, Shaykh Aḥmad ibn Abū Bakr, 25
 Hammās, 100
 Har ha-Bait, see Temple Mount
 al-Ḥaram al-Ibrāhīmī in Hebron, 80
 al-Ḥaram al-Sharīf, 10, 14, 27–28, 49–51, 55, 61, 63, 65, 73–74, 87–90, 93, 95, 98, 101
 Hārūn al-Rashīd St., 36, 76
 Hashemite Family, 2, 7
 al-Hayʿa al-Islāmiyya al-ʿUlyā, see Supreme Muslim Authority
 Hebron (al-Khalīl), 56, 58, 60, 80
 Herbert Samuel (British High Commissioner), 5
 High Commissioner, 5, 38
Ḥikr (long-term rent), 49, 73–74, 77
Ḥizb al-Tahrīr, 99
 Holy Places, holy sites, 9–10, 27–28, 39, 80–81, 87–97, 101, 104
 Hudā al-Islām (journal), 63
 al-Ḥusaynī (family, the Ḥusaynīs), 7, 40
 al-Ḥusaynī, Ḥājj Amīn, 6, 21, 27
 al-Ḥusaynī, Hind bint Ṭāhir Shukrī, 35
 al-Ḥusaynī, Fayṣal, 10(n. 25)
Ḥubūs (pl. of *ḥabs*, endowment in North Africa), 2
Hujaj (court notarial issues), 12
- Fāla* (financial support of family members), 20
 al-Ibrāhīmīyya College, 36
Iftāʿ, see *Fatwā*
Ijāratayn (long-term leasing of *waqf* property), 6, 74
Imām (praying leader), 56
 al-Imām, Shaykh Asʿad, 34, 49(n.4), 79(n.44), 84(n.84), 99
 Inspector General (British officer in Mandatory Iraq), 4
 India, 2

- Inheritance, 20
 Intercontinental Hotel, 79
Intifāda (Palestinian uprising), 10, 22, 61, 91, 99–100
 Iraq, 3, 4
 Islamic College, 73, 99
 Islamic Congress, 73
 Islamic Museum, 63
al-Isrā' (night journey), 89, 99
 Israeli rule, 1, 7–11, 94–95, 97, 100–101, 104
 Israeli laws (Marriage Age Law of 1950, Criminal Law, Property Relations between Spouses Law of 1973), 19–20.
Istibdāl (exchange of waqf property), 6, 71, 74, 77–81, 83
Istidāna (loan), 73
- al-Ja'barī, Shaykh Sulaymān (Mufti of Jerusalem since 1993), 10
 Jaffa, 8, 11, 13, 15–19, 43
Jam'iyyat Ittihād al-Nisā' al-ʿArabī (Arab Women's Association), 36
 Jenin, 56, 58, 60
 Jericho, 56, 68, 97
 Jewish Quarter, 34, 80, 87, 94–95
al-Jihād al-Islāmī, 100
Jīl al-Amal (Generation of Hope Association), 35
 Jordan (The Hashemite Kingdom of), 1, 9, 11, 13, 36, 52, 56, 61, 83–85, 101
 Jordanian
 rule, 2, 6–7, 28, 74, 95, 97–98, 100, 102–104
 citizens, 20, 57
 citizenship, 20
 Department of Occupied Territories, 61
 Family Law of 1976, 19
 General Director of *Waqf*, 39
 Government, 51, 60, 65, 76, 79, 82, 103
 Interior Ministry, 21
 Ministry of Education, 61
 Supreme Committee of endowments, 39
 waqf local committee or departments, 39
 waqf regulations (of 1952, 1955), 39
- Khān, 26
 Khān al-Zāhir, 26
Khānqā', 25
 al-Khānqā' al-Ṣalāhiyya, 24, 43, 99
 al-Khālidi (family), 17
 al-Khālidi, Maḥbūba Waqf, 43
 al-Khaṭīb (family and *waqf*), 74
 al-Khaṭīb, Anwar, 35
 al-Khaṭīb, Rawhī 76(n.32)
 al-Khātūniyya land, 83
 al-Khayyāt, ʿAbd al-ʿAzīz (Jordanian Waqf Minister), 52
Khulū mawaniʿ wa-tajāwwuz ʿan al-jinsiyya (kind of document for traveller indicating personal status and nationality), 20
 King Hussein, 21
 Kitchener (British Consul-General in Egypt), 3
Kuliyyah (college), al-Daʿwa wa-Uṣūl al-Dīn, al-Umma, al-Mujtamaʿ, 61
 Kupferschmidt, Uri M., 4, 5, 97
 Knesset (Israeli legislator, parliament), 7, 19, 42
- Law of Inheritance (Jordanian law of 1946), 12
 Law of Shariʿa Court Procedure (Jordanian Law of 1959), 12
 Law of Personal Status (Jordanian law of 1951), 12
 Law of *Waqf*, Holy Places and Religious Affairs (Jordanian Law of 1966), 12
 Lifta (village), 26
 Lod, 8
- Ma' dhūn Sharʿī* (marriage registrar), 17
Madrasa (religious school), 25
 Maghribī (of North African origin), 26
 family, 14
 neighborhood, 41, 77
 zāwiyya, 26
al-Maʿhad al-Sharʿī (Islamic college in Qalqiliya), 60
 al-Madrasa al-Tankiziyya, 90
al-Maḥkama building, see al-Madrasa al-Tankiziyya
Mahramiyya (kind of document for pilgrimage), 20

- Majlis al-Awqāf*, see Council for Endowments and Islamic Affairs
- Majlis al-ʿMār* (Development Council), 73
- Mamila (neighborhood, cemetery), 81
- Mamlūk(s), 24–26
- Maʿmūr awqāf* al-quḍs (Director of Jerusalem endowments), 40–41
- Manfaʿa* (benefit), 77
- Maqām* (saint tomb), 25
- Maqbarat al-Mujāhidīn (cemetery), 81
- al-Maqāṣid al-Khayriyya al-Islāmiyya* (Association and hospital), 37
- Mashyakha* (position of Shaykh), 43
- Maṣlaḥa* (benefit, public interest), 77
- al-Mawlid al-Nabawī* (feast), 99
- Mecca, 20
- al-Mʿrāj* (ascending to heaven), 89, 99
- Ministry of Waqf, see Waqf Ministry
- Minister(y) of Religious Affairs (Israeli), 7–8, 12, 15, 41
- Mirī* (status of land), 19, 27
- Mosques, 8, 39, 49, 56–57, 60, 80–81, 87–90, 92–93, 99, 103
- Mount of Olives, 25, 79
- Mount Zion, 27
- Mudīr al-Sharʿa* (Director of *Sharʿa* Courts), 13
- al-Muḥtasib, Shaykh Ḥilmī, 8, 12–13
- Muḥāsaba* (accounting), 44
- Mufti, 5, 8, 12–13, 21–22, 98
of Egypt, 81(n.47)
- Mujīr al-Dīn (historian), 24–25
- Mukāfaʿa* (grant), 61
- Mulk* (private owned land), 19
- Mukhlis ʿAbdallāh (mandatory Director of Waqf Department), 75
- Municipality, 49, 52, 75–76, 80
- Muqāṭaʿa* (long-term lease), 74
- Musawwigha* (legal pretext), 77
- Mushāʿ* (common ownership of land), 27
- Muslim Brethren, 99
- Mutawallī* (waqf administrator), 17–18, 36–38, 40–45, 54, 66–67, 69–73, 77, 79, 83–84
- Muzāraʿa* (share-cropping), 74
- al-Nabahānī, Shaykh Taqī al-Dīn, 99
- Nabī Mūsā, 98
- Nabī Samwīl, 91
- Nablus, 56, 58, 60, 63
- al-Nashashībī, Ghālīb Maḥmūd, 17
- al-Nāṭūr, Shaykh Aḥmad (Israeli President of *Sharʿa* Courts), 18(n. 20)
- al-Nūr (pamphlet), 100
- Nusayba, Anwar, 35
- Old City, 1, 10, 28, 49, 51, 73, 77, 80, 84, 87, 94, 97–98, 103
- Orphanage, 25, 60–61, 73
- Ottoman 4, 9, 26, 38–39
Empire, 1
Family Rights Law of 1917, 11
procedure law of 1917, 11
rule, 3
rulers, 25
- Palace Hotel, 49, 81
- Palestine, 2, 5, 9
- Palestinian Authority, 10, 97–98, 102
- Palestinian leadership, 2, 27, 101
- Palestinian national movement, 1
- Palestinians, 9, 20, 65, 103
- Personal status affairs, 15–17
- Pilgrimage, 26, 39, 57, 100
- Pilgrims Hotel, 84
- PLO, 10, 61, 100
- Poligamy, 19–20
- Qādī*(s), 1, 3, 5, 7–8, 12–13, 16–18, 21–22, 36–38, 40, 44, 56, 67, 69–71, 73, 77, 82–84, 98, 102–103
- Qādī al-Qudā* (Chief *Qādī*, Jordanian), 6–8, 10, 12, 14, 21, 39, 75–76, 84
- Qādīs* Law of 1961 (Israeli law), 7, 42
- al-Qādiriyya (sufi order), 99
- Qalqiliya, 60
- Qibla* (direction of prayer), 87
- al-Qirsh, Shaykh Yaʿqūb, 99
- Qurān* Readers, 25–26
- Qurba* (rapprochement), 92

- Ra'īs al-Sadana* (chief servant), 99
 al-Rām, 60
 Rāmallāh, 56, 58
 Ramla, 8
 al-Rāshidiyya school and *waqf*, 73
 Religious apparatus, 1
 al-Rifā'ī, Shaykh Jamal, 99
 al-Rifā'iyya (sufi order), 99
 Riyād al-Aqṣā School, 62
Ribā'i, 25
 Ritz Hotel, 28
 al-Rūḥa High School, 36
- Sabīl* (fountain), 49
 Ṣabrī, Shaykh Sa'īd (*Qadi* of Jerusalem), 8
 Ṣabrī, Shaykh 'Ikrima (first *qadi*, then: Palestinian Mufti), 10, 12, 98
 al-Sā'ih, Shaykh 'Abd al-Ḥamīd (Chief *Qadi* of the West Bank), 8, 12–13, 79
 Saladin, 24–25, 43, 99
 Ṣalāh al-Dīn St., 14, 68, 70–71, 74–76, 78, 83
 Salhab, Shaykh 'Abd al-'Azīm (General Director of *Waqf* and Chairman of the *Waqf* Council), 10
 Sa'udi government, 20
 Sermons and Guidance (*al-Wa'z wal-Irshād*) Committee, 63
 Shabana, Shaykh Ya'qūb (Jerusalem *qadi*), 22
 al-Shādhiliyya (sufi order), 99
Shahādāt ḥusn sulūk (certificate of integrity), 20
Sharī'a (Islamic law), 1, 7–9, 11, 36, 69, 71, 74, 79
Sharī'a College, 60
Sharī'a Courts, 1–3, 7–8, 11–22, 26, 35–37, 40–44, 49, 53, 67, 69–70, 78–81, 83–84, 93, 95, 100–102
 Director of, 8
 Judicial system, 3, 7, 11–12, 19
 Judiciary, 6, 14, 21, 102
 Jurisdiction, 7
 of Appeals, 8, 12–13
 of Jaffa (Israeli), 16–19
 office, 75
 procedures, 7
- Shaykh al-Islām*, 1, 9, 38
 Shaykh Jarrāḥ (neighborhood), 73
 al-Shihābī, Zulaykha, 36
 Shitayya family and *waqf*, 75, 83
 Shitaya, Muḥammad 'Īssā, 54
Sijill (*Sharī'a* Court records), 14, 20, 43, 67–68, 73
 Silwān (village enaxed to Jerusalem), 14, 78
 Simon the Just (cave), 92
 SMC, see Supreme Muslim Council
 Status quo, 88, 94–95
 Sublime Port, 3
 Sudan, 2
 Supreme Court (Israeli), 43
 Supreme Endowments' Committee (Jordanian), 6
 Supreme Muslim Authority (after 1967), 8–10, 13, 82–84, 98, 101
 Supreme Muslim Council (SMC), 4–6, 9, 27, 38–39, 41, 44, 50, 53, 81, 89, 95, 98–100
 Sufi(s), 24–26, 87, 92, 97–99
 Syria, 3, 4,
- Ṭā'a* (marital obedience), 16
al-Tablīgh wal-Dā'wa (Islamic radical movement), 100
 Tahbūb, Ḥasan (Director of *Waqf*, President of the Supreme Muslim Authority and PA's Minister of *Waqf*), 10, 39, 43
 Takiya, 25
 Talpiyyot (neighborhood), 27
 al-Tamīmī family, 40
Tawliya (appointment as *mutawallī*), 35
 al-Ṭazīz, 'Alī, 36
 Temple Mount, 28, 87, 89–90, 95, 99
 Faithful, 89, 91, 101
 Tenant Protection Law (British and Jordanian law), 51
 al-Tījāniyya (sufi order), 99
 Tombs (of the Kings, and David Tower, of Zechariyya, of the Prophets, of Hulda the Prophetess), 91–92
 Tulkarm, 56, 58
 Ṭūr Zayta (al-Ṭūr village, then neighborhood), 25

- al-Tūr (neighborhood), 76, 99
Turba (tomb), 25
- ‘*Ulamā*’ (religious figures), 4
 al-‘Umariyya school, 73
 Unions and Welfare Bodies Law (Jordanian law of 1965), 35
- Vakf-Mearif Assembly, 4–5
- Wādī Jawz (neighborhood), 60
 Walī, 25
- Waqf (s. pl.: *awqāf* = endowments), 6, 14–18, 23–47, 49–63, 65–86, 92–93, 99–103
 Abū Midyan al-Ghawth, 26, 28, 41, 77, 91
 Administration, 1, 2, 5, 7, 9–10, 95, 99, 103–104
 affairs, 11
 Muḥammad al-‘Alamī, 79, 83
 al-‘Anabūsī (family), 70
 Assets, properties, lands etc., 3, 7, 83
 budget, 5
 clerics, 5
 al-Dajānī (family), 69
 Dā’irat al-Awqāf, Department of Endowments, 3, 14, 38–40, 42–44, 49–63, 65, 70, 73–76, 78–81, 85
 Director of, 43
 family, 23, 28, 38, 40, 42, 53–55, 65, 66, 70, 73
 General Director, 8, 40
ghayr maḍbūta (independently administered), 38
 al-Imām (family), 83
 Jordanian Law of 1946, 6, 39
 Jordanian Law of 1966, 7, 39, 57
 al-Khaṭīb (family), 74
ma’ mūr awqāf al-quds, 40, 70, 81
- maḍbūta* (pl. *maḍbūta*, state administered), 38, 40–41, 53
 Maḥbūba al-Khālidī, 43
 Management, 12
 Minister, 7, 52, 58
 Ministry, 3, 7, 37–40, 69, 82
 Muḥaddath, 53–54
mulḥaq (pl. *mulḥaqa*, attached to central administration), 38
 Mūsā ‘Aqaba, 27
 al-nashashībī (family), 84
 public, 23, 28, 38, 42, 47, 65
 al-Rashīdiyya, 73
 al-Rayis (family), 70
 al-Safūṭī (family), 71
 al-Sālīḥ (family), 73
 Shitayya (family), 71, 75, 83–84
 The *Waqf*, 5, 24
 Trustee Committees (Israeli), 8
 Yamānulī (family), 17
 al-Zāwiyya al-Fakhriyya, 27, 78
Waqfiyya (endowment deed), 14, 23, 26, 40, 43
 West Bank, 1, 6–10, 12–16, 21–22, 39–40, 47, 50–52, 56–58, 61, 88, 93, 95, 97, 100–101, 103
 West Jerusalem, 13, 102
 Western Wall, 26, 28, 34, 80, 87–88, 90–91, 93–94, 99
- Yamānulī *Waqf*, 17
 Yāsīn, Shaykh Aḥmad (Hammās leader), 100
- Zakat Committee, 62
Zāwiya (sufi lodge), 25–26, 43, 49, 56, 92, 98–99
 al-Fakhriyya, 27, 78
 Zedekiah’s Cave, 92
Ziyāra (pilgrimage ceremony), 98

Series General Editor

Dr. Mark S. W. Hoyle

Titles in the Series

Islamic Institutions in Jerusalem, Yitzhak Reiter
(ISBN 90-411-0382-1)

The Law of Business Contracts in the Arab Middle East, Nayla Comair-Obeid
(ISBN 90-411-0216-7)

Arab Islamic Banking and the Renewal of Islamic Law, Nicholas D. Ray
(ISBN 1-85966-104-1)

Business Laws of Yemen, Abdulla M.A. Maktari and John McHugo
(ISBN 1-85966-112-2)

Finance of International Trade in the Gulf, Dr. Ahmed A. M. S. Al-Suwaidi
(ISBN 1-85333-947-4)

Islamic and Public Law, Chibli Mallat (ed.)
(ISBN 1-85333-768-4)

Islamic Family Law, Chibli Mallat and Jane Connors (eds)
(ISBN 1-85333-301-8)

Islamic Law and Finance, Chibli Mallat (ed.)
(ISBN 1-85333-121-X)

The Islamic Law of Personal Status (2nd ed), Jamal J. Nasir
(ISBN 1-85333-280-1)

The Law of Commercial Procedure of the United Arab Emirates, Dawoud S. El Alami
(ISBN 1-85966-080-0)

The Status of Women under Islamic Law (2nd ed), Jamal J. Nasir
(ISBN 1-85966-084-3)

The Marriage Contract in Islamic Law, Dawoud S. El Alami
(ISBN 1-85333-719-6)

Mixed Courts of Egypt, Mark S. W. Hoyle
(ISBN 1-85333-321-2)

The Theory of Contracts in Islamic Law, S. E. Rayner
(ISBN 1-85333-617-3)

Unlawful Gain and Legitimate Profit in Islamic Law, Nabil A. Saleh
(ISBN 1-85333-721-8)

(Please order by ISBN or by title)