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WAQFS AND URBAN STRUCTURES

The Case of Ottoman Damascus

BY

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INTRODUCTION
FOUNDATIONS, URBAN SPACE AND POWER

Most theories about the rise and development of cities assume that the basic condition for the foundation of urban settlements consisted of the integration of three essential elements: the stronghold, the temple and the market, or, in other words, secular power, religious legitimation and economic organization. Of these elements the religious factor was generally predominant. The foundation of a city implied that a certain territory was linked to a religious idea, that an agglomeration of people took place which was socially bound by some common allegiance to the sacred. This meant not only that citizenship was defined in religious terms, but also that the organization of space within the city was to a large extent determined by the systems of religious symbols and the prerequisites of ritual and ceremony. Cities were meant to reflect the sacred, or, more specifically, cities as spatial structures imitated a celestial archetype and were incorporated into the heavenly order, which shaped the hierarchies of earthly space. Since it was a centre for common religious experience, in the city communication with the divine was at its most intensive. To uphold these contacts, space had to be organized to facilitate ceremonies and strengthen the religious bond, and to reflect the symbolic function of the city, as a centre imposing a specific spatial organization on its surroundings. In more complex structures cities were the focal points in hierarchical networks based on religious interpretations of geography.[1]

The symbolic functions of cities are well-known for medieval Europe. Cities, both as *urbs* and as *civitas*, were reflections of a divinely inspired world order, in which topography was absorbed by theology, expressing religious symbols and identities. Gradually, representations of cities turned into settings for more profane heroes and activities, reflecting new forms of citizenship and perceptions of space.[2] In medieval Arabic texts, too, echoes of these ideas can be found. In several tales of the *Thousand-and-one-nights* (*Alf layla wa-layla*), for instance, cities are described as centres of civilization and power, and

[1] Carter, pp. 8, 13-14; Carter gives a general introduction to the historical geography of cities; see also Lynch, Morris and Kostof.

[2] See Frugoni, pp. 3, 7-15, 20, 24, 66, 75-6, 88, 101, 110.

as the setting for the struggle to spread the Faith. As I have noted elsewhere, in the story of As'ad and Amjad, to take only one example, the city in which the heroes end up is still partly dominated by the unbelievers. By a clear juxtaposition of the forces of good and evil a maze is woven through which the heroes have to find their way, in order to reach the final denouement, the incorporation of the city, personified by its community, into the world order of Islam. There is a tendency in other stories too, to see cities as defined entities, both as a stereotype material form (walls, market, etc.), as a community (Muslims, unbelievers) and as places where moral and religious values manifest themselves in earthly space. Cities are spatial entities where individual and social moral struggles take place within a religious framework, and, consequently, they are the focal points of the sacred geography of Islam.[3]

Apart from these fictional tales, there are references to cities in various genres of Arabic religious, philosophical and geographical texts. Not surprisingly, the religious texts strengthen the sacred image of cities, as do some of the philosophical approaches.[4] Al-Fārābī (d. 950), for instance,[5] takes the city as a model to expound on his ideal society and thus as a metaphoric 'container' in which a set of moral values is systematized. There are also texts that approach the phenomenon of the city in a more profane spirit, especially geographical surveys, and, significantly, the *Muqaddima* of Ibn Khaldūn (1332-1406). For Ibn Khaldūn, the city is put into the context of the cyclical phases which he discerns in the historical process. Cities are 'manifestations of the glories and the majesty of the state', that contain 'the best that a civilization has to offer' and 'the highest achievements of man in art, literature and science'. For a city to be founded, among the first requirements is a stable, peaceful phase of history and a strong royal authority, capable of warding off threats from outside and of building a solid internal structure. Cities are integrated into several hinterlands, such as cultivable land with sufficient water supplies, pastoral grounds, forests for wood supplies and populous rural suburbs to provide a population 'buffer' in times of decay. The establishment of a city is primarily an act of power and is thus linked with the formation or expansion of states and dynasties. The cycle of

[3] Van Leeuwen (1997).

[4] For a general discussion of urban images in Arabic texts, see Khalidi (1981), and Cuneo, pp. 75-7.

[5] Al-Fārābī, *Ārā' ahl al-madīna al-fāḍila*, ed. A. Nādir, Beirut 1973.

urban development cannot be separated from the authority of the dynasty, which also determines the potential size of cities, since this is derived from the ability of a city to draw resources from its surroundings. Thus the size of the empire determines the limits of urban growth. Finally, the city contains complex social formations, based on sophisticated needs, economic accumulation and circulation, labour specialization and the substitution of 'classes' for traditional parental relations.[6]

It would be beyond the scope of this study to present a detailed survey of perceptions of the city in various Arabic texts. Suffice it to say that views existed that took into consideration the systems of symbols of which representations of the city were part, and the systems of power which regulated their life cycle and development. Historiography has provided us with examples of several stereotypes, such as the various *amṣar*, camps which were the military bases for the expansion of Islam and which later grew into urban settlements (Fusṭāṭ, Kūfa); imperial cities, designed to serve as centres of power and fitted into the systems of secular and religious authority (Baghdad); and holy cities, which dominated extended religious infrastructures and whose history and status were an amalgam of fact, legend and religious beliefs (Mecca and Medina). In all three categories religion and power played a part, though in different proportions. Of these types of cities the status is either evident or determined by specific historical circumstances. They were founded with an explicit purpose, or invested with unique sacred properties. For other towns the question of their status within the realm of Islam was less unambivalent and their development as urban entities much more complex. One of these was Damascus.[7]

Damascus and the foundation of the Umayyad Mosque

Damascus was conquered by the Muslims in 635 under Caliph ʿUmar, by the troops of the famous warrior Khālid ibn al-Walīd. Initially the city remained one of the many provincial towns of the empire, until in 659 the controversy between Muʿāwiya and ʿAlī took

[6] Ibn Khaldun, pp. 175-205; see also Alam.

[7] For the history of Fusṭāṭ, see Kubiak; for Kūfa, see Djait; for Baghdad, see Al-Sayad; for Mecca and Medina, see Crone (1987) and Peters (1986; 1994).

place and the former, after his triumph, chose Damascus as his caliphal residence and capital of the empire. The shift of the capital from the Ḥijāz to Syria was of course an important step. It illustrates how during the expansion of the Faith the religious centres of the empire, Mecca and Medina, had become marginalized as the seat of secular power. Although they evidently retained their sacred and religious status, they were too much in the geographical periphery to be effective as the location of the religious-imperial symbiosis. For some time to come, the relocation of the centre of gravity resulted in a *de facto* separation of religious and secular authority, since Damascus, although it may have been suitable as an administrative centre, lacked the religious appeal of the holy cities. This situation would change at least to some extent under the caliphate of al-Walīd (705-715).

After the conquest of Damascus, the Muslims apparently chose an open space outside the city, the *muṣallā*, for their communal prayers, but also a part of the church of Saint John in the centre of the city was used as a *miḥrāb* by the Muslims. In the course of time this space became too small for the increasing number of believers, and Caliph Muʿāwiya sent a letter to the Damascene Christians asking if they were willing to concede the basilica to the Muslims, in exchange for a sum of money. The Christians refused, and the caliph gave up his project. His grandson al-Walīd, however, initiated a second effort to appropriate the church by offering the Christians a large amount of cash. Since they again refused, the Muslims took resort to formal arguments: during the conquest of Damascus the commander of the Muslim troops Khālid ibn al-Walīd had entered the city 'with the sword' through the eastern gate, while Abū 'Ubayḍa had conquered the other part of the city by peaceful means through the Bāb Jābiya, on the western side. This implied that the Muslims were legally allowed to destroy the churches in the eastern part of the city. However, they were prepared to leave the churches intact in exchange for the Basilica of Saint John. Confronted with this threat, in the guise of legal reasoning, the Christians finally conceded.[8]

The destruction of the church did not pass by without incident. Until then, the inside of the church had not been demolished, since legend had it that anyone damaging the altar would either become mad or catch some serious disease. The workers refused to embark

[8] Al-Nuʿaymī (1990), vol. 2, p. 288.

upon their task, and ultimately Walīd personally took hold of the axe and, clad in his yellow robe, chopped the altar in two. As they saw that nothing happened to the caliph, the workers were reassured and proceeded with the demolition. During the excavaton of the walls, several mysterious finds were made. The Muslims discovered a wall with a door, behind which a stone was placed with a strange inscription. Another stone was found, apparently from the times of Sulaymān ibn Dāwūd, bearing an inscription which could not be deciphered by either the Greeks, the Jews or others. At a certain moment al-Walīd, with a candle in his hand, entered a cellar under the floor, which contained a beautiful small chapel and the completely preserved head of Saint John the Baptist. The Muslims decided to leave the head in the chapel and to place a pillar on top of the cellar. In another crypt the statue was found of a man riding a horse, with some *dhurra* in his hand. In the other hand he was holding a grain of wheat and a grain of oat. An inscription said that as long as the hand of the knight remained intact, there would be no famine in the country. Finally, a stone was discovered, made by Greek scholars, that caused every mule that turned around it three times to urinate.[9]

After the destruction of the church, astrologers chose the most auspicious moment to start the construction works, so that the mosque would never be demolished or become void of believers. Al-Walīd then set out to build the 'greatest mosque of all times'. To achieve this, he dispatched a missive to the Byzantine emperor in Constantinople requesting a large number of artisans to be sent to Damascus. The emperor was furious and remarked: 'You have destroyed the church which your father has spared. If his decision was right, you have been disobedient to him; if it was wrong, your father made a mistake.' Perturbed by this argument, al-Walīd turned to the scholars of Kūfa and Basra to formulate an answer. Al-Farazdaq provided him with one: 'I have had a vision. If it is true, you may keep it, if it is wrong, it is my mistake: it is the saying of God, praise be to Him: 'And remember David and Solomon, when they gave judgment in the matter of the field into which the sheep of certain people had strayed by night: We did witness their judgment.'[10] Moreover, to render this rhetoric more effective, al-Walīd threatened to launch an attack against the emperor and destroy all churches and

[9] Id., vol. 2, pp. 286-290.
[10] *Koran*, 21:78.

Byzantine shrines in the empire, including those in Jerusalem. At this stage the emperor gave in and sent the artisans.[11]

Further difficulties during the construction works were of a technical nature. Firstly, a new method had to be devised to construct and lift the great cupola; secondly, large quantities of marble, said to have been taken from the throne of Bilqīs, were gathered and cut by twelve thousand marble workers. Furthermore it was decided to cover the roof with lead, because the clay would have to be renewed every year. Lead was taken from coffins and bought from the people. According to one of the stories, an old woman agreed to sell the lead in her possession only for the equal weight in gold. Al-Walīd consented, whereupon the lady presented him with the lead as a gift, stating that she had only refused at first because she thought that the caliph was confiscating the materials by force. The collection of all these materials naturally involved tremendous expenses, and at a certain point the Muslims of the city rose in protest, saying that al-Walīd spent 'their' *fay'* and exhausted 'their' treasury, only to pay for the decorations. Al-Walīd placated them, however, replying that he had counted the money in the treasury and had found it sufficient for sixteen years. The caliph died in 715, when the construction works were not yet finished. The Umayyad Mosque was completed by his brother and successor Sulaymān.[12]

This account of the building of the Umayyad Mosque, taken from al-Nuʿaymī's *al-Dāris fī tārīkh al-madāris*,[13] is a compilation of several, slightly different versions. Al-Nuʿaymī states at the beginning of his book, which contains an inventory of schools, mosques and other religious buildings in Damascus, that he embarked upon the project of writing it after seeing the splendid waqf-endowments of Damascus, and it is obvious that he wants to contribute to the consolidation of the religious institutions mentioned in the text. It is not surprising, then, that he imbues his descriptions with laudatory qualifications and seeks to reinforce the importance of the institutions by incorporating legends into his histories. His descriptions are representations with a specific aim, the aim of preserving the blessings of the city's religious institutions, spreading their reputation and buttressing the system of waqfs.

Al-Nuʿaymī's account prompts several observations. The first con-

[11] Al-Nuʿaymī (1990), vol. 2, pp. 290-1.
[12] Id. (1990), vol. 2, pp. 291-6.
[13] The edition referred to here is the one by Shams al-Dīn, Bayrūt 1990.

cerns the location where the Umayyad Mosque was constructed. It is of course no coincidence that a spot was chosen that was renowned for its sanctity and on which for ages in the past temples and shrines had been built. It was a place steeped in holiness by the traditions of other religions. Moreover, it was a place that was incorporated into the imagination of the population as a centre of spirituality, a combination of religious beliefs and popular legends. In the course of time, the temple-area had developed into the core of the city, not only in the spiritual, but also in the material sense. It was one of the focuses of urbanization, which had imposed a certain spatial pattern on its surroundings. Thus, by appropriating the Basilica of Saint John and turning it into a mosque, the caliph in the first instance chose for a policy of continuity, based on the material and spiritual conditions of the city and building on existing structures. These structures were not left intact, however, but were modified to accommodate the exigences of the new dominant community. With the building of the Umayyad Mosque, the material and symbolic structures were integrated into a new system, dominated by a new ruler, and the values accumulated in its location were absorbed to serve a new social and administrative set-up.

This appropriation of the spiritual and material nucleus of the city was not an act of mere arbitrariness. Al-Nuʿaymī is careful to suggest that the Christians were offered compensation in several forms and that their wishes were respected when they initially refused. When the time had come to enforce the arrangements, according to the account, the Muslims were anxious to find a legal argument to support their claims. The confiscation of the church was not an act of war, not the result of conquest, but an act of administration, the result of the hegemony of a new legal system. It was a consequence of the triumph of a new society.

As a symbol of splendour and glory, the Umayyad Mosque was evidently meant to enhance the status and fame of the new ruler. Al-Walīd utilized the construction of the Mosque to consolidate his authority in a capital which had only relatively recently become part of the Islamic domains. The Mosque was explicitly meant to be a monument for the triumph of Islam, ranking in the list of wonders of the world only after a magic mirror in Andalusia, in which persons could be seen at a distance of one hundred parasangs.[14] Costly mate-

[14] Al-Nuʿaymī (1990), vol. 2, p. 294.

rials were purchased and countless artisans and craftsmen were employed to render the building into a unique symbol for the community. The Mosque became the antithesis to the Byzantine emperor and the power structure previous to the Islamic conquest. The emperor was threatened directly with invasion, and indirectly with the demolition of the symbols of the *ancien regime*, the Christian churches in Syria. The function of the Mosque as a symbol of power and glory was based not only on these more or less violent and aggrandizing images, but also on an image of fairness, courage and tolerance. Firstly, as mentioned above, the confiscation was executed according to legal argumentation; secondly, by personally destroying the altar, the caliph took it upon himself to exorcise the place of ancient superstitions and prove the truth of Islam; thirdly, the caliph took care to assuage the anxiety of the population as much as possible, to make sure that the new monument would be seen not as a symbol of oppression, but rather as a symbol of prosperity, justice and self-confidence; fourthly, the Byzantine emperor was rebuffed by a quotation from the sacred book, symbolizing the new source of authority and communal symbols; finally, the construction of the Mosque symbolized the reintegration of the domains of secular and religious authority. Of course Mecca and Medina kept their status as the most holy cities of Islam, but Damascus was now incorporated into the religious infrastructure of the empire. It became not only a centre of wordly power, but also a prominent focal point of piety and religious ceremony. The attracting potential of the city was enhanced, as well as its potential religious hegemony over its hinterland. The religious status of the caliph, as the leader of the community, was confirmed, and the predominance of the Ḥijāz was no longer absolute, but balanced by a new congruence of religious symbols and secular authority.

It is not difficult to see how these aspects of the construction of the Umayyad Mosque were related to the systems of power and authority, especially as they were explained by Ibn Khaldūn. Firstly, the caliph could only complete his project by using his power in different fields, not only to secure his possession of the place in question, but also to collect the building materials and to mobilize the labour force; secondly, the Mosque marked the transition from one power structure to another, based on different values, different social relations and a different leadership; thirdly, the Mosque was the material manifestation of the structure of power which would henceforth be

predominant in the city. In other words, the Mosque was a means for the symbolic appropriation of the city by the Muslim community, setting it apart from its past and from the leaders and communities that had previously ruled the city, but utilizing the symbolic values that had been bestowed upon the city by previous generations. In all these aspects, it is an example of the typical function of a city, as a spatial setting where the past is integrated into new material forms, where power is concentrated and where the domains of the spiritual and material converge. With the completion of the Mosque, Damascus assumed its place in the sacred and secular hierarchy of spatial organization, as a centre of religious symbols and administrative power.

In al-Nuʿaymī's account the foundation of the Umayyad Mosque is nowhere explicitly described as a waqf. As far as we know, in this period the law with regard to waqf was not yet elaborated, and perhaps in this case it would be appropriate only to speak of a 'proto-waqf'. However, in the course of time the Mosque became the nucleus of a large network of waqfs which eventually dominated the city centre and which is illustrative for its function as a component of the administrative system and the organization of urban services. The history of the construction of the Umayyad Mosque and its gradual evolution into the nucleus of the system of religious foundations of Damascus contain the elements that form the basis of the approach to religious foundations, or waqfs, proposed in the present study: firstly, waqfs were part of a dynamic process which shaped the spatial organization and the symbolic meaning of spatial differentiation within urban structures; secondly, this process is closely connected with the development of the mechanisms of power within Muslim societies, which became visible in the elaboration of the sacred law, the administrative systems set up by rulers and the influence of social groups, especially the group of legal scholars, or ulama. In the following sections we will briefly discuss the three main components on which the analysis will be focused: waqfs, the city and power.

The waqf institution

Defining the institution of waqf is both at the same time simple and extremely difficult. It is simple because the concept of waqf has been described in legal handbooks of various kinds, in a terminology which

is especially moulded to avoid ambiguity and misinterpretations. Moreover, these texts have the authority of being part of an elaborate, officially accepted, and even divinely sanctioned legal system, which has survived for many centuries. The question what a waqf is, is difficult, however, since the phenomenon is not confined to the realm of legal theory and juridical handbooks. It is also part of a historical reality and it touches upon the material and spiritual conditions of societies beyond the sphere of legal systems. The waqf-institution has at least two manifestations, which are not always congruous, one laid down in texts and the other occurring in the material world.

In the past, western scholars have predominantly analyzed the phenomenon of waqf from a legal perspective, some out of practical need—to develop a framework for the administration of waqf properties in the colonial context—and others out of theoretical considerations—the presupposition that in the Islamic world the legal system, being of divine origin, is the ultimate formative force in the society, or, in other words, that the theoretical rules and the historical structure of Islamic society are each other's true replica.[15] This approach has for some time obscured the meaning of the waqf-institution within the social and historical context, and only in the last few decades has the interest in waqfs become more variegated. The number of studies in the socio-economic aspects of waqfs has grown remarkably, and waqf documents are increasingly scrutinized as a source for the social history of Islamic societies. This broadening of interest has inspired, or perhaps necessitated, a more variegated set of approaches and perspectives—historical, sociological, cultural—but although several important studies on waqfs have appeared, they tend to be fragmentary and limited in scope, focused on case studies or only one of the functions or aspects of the institution. Efforts to deal with the complexity of the waqf-institution in a comprehensive way have been relatively few.[16]

The legal approach to waqfs has usually been ahistorical and concentrated on an ideal type of waqf. Other studies have concentrated

[15] The most comprehensive survey of legal rules with regard to waqfs is Clavel; see also: Luccioni and Mercier; for a discussion of 'orientalist' approaches to waqfs, see Powers.

[16] Case studies include: McChesney, David, Tate, Pascual, Schwarz/ Winkelhane, el-Masry, Baer, Gerber (1983), Peri; and the recent collection of articles: Deguilhem (ed.; 1995); more comprehensive accounts are: Barnes, Yediyildiz, Behrens-Abouseif (1994).

on specific cases and have shown that discrepancies often existed between the ideal type and its material manifestations. They tend to neglect the fact that separate waqfs were an integral part of the 'phenomenon' of waqf, and that divergent practices in various regions and periods were not detached from the broader framework, but were a manifestation of it, or at least of the way it developed in the course of time. These efforts at describing waqfs are useful since they aim to relocate the institution into its historical context, as part of historical processes, but they sometimes neglect the role of the texts that shaped the legal framework, that served as a reference and which formed the basis of the structure of waqf. Probably the only way to understand the complexity of the institution as it occurred in texts and in actual history is to formulate an approach which does justice to the theoretical and material aspects of waqfs, which incorporates both manifestations in a structural concept and which studies not only the discrepancies, but also, and primarily, the interaction between the textual and historical appearances of the institution. In this study we shall use legal and historical sources to formulate a concept of waqf in which various manifestations are integrated into a schematic framework. This framework should first of all focus on the functions of waqfs in certain contexts, to illustrate how the essence of waqf as it was originally conceived is reflected in its various manifestations, and, moreover, to investigate how this essence was transposed to actual historical situations. To achieve this, our only recourse is to texts which contain variegated and subjective accounts of waqfs from different perspectives. These texts, with their subjectivity, are all an integral part of the institution of waqf as it developed in the course of time.

The proliferation of waqfs in Muslim societies in the course of time fostered the diversification of their functions and characteristics. Essentially a waqf consisted of an object which was endowed to a specific pious purpose for eternity. The founder (*wāqif*) gave up his property rights and determined the pious purpose and the regulations for the exploitation of the object, which became the 'property of God'. The object was dissociated from the market circulation and any form of alienation (sale, pawning, donation) was strictly forbidden. Waqfs were often founded for the benefit of mosques, which themselves also had the status of waqf. In such a case, agricultural lands were converted into waqf and their revenues destined to build and maintain a specified mosque and its functionaries. Waqfs could thus either be

possessions yielding revenues and profit, or objects consuming these revenues and serving as religious or social institutions. At an early stage of the development of waqf regulations, the founder was allowed to designate himself and/or his family and descendants as the beneficiaries of his foundation. Only after the extinction of his line would the revenues be allocated to a certain pious purpose (for instance, 'the poor of Damascus'). He could, moreover, appoint himself and his descendants as trustees of the waqf, thus keeping control of the waqf possessions in spite of having relinquished the rights of ownership.

This schematic description of the concept of waqf shows the main characteristics of its function. Endowments became the basis of the system of religious institutions in Muslim societies, consisting of mosques, schools, etc. They also became a repository of possessions acquired by families in the course of several generations, converted into waqf to preserve their integrity and to reserve the profits for the family line; finally, waqfs came to serve as a system for the relief of the poor of the community, of scholars and sufis, of travellers and pilgrims. It is clear from this brief description that the basic idea of waqf was to provide a means to have material possessions serve the interests of the community as a whole, both in the spiritual and in the material sense. As the economic significance of waqfs increased in the course of time, the parties involved in their upkeep and profiting from their revenues grew concomitantly, and the waqf institution became more complex. It is the aim of this study to present an outline of the evolution of the waqf institution as a result of the various forces shaping it in the course of time, within the context of the development of urban structures.

In recent years students of waqf have shifted their attention from the legal aspects of the institution to the social and economic aspects, an obvious choice if one takes the huge economic potential of waqfs in Muslim societies into account. Several studies have brought to light aspects of waqfs which have made it necessary to qualify certain traditional ideas about the institution, which were mainly based on the assumption that since waqf possessions could not be sold or pawned, they were no longer part of the economic circuit that determined the value of commodities. Consequently, they were no longer part of the regular process of exchange and market fluctuations, thereby becoming a static and restrictive element in the socio-economic development of Muslim societies, and, more specifically, ham-

pering the emergence of capitalist economic relations. We will argue below that this picture of the waqf institution is not only inconsistent with recent approaches to historical processes, but also too narrow, neglecting some essential characteristics of the institution. One of the objections to the 'traditional' view results from the historicization of the waqf institution, which shows that it was certainly not dissociated from economic circumstances. Apart from this, waqfs had functions which were explicitly dynamic and which, moreover, transcended their role as economic assets. The interaction between these different roles, within the process of historical change, will be the central focus of our discussion.

The city

The emergence of a theoretical concept of 'the city' was inspired by the assumption that there are certain characteristics that cities have in common, that there are laws which apply to all cities and that there are criteria which enable us to define what a city is. This line of thought is attractive for historians, who have to deal with the impact of cities in certain regions or periods, with the growth or decay of cities, or with the dynamics of urban societies. This historical interest gave rise, firstly, to the field of 'urban history', and, secondly, to the analysis of similarities between the roles that cities played in certain phases of history. The city became an entity and a phenomenon with definable properties, an abstraction which should epitomize the essential nature of all cities.

A discussion of the city as a historical phenomenon is incomplete without some reference to the two 'founding fathers' of urban studies, Max Weber and Lewis Mumford. Although both may be somewhat outdated as theorists, their ideas still echo through modern approaches to urban history and are still used, or dismissed, as referential frameworks. In this section we shall briefly concentrate on the relevance of their ideas to the concept of the 'Islamic city' and some alternative approaches.

For Lewis Mumford, the origin of the city can be found in the cemetery, as a ceremonial meeting place and a fixed point in space attracting people and stimulating social intercourse. Shrines and sacred places where the first fixed settlements were located are the original cores of cities, whose first characteristics are, consequently,

that they served as a goal for pilgrimage in its broadest sense. A second fundamental characteristic of cities is their function as containers of material and spiritual assets of various kinds, ranging from food supplies to achievements of the cultural heritage. A third function, finally, is that cities are military and political strongholds, taking a dominant position in structures of power and authority. These features differentiate the city from the village only in that the former is more complex and, by the increase in scale, has a far more variegated potential.

According to Mumford the crucial stage in the formation of cities is when a symbiosis is achieved between the sacred, in its crystallized form, the shrine or the temple, and secular authority. In his view cities are centres of accumulation and preservation and, consequently, also of transformation, providing a structure for the transmission and reproduction of the material and cultural heritage of societies. They are a link between the past and the future, a space where the past is being transformed and manipulated. But because of their accumulative role, and being rooted in the past to such an extent, cities are also resistant to changes and conducive to the preservation of patterns of the past. As a result of their complexity and scale, cities undergo a process of social, economic and spatial differentiation, in the fields of economic organization, labour, professionalization, institutions, social classes, etc. This differentiation gives cities a complex dynamism, based on the dialectic between their integrating and differentiating functions. Thus, for instance, the cultural heritage may be accumulated and preserved by cities, but it is not preserved as a monolithic whole, but in various institutions with diverse functions. It is this dynamism that is the basis of the urban structure and its transformations.[17]

An important contribution to the concept of the city was made by the German sociologist Max Weber, in his book entitled *The city* (1960). In this work, Weber differentiates between several types of cities, existing in different historical periods. Since his main focus is upon the role of the city in the development of capitalism, he singles out one type of city, the medieval city in Europe, or, even more specifically, in North-Western Europe. This type is carefully defined and analyzed to explain why it was especially conducive to the rise of capitalism. As in his other work, Weber sets off developments in

[17] Mumford, pp. 15, 17-18, 33-4, 40-1, 117-8, 123-4, 127.

Europe against developments in other parts of the world, mainly Asia and the Islamic world. In the case of the city the European urban type is contrasted with urban phenomena in Asia and the Middle East. Differences are primarily ascribed to cultural factors, such as the influence of Islam. Since the European city is presented as normative, cities outside Europe fall outside the concept of what a city is. They are not 'cities', but agglomerates of densely inhabited components, without a unifying organizational or administrative framework. This approach makes Weber one of the exponents of the orientalist discourse on urban history.

Weber's concept of the city can be summarized as follows, in his own words: 'To constitute a full urban community a settlement must display a relative predominance of trade-commercial relations with the settlement as a whole displaying the following features: firstly, a fortification; secondly, a market; thirdly, a court of its own and at least partially autonomous law; fourthly, a related form of association; and fifthly, at least partial autonomy and autocephaly, thus also an administration by authorities in the election of whom the burghers participated.'[18] Only when these conditions are fulfilled is it possible to speak of an 'urban community', which 'in the full meaning of the word, appeared as a general phenomenon only in the Occident.'[19]

Perhaps because of a lack of alternative authoritative theoretical frameworks, Weber's type became a main reference for students of urban history. Among the important works influenced by his typology is Sjoberg's *The pre-industrial city*.[20] Here, a new, synchronic urban type is described occurring in all parts of the world if a certain phase of urban socio-economic development is realized. The type includes medieval European cities and modern cities in the Middle East, Asia and Latin America, which, according to Sjoberg, have basic features in common. The concept is historicized, inasmuch as it is situated within a chain of developmental phases, which culminate, apparently, in modern industrial society. However, the concept is conspicuously ahistorical, since it brings medieval European cities together in one category with modern cities elsewhere in the world and thus fails to recognize divergencies from the European model of historical transformation, or 'progress'. Moreover, the influence of indigenous factors and the effects of European expansion on the course

[18] Weber (1960), pp. 80-1.
[19] Id. (1960), p. 80.
[20] Sjoberg (1960).

of development of cities in colonial areas are neglected. The Weberian cultural discrepancy between European and, for instance, Islamic cities is now expressed by a gap in time: Islamic cities can be compared to European cities in an evolutionary phase of some five hundred years ago. Again, the European city is taken as a model, which outlines the future shape of cities in areas which are still 'pre-industrial'.

According to some, this interpretation, or the elaboration of pre-industrial city-type is not justified by Weber's work. After all, in *The city* Weber does not give a fully elaborated urban theory, or even a coherent typology of 'the city'; he explicitly confines the scope of his study to the European city in the Middle Ages, that is, he does not describe the city in general, but only the role of certain cities within the complex set of socio-economic transformations that gave rise to European capitalism. Weber's definition concerns cities in a certain phase of development and fails to encompass not only Islamic cities, but also European cities after the medieval period, when the city as an entity lost its autonomy in favour of the national state.[21] The confusion is partly due to Weber himself, since he places his European urban type explicitly within the context of what, in his view, is the 'essential', cultural dichotomy between Christianity and Islam. It seems that the Weberian type, albeit confined to a certain period and a certain geographical area, nevertheless assumes an essential and timeless difference between the two cultural domains.

A radical critique of the general concept of the city was put forward by some of the articles in the collection *Towns in societies*, edited by Abrams and Wrigley.[22] Abrams, and especially Dobbs argue that no such concept as 'the city' exists, and that it has only been invented for convenience and in order to demarcate fields of study. In reality, cities do not have sufficient characteristics in common to be converted into an abstract model which can be used as a basis for historical or social research. Each city is different and is embedded in a broad framework of socio-economic and political relations which define its shape and its development. Cities can therefore not be studied as conceptual entities, but only in relation to these broader frameworks. They are not shaped by some 'typically urban' internal dynamism, but are inseparably linked to external factors. Conse-

[21] Compare: Saunders.
[22] Abrams/ Wrigley (eds).

quently, there is no such thing as 'urban history', or 'urban sociology', since the object, the city, can not be defined.[23] This critique reflects the post-structuralist suspicion of abstract concepts, which tend to schematize history and reflect subjective categories which are invented by the historians.

From the Weberian typology of the city, it is only one step to the idea of the 'Islamic city'. After all, if a concept of the European city exists which differs essentially from cities in the Islamic world, can a counter-concept of the Islamic city be formulated? Do Islamic cities have certain characteristics in common, enough to justify their being brought together in one category? This line of thought, which can be traced back to the early European scholars studying Islamic urban history, shows that the idea of the Islamic city was influenced from the outset by the Weberian essential dichotomy between European and Islamic cultures. The opposition of the two cultures was not questioned, and what remained was to describe how the differences found their expression in urban structures. Or, to put it differently, it was usually not asked to what extent religious factors determined the appearance and shape of cities, but rather how Islamic cities differed from European cities. The concept of 'Islam' as a determining factor was not questioned. Cities in the Middle East were *a priori* 'Islamic', but were they 'cities'?

The basic definition of the Islamic city was formulated by Von Grunebaum in his article 'The structure of the Muslim town', written in 1955.[24] In this exposé he gives an outline of the physical shape of Islamic cities and its relation to socio-economic relations and religious attitudes. Von Grunebaum's model, whose shadow hovered over Middle Eastern urban studies for many decades, focuses on the contrast between the Islamic city and its European counterpart. Firstly, it is argued that the Islamic city did not, like the European city, inherit its political and socio-economic institutions from Classical Antiquity, due to the previous decline of the Byzantine urban administrative institutions; secondly, the basic entity of the Islamic city was the quarter, which was the expression of tribal, religious or ethnic affiliations. This implied, thirdly, that the Islamic city could not be defined as an 'urban community', in the Weberian sense, but rather as a loose agglomeration of groups and individuals who were

[23] Abrams, Dobbs, in: id.; see also the critique by Wrigley of the approach of Sjoberg.

[24] Von Grunebaum (1961).

not organized within a municipal administrative framework. Since municipal institutions, based on the concession of urban privileges and urban charters, were lacking, the Islamic city could not claim any form of municipal autonomy and remained subjected to imperial authorities. Two factors contributed to the absence of urban autonomy: the cities were normally centres of state power and were thus unable to develop a bourgeois class which could support their autonomy; and in Islam the idea of corporate institutions was unknown, especially in the form of guilds, which in Europe played a decisive part in the organization of medieval cities. Von Grunebaum admits that in some periods local leaders profited from the weakening of central authority in order to establish some degree of urban independence, but these efforts never led to an officially legitimized autonomy, laid down in charters containing privileges of a more than incidental nature. He also notes that the occurrence of corporate movements can be perceived in Islamic urban history, but these did not have the 'proper corporative form' and did not reach their 'final stage' of development.

The model of Von Grunebaum closely follows the path set out by Weber and henceforth the discussion was to be dominated by the issues raised by him. Stern, for instance, confirms the view of the Islamic city as an 'agglomeration' of disjointed groups, without municipal, formal juridical and civic institutions, without municipal autonomy, or, in short, without an urban structure.[25] This does not mean that the concepts of Von Grunebaum were always adopted uncritically. Especially Lapidus attempted to focus his analysis of Muslim cities on the social structures within the city and social networks that determined the functioning of urban conglomerations, rather than on a description of an urban type. He suggests that 'Muslim cities' were organized rather as communities by non-institutional networks than by institutions like the ones that were developed in European towns.[26] Although it has been suggested that this effort represents 'a firm break' with Weber's approach,[27] the notion of Islam as 'an invisible hand'[28] remains predominant, and although the dichotomy between European and Islamic cities is discarded, it is implicitly confirmed.

[25] Hourani/ Stern (eds), pp. 26-9, 31, 48-9).
[26] Lapidus (1967), pp. 1, 185-6.
[27] Eickelman, pp. 102-3.
[28] Haneda/ Miuri, p. 340.

An attempt to conceive a different categorization to substitute the vast and unwieldy concept of the Islamic city is André Raymond's book *Grandes villes arabes à l'époque ottomane.*[29] As the title indicates, the field of study is reduced to a more specific, regional urban system in a confined period. It is not an analysis of the 'essence' of a type of city, but rather a comparative study of a historical type. It is, moreover, not inspired by the wish to develop a counter-concept of Middle Eastern cities as opposed to European cities, but focuses on an analysis of structural elements of a limited number of cities in Syria and Egypt, within one, relatively stable, administrative framework. Although the method of relating structural urban components to historical urban development suggests that a preconceived model is used and imposed on the cities under study, it is not a supposedly inherent Islamic 'norm' to which the cities should conform, but a general configuration of formative elements.[30]

An attempt to deal with the complexities of the concept of the Islamic city from a legal perspective is made by Baber Johansen in his 'The all-embracing town and its mosques; al-miṣr al-ǧami'.[31] In this article Johansen looks for rules which specifically applied to Muslims living in urban centres, from which some notion of the city in Islam can be derived. Apart from this, he dicusses several 'definitions' of the city by legal scholars from various ages. Johansen states that all definitions in this category stress that 'a city should be a comprehensive social and political entity embracing various groups, rallying different factions into one community and uniting them under one leadership.' Definitions can be of a socio-economic nature, characterizing the city as a centre of production and industry, or of a military nature, stressing the ability of an urban population to defend itself. The jurist Abū Ḥanīfa (d. 767) incorporated various elements into his definition: the population should be large; legal order should be enforced by a representative of the state, the city should consist of a system of streets and it should be a centre of learning. The administrative dimension was stressed by the prominent Hanafite scholars Abū Yūsuf (d. 798) and Ibn Nujaym (d. 1563), who held that a city should have a qadi to enforce the law and execute the *ḥudūd* penalties prescribed by the Sharī'a. Finally, cities are sometimes defined by the

[29] Raymond (1985).
[30] See also: Raymond (1994).
[31] Johansen (1981-2).

existence of a congregational mosque.[32] The definitions are all connected with the smooth functioning of the religio-political structure, of which the city is considered an integral part. It is not the administrative autonomy of cities that is stressed, but rather their place in the hierarchy of centres of authority and their role in the administrative integration of the community.

The line of thought developed by Lapidus has been taken up by Kenneth Brown, in whose study the development of a sense of urban identity among the inhabitants of Sale is analyzed, in relation to the far-reaching socio-economic changes that occurred in the 19th century. Significantly, his findings show that the people of Sale strongly identified themselves as a community, an awareness that should be seen as a 'cultural concept and a spiritual reality and not an inclusive, territorially defined set of social relationships'.[33] Brown's approach shows an important shift of focus, from the formal aspects of the Islamic city to the vision of a common identity, and from the abstract concept of an Islamic city to the functioning of Islam within the social and cultural life of one specific city.

These examples of recent research on Islamic urbanism show a critical attitude to the traditional concept of the Islamic city and to the focal issues of the debate.[34] Firstly, the monolithic and inflexible concept of the Islamic city is fragmented into a more historicized and geographically differentiated approach; secondly, the emphasis on Eurocentric ideas about urban development has been substituted by the more extensive and critical use of Arabic and Islamic sources; thirdly, some of the old issues of the debate have been circumvented by advancing new questions and looking for new kinds of sources; fourthly, the paradigm of the Islamic city is rejected by some because it is impossible to speak of European towns as a uniform, undifferentiated concept. Likewise, cities in the Islamic world should be differentiated too, some having similar features with regard to European towns, others fitting into a separate urban system. The autonomy of European towns can be questioned, while some Islamic towns show a planned and coordinated development similar to European towns; finally, the evidence is increasingly and consciously sought in texts, rather than in formal structures. A hidden rationale of urban forms can only be found in rationalizations, or, in other words, a

[32] Johansen (1981-2), pp. 141-4.
[33] Brown, p. 4.
[34] See also: al-Sayyad, El-Ali, Daunton.

representation of Islamic cities may only be contrived by using the representations that Muslims made of their cities, before the relation between these 'models' and their historical manifestations is analyzed.

It is remarkable that in the studies mentioned above very little use is made of general theories about the development of cities as a form of the organization of space. These theories are often concerned with the linking of cultural phenomena or ideological attitudes and the material and social aspects of spatial regimentation. An ambitious attempt to describe the relations between social and cultural factors and space can be found in the pioneering study of Lefebvre, *The production of space*, an effort to clear the ground for a comprehensive theory of spatial perception and organization. Lefebvre sets out to state that space has an objective existence and is not just conceived in the human mind, as part of a 'discourse', or of a 'system of linguistic codes'. Space is first of all 'produced' by the mode of production. A theory of space should integrate three domains: physical space (nature); mental space (logical and formal abstractions); and social space. Space should not be analyzed as an object containing a coded meaning attention should rather shift to the origin of spatial formations, or the production of space, which varies between different periods and cultures. Every society produces its own space, and the study of history should partly be dedicated to this process.

For Lefebvre the concept of space can be divided into three categories: spatial practice, which 'embraces production and reproduction, and the particular locations and spatial sets characteristic of each social formation'; representations of space, which are tied to the relations of production and to the 'order' which those relations impose, and hence to knowledge, signs, and codes; and representational spaces, 'embodying complex symbolisms, sometimes coded, sometimes not'. The spatial practice of a society produces that society's space: 'it propounds and presupposes it, in a dialectical interaction; it masters and appropriates it'. Representations of space are to be sought in conceptualizations by scholars, planners, constructors, etc., in short, all rationally conceived images and verbal circumscriptions of the spatial environment. These images belong, in the words of Lefebvre, to the 'dominant' space of a society. Representational spaces, finally, concern the space which is 'directly lived through its associated images and symbols', the 'dominated space which the imagination seeks to change and to appropriate, more-or-less coherent

systems of non-verbal symbols and signs', which have their source in history.[35]

There is a dialectical relationship between the constituents of this 'triad', the perceived, the conceived and the lived, or the real, the mental and the social. Social relations inscribe themselves in social space, and thus contribute to the durability of this space, while symbols and images, too, remain part of the spatial organization in spite of transformations: 'Pre-existing space underpins not only durable spatial arrangements, but also representational spaces and their attendant imagery and mythic narratives'.[36] The analysis of the production of space is thus in the first instance a historical project, but one that defies traditional methods:

> [...] we should look at history itself in a new light. We should have to study not only the history of space, but also the history of representations, along with that of their relationships—with each other, with practice, and with ideology. History would have to take in not only the genesis of these spaces but also, and especially, their interconnections, distortions, displacements, mutual interactions, and their links with the spatial practice of the particular society or mode of production under consideration. [...] representations of space have a practical impact, by effective knowledge and ideology. Representations of space must therefore have a substantial role and a specific influence in the production of space. [37]

Within this historical process the development of the city takes a central place. Since Lefebvre links his discussion of urban development to the history of the European city, it is not possible to extrapolate a general pattern or paradigm for the original growth of urban settlements. It is evident, however, that processes of accumulation and the exertion of authority play a determining role in shaping settlements into nuclei of political and religious power, creating a dichotomy between urban and agrarian spaces. The city is founded as a *imago mundi* which is designed as a link between the sacred and earthly realms, and the rites confirming and expressing the sacred components reinforce the boundaries that separate the city and its citizens from the agrarian world outside. Once this dichotomy has been established, a kind of symbiotic relationship evolves between the urban centre and its rural environment, the city extracting surplus production from the countryside and offering protection against ex-

[35] Lefebvre, pp. 33, 38-9.
[36] Id., p. 230.
[37] Id., p. 42.

ternal incursions. In this way the city becomes a centre from which the peripheral areas are ordered and fitted into hierarchical spatial structures. Finally, as in the theory of Mumford, the medieval European city became the locus of accumulation of material goods and products of the mind, thus laying the foundations of a commercial system which would later evolve into capitalism.[38]

Lefebvre's book is an ambitious effort to design the contours of a theory of space, in which various approaches converge. Even if one rejects the Marxist models that underlie his theory—especially the predominance of the mode of production—there are important observations to be derived from his discussion, particularly concerning the notion of social space and the symbolic connotations of spaces, within the category of representational space. Lefebvre's concepts provide some tools for the investigation of the transformation of spatial organization in various periods, and allow us to assess the differences in spatial outlooks in different societies. They do not presuppose a culturally determined divergence between civilizations, but create a broader framework for the analysis of the organization of space in specific societies, in which 'objective' and 'subjective' forces come together.

Power

It is remarkable that in the theories of the city and spatial organization mentioned above the aspect of power and authority is very prominent. Apparently, it is hard or even impossible to dissociate cities from either the concept or the exercise of authority, and if there is an urban 'essence' it may first of all be some manifestation of power. Since this study is concerned with the analysis of waqfs within urban structures, we shall base our argument on the perspective of the waqf institution as part of urban power systems and as one of the factors involved in the formation of power. It is necessary, therefore, to devote some attention to the concepts of power that have been developed in sociological and philosophical theories, to see which approaches can be useful for the organization of our material and our argument. For this purpose we shall briefly discuss three theoretical models in which power occupies a central place, namely those of

[38] Id., pp. 234-6, 263-6.

Anthony Giddens, Michel Foucault and Pierre Bourdieu. Together these three cover the main field of debate about the workings and nature of power and the significance of the exercise of authority for the development of social relations.[39]

For Giddens power is essentially instrumental and summarized in the term 'transformative capacity,' that is, 'the capability to intervene in a given set of events so as in some way to alter them,' even in spite of the opposition of others. Power is invested in persons, or 'agents', who in order to achieve their aims make use of certain 'resources', which are part of the 'structural properties' of social systems. Giddens distinguishes two types of resources, the allocative and the authoritative. The first type refers to material facilities, in the sense of goods and the ability to produce them, the second type consists of the means to control the activities of human beings. The deployment of these resources is to a large extent dependent on 'the management of time-space relations', which are the basis of social activity and social relations. Power, then, is primarily seen as 'domination', which is expressed in the institutions that structure social life and that represent means of control through which some try to secure the compliance of others. These institutions are crucial for the reproduction and continuity of social structures and are unseparably linked to the two types of power resources.[40]

In Giddens' approach, there is a notable emphasis on the significance of time-space relations for the exertion of domination. The reproduction of social systems and, consequently, the systems of power, depend on the 'predictability of day-to-day routines', which is in turn vested in the functions of specific spaces where 'systemic aspects of interaction and social relations are concentrated'. These spaces are referred to as 'locales'. Some locales can be designated as 'arenas for the generation of administrative power', and 'power-containers', in which a concentration of allocative and authoritative resources can be found. Locales thus occupy a central position in this model, since it is the 'containment' of resources by which power is generated, and since settings are an important factor in the 'reproduction of institutionalized activities across wide spans of time and space'. Castles, manorial estates, buildings with specific functions, but also cities are 'containers' which can be utilized to generate power, mainly because they are used for storage, a means to control time-

[39] Compare: Hindess, especially chapters one and five.
[40] Giddens (1996), pp. 7, 9; id. (1983), pp. 4, 51.

space relations. Giddens' concept of the city is based upon the theory of Mumford.[41]

This approach to the idea of power differs markedly from that developed by Michel Foucault, although some aspects may be similar. The essential divergence is that for Foucault power is only partly synonymous with domination. Power is not only an instrumental capacity, but also something which is always inherent in relations between people. It is thus not vested in 'agents' or even in 'institutions', nor can it convincingly be located as being concentrated in certain 'centres' within society; it is rather dispersed and vested in all social relations, varying from those between individuals and those between groups, which are institutionalized within traditions. Power is not imposed by some agents on others who are thus forced to comply; it is rather generated by an essentially diffuse set of social relations, which only at a certain level reveals distinctive patterns. It is within these patterns of social relations that power becomes visible in a systematic form, as systems or mechanisms of power created by the ways in which diffuse power relations converge. These systems are in their turn used for 'power strategies', that is, the systematic use of existing power systems to exert authority and control. Agents, groups of agents, or institutions can become the focal points where the mechanisms of power, built up by countless interacting power relations, come together and can be monopolized and manipulated.[42]

Since for Foucault power is not merely domination, it cannot be rejected as a solely negative force. Power is not exclusively destructive and oppressive; it is primarily a productive force, which structures all activities within the social context. Consequently, power is manifested in all aspects of human behaviour and human relations, in social rules and codes, and in all social, political and economic institutions. In this pyramidal view of authority, law is only one of the expressions of the power systems which structure society, where certain aspects of the different power systems converge; these are part of the many 'discourses' that are a reflection of the power system and that provide the framework for the legitimation and ideological reproduction of certain power strategies. Discourse, or rather 'discursive programmes' are inseparably linked to power systems, since they are shaped by power relations and simultaneously mobilized to secure the reproduction of these power relations. The different compo-

[41] Giddens (1996), pp. 11, 13, 14, 38, 47; id. (1983), pp. 5, 6, 93-6.
[42] Foucault (1980), pp. 96-102, 122, 142, 197-8, 236; see also: Dean.

nents of the 'chains' of power relations converge within the state apparatus, which 'consists in the codification of a whole number of power relations which renders its functioning possible'.[43] The state arranges and fixes the micro-relations of power by using strategies and techniques of government. As in Giddens' approach, time and space are of crucial significance within the systems of power. 'Time and space, and their mutual enwrapping, are constitutive elements in practices of government and technologies of power', since they make a co-ordination of activity and various forms of surveillance possible. 'Programmes' and strategies of power are directed at shaping reality into an organized controllable form and this requires an organization and regimentation of temporality and space.[44]

Although the ideas of Bourdieu are not always compatible with those of Foucault, certain elements of their conceptions of the phenomenon of power can be reconciled. For Bourdieu, too, social relations are imbued with power and power struggles are the dynamic force shaping transformations in history. Like Foucault, Bourdieu sees history as a process which is partly structural and in which every structure 'in every phase of its existence is the result of the struggle which has been fought to preserve or change it'. These processes of transformation manifest themselves in Bourdieu's famous dialectic between the 'habitus' and the 'field'. Habitus can be defined as the way in which historical structures are internalized by individuals, and are thus activated, transformed and reproduced. Every person assimilates certain roles and attitudes which are shaped by others before him and the way in which they are re-enacted determines his habitus.[45]

The internalization of roles is further determined by the field in which it takes place. Fields are sets of relations that are more or less coherently defined and that consitute the framework for power struggles. Fields are structured by rules, and these rules in turn structure the struggles of people aiming to acquire dominant positions within certain fields, which would endow them with 'symbolic power', sanctioned by a common acceptance, within the field, of their authority. As in the approach of Foucault, power is not exclusively invested in

[43] Quoted in Dean, p. 157.

[44] Foucault (1980), pp. 119, 122; see also id. (1979).

[45] For a survey of Bourdieu's thought, see Bourdieu (1992), especially the introduction; Bourdieu (1989) contains essays which have been published in various journals; for a critical discussion of Bourdieu's ideas, see Jenkins (1992).

'agents', but is rather a relative concept, as a component of social relations. These relations are organized and institutionalized within fields, which are at the same time the expression of balances of power at certain points in time, because they are shaped by power struggles. They are, consequently, also the framework in which transformations take place, since they are continually reshaped by power struggles. Although fields are preserved as the framework and legitimation of specific power systems, they are still a dynamic concept, since the power systems involved are always contested by new competitors and new generations. All participants in these struggles are interested in preserving the basic definition of the field, but also in transforming it, within these boundaries, to serve their own interests.[46]

With the concept of the field Bourdieu defines the locus where the transformation of structures takes place and where they are controlled by interested parties. The fields are the framework for the competition for and exchange of 'symbolic commodities', that is, everything that is valued within the context of a certain field and which endows individuals with authority and status. Power is in the first instance 'symbolic' power, buttressed by shared opinions about which qualities are needed to obtain it. As in the case of Foucault, power is not located in specific centres of authority, but rather dispersed over social relations on all levels. It becomes visible in the formation of the habitus and the structuring of fields, and in the institutions which are part of the fields. It should be stressed that, as in Foucault's thought, texts are an integral part of these structures, since they are indispensable for the formulation and reproduction of the definition and rules of fields, and for the legitimation of power balances within the field. Moreover, texts are a source of authority and the status and form of texts is determined by the context of power relations.[47]

In the present study we shall base our argument on the view of power expressed by Bourdieu,which seems to be especially relevant to a description of the evolution of the waqf system. Firstly, Bourdieu's concepts provide us with a theoretical framework for a perception of history as a process of interaction between agents and structures, and between structures of various kinds and on various levels, interlinked by the dynamic resources, systems, mechanisms and strategies of power. Secondly, it seems possible to study the waqf

[46] Bourdieu (1989), pp. 163, 171-4, 177; see also the quotation of Bourdieu's definition of the field in Jenkins, p. 85.

[47] Id. (1992), pp. 42, 164, 168; id. (1989), pp. 154-5.

institution as part of a field. It will be argued below that in the course of time the concept of waqf was 'institutionalized', in the sense developed by Bourdieu, and that gradually a field was formed in which various parties 'invested' their material and symbolic capital in order to derive profit and symbolic power from it. The concept of the field, moreover, seems to allow for a representation of the waqf institution both in its 'essential' and its historicized manifestations, since it is the dialectic between these two that determines the dynamic force of history, and the reproduction of structures within the framework of the field. Thirdly, the concept of the field provides us with an instrument to relate historical phenomena with texts. Texts are shaped by the same mechanisms as everything else and are somehow the reflection of power balances. Texts, as components of fields, are part of the historical process. They represent the framework of institutions and their functioning, their justification and the distribution of power over them. Fourthly, the concept of power systems can be useful to discuss certain conceptual views of the city in general and the Islamic city more specifically. Since power structures are not the prerogative of any culture, an approach based on their predominance as a structuring force prevents culturally determined presupposed categories.

Aim, sources and structure of the work

After this survey of the theoretical discussions on the concepts of waqf, the city and power that have inspired the approach of waqfs in this study, a more precise hypothesis can be formulated. The aim of our study is to analyze the function of waqf within the shaping of the urban structure of Damascus, as the outcome of three interacting processes: the formation of the framework of the Hanafite legal tradition, the influence of the networks of ulama, and the interference of the state. It will be argued that the function of waqfs was not only shaped by the elaboration of the legal concept of waqf, but also by the structuring influence of the state on the ulama networks. This complex set of historical developments was of crucial significance for the formation and function of Damascus as an urban centre. The three processes can be related to each other within the framework of the field, which is defined by the legal definition of the waqf institution and shaped by the competitors in the field, apart from the founders of waqfs especially the ulama and the state, striving to con-

trol the distribution of material and immaterial profits which were invested in the waqf institution. The struggles within the field determined the functions of waqfs as a mechanism to control the spatial organization of the city, in the physical and social senses. Our main focus will be on the Ottoman period, especially the 18th century, which witnessed the culmination of the waqf system before the far-reaching reorganization in the 19th century.

The source material used for this study consists of texts of a diverse nature, dating from different periods and representing Damascus in various phases of its history. They can be categorized as follows:

a. historical and biographical texts from the pre-Ottoman and Ottoman periods, such as Ibn Ṭūlūn (d. 1546), al-Nuʿaymī (d. 1521), al-Murādī, Ibn Kannān and al-Budayrī (18th century);

b. legal texts of various kinds: waqf compendia (al-Khaṣṣāf (d. 798), al-Ṭarābulusī (d. 1516), edited documents and collections of documents, and fatwa-collections (al-Ramlī (1581-1671), al-ʿImādī (d. 1758);

c. archival material: the records of the Maḥkama al-Sharʿiyya of Damascus (beginning of the 18th century), and miscellaneous documents preserved in the Centre for Historical Documents and the Asad Library in Damascus;

d. studies on the history of Damascus, urban history, urban sociology, Islamic law, etc.

These sources are not sufficient to provide an overall reconstruction of the practice of waqfs in any of the periods under discussion, but they do provide ample material for a discussion of the phenomenon of waqf. This study does not aim to be a conclusive analysis of the function of waqfs in the historical development of Damascus, but rather a contribution to an ongoing debate on the phenomenon of waqf, and, more specifically, of waqfs in an urban structure, using historical and legal material. The study will open with two chapters covering the formation of the field of waqfs in Damascus, as the outcome of the development of the legal concept of waqf into an institution and the increasing interference in the waqf system of the Ayyubid and Mamluk rulers. This section will be mainly based on edited sources and secondary sources. Subsequently we shall turn our attention to our main focus, the Ottoman period until the middle of the 18th century, using archival, legal and historical sources. Here, too, we will concentrate on the legal issues, the development of ulama networks and the intervention of the state in the system of

waqfs. An evaluation will be given of the material presented, in order to delimit a concept of waqf that is consistent with its manifold manifestations. Finally, an evaluation will be given of the function of waqfs within the organization of space in Damascus over the course of time and in the development and expansion of its urban structure. It should be stressed that although the waqf institution is analyzed over such a long period of history, and the developments observed are not always related to specific historical cases and quantitative data, this does not mean that the importance of historicization of the waqf phenomenon is played down. On the contrary, every general characteristic and essential feature has its place in the complex processes of change.

PART ONE

THE FORMATION OF THE FIELD OF WAQF

CHAPTER ONE

THE LEGAL FRAMEWORK OF THE WAQF INSTITUTION

In the introduction we have seen how the Umayyad Mosque was constructed as the symbolic centre of the new Muslim empire, and simultaneously as the building that dominated the structure of the urban core of Damascus. Although the mosque itself was not designated as a waqf, in the course of time it became the main nucleus of the waqf system of the city. In the Ayyubid, Mamluk and Ottoman periods the cluster of waqf possessions concentrated around the Umayyad Mosque was probably the most important complex, both in the spiritual and in the economic sense. This evolution illustrates the development of a foundation that was loosely embedded in the power structure of the imperial capital into a diverse complex of foundations governed by a set of strict legal regulations. Evidently, the increasing economic and religious importance of waqfs necessitated the elaboration of legal rules, to fit the idea and practice of waqf into the tradition of the law and the practical requirements of administration. Thus, in the course of time pious foundations became an important issue in the corpus of Islamic jurisprudence, or *fiqh*, as it was developed by the four officially recognized law-schools or *madhhab*s.

In this chapter we shall discuss four texts which show the development of the legal concept of waqf and the framework for its functioning as an institution. They are texts of different types, from different periods, but all written by Hanafite scholars: *Kitāb aḥkām al-awqāf*, by Abū Bakr Aḥmad ibn Amr al-Shaybānī al-Khaṣṣāf (d. 798); *al-Isʿāf fī aḥkām al-awqāf*, by Burhān al-Dīn Ibrāhīm al-Ṭarābulusī (d. 1516); *al-Fatāwā al-Ramliyya*, by the mufti of al-Ramla, Khayr al-Dīn al-Ramlī (1581-1671); and an anonymous treatise on waqf from the 18th century. The texts will be analyzed from the perspective of Bourdieu's concept of the 'field'; that is to say, it is examined how they contributed to the formation of the 'institution' of waqf and how they are related to the mechanisms of the field into which the institution was incorporated. As we shall see, this approach can be especially illuminating when the historical development of waqfs and the diversity of practices are taken into account.

Legal texts as a source of authority

Legal rules are only one of many manifestations of authority, although evidently a very important one. Bourdieu describes legal discourse as a form of creative speech which aims to realize what it states, in order to produce a collectively recognized representation of existence. It is not a set of rules that is imposed as a legitimation of hierarchies and authority; it is rather supported by a shared belief, by an institutionalization of values that are accepted by those in power and those who are subjected to the mechanisms of control.[1] A legal system, then, is not just a set of idealized concepts of the society, which stands apart from real life; rather it is integrated into the structure of the society as a reflection of the power relations between various groups. This implies that legal texts are subjected to the same mechanisms as other texts. They are part of the historical process and are developed in relation to historical circumstances. Texts in which legal concepts are defined and explained are shaped by internal—textual—factors, and external—social, economic, cultural—factors. They are in the first instance meant to institutionalize practices in a coherent framework and legitimize and freeze a certain state of affairs. At the same time, however, they provide a starting point for change, for reinterpretation, varying explanations, comment, extensions and change. This dual function of legal texts is the logical consequence of the dynamism inherent in all texts, which are always in a state of development and continually acquire new meanings, whatever authority may be vested in them. After all, a text can only acquire meaning through associated texts, which per definition differ from it, and which comment on its two aspects: its inner coherence and its connections with contexts in the material, non-textual world. In legal texts practical questions and circumstances are related to concepts, and to protect the consistency of the system of concepts, the practicality of regulations can sometimes be sacrificed to internal logic. This contributes to a rationalization within the text which links practices and concepts to a general legal framework, making specific rules dependent on general rules, thus creating a possibility of appeal. Apart from the dialectic between internal and external factors shaping the texts, a second dialectic appears: that between general concepts and practical cases.

[1] Bourdieu (1992), p. 42.

Legal texts are often meant to institutionalize practices and concepts, that is, to define them as elements of 'fields'. A field, in the definition of Bourdieu, is a relatively durable set of social relations which endows individuals with power, status and resources of various kinds. Fields are structured by legal rules, non-legal codes and hierarchical relations. They are the framework in which mechanisms of power are operative and struggles for power and other resources are staged. The participants in these struggles invest their material or symbolic capital in the institutions within certain fields, with the aim of protecting it and gaining profit of some kind, in the form of material wealth, social status or symbolic power. The creation of an institution is described by Bourdieu as a 'rite of passage' by which a set of concepts is set off from other concepts and acquires a specific, clearly defined status. This transition is achieved by the definition of a fictive boundary between two realms, in order to create a difference between 'objects' which seem similar and of equal value, on the basis of suggested links with some higher order and unity. These transitions are regulated by law and guarded by the various constituents of the legal apparatus.[2]

In the view of Bourdieu, legal rules determine the structure of fields in which struggles take place over the distribution of material and immaterial capital. They provide the 'rules of the game' to which the participants are supposed to adhere. They are, moreover, the framework that makes possible the reproduction of fields in the course of time. A field is not reproduced as a monolithic whole, simply by imposing existing rules on new participants, but by continual partial changes, which do not infringe upon the basic principle of the field in question, but rather adapt rules within its set-up. In this way the basic structure of the field is confirmed by reiterating the appeal to the fundamental rules. After all, anyone who has been allowed to participate in a certain field and has a stake in the capital it governs, has an interest in preserving it and protecting it against disintegration. However, he is also interested in dislodging a status quo which legitimizes a certain hierarchy within the field and which hampers him from sharing optimally from the profits that are at stake. As a consequence, the structure of a field is continually reshaped by competition and power struggles. Although the principles remain the same, the structure has to be appropriated by every new

[2] Id. (1992), pp. 117, 119, 120; id. (1989), pp. 86-8, 133, 136.

generation, which tends to contest rules which buttress the position of dominant participants and aims to take over their position. Rules are thus a reflection of power relations within a field and as such are permanently subject to change under the influence of changing power configurations.[3]

This approach results in an explicitly dynamic view of legal systems. After all, it presupposes that no rule can ever be laid down, however fixedly, without being, almost by definition, reinterpreted and changed. Legal systems are repositories shaped by the interaction between internal and external influences, practical circumstances and concepts, competitors for material and symbolic profit, and texts of varying status. Bourdieu's view contrasts especially with some conceptions of Islamic Law, which regard it as fundamentally resistant to change, since it is rooted in the sacred realm of divine revelation. Moreover, another traditional conception holds that Islamic Law was limited to theory only, and that a wide discrepancy existed between legal concepts and legal practice in Islamic societies. These conceptions of Islamic Law have been critically reviewed by a number of scholars, most notably Wael Hallaq, who has advocated a much more dynamic view of law in Islam.[4] In order to be able to place the four texts under consideration in this chapter in their context, it is necessary to give a brief survey of the development and functioning of jurisprudence in Islam, as it has been conceived in recent years by several scholars, emphasizing the dynamic character of Islamic Law and its capability of positive legislation.

Islamic Law

Islamic Law is not based on extensive codifications which are endowed with an absolute authoritative status. Sunnite Islam acknowledges two texts as sources of legal rules: the Qur'ān and the *sunna* of the prophet, as it has been recorded in the *ḥadīth* collections. These texts do not provide a well-ordered set of rules, however; in order to derive legal rules from them, they have to be subjected to a process of interpretation. Islamic Law consists to a large extent of a discussion

[3] Id. (1989), pp. 155, 158, 172-4.

[4] Hallaq, *A history of Islamic legal theories*; id., 'Was the gate of ijtihād closed?' pp. 3-5, 11, 19, 24, 29-30; id., 'Considerations...,' pp. 680, 685, 689; see also: id., *A history of Islamic legal theories; an introduction to Sunnī* uṣūl al-fiqh, Cambridge 1997.

aimed at refining and applying methods to systematize this effort at interpretation, or *ijtihād*. In the course of time, two methods were sufficiently accepted to acquire the status of legal sources: the method of *qiyās*—the logical derivation of legal arguments—, and *ijmā'*—the consensus among the ulama of a generation on the validity of a legal judgment. The formulation of law thus became a complex process, with sources which had a divine and therefore sacrosanct status, but which were still open to interpretation. In principle all scholars could participate in the legal debate and develop their own line of thought. Eventually, however, the restrictions imposed by the methodological requirements became ever more stringent, and at the end of the thirteenth century the debate on law had crystallized in four officially recognized law schools, or *madhhabs*.[5]

Although Muslim jurists may have seen Islamic Law as an idealized, fixed set of rules, conceived by God, but only partly revealed in religious texts, forcing the believers to use their capacities of reasoning to discover the hidden rationale, Islamic jurisprudence consists of a body of texts which can be treated like all other corpuses of interrelated texts. This corpus of texts encloses the results of an ongoing debate, which was structured by the authority of individual scholars or legal schools, the status of texts, the exigencies of internal logic and the dialectic between theoretical concepts and changing practical circumstances. Under the influence of these factors, some texts were invested with an authoritative status in order to build structures that would withstand the vicissitudes of time. It was because of their authoritative status that they could be used as a source to formulate responses to very specific instances of change and adaptations of legal theory. The interpretation of the sacred texts was carefully bound by strictly imposed methodologies, which guarded the links between the text and reality and allowed a dialectic between the fundamental sources, which were part of the idealized system, and the practicalities of everyday life. It is not necessary to describe the methods of legal scholarship here, since they have been analyzed by others; suffice it to say that they consisted of institutionalized practices performed by the ulama and belonging to different categories of legal authority, such as *ijtihād* (interpretation) and *iftā'* (the formulation of legal opinions on specific cases), but also of categories of judgment,

[5] Id., 'The logic of legal reasoning...,' pp. 81-2, 85; id. (1996), pp. 34-40; for a survey of the development of Islamic Law, see Schacht.

such as *ijmāᶜ* (consensus) and *istiḥsān* (approval). These methods allowed the scholars some freedom of manoeuvre, which broadened the possibilities for their successors. As Wael Hallaq has convincingly shown, the process of accommodation of jurisprudence and the formulation of positive law, in some form or another, never really came to an end.[6]

In one of the following chapters we shall deal with the question of non-legal influences that contributed to the shaping of the legal reasoning with regard to waqfs. To conclude this summary, it is sufficient to say that the texts in which Islamic jurisprudence is recorded are treated here from the perspective that all texts, whether their status be sacred or profane, are part of a dynamic process and that the vision of Islamic Law as the result of a continuous debate and process of interpretation can be reconciled with the function of law as a constituent factor in fields as conceived by Bourdieu.

The waqf compendium of al-Khaṣṣāf

The diversity of Islamic legal reasoning, even within one law-school, is clearly shown by the different opinions on waqf among the 'founding fathers' of the Hanafite *madhhab*. The founder himself, Abū Ḥanīfa, only briefly refers to the problem of waqf and seems to be generally ambivalent as to its legal implications. He wanted to restrict the liberty of founders and assigned only a limited privileged status to the waqf-object itself, as a pious gift (*ṣadaqa*) that was only valid during the lifetime of the founder, as an irrevocable loan to a beneficiary, or as a testamentary gift at the founder's demise. This restrictive view was later followed by Muḥammad al-Shaybānī (d. 805), who, in a period when the regulations for waqfs became more and more elaborate, attempted to keep on to the course set out by the founder of his *madhhab*. In contrast, Abū Yūsuf explicitly favoured the proliferation of pious foundations and tried to formulate a legal framework that would encourage founders to convert their possessions into waqfs. He attached little importance to strictly theoretical issues, such as the question of ownership of the converted object, and had a less strict view on the privileges afforded to the founders, since he lifted the obligation of formal cession of the object and allowed

[6] Id., 'On the authoritativeness...,' p. 427; id., 'Usūl al-fiqh...,' pp. 176-7, 182.

founders to profit from their foundation themselves. In spite of the opposition of al-Shaybānī and others, this particularly pragmatic view eventually became dominant within the Hanafite doctrine.[7]

The debate among the founding fathers did not immediately result in a coherent system of waqf legislation. The first effort to compile an evaluation of the discussion, in the form of a compendium of rules, derived from the opinions of his predecessors, was undertaken by the chief qadi of Baghdad in the eighth century, Abū Bakr al-Shaybānī al-Khaṣṣāf. His *Kitāb aḥkām al-awqāf* remained one of the main sources of Hanafite waqf jurisprudence with regard to waqfs at least until well into the eighteenth century.

Al-Khaṣṣāf begins his compendium with references to the pious gifts of the prophet Muḥammad and his companions, that is, with the idea of pious gifts in the *sunna* according to the *ḥadīth* literature. He mentions several examples of charity (*ṣadaqa*) by the prophet, for instance when some gardens were immobilized (*ḥabs*) for the benefit of the descendants of certain companions who had fallen in battle. Sometimes the property was split up to support other beneficiaries first. After this, he describes the proto-waqfs by the caliphs Abū Bakr and ʿUmar ibn al-Khaṭṭāb. The latter received instructions from the prophet to immobilize (*ḥabs*) land and donate the revenues to the poor, travellers and fighters for the sake of God, pledging not to donate, bequest or sell the land in question. ʿUmar entrusted the land to his daughter Ḥafṣa, to do with it as she saw fit, and after her to the leaders of her family. Since during his lifetime ʿUmar distributed the revenues of the waqf himself, the Hanafite jurist Abū Yūsuf later concluded that a founder may stipulate that his waqf remains under his control during his lifetime, and that he may transfer his right to persons selected by himself. Moreover, the trustee (*wālī*) may take part of the revenues of the waqf, without enriching himself at its expense.[8]

The foundation of ʿUmar counts more or less as the model of the waqf institution, followed by other caliphs, such as ʿUthmān and ʿAlī and other companions, whose waqfs served as examples of the refinement and diversification of the original concept. One of the companions, for instance, allocated his house to his sons and daughter, as long as the latter remained unmarried; another companion endowed a large house to sons who were not yet born; Abū Bakr and ʿUmar

[7] Clavel, vol. 1, pp. 10, 11, 20, 22-5.
[8] Al-Khaṣṣāf, pp. 1-6.

judged this waqf to be invalid, since it would only come into force when possession was taken by the beneficiary. After protests the waqf was recognized, however, sanctioning the principle that someone could found a waqf partly for his sons and partly for the poor. Another companion wanted to convert two-thirds of his land as *ṣadaqa*. He sold the land and distributed two-thirds of the amount to the beneficiaries. This procedure was praised by some, because conflicts with the inheritors could in this way be avoided. ʿĀ'isha founded a house that would return to the family of Abū Bakr after it had been used by the beneficiaries, and ʿUqba ibn ʿĀmir, finally, endowed a house to his sons and descendants, and, after their death, to his nearest relative.[9]

From these examples the principles of the waqf institution, and even some legal implications, were derived. A waqf consisted of the perpetual immobilization of property for a pious purpose, with the aim of serving the community and obtaining salvation in the hereafter. Al-Khaṣṣāf concludes on the basis of the examples that the prophet himself commanded the practice of charity (*ṣadaqāt*), and that the endowment of waqfs was permitted to support the construction of mosques, warehouses (*khāns*), waterworks, buildings serving the *jihād* or the hajj, cemeteries and roads, and houses for Muslims, provided they came from personal property and were endowed in perpetuity.[10]

The actual compendium of waqf rules is divided into chapters (*bāb*) dealing with 'clusters' of regulations that were related in some way or another. Because it is not possible to deal in detail with all chapters, only a concise survey will be given here.

a. *Validity of the waqf.* In order to become valid, the object of the endowment must be converted into waqf for eternity, the founder losing his rights of property (*milk*). A founder can appoint himself as a beneficiary, after himself his son, etc., and only then the poor or another pious purpose (*qurba*). Al-Khaṣṣāf refutes the objection made by some of the jurists of Basra that in such a case the waqf is invalid, since the object would remain the property of the founder.[11] If a person endows land for someone for his—the founder's—lifetime, the waqf is not perpetual and therefore not valid. In this, waqf differs from inheritance, or *waṣīya*, since in the case of inheritance the object

[9] Id., pp. 6-17.
[10] Id., p. 18.
[11] Id., pp. 137-154.

remains the property (*milk*) of someone, whereas in the case of waqf the object loses its *milk* status until 'God inherits it when He inherits the world with everything it contains'. The differentiation between waqf and inheritance is further stressed by the rule that in his testament everyone can dispose freely of only one-third of his properties, the other two-thirds being subjected to the strict inheritance rules. Here a discussion ensues between Abū Yūsuf and al-Shaybānī, the former allowing the founder to designate his waqf to anyone—possibly himself and/or his descendants—and only then to the poor, arguing that ʿUmar and ʿUthmān had allowed the trustee to take a part from the revenues of the waqf. Moreover, referring to the *ḥadīth* of Abū Bakr, Abū Yūsuf holds that a beneficiary is not obliged to formally take possession of the waqf before the transaction becomes valid (*qabḍ*), since the waqf is no longer the property of anyone. In both cases al-Shaybānī disagrees and follows a stricter line. Both do agree, however, that the founder may not reserve for himself the right of sale, although Abū Yūsuf does acknowledge the right of exchange, or *istibdāl*, implying that a waqf object can regain its status of *milk*, on condition that it is exchanged for another object which then becomes waqf. On the basis of *istiḥsān* an *istibdāl* for money is allowed if a substitute is bought and subsequently turned into waqf. After this, rules are given for the conditions that can be stipulated with regard to the beneficiaries, such as the inclusion or exclusion of beneficiaries, waqfs for the descendants of the founder, etc. Here, a differentiation is made between *ṣadaqa* and waqf. The point is that '*ṣadaqa*' can only be used as an alternative term for waqf if the founder defines the transaction as the equivalent of waqf by mentioning the required conditions. If not, then a *ṣadaqa* remains part of the inheritance. As for the pious aim, or *qurba*, it has to be specified and considered as 'eternal', implying according to some that 'the poor', as a category, should always be mentioned, or, when a category is infinite, for instance 'orphans', that it should benefit the poor orphans only.[12]

Special rules are devised for cases in which the founder is suffering from a mortal illness. It is here that the differentiation between waqf and bequest (*waṣīya*) is emphasized, to prevent a founder from circumventing the rules of inheritance. If a founder converts all his properties into waqf, then only one-third is acknowledged as a valid

[12] Id., pp. 19-33.

waqf, the other two-thirds being reverted to the inheritors. A waqf taken out of one third of the founder's property is allowed.[13]

When land converted into waqf turns out to be pawned, it should be redeemed before the waqf is valid. In the case of an 'irregular sale' (*bayʿ fāsid*) of land turned into waqf, the buying price has to be compensated. In general Christians are allowed to found waqfs, on condition that the purpose is considered as a *qurba* by both the Muslim and Christian communities (for example poor Christians, but not churches).[14]

b. *The object of a waqf.* The waqf would normally and preferably consist of durable real estate properties, which must be the free property (*milk*) of the founder, for instance land and buildings. The foundation of land for which the *kharāj* tax is paid is allowed, since it is deemed to be private property (*milk*); likewise, land given in property as a landholding by the sultan (*tamlīk*, or *iqṭāʿ*) can be the object of a waqf, but not *ḥawz* land, which is land that is sequestrated by the sultan because it is not exploited and given to tenants to cultivate it. The original owners keep the property rights.[15] Neither is it allowed to endow properties owned by the state treasury (*bayt al-māl*). Land that has been acquired by an 'irregular sale' (*bayʿ fāsid*) and subsequently turned into waqf in a correct way, will be treated as a waqf, on condition that the real value is paid to the seller. It is not allowed to endow a house without its land, unless the founder has rented the land and the family will keep it in possession by inheritance.[16]

When a founder, or *wāqif*, builds a mosque or turns his house into a mosque, according to Abū Ḥanīfa the building will only officially become a mosque when the people have performed their prayers there. According to others the conversion takes place when the founder testifies that the building is a mosque, but the opinion of the majority of the Hanafite scholars is that in this case the act of praying counts as a *qabḍ*. Similar regulations apply to *khāns*, cemeteries, waterwheels and roads. For Abū Ḥanīfa, however, these 'objects' always return to the inheritance.[17]

c. *The beneficiaries.* It is possible to designate family members as beneficiaries before the poor (*ahl al-bayt, jins, āl*). A difference between

[13] Id., p. 245.
[14] Id., pp. 332, 335.
[15] Johansen (1988), p. 14.
[16] Al-Khaṣṣāf, pp. 34-8.
[17] Id., pp. 113-4.

waqf and *waṣīya*, in this context, is that a *waṣīya* cannot be made to persons not yet born, which is permitted in the case of a waqf.[18] It is carefully discussed who should be considered as 'relatives' and 'poor'. Many variations are mentioned of stipulations (*shurūṭ*) and different distributions of shares. Of course many of these rules are derived by *qiyās* from the general rules for kinship and other related themes, such as the proof of kinship or poverty.[19]

Elsewhere the waqf for the benefit of the neighbours of the founder is discussed, mainly in order to define the concept of 'neighbour' (*jār*; *jīrān*). According to Abū Ḥanīfa the *jīrān* are only those living in the adjoining (*mulāṣiq*) building, but according to Abū Yūsuf the term refers to the inhabitants of a quarter, or *maḥalla*, or all people 'united' by the same mosque (*masjid*), or by two mosques in the same *maḥalla*. All those who can hear the call for prayer of a certain mosque are considered to be 'united' by this mosque.[20]

When groups of beneficiaries include rich persons, only limited categories ('the poor of Baghdad'), and no uncalculable ones, are accepted as *qurba*.[21]

d. *Administration.* The founder is allowed to appoint someone as trustee (*wālī* or *mutawallī*) of his waqf, during his lifetime and after his death. He may also appoint himself and retain the right to appoint someone else. If the waqf is threatened by decay, the qadi can force him to resign and appoint someone else.[22]

The practice of *istibdāl* for money, as described by Abū Yūsuf, that is, with the condition that the money is used to buy a new waqf-object, is accepted on the basis of *istiḥsān* and *qiyās*, but only when real estate possessions are bought and the sale is not disadvantageous to the seller. In the case of a mosque, *istibdāl* is not allowed, since mosques are not meant to produce revenues (*ghilla*). In general, this kind of transaction is permitted to ensure the profitability of a waqf, as in the case of a a long-term rent (*ijāra mudda ṭawīla*), which can be dissolved by the qadi when ruination is feared.[23]

The leasing out of waqf possessions (*ijāra*) is allowed, on condition that the fee is in accordance with the market value of the object (*ajr*

[18] Id., pp. 38-42.
[19] Id., pp. 42-63, 71-112.
[20] Id., pp. 182-5.
[21] Id., pp. 322-331.
[22] Id., pp. 201-5.
[23] Id., pp. 154-9.

al-mithl). The qadi is authorized to dissolve rent agreements if they are harmful to the waqf. If a waqf is rented for a certain period and the founder dies before this period has elapsed, the *ijāra* remains valid. A founder may rent waqf possessions to his father or his son, according to Abū Yūsuf, in contradiction to Abū Ḥanīfa.[24] In the case of exploitation by sharecropping, or *muzāraʿa*, it is stipulated that expenses and revenues are divided equally between the two partners. The agreement remains in force when the founder dies, but is dissolved when the *muzāriʿ* dies. The tax-obligations rest on the part of the revenues which is allocated to the beneficiaries.[25]

Buildings or trees that are on waqf land become part of the waqf, including, in the case of bathhouses, the furniture inside. A founder who sows on waqf land at his own expense may appropriate the harvest. If he has no means to buy seed, the qadi may allow him to borrow money from the waqf. If the founder prohibits rent in his waqf-deed, or stipulates rent for a limited period only, the trustee should act accordingly.[26]

As far as the exploitation is concerned, the expenses for maintenance are to be met with before the shares are distributed among the beneficiaries.[27]

e. *Conflicts.* In the case of conflicting claims to the waqf, for instance after the demise of the founder, the qadi has to follow general guidelines.[28]

Al-Khaṣṣāf and the concept of waqf

The first observation that can be made after this summary of al-Khaṣṣāf's compendium is that although the text is focused on the concept of waqf, there is little effort to define it in a conceptual way. There is no theoretical reflection on the nature or principle of waqf. Al-Khaṣṣāf aims to present a set of rules which is derived from a long period of debates and legal reasoning and which, as such, shows the state of the discussion at a certain moment, while the discussion is still continuing. By being written, however, the text implicitly posits

[24] Id., pp. 205-7.
[25] Id., pp. 207-9.
[26] Id., pp. 265-272.
[27] Id., pp. 274-322.
[28] Id., pp. 134-7.

the phenomenon of waqf as a juridical concept. What is more, it aims to lay down an authoritative source of jurisprudence on the subject, as agreed upon by the majority of Hanafite scholars. This observation leads to our next two questions: how can a concept of waqf be derived from al-Khaṣṣāf's text, and how does the text, as a source of legal authority, relate to texts from subsequent periods?

From the *Kītāb aḥkām al-awqāf* it becomes clear that although waqf is only one of many elements of Islamic jurisprudence, it is linked and intertwined with overarching systems in various ways. Firstly, the concept of waqf is firmly rooted in the system of religious symbols by tracing its origins back to acts and sayings of the prophet and his companions, handed down in the *ḥadīth*. The examples taken from the Traditions not only give the concept a legitimate, sanctioned status, but also provide a model of the waqf-concept that can be copied, developing it from a kind of embryonic state into a fully grown institution. Of course, the rather concise examples take on an enormous weight by being associated with the prophet, and every detail is taken as a meaningful and even authoritative element. With this projection of the concept into the Traditions, it becomes part of the divine order, both in the moral sense and in the legal sense, since the *ḥadith* not only provided a model for moral behaviour, but was also acknowledged as a source of legal interpretation. The concept is thus simultaneously rooted in sacrosanct texts and established on a basis that allows the further elaboration of the legal aspects.

Secondly, the concept is connected with the system of Hanafite law, by an appeal to the most prominent scholars of the *madhhab*. This connection is important, since although the concept of waqf contains many specific rules, it is embedded in a set of general rules, for instance in the cases of conflicts, the system of kinship, the categories of transactions, etc. Apart from this, it is influenced by the Hanafite 'philosophy' of legal reasoning, which is generally characterized by a pragmatic approach.

The set of rules given by al-Khaṣṣāf shows how intimate the connections are with the legal framework. The waqf concept is not only part of the domains of various kinds of legal transactions, such as sale, donation, inheritance, etc., but also of the domains of legal reasoning and the mechanisms of interpretation. This implies, firstly, that a certain consistency is sought, possibly neglecting the practicability of rules, but, secondly, that it is in principle open to interpretation and elaboration. It is, in other words, part of the debate on the

methods of legal reasoning and as such adaptable to changing practical circumstances. This mechanism is clearly visible in the text of al-Khaṣṣāf, since from his references to the Hanafite 'founding fathers' it can be deduced that Abū Ḥanīfa only provides an outline of waqf regulations, giving scattered opinions, rather than a set of guidelines for practical purposes. Al-Shaybānī interprets this evidence in a rather 'traditionalist' way, trying to link it as much as possible to the original sources and developing a system that is concerned more with theoretical coherence than practicability. Abū Yūsuf, finally, formulates a system that is based on practical requirements and the idea that waqfs can be profitable for the community in general. Probably in response to a need for public facilities and the lack of an appropriate legal framework to realize them, he advocated the spread of waqfs and discarded some of the restrictions put upon the practice of foundations by a legalist interpretation of the *ḥadīth*. His interpretation of the Traditions and the opinions of Abū Ḥanīfa places the concept of waqf in everyday life, so to speak, opening up a whole domain of legal implications and sketching the outline of the waqf concept not as a legal transaction, but as an institution. Al-Khaṣṣāf presents an overview of the discussion within the Hanafite school and of the rules that resulted from it. It is clear, however, that his work is not merely a compilation of rules, but that he confirms the pragmatic approach to the waqf concept as it was conceived by Abū Yūsuf. His text is not only a handbook for Hanafite qadis it is also an effort to buttress the victory of the line of Abū Yūsuf and to fix his views in the systems of legal argumentation and legal texts. It is an effort to institutionalize the concept of waqf according to one particular interpretation.

Within the framework of these two overarching systems, religious symbols and legal reasoning, the definition of waqf is to be found. The examples of the prophet and his companions show that founding a waqf is morally recommendable, that foundations are made in perpetuity and that they are meant to serve some pious purpose, mainly to support the community as a whole. Furthermore, the objects of waqfs are land and houses, which, once converted, are dissociated from any form of circulation or transaction. This general circumscription is of course not sufficient in the legal sense, since the status of waqfs and the liability of the persons involved are not included. One further step is to distinguish the concept of waqf from other legal devices and transactions, and this is done by al-Khaṣṣāf

on several occasions, but especially in his first chapter, when he draws a clear boundary between the rules for inheritance and those for waqfs. This boundary is not merely an artificial formality, but separates two similar types of transactions into domains which are essentially different. Whereas the objects of inheritance retain their status of *milk*, an object of waqf loses this status and instead is incorporated into the realm of the sacred. This distinction, which was previously not acknowledged by all scholars, forms the basis of waqf as an institution: it marks a transition that gives an object a sacrosanct status and an added symbolic value, making it part of a different, coherent set of rules, which reduces its links with the changeable material world and provides it with some timeless 'essence'. Two objects may look the same, but when one of them is a waqf, they belong to different realms and have a quite different symbolic status. It is from this status that waqf legislation takes its form.

The rules concerning waqf, as gathered by al-Khaṣṣāf, have various functions. Firstly, the definition of waqf is reinforced by discussing various links with other legal concepts, such as land categories, legal transactions, *dhimmī*s, forms of kinship, forms of legal evidence, etc. Secondly, the status of waqf as an institution and of waqf objects is protected by restrictions on their exploitation, by defining pious goals and by providing a regulated form of supervision, but also by stipulating that objects to be converted into waqf should be acquired in a legally sound way and by laying down rules for the transmission of waqf objects to the next generation.Thirdly, the rights and duties of the founder and the beneficiaries are explained with the dual intention of stimulating the spread of waqfs and protecting their sacrosanct status. Finally, the rules for the administration and exploitation of waqfs provide the framework in which the institution can function in a practical way.

It is not difficult to see how the concept of waqf as it emerges from al-Khaṣṣāf's text fits into the concepts developed by Bourdieu. The text describes waqf as a concept with its own particular status and legally defined boundaries. This status is achieved by a 'rite of passage' which links it to an overarching symbolic system and a separate set of values, thus transforming it into an 'institution'. This institution is part of a field which is partly structured by texts, not only legal texts, but also other texts which support the symbolic importance of the institution. These texts protect the status and the 'essence' of the institution and define the roles of those who profit from its preserva-

tion and development. In order to participate in this field, one has to invest something, which will then be subjected to a distinct set of rules, in order to regulate the distribution of the profit to be made from the institution.

It is important to note that, as we have seen, the formation of the waqf institution was not imposed as a state system nor laid down in a codified text. The competition for symbolic profit took shape from the beginning of the spread of Islam and the formation of the community within a society and the legal forms that regulated this competition evolved concomitantly out of practical need and legal discussion, gradually reaching a coherence in which practice and theory were balanced. In other words, it did not result from an implementation of state power, but by the exigencies of socio-economic relations, which at a certain stage had to be incorporated into the juridical and administrative organization. This process of incorporation should be visible in texts and in practices, since both are part of dynamic systems. If in al-Khaṣṣāf's text we perceive the perhaps still vague outline of a field in a state of development, it should be elucidating to see how it relates to a later text of the same genre, to which we shall presently turn our attention.

The compendium of Burhān al-Dīn al-Ṭarābulusī

If one compares the text of al-Ṭarābulusī with al-Khaṣṣāf's, the first thing that strikes one is that both texts are firmly rooted in the various frameworks of tradition. Al-Ṭarābulusī repeatedly refers to authoritative sources, such as Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī and al-Khaṣṣāf, and occasionally to later texts (al-Hilāl, Baqālī, al-Nasafī). He does this exclusively in cases when opinions among the founding fathers diverge. However, apart from a reiteration of the discussion on principles among the Hanafite scholars, a whole set of elaborate rules is presented based on these principles and, evidently, on the spirit of previous waqf-regulations. The new regulations all have to do with practical problems which were not dealt with in previous texts.

Like al-Khaṣṣāf in his text, al-Ṭarābulusī opens with a legitimation of the principle of waqf. He gives a linguistic explanation of the term *ḥabs* and then briefly refers to the difference of opinion between Abū Ḥanīfa and Abū Yūsuf, stating that if Abū Ḥanīfa had known the

ḥadīth of ʿUmar, he would certainly have agreed with a pragmatic interpretation of waqf. Al-Ṭarābulusī thus explicitly supports the course of Abū Yūsuf, speculating on historical coincidence. Then the distinction between inheritance and waqf is summarized and the general conditions imposed by Abū Yūsuf and al-Shaybānī, followed by examples taken from the Traditions of the Prophet and his companions.[29]

The approach to the waqf phenomenon in al-Ṭarābulusī's text is much more systematic and concise than that in al-Khaṣṣāf's, thereby strengthening the sense of waqf as a coherent legal concept and an institution with clear boundaries. This impression is confirmed by the formal description of the legal components of the procedure to convert an object into waqf: an object is converted into waqf by the pronouncement of one of the synonyms of the legal terms for waqf (*rukn*), by people who are legally capable of doing so (*ahl*), concerning an object which is legally admitted as a waqf (*muḥall*), and, finally, by a legal recognition (*ḥukm*). After this enumeration of the procedural phases, several general rules are given concerning the perpetuity of the waqf and the categories of beneficiaries. Four issues are mentioned in which Abū Yūsuf and al-Shaybānī have advocated diverging opinions: Al-Shaybānī stipulated the taking possession (*qabḍ*) of the waqf by the trustee for the waqf to become valid; he considered a waqf consisting of one half of an object as invalid; he required the explicit mentioning of the perpetual nature of the waqf; and finally, he did not allow the founder to derive profit from his foundation.[30]

Thirdly, in al-Ṭarābulusī's text there is a much clearer circumscription of the liabilities and responsibilities of the parties involved. An example is the elaborate discussion of the rights and duties of the trustee, who, in some cases, has to pay damages in cases of negligence. According to al-Ṭarābulusī, the function of the trustee is assessed essentially different in the opinions of Abū Yūsuf and al-Shaybānī. For the former he is the representative of the founder, while the latter rather sees him as the representative of the poor. Consequently, al-Shaybānī allows the discharging of a trustee by the founder only when the right to do so has been stipulated in the waqf-deed. If the founder is not fit to act as administrator, the qadi, who is the supervisor, may discharge him and appoint someone else. Guidelines are

[29] Al-Ṭarābulusī, pp. 3-9.
[30] Id., pp. 10-18.

given as to the preferable candidates. The founder may allocate a yearly allowance to the trustee, so that the latter acquires an interest in the exploitation of the waqf. The amount has to be in accordance with the weight of the task. Subsequently, some practical problems are discussed in the case of conflicts. It is argued that the trustee is obliged to invest money from the revenues to ensure the prosperity of the waqf and that debts may only be incurred on the waqf with the permission of the qadi.[31]

Furthermore, the role of the qadi is mentioned more explicitly, as having the 'absolute right of disposal' (*iṭlāq al-taṣarruf*)[32] and having the supervision of the waqf's debts (*wilāyat al-istidāna ʿalā al-waqf*).[33] This not only implies a refinement of the legal framework, but also indicates that the roles of these functionaries had become more prominent, or that the division of responsibilities between them had become a source of conflicts, enforcing jurists to redefine their respective powers. The same applies to the elaboration of rules concerning cases in which property rights or responsibilities are split between different persons.

The large sections on *istibdāl* and *ijāra* in the *Isʿāf* suggest that these practices had greatly increased in the centuries between al-Khaṣṣāf and al-Ṭarābulusī. The possibilities for *istibdāl* are acknowledged, on the authority of Abū Yūsuf, al-Khaṣṣāf and al-Hilāl. It is stressed that *istibdāl* can only take place in case of necessity. It should not necessarily be stipulated by the founder, however; a qadi may decide to condone an *istibdāl* when he sees it as a 'preponderant interest' (*maṣlaḥa*) for the waqf. Detailed rules are given for the purchase of the new object, to ensure the validity of the new waqf, which has to be exploited and administered according to the same conditions as the original one.[34]

Similarly, the discussion on *ijāra* is extended to include regulations for long-term lease and for the responsibilities of the qadi and the administrator. Firstly, the founder may stipulate the duration of rent contracts. If he does not mention *ijāra*, the administrator may lease out the property if this is in the interest of the waqf, but only for a period of one year, to avoid the cancellation of the waqf. However, if the exploitation requires a longer period, or if no one wants to rent

[31] Id., pp. 49-63.
[32] Id., p. 36.
[33] Id., p. 57.
[34] Id., pp. 28-35.

the property for a short period, the qadi may allow a longer term, according to some up to three years, according to others for an even longer period, for instance in the form of thirty contracts of one year. The fee should be in accordance with the market value of the object (*ajr al-mithl*), which should not necessarily be adapted to conjunctural changes during the period of rent. If the administrator dies, the rent is continued. Several cases are discussed of the rent of *milk*-buildings on waqf land. If an administrator leases the waqf in an irregular way, he is himself liable to pay the *ajr al-mithl*; he may lease the waqf to his son or father, but not to himself. The *kharāj* and *ʿushr* levies on land are paid from the share of the beneficiaries; *muzāraʿa* agreements are allowed.[35]

Detailed regulations are given to judge conflicts between beneficiaries and to establish the rights of persons building or planting on waqf-land. When a founder constructs a building or plants trees on waqf land and the money is taken from the revenues of the waqf or when he uses his own money but declares that the property will revert to the waqf, then the object will be added to the waqf. If he uses his own money without further explanation, the building or plantation becomes his *milk*. Finally, the shared waqf (*mushāʿ*) and various forms of partition (*qisma*) are elaborately discussed.[36]

If we ask what the reason was for al-Ṭarābulusī to write his compilation, the answer may be twofold. It is clear that he saw it as his task to compile a survey of waqf rules conceived by his predecessors. His approach fits into the traditional method linking texts to previous texts in order to preserve the chain of authority. However, in spite of its conformity with regard to other texts, his text has its own significance and was not written without a specific purpose. Apparently, al-Ṭarābulusī's ideas on the administration of waqfs, especially the practice of *istibdāl*, were sufficiently provocative to make the Ottoman authorities sentence him to death.[37] He wrote his text in response to a certain need for rules to deal with practices that had spread in the course of time and for which no really authoritative solutions existed. Apart from this, he probably wanted to influence or possibly curb practices which he thought inconsistent with the principle of waqf and which could flourish due to a lack of proper regimentation. After all, as we shall show below, in Mamluk times the concept of waqf and

[35] Id., pp. 63-70.
[36] Id., pp. 19-28.
[37] Behrens-Abouseif (1994), p. 148.

its legal implications were by no means clear or generally accepted by the ulama. Individual ulama sanctioned practices which were seen as malpractices by others, while some even contested the principle and usefulness of waqfs. Both aims, proposing rules for new practices and attempting to eliminate other practices, were achieved by integrating a set of new rules within the tradition of Hanafite law. The text is careful not to diverge from the basic definition of the institution, and even strengthens it, but rules are added which should incorporate new practices and refine the internal, legal coherence of the concept. The legal techniques are refined, especially with regard to liability, to embed the institution in legal practice.

The fatwa-collection al-Fatāwā al-khayriyya

A collection of fatwas is different, as a text, from a compendium of legal rules. It is essentially concerned with cases instead of concepts, with the connection between rules and their practical consequences, and as such it is less systematic and less theoretical. This does not mean that the authors of these fatwas were not interested in general rules or were averse to philosophizing about concepts; on the contrary, they saw it as their task to examine specific cases in the context of general rules and more often than not they took part in legal debates on theoretical issues. But by working explicitly from the specific to the general and by not formally laying claim to theoretical authority, fatwa-collections had their own place within the tradition of legal texts. They did not provide explanations of the concept, they did not pretend to give complete surveys of rules and they did not claim general validity. It is no coincidence, then, that in a text like al-Ramlī's *al-Fatāwā al-khayriyya*, which we shall discuss here, the author repeatedly refers to varying circumstances in different regions, or to legal scholars of different periods, who held different opinions because circumstances differed. Al-Ramlī separates the early generations of scholars (*al-mutaqaddimūn*) from the 'modern' ones (*al-muta'akhkhirūn*), to explain divergent views. There is a sense of relativity which al-Ṭarābulusī's *Isʿāf*, for instance, lacks.

The difference in genre between the texts of al-Ramlī and al-Ṭarābulusī implies that a comparison between the two cannot result in a reconstruction of the development of the waqf institution in the course of two hundred years, but rather in a glimpse of the discrep-

ancy between theory and practice, between general rules and specific solutions. This discrepancy should not be dramatized, however, since fatwa texts are after all stylized representations of cases and not an inventory or record of 'real' practice. Although their method and function were specific, they are still part of the broader framework of legal texts, which means that 'reality', in the form of concrete cases, is made abstract by using categories, interpretations and terminology derived from the tradition of legal texts. They are evidently not meant to give a truthful image of real cases, but rather to cover at least partly an intermediate space between the abstract rules and concrete cases. As has been observed by others, this makes them particularly susceptible to the effects of political, economic and social circumstances, or, in the terminology of Bourdieu, to the structuring influence of power relations.[38]

The chapter on waqf ('kitāb al-waqf') of *al-Fatāwā al-khayriyya* is only loosely organized and has no subdivision into chapters or categories of cases. In order to be able to present a brief survey, we have grouped the main cases in six domains.

a. A number of cases deal with the division of authority between the sultan and the qadi, firstly in the domain of appointments, and secondly in cases where the registers of the state (*daftar sulṭānī jadīd*) contradict individual claims or decisions of the qadi. For example, if the sultan appoints a trustee after the qadi has already appointed another candidate, the qadi's appointment will be valid.[39] Similarly, the sultan cannot discharge a supervisor (*nāẓir*) appointed by himself without an appeal to the interests (*maṣlaḥa*) of the waqf and in this his opinion does not differ from that of the qadi.[40] In the case of contesting claims to a waqf which has been registered in the sultanic *daftar*, the written evidence is only part of the proof, and other types of evidence, belonging to the normal procedures of the court, have to be taken into account.[41] Another case concerns the coordination between legally defined institutions and the administrative framework: the governor of a village may not demand levies from a village under his authority of which part has been converted into a *waqf irṣādī* for the benefit of a convent (*zāwiya*). Al-Ramlī takes this case to briefly

[38] Compare Masud, 'Muftis...,' p. 4; and Hallaq 'Ifta'...,' both in: Masud/Messick/Powers (eds).

[39] Al-Ramlī, pp. 115, 152.

[40] Id., p. 115.

[41] Id., pp. 118-9.

discuss the principle of the *waqf irṣādī*, or waqf made from land belonging to the state treasury (*bayt al-māl*), which he deems permissible on the authority of Ibn Nujaym, Qāḍīkhān and Ibn Wahbān, on condition that the waqf is in the interest of the Muslims.[42]

In general, it is remarkable that in the questions summarized above divergences in the capacities of the sultan and the qadi are suggested, which are subsequently, at least in most cases, reduced to a minimum in the answer given by the mufti. On the one hand the qadi is the representative of the sultan and has to abide by the sultanic decrees; on the other hand, the sultan is subjected to the same general rules that apply for anyone else, such as the procedures for establishing the validity of evidence, the sacrosanct nature of the stipulations of the founder and the rules for the validity of waqfs. The cases that we have cited suggest a high degree of state interference in the field of waqfs, but at the same time they reflect an effort to secure the autonomy of the law, in some cases by incorporating administrative practices which had been established in the course of time.

b. Other issues which attracted al-Ramlī's special attention are cases concerning the appointment of waqf functionaries. As a general rule, he argues that 'personal' appointments of administrators (*al-wilāya al-khāṣṣa*) by the founder supersede 'public' appointments (*al-wilāya al-ʿāmma*) by the qadi. This implies that, in normal circumstances, the qadi may not interfere when the founder appoints a trustee, or a new trustee when the previous one has died, even by testament (*waṣīya*), when the founder has died, or by stipulating that the decision to appoint trustees rests with the trustee himself. Al-Ramlī concludes that in Egypt other rules were in use.[43] After this case, more detailed regulations are given, for instance that functionaries who are travelling receive no salary, even when they perform the pilgrimage;[44] the importance of keeping the number of functionaries limited in the interest of the waqf;[45] and the question of the transfer, or *farāgh*, of functions: the ceding of a function for money is not allowed, and *farāgh* is subject to the ratification of the qadi. About this last issue al-Ramlī remarks that *ʿurf* practices (customary law) contradict the *madhhab* on the question of *farāgh* for payment and that

[42] Id., pp. 147-8.
[43] Id., pp. 124, 161.
[44] Id., pp. 138, 151.
[45] Id., p. 144.

recent scholars have written many treatises (*risālas*) on the subject;[46] as for the *nāẓir*, he has to act in accordance with the conditions stipulated by the founder, the decisions of the qadis in the past and the decrees of the former sultans. He receives a fee according to the work he actually performs.[47] If a founder does not appoint the functionaries needed for the preservation of the waqf, the sultan is allowed to appoint supplementary personnel, on condition that the number of functionaries is not explicitly determined in the waqf-deed.[48] Another case concerns the so-called *awqāf al-miṣriyya* in Syria, which had apparently been placed under the supervision of a general *nāẓir*, although the waqfs in Jerusalem that were part of them had a separate *nāẓir*. Since both were appointed by the sultan, the former could not overrule the latter, and both had an independent *wilāya*.[49] Finally, a hierarchy is made for the functionaries of waqfs in case the revenues should be insufficient to pay all their salaries. The criterion is the indispensability of their task for the respective waqfs (for schools the *mudarris*; for mosques the imam, the muezzin and the *khaṭīb*).[50]

c. A third cluster of cases concerns the rules for repair, expansion and investment, the liability for expenses and the consequences for rights of ownership. If a man usurps a shop and says that he bought it, so that it has become his property (*milk*), and he builds a house on the land and exploits the shop, and afterwards the qadi finds out that the land and shop have always been a waqf, then the properties are confiscated and the man has to pay the rent for the period of his possession. The building has to be demolished if this can be done without harming the waqf. This opinion is based on the 'preference of the modern scholars' (*ikhtiyār al-muta'akhkhirīn*).[51] In general, if debts have to be incurred on the waqf for the expenses of repair, the permission of the qadi is required; moreover, loans are only permitted in the case of necessity, for repair or the purchase of sowing-seed, and when it is impossible to lease the object and pay the expenses from the rent. If all conditions are met, the trustee may borrow money, but only the original sum without the interest may be recov-

[46] Id., pp. 157-8.
[47] Id., pp. 169, 171.
[48] Id., pp. 182, 185.
[49] Id., p. 188.
[50] Id., p. 153.
[51] Id., p. 121.

ered from the waqf.[52] If a founder has stipulated the possibility of loans from the waqf, the permission of the qadi is not required, since a condition of the founder is equivalent to the text of the Legislator (*sharṭ al-wāqif ka-naṣṣ al-shāriʿ*).[53] With respect to all kinds of waqf, repair is the first obligation of the trustee, and only in the case of a mosque should the 'indispensible' functionaries come first.[54] If a trustee expands the waqf at his own expense for the benefit of the waqf, the possession reverts to the waqf; if he builds it for himself, with his own money, it remains his property; if the builder is someone else and builds something for the waqf with or without the permission of the trustee, then possession reverts to the waqf; if he has built it for himself, it should be demolished without harming the waqf. If the trustee has acquired the permission of the qadi to expand the waqf, the expenses may be claimed back from the waqf. In principle, the trustee can choose whether he wants the expansion to be his own property or to be part of the waqf.[55]

d. A number of cases deal with forms of leasing out waqf possessions (*ijāra*), and the concept of 'rent according to the market value' (*ajr al-mithl*). Al-Ramlī prohibits the various devices for long-term rent, like the simultaneous conclusion of a number of separate contracts, together covering a period of thirty years, for instance.[56] Other cases concern the investments in the plantation of land and the rights of continued exploitation. In general, the rules are conducive to a continued exploitation from one generation to the next, on condition that the *ajr al-mithl* is paid. If a tenant (*muḥtakir*) pays the *ajr al-mithl* for empty land and builds a house on the land, he and his inheritors have the right to continue the *ḥikr* and the house remains *milk*.[57] A sharecropper (*muzāriʿ*) may not transfer his rights as exploiter to another sharecropper for money (*al-farāgh ʿan manfaʿatihā bi-māl*), because the profit (*intifāʿ*) can only revert to the trustee.[58] A separate discussion is dedicated to the idea of *ghaṣb*, or illegal appropriation. Here the opinions differ between the *mutaqaddimūn* and the *muta'akhkhirūn*, since the latter demand that a usurper (*ghāṣib*) pay the *ajr al-mithl* for

[52] Id., pp. 129, 131-2, 208.
[53] Id., p. 131.
[54] Id., p. 131.
[55] Id., pp. 134, 174, 196, 199.
[56] Id., pp. 192-3, 202.
[57] Id., pp. 172, 174.
[58] Id., p. 135.

the period of his exploitation of the object.[59] Finally, an elaborate discussion is given of the concept of *khuluww*, or the right to exploit a shop in exchange for a fixed fee, a practice which, according to al-Ramlī, was especially popular in the cities of Egypt and Anatolia. The practice goes back to a waqf of the Mamluk Sultan al-Ghūrī, who, when founding a souk in Cairo, ceded the rights of exploitation and habitation to merchants for a fixed amount of money. The 'owner' of the shop could subsequently not expel the merchant, as was proved by legal precedents. Al-Ramlī sees the advantages of this construction in its contribution to a continued exploitation, as in the case of *ḥikr*, which allows the tenant of waqf land the right to renew the agreement, on condition that the *ajr al-mithl* is paid. Al-Ramlī advocates this practice, since it is not contrary to the Qur'ān, the *sunna* or the consensus of legal scholars (*ijmāʿ*), and since it is useful for large cities and the expansion of waqf possessions. By means of this device, investments for the waqfs are partly paid back by the merchants themselves, while they in turn profit from the facilities provided by the waqf. There is no harm in this for religion.[60]

e. Furthermore, the possibilities for *istibdāl* are dealt with in relation to several different cases. Al-Ramlī does not question the principle of *istibdāl* itself, but confines his discussion to its explanation and some examples. Both the exchange of one object for another or an object for money is permitted. A crucial role is reserved for the qadi, who has to make sure that no harm is done to the waqf. He is the only one who can decide to carry through an *istbdāl*.[61]

f. Some separate cases concern miscellaneous problems, such as the prohibition of turning waqfs into a tax-farm, since this would be equivalent to sale or donation; when a qadi accepts a waqf as valid (*lāzim*), another qadi cannot denounce it as invalid (*bāṭil*);[62] and a discussion is given of the interpretation of the word *dirham*, implying either a *dirham* of 7/10 *mithqāl* of silver, as standardized by Caliph 'Umar, if stipulated so by the founder, or else a currency used in the time of the founder, to be re-evaluated by the qadi.[63] Finally, if a mosque outside the city loses its function and falls into ruin, can the revenues then be transferred to a prospering mosque inside the city?

[59] Id., pp. 142-3.
[60] Id., p. 179; see also Hanna, pp. 32-3.
[61] Al-Ramlī, pp. 129, 156, 217-9.
[62] Id., p. 126.
[63] Id., p. 161.

According to all-Ramlī the early ulama had different opinions on this issue, Abū Yūsuf stating that the mosque remains a mosque forever, while al-Shaybānī permits a reversion of the mosque to its former owners, or its sale. Al-Ramlī prefers the second opinion, provided that the transaction is based on good intentions.[64]

If compared to the compendia discussed above, the collection of fatwas by al-Ramlī illustrates another link in the chain of transmission of the Hanafite legal tradition. Evidently, there is a greater emphasis on practical problems concerning the administration of waqf possessions and the rights and duties of functionaries. What is particularly important for our purpose is, firstly, the distinction made by al-Ramlī on several occasions between the ancient and modern scholars, suggesting an accommodation of legal rules to circumstances which were either evaluated differently by the ancient scholars, or neglected, or non-existent. Secondly, there is the prominent place taken by the administrative practices and the reconciliation of waqf regulations with the administrative system. It is here that the specific function of fatwas, as opposed to compendia, comes to the fore, but it also indicates the importance of the administrative system within the field of waqfs, as a mechanism to shape legal practice and theory. Thirdly, the fatwas show that the legal framework was by no means inflexible, but capable of incorporating rules and practices which grew in the course of time, or which originated in different regions. In fact, it was one of the purposes of fatwas to discuss such practices in the light of the general concepts of the law.

A treatise on istibdāl *and* ijāra ṭawīla

It is not our intention to discuss all genres of legal discourse which have been practised in the tradition of Islamic legal texts. Above we have treated one specific genre which was developed to accommodate theory to practice and to formulate rules to deal adequately with specific cases and conflicts. Another genre of this category was the legal treatise, or *risāla*, in which a jurist discussed the legal aspects of a certain problem, sometimes a concrete case, but also more general concepts and practices. These treatises were also intended to bridge the gap between theory and practice and between the rules inherited

[64] Id., p. 163.

from the 'founding fathers' of the *madhhab* and those developed either by later jurists as the outcome of legal reasoning, or as a result of practices which had become accepted as legitimate in the course of time. Treatises derived their authority from more informal criteria, such as the status, erudition and scholarly standards of the author. They could be written on request in order to shed light on some juridical problem or controversy, and their form gave scholars the opportunity to comment on usages current in their days and to state their opinion in a more general way. Thus, problems could be analyzed much more elaborately than in fatwa texts.

In this section we shall direct our attention to a treatise entitled *Risāla tataʿallaq bi-al-awqāf min al-istijāra wa-al-istibdāl ilā ghayr dhālik*, or 'Treatise concerning waqfs: on rent, exchange and other issues'. The name of the author is not mentioned, but the manuscript is dated *shawwāl* 1179 (1766). The aim of the author is to present a survey of the rules and opinions on *istibdāl* and the leasing out of waqf possessions for a long period of time (*ijāra ṭawīla*). In the following discussion we will focus attention not so much on the conclusions of the author insofar as the legal implications are concerned, but rather on his way of reasoning and his remarks on the practice of his time. These show the efforts by the author to reconcile practices and theories and to set a standard for his contemporaries. It is, more or less, a reappraisal of rules in the light of certain new practices, and thus, like fatwa collections, it illustrates the dynamic character of the Islamic tradition of legal texts.

Our author begins with a presentation of the definition of the concept of waqf, both linguistically and in the view of the three main Hanafite scholars, Abū Ḥanīfa, Muḥammad al-Shaybānī and Abū Yūsuf. The differences between these three are mentioned, especially those with regard to the property status of the object (property of the founder or property of God), and the procedure to secure the validity of the endowment (perpetuity, *taslīm*, etc.). Of the latter, examples are given taken from later scholars which resulted in the typically Hanafite court procedure to achieve the recognition and registration of the waqf: the founder endows the object, the trustee accepts it, then the founder withdraws it and the trustee requests a verdict from the qadi. This procedure renders the founding of a waqf valid and irrevocable.[65]

[65] *Risāla...*, ff. 186-7.

After this general introduction the principle of the *istibdāl* construct is discussed, based on the opinions of scholars such as Hilāl al-Baṣrī and Abū Yūsuf. The first question to be treated is: is a waqf valid when the possibility is stipulated of an *istibdāl* for money which is subsequently used to buy a new object that will be waqf? The answer given by Abū Yūsuf, Hilāl and al-Khaṣṣāf is that both the waqf and the condition are valid. Only when the waqf consists of a mosque is the situation different, and the waqf should be considered valid but not the condition, since the object is not intended to be exploited economically. A variant of this principle is, for instance, the case where a founder stipulates *istibdāl* promising to buy a new object without mentioning that this object will become a waqf. According to *qiyās* this would make the waqf invalid, but according to *istiḥsān* the condition is allowed and the new object will be waqf according to the same conditions as the former one.[66] If the founder stipulates the right to sell the waqf without mentioning *istibdāl*, according to Muḥammad al-Shaybānī the waqf is not valid, while according to Abū Yūsuf the waqf is valid but the condition is void.[67]

The second question is whether the fact that a more profitable object can be obtained is sufficient justification for an *istibdāl* by sale. Later scholars, such as for instance al-Anṣārī, argue that a waqf may be sold if it no longer yields any profit and the founder or trustee is able to buy a better object with the money, since this is to the advantage of the beneficiaries. However, the money may not be reverted to the beneficiaries or be used by the founder to cover his needs.[68] According to some, when a waqf object becomes totally unprofitable it is permissible to rescind the waqf and revert the object to its former owner or his heirs.[69] An *istibdāl* of a house for a piece of agricultural land is not automatically allowed, since the conditions for the exploitation are different. However, it can be allowed when such a transaction would be profitable for the beneficiaries.[70]

These juridical details show the parameters by which the validity of transactions with waqfs can be judged, depending on the formula used by the founder and the condition of the waqf. Conclusions divide into three levels: either the waqf is rendered invalid by a

[66] Id., f. 188.
[67] Id., f. 190.
[68] Id., ff. 189-190.
[69] Id., f. 190.
[70] Id., f. 192.

condition of the founder, or the waqf is valid but the condition is void, or both are valid and accepted, although in some cases a lacuna in the *waqfiyya* is filled in by juridical reasoning based on *istiḥsān*. The issues involved can be summarized as follows: a. *istibdāl* is stipulated by the founder; b. *istibdāl* is not stipulated by the founder; c. the founder forbids *istibdāl*. In the first case the general opinion is that *istibdāl* is allowed. In the second case it should be examined whether the waqf is profitable and can or should be replaced by a new object. If the waqf is totally unprofitable, then *istibdāl* is allowed; if it is profitable but the substitute is more profitable, then *istibdāl* is not allowed. This is the opinion of important scholars such as Hilāl, al-Khaṣṣāf, Abū al-Layth, Abū Bakr, al-Anṣārī, al-Sarakhsī, and others.[71]

An important source for this argumentation is the fatwa collection of the Transoxianan scholar Qādīkhān, who claimed that according to *ijmāᶜ*, in the case of the omittance of a stipulation of the right of *istibdāl*, only the qadi has the right to sanction such a transaction if it is in the interest (*maṣlaḥa*) of the waqf. According to our author, however, no such *ijmāᶜ* exists since some authors even doubt the legitimacy of *istibdāl* in such a case. Nevertheless, other scholars explicitly agree that in this case the qadi has the final say in carrying through the transaction.[72] It is this latter issue that after this survey becomes central to our author's discussion. He reiterates that the case of a founder stipulating the right of *istibdāl* is not really difficult or controversial, and even when he wholly or partly omits the *istibdāl* formula there is no significant divergence of opinion. 'The great problem in our times, however,' he continues, 'is when a founder has explicitly stipulated that *istibdāl* is not allowed' (*ʿadam al-istibdāl*).[73]

Our author proceeds to say that only one scholar has dealt with this problem, qadi ʿImad al-Dīn Ibrāhīm al-Ṭarsūsī.[74] Al-Ṭarsūsī begins to state that in principle in such a case *istibdāl* is not allowed, but

[71] Id., f. 193.

[72] Id., ff. 190, 193-6.

[73] Id., f. 197.

[74] ʿImād al-Dīn al-Ṭarsūsī became teacher of al-Nūriyya al-Kubrā and chief qadi of Damascus in 1347. According to al-Nuʿaymī he died in the same year. He also held teaching posts at al-Muqaddamiyya al-Juwwāniyya, al-Rukniyya al-Barrāniyya, al-Qalʿa, al-Qaymāziyya and al-Nūriyya al-Ṣughrā; al-Nuʿaymī (1990), vol. 1, pp. 399, 421, 442, 459, 478, 499; see also: G. L. Guellil, *Damaszener Akten des 8./14. Jahrhunderts nach aṭ-Ṭarsūsīs* Kitāb al-Iʿlām*; eine Studie zum arabischen Justizwesen*, Berlin/Bamberg 1985.

sometimes lands fall into decay and are no longer exploited. An *istibdāl* would then be in the interest of the waqf. To support his thesis, al-Ṭarsūsī cites the argument that conditions stipulated by the founder that are harmful or not beneficial for the waqf should not be accepted. As an example he mentions cases when the founder stipulates that neither the sultan nor the qadi have any authority regarding the waqf. This condition is rejected by scholars, since it is contrary to the law: in fact the qadi has the highest supervisory power (*al-naẓar al-aʿlā*). The same is true when the founder stipulates that his waqf may only be rented for a period of one year: if the qadi considers it to be in the interest of the waqf to lease it for a longer term, then he is allowed to overrule the founder's condition, since the authority of the qadi is superior to that of the founder. This also applies to the appointment of supervisors, administrators, functionaries, etc.[75]

The criticism to be expected from his contemporaries is forestalled by our author: 'You will answer that this [method of reasoning] is *qiyās*, and say: "You are not authorized to exercise *qiyās*, because that is reserved for the *mujtahid* and the age of *ijtihād* has ended. There are no longer any *mujtahid*s on earth."' Several sources are cited to confirm that *ijtihād* is no longer allowed and that qadis who pronounce verdicts on the basis of their own interpretations risk severe punishment. If renowned scholars who died a long time ago denied that they held the rank of *mujtahid*, how could al-Ṭarsūsī, who died in 758 (1357), claim the authority to practise *qiyas*? However, our author answers: 'As for the closing of the age of *ijtihād*, this is not without controversy, because *ijtihād* is not bound to a certain period. Al-Ṭarsūsī may not have been of the rank of *mujtahid*, but what he practises should properly called "deduction" [*takhrīj*], and not *qiyās*, because it concerns a specific lacuna in a part of a rule.' And: 'If you claim that those authorized to exercise *takhrīj* are also extinct, then your claim is without proof, since the Bountiful has not closed the gate of excellent people forever.' Thus, on the basis of this opinion of al-Ṭarsūsī, the far-reaching capacities of the qadi are endorsed.[76] In some periods, however, qadis are not to be trusted and all qadis should heed the admonition in this treaty and avoid corruption, 'since the freedom of *istibdāl* has not been witnessed on such a scale

[75] *Risāla*...., ff. 197-8.
[76] Id., ff. 198-9.

before our time'. The example is cited of the famous Egyptian qadi ʿAbd al-Barr ibn al-Shaḥna, who practised *istibdāl* so excessively that a popular poem said about him that he would sell God's Kaʿba if it had been in his power to do so.[77]

The second part of the treatise is dedicated to the issue of rent. The concept of rent is defined linguistically and juridically and divided into two categories: rented labour (*aʿmāl*) and rented objects (*manāfiʿ*). In both cases it concerns the sale of exploitation (*bayʿ al-manfaʿa*). The main problem of the leasing out of waqf possessions is the stipulation that only a limited term of rent is allowed, usually one, or at the most three years, since a longer term would lead to the annulment of the waqf. After all, people would in the course of time no longer remember that a property is waqf and consequently give false statements in court. Since oral testimonies are the main category of legal evidence, this would endanger the legal status of waqfs.[78] In the old days, this was not seen as a problem and there were no limits to the terms of the leasing of waqfs, but in these times people are prone to corruption and eager to appropriate what is not theirs.[79]

There are instances, however, in which a longer lease-term is the only way to make a waqf object profitable, for example when agricultural land can only be sown once every two years, or when an advance payment is necessary for repair or investment. These 'interests' of the waqf are dependent on place and time and are to be taken into consideration to avoid the possibility that a waqf cannot be profitably exploited.[80] Consequently, several forms of long-term lease are allowed by many scholars, such as the continuation of a lease for ten subsequent periods of three years. However, the qadi should protect the waqf against abuse and dissolve the lease contract when the status of the waqf is threatened.[81] Here, al-Ṭarsūsī is cited once again, who pleads for the view of the 'ancient' scholars (*al-mutaqaddimūn*), who stipulated no limit to lease-terms. Their opinion should prevail, because, firstly, their *ijtihād* is 'strong'; secondly, they were close to the age of the imam, and, thirdly, they excelled in deduction (*takhrīj*) concerning cases for which no transmitted opinion (*riwāya*) is avail-

[77] Id., ff. 200-1; a similar anecdote on qadi Ibn Shaḥna is cited by Behrens-Abouseif (1994), p. 147..

[78] *Risāla*...., f. 206.

[79] Id., ff. 210, 211, 213.

[80] Id., ff. 207, 208, 211.

[81] Id., ff. 207, 210, 211-2.

able. Some later scholars support this opinion, notably Abū al-Ḥasan al-Saʿdī, Abū Bakr al-Balkhī, Abū ʿAlī al-Nasafī and Abū al-Qāsim al-Balkhī. However, in recent times opinions came to differ, and because of this *ikhtilāf* it is necessary to take resort to the qadi to have each case assessed separately.[82] The question is subsequently related to another one: objects rented for an amount below the *ajr al-mithl*, resulting in *laesio enormis* ('grave deception', or *ghabn fāḥish*). The debate focuses on the question whether a tenant in such a case should be regarded as a usurper (*ghāṣib*) and be forced to supplement the rent for the period of the contract. Here too the qadi has a prominent role, according to some, being authorized to dissolve the agreement and even to discharge the trustee.[83]

The document summarized here is not only interesting for its conclusions, but also for its structure and arguments. After the basic definitions, it is built up step by step referring to previous scholars, not only to present their conclusions on the subject, but also to give a survey of their interpretations of the early jurists of the *madhhab*. In this way a panorama of reasonings is put together which gives an insight in the development of the debate, arranged in several layers that were accumulated in the course of time, and according to different tracks of transmission, at various places, by various scholars. One looks to the sources through the prism of manifold interpretations, which were nevertheless part of a coherent and methodologically structured whole. This method is not only adopted to give the argument a historical dimension and secure its roots in the legal tradition, but also to evoke the dynamic evolution of legal thought. There is a clear awareness that law is part of a historical process, that solutions were formulated partly by references to the legal tradition, but also partly in response to circumstances requiring devices which had not been foreseen by the ancient jurists.

The development of thought is illustrated, firstly, by the division made between the ancient and the modern scholars, and, secondly, by the discussion about method and legal authority. These elements of the discussion are utilized at will to buttress the argument, even in a seemingly contradictory way, as is shown by al-Ṭarsūsī, who at one time prefers the flexibility of moderns to the ancients, while at another time praising the trustworthiness of the ancients as opposed to

[82] Id., ff. 212-3.
[83] Id., ff. 214-7.

the moderns. Finally, the influence of historical development is shown by the evolution of the ideas themselves, in the case of *istibdāl* towards a greater flexibility, and in the case of *ijāra ṭawīla* towards more precise restrictions. This divergence between the two illustrates that it is dangerous to try to discern a unilinear evolution of concepts within the legal tradition, either towards greater permissibility, or towards greater restrictiveness. The only pattern to be perceived is that apparently it was felt that differences of opinion increased in the course of time and that rules should be adapted to the characteristics of the times, which of course necessitated the formulation of new directives. The treatise shows to what extent this process was influenced by jurists from Transoxiana, such as Abū al-Layth, al-Sarakhsī, al-Marghīnānī, al-Nasafī, Qāḍīkhān and others.[84]

Conclusions

The examples of legal discussions of waqf given above illustrate the functioning of the theoretical framework of the legal apparatus. They show the dynamism of texts, linked tightly to each other and to the vested hierarchies of authority. They are based on each other, but also comment on each other, reorganize the material, elaborate existing rules, and add discussions on new practices. They also show the dialectic between, on the one hand, practices and individual cases, and, on the other hand, the authoritative system of general rules and concepts of the Hanafite tradition and its system of transmission and interpretation. It is clear that the aim of the texts was, firstly, to systematize the legal rules concerning waqfs; secondly, to present authoritative and practical surveys of rules which could strengthen waqf as a legal concept; and, thirdly, to integrate new practices into the authoritative system of rules. It should be observed that there was a tendency to reconcile new practices with mainstream legal thought, and that practices deviating from general rules should not too readily be considered as anomalies or infringements on the law. One should rather conceive of them as part of a dialectic between practice and legal theory, which falls into the regular evolution of legal reasoning and legal practice, and which was certainly not alien to the concept of waqf.

[84] See also McChesney, p. 33.

The discussion of the texts above gives us an outline of the theoretical boundaries delimiting what might be called the 'field' of waqf. Firstly, an evolution can be perceived towards a stricter and more detailed definition of waqf, resulting in an 'institutionalization' of the concept, in the sense meant by Bourdieu, by a rite of passage providing the object with a sacrosanct status. By becoming waqf, an object is subjected to a whole set of rules developed especially to protect its status and to enhance its exploitation to the general benefit of the community. After this definition the set of rules regulating the founding and administration of waqfs are refined, to describe the rights and duties of those groups which have invested in the institution of waqf, or which are its beneficiaries. Here the institution of waqf is made more coherent in the legal sense, but also in the practical sense, by giving guidelines for practical problems. Each text that proposes accommodations of the rules also confirms the basic definition of the institution and strengthens its roots in the legal tradition and the mechanisms for the transmission of authority. The institution, at the centre of a field of interests and competitors, is permanently consolidated, but at the same time it is adapted to new requirements and new socio-economic configurations.

Of course, the legal texts show only one side of the picture. They reveal the regulations governing the functioning of the field and securing its reproduction. However, they also reflect their intertwinement with the historical circumstances in which they were conceived, firstly by the mentioning of practices which show the influence of changing conditions on the functioning of the institution, and, secondly, by references to parties involved in the administration of the institution and their interests. Apart from the founders and the beneficiaries, who, of course, formed the basis of the waqf system, it is the positions of the qadi and the secular ruler that are increasingly integrated into the legal framework. It is to their roles in the formation of the field of waqf to which we shall now turn our attention.

CHAPTER TWO

WAQFS, THE ULAMA AND THE STATE

In the previous chapter an outline was given of the development of the concept of waqf into a well-defined institution. The rules which were formulated were aimed at the incorporation of the waqf concept into the value-system of the Faith and the community. It also stimulated the proliferation and exploitation of waqf objects for the spiritual and material welfare of the believers. Because of its attractive combination of religious connotations and material advantages, the waqf institution grew into one of the main types of real estate possessions. Waqfs were a symbol of piety, which reflected on the founder, for whom the endowment was not only one of the ways to secure his salvation in the hereafter, but also a way to enhance his reputation and social status during his lifetime, while he and his family—or others—were allowed to profit from the revenues for an indefinite period. In the course of time the waqf institution came to represent an important complex of economic assets, not only in the form of mosques, schools and other religious buildings, but also in the form of trade facilities, agricultural lands and other revenue-producing possessions. As the economic importance of waqfs increased, so did the interests of the parties which were somehow connected with the field of waqf, apart from the founder and the beneficiaries: the ulama and the state.

The ulama were not only responsible for the elaboration of the legal framework of the waqf institution; they were also often entrusted with the administration of waqfs, as trustees or qadis. Moreover, as religious functionaries, they were often among the beneficiaries taking their livelihood from the revenues of individual waqfs. The state, too, had varied interests in the material assets gathered in the system of waqfs. Evidently, the institution had to be incorporated into the administrative system, which was not confined to legal rules, but also covered the fiscal set-up and the control of struggles for power. Moreover, as a symbol of piety, the waqf institution had an important ideological dimension which the rulers could not neglect. Thus, as waqfs came to represent a significant economic factor, the interests connected with their exploitation increased. It was the inter-

action between these interested parties that shaped the system of waqfs both in its theoretical conception and in its historical manifestation. As will be explained below, the way in which this occurred was part of the mechanisms of power. It will be argued that the waqf system, partly through its spatial dimension in the urban context, contributed to the shaping of the networks of the ulama. At the same time the waqf system was used by the state as a means to structure the networks of the ulama in order to strengthen the administrative apparatus.

The ulama

By becoming waqf, an object underwent a transformation which confirmed its sacrosanct status, as part of the system of religious and moral codes, and made it subject to a separate set of rules, to protect its 'eternal' status. This transformation and this status were supervised and protected against corruption and decay by members of the community who theoretically would be especially concerned with the welfare of the community and the preservation of moral and spiritual values: the ulama. As has been showed above, in the waqf-compendium of al-Ṭarābulusī an important task is assigned to the qadi, as supervisor of transactions with waqfs and judge in cases of conflicts, the appointment and dismissal of administrators, etc. Qadis were, one might say, the official guardians of waqfs, or at least they assumed this role in the course of time. It is noteworthy that both al-Khaṣṣāf and al-Ṭarābulusī were qadis, of Baghdad and Cairo respectively, besides being active as interpreters and compilers of waqf handbooks. As ulama, they were involved not only in the administration of justice, but also in the development of the theoretical outline concerning waqfs. Apart from these two roles, the ulama as a group were at least from the 12th century onwards also among the most important beneficiaries of the waqf-system, as teachers in *madrasa*s and functionaries in various religious institutions.

The concentration of interests related to waqfs in the hands of the ulama gave them a privileged position. Some have argued that the relation between the ulama and waqfs should be seen as a more or less closed professional guild, since the ulama increasingly monopolized the design of the organizational set-up—by formulating rules

within their *madhhab*s—and the distribution of the revenues.[1] Although it is certainly true that the connections between the ulama and the waqf institution were very intimate and that through their function as interpreters of the law the ulama had a crucial influence on the theory and practice of waqfs, this conclusion seems too artificial. Firstly, the ulama were not the only ones benefitting from waqf-revenues and the measure of their grip on the distribution of waqfs depended not only on their role as legal interpreters, but also on their position in the society and the extent to which the legal system was effectively imposed by the state. Secondly, at least from the period onwards, the sultan, or the state, played a prominent role in structuring both the waqf-system and the ulama network. Although the waqf institution undoubtedly contributed to the integration of the corps of ulama, the differentiation of interests and the importance of external influences were sufficient to prevent a total convergence of the waqf system and the organization of the ulama. The scholarly profession was in principle open to all, *madhhab*s were not autonomous in organizing the waqf system, and ulama often served the interests of secular rulers against those of their colleagues.

Since anyone could in principle choose a scholarly career, the corps of ulama was essentially diffuse, encompassing a variety of social classes, economic positions, educational levels and administrative functions. This does not mean that they were an amorphous body, since these categories were of course among the factors structuring the different networks and regulating hierarchical mobility within the group. Social status, family adherence, material wealth and a foothold in administrative institutions were assets for a young scholar's career, but erudition, talent, and the protection of influential teachers and governors could also be of decisive importance.

Since the composition of the corps of ulama is potentially diverse, it is perhaps not adequate to speak of them as a group with a single common definition. The backgrounds of functionaries and scholars can be so varied, that it would be preferable to use the term 'networks' as referring to the relations connecting the ulama to each other, which are not necessarily confined to one domain. Moreover, the term 'networks' indicates a certain dynamism in space and time and a nexus between hierarchical and spatial mobility. Finally, a network suggests an open structure which can be shaped and influ-

[1] Makdisi (1990), pp. 16, 20-1.

enced by external forces and not exclusively by some form of group cohesion. Networks have their centres and focal points in space and time, where their pillars and the repositories of their authority are to be found. One can say that there was a dialectic relationship between the ulama networks and the religious institutions; the ulama invested their authority in institutions such as *madrasa*s and mosques, which in the course of time acquired a reputation that in turn enhanced the authority of their scholars and thus contributed to structuring hierarchies within ulama networks. Another factor influencing the relation between ulama and religious institutions were the administrative functions open to scholars provided by the state, especially in the legal apparatus, which could strengthen the position of certain scholars among their colleagues.

In this section some aspects of the relations between the ulama network and the waqf institution in Damascus in the Ayyubid and Mamluk periods will be discussed, focusing on the spatial dimension of the ulama networks on three levels: the city as a centre attracting ulama from other regions, waqf as the organizational framework of schools, and the way in which schools contributed to the structuring of ulama networks. It is not our aim here to present a reconstruction of the development of the educational system in Damascus, nor of the organization of scholarship; our discussion, which will be based on some archival material and on the text of al-Nuʿaymī, only aims to shed some light on the interaction between the waqf system and ulama networks, to support the contention that this interaction had a clear spatial dimension and that it was at least partly shaped by competition between various participants in the field of waqf. To limit our field under consideration, we shall concentrate on Hanafite scholars and institutions.

The geography of sacred learning

The attractive force of urban centres mainly derives from three sources: material wealth, secular authority and spiritual heritage. These three domains are not necessarily interrelated, since, for instance, a town can preserve its religious appeal in periods of political decline. In the case of Damascus, the religious importance of the city was derived from a large number of more or less holy sites, linked to legends and tradition, historical figures and religious buildings and

shrines. In his guidebook for pilgrims, Abū al-Ḥasan al-Harawī (d. 1215) mentions a long list of sites, such as the Mashhad al-Naranj, containing a stone connected with the history of ʿAlī ibn Abī Ṭālib, the fourth caliph, and the tombs of several companions of the prophet, three of his wives, the forefathers of the Abbasid caliphs, descendants of ʿAlī, in total twenty-four persons, some of whom, al-Harawī remarks, are in reality buried in Medina. In one of the *madrasa*s a black stone is preserved in which the footprint of the prophet can be seen, taken from the Ḥawrān. In the Sūq al ʿUlabiyyīn the 'column of the retention of urine' can be found, a talisman whose value has been proved, according to the population. A large section is dedicated to the Umayyad Mosque, with the oratorium of ʿUmar ibn al-Khaṭṭāb, the *mashhad*s of al-Ḥusayn and Zayn al-ʿĀbidīn, the son and grandson of ʿAlī, and the *maqṣūra* of the companions, the *zāwiya* of al-Ḥāḍir, the head of John the Baptist, the written by Caliph ʿUthmān and the alleged tomb of the Prophet Hūd, which, al-Harawī says, is in reality located in the Ḥaḍramawt.[2] Al-Harawī continues his discussion of the Umayyad Mosque as follows, in the translation of Janine Sourdel-Thomine:

> 'Il n'est point en pays d'Islam de sanctuaire comparable a la Grande-mosquée de Damas, hormis la mosquée al-Aqṣā de Jérusalem, pour la beauté de la construction tout au moins, car pour l'activité dans le domaine des sciences profanes et religieuses, c'est aux Grandes-mosquées de Herat, de Balkh et de Sijistān qu'appartient la suprématie; quant aux mosaïques dorées de la coupole de l'Aigle (*qubbat al-Naṣr*), je les ai vues dans des sanctuaires du pays des Rūm dont il sera question plus loin, s'il plaît à Dieu. Dans la Grande-mosquée encore, les petites *colonnes* de marbre blanc veiné de noir qui se trouvent sous la coupole de l'Aigle auraient appartenu, d'après ce que l'on raconte, au *trône de Bilqīs* et Dieu seul sait la vérité. On dit aussi que le minaret occidental de la Grande-mosquée, dans lequel séjournèrent al-Ghazālī et Ibn Tūmart, le [futur] souverain des pays du Maghrib, était un temple pour les adorateurs du feu et que vers lui se prosternaient les gens du Hauran lorsque s'y élevaient des flammes; actuellement des 'saints' y résident en grand nombre. Le minaret occidental serait, dit-on, le '*minaret blanc*' près duquel descendra ʿĪsā ibn Maryam; il s'y trouve une pierre provenant de *rocher que frappa Mūsā* si bien que 'douze sources en jaillirent' (*Coran*, VII, 160), et Dieu seul sait la vérité. Mais on dit aussi que le minaret sur lequel descendra le Messie serait celui que se trouve près de l'église de Marie (*kanīsa Maryam*) à Damas et Dieu seul sait la vérité. Dans la Grande-mosquée, sous la coupole du Trésor, c'est-à-dire la coupole

[2] Al-Ḥarawī, pp. 32-8.

> occidentale, la *tombe de ʿĀ'isha*, qui se trouve en réalité dans le cimetière du Baqiʿ [à Médine] et Dieu seul sait la vérité. Sur la porte de la Grande-mosquée, que l'on appelle porte de l'Addition (*bāb al-Ziyāda*), un morceau de lance accroché dont on raconte qu'il provient de la *lance de Khālid ibn al-Walīd* et Dieu seul sait la vérité."[3]

Al-Harawī concludes his section on Damascus as follows:

> 'À Damas encore, la *tombe de Nūr ad-dīn Maḥmūd ibn Zanjī* qui fait partie des 'saints', dans la madrasa qui porte son nom, et, près de la Grande-mosquée dans le quartier des Chaufourniers (*al-Kallāsa*), la *tombe* du pieux serviteur [de Dieu] *Ṣalāḥ ad-Dīn Yūsuf ibn Ayyūb*, conquérant de Jérusalem, des marches et des places-frontières."[4]

The account of al-Harawī shows a typical amalgam of legend, Christian as well as Muslim, historical heroes and events, popular beliefs and doctrine, religious and secular charisma, which characterizes the symbolic reputation of Damascus. Apart from this, the city of Damascus is placed in a hierarchy of cities as far as monumental appreciation and the standard of learning are concerned, thus measuring its attractiveness as a centre of religion. Symbols of religious and secular history are combined to determine the position of Damascus within the geography of the sacred.

For medieval Muslim scholars, pilgrimage and learning were to a certain extent linked to each other. The process of acquiring knowledge and obtaining official qualifications implied visiting scholars in other towns, following courses in famous institutions and collecting and copying texts. The pilgrimage to Mecca was usually not only the fulfilment of a religious duty; it was also an opportunity to visit scholars in the holy places and towns on the way and to acquire a pious reputation by visiting shrines and holy sites. Thus, travel was one of the mainstays of the ulama network, and in the case of Damascus one can see that ambitious pupils as a rule left their native town to study in other centres of learning, such as Cairo and Baghdad, but also Transoxiana and Mecca. In the Umayyad period, the caliph appealed to scholars to come to Damascus, and as a result the city became the main centre for the science of *hadīth* after the Ḥijāz.[5] From the Ayyubid period onwards, when the city could boast of its own *madrasa*s, scholars travelled to Damascus from abroad, attracted by the opportunities for work and the patronage of the governors.

[3] Id., pp. 38-40.
[4] Id., p. 40.
[5] Abiad, pp. 80, 112.

There was especially a large influx of ulama from the East, Transoxiana and Khorasān, usually via Aleppo. After the destruction of Baghdad and the elimination of the caliphate by the Mongols in 1258, many scholars fled the city and settled in nearby Damascus. This naturally gave an important impulse to religious and scholarly life in the city, both by broadening the scope and enhancing the level of, especially Hanafite, *ḥadīth* scholarship and by introducing new forms of sufism.[6] Ibn Baṭṭūṭa is remarkably positive about the opportunities for scholars to thrive in Damascus, due to the proliferation of waqfs:

> 'The people of Damascus vie with each other in the building and endowment of mosques, religious houses, colleges, and sanctuaries. (...) Every man who comes to the end of his resources in any district of Damascus finds without exception some means of livelihood opened to him. Either as imām in a mosque, or as a reciter in a college, or by occupation of [a cell in] a mosque, where his daily requirements are supplied to him, or by recitation of the Qur'ān, or by employment as a keeper at one of the blessed sanctuaries, or else he may be included in the company of Ṣūfīs who live in the convents, in receipt of a regular allowance of upkeep-money and clothing. Anyone who is a stranger there living on charity is always protected from [having to earn it at] the expense of his self-respect, and carefully sheltered from anything that might injure his dignity. Those who are manual workers or in domestic service find other means [of livelihood], for example as guardian of an orchard or intendant of a mill, or in charge of children, going with them in the morning to their lessons and coming back [with them] in the evening, and anyone who wishes to pursue a course of studies or devote himself to the religious life receives every aid to the execution of his purpose.'[7]

This account stresses a combination of moral and material 'facilities' provided by Damascus for the travelling scholar, provided by the waqf system.

The migration of ulama should at least partly be seen in the context of the administrative framework of the state. Under the Ayyubids and the Mamluks Damascus was a provincial capital, important as a regional centre, but subordinate to the imperial capital, Cairo. In both periods efforts were made to establish links between the ulama networks and the state, or, perhaps more accurately, with the ruling elite. This occurred mainly through the foundation of schools and the institutionalization of the office of qadi. Of course, a hierarchical

[6] Pouzet, pp. 30, 51, 54-6; see also Nashabe, pp. 58, 81, 95.
[7] Ibn Battuta, vol. 1, pp. 149-150.

organization of the judicial apparatus broadened the career opportunities for the ulama, while the expansion of the *madrasa*-system created an increased number of teaching posts and new resources from waqf-revenues. Important teaching posts, the supervision of schools and other ulama functions of any weight were controlled by the state and not left to the policies of waqf-administrators. The control of these institutions was further strengthened by waqf complexes. The imperial dimension of the ulama hierarchy entailed that scholars were required to apply for positions outside their native town, and in the case of Damascus it was no anomaly that scholars acquired appointments first in Cairo or in Syrian provincial towns, such as Baʿalbakk or Jerusalem, before they returned to Damascus to assume either an administrative function or a teaching position. Some scholars joined the retinue of sultans, emirs and high officials and linked their careers to those of their patrons, following him to his administrative posts throughout the empire, hoping to rise to the rank of qadi or become an administrator or beneficiary of their patron's waqfs.[8]

The above shows how the 'geography' of learning was shaped by a complex set of factors, consisting of the spiritual reputation of cities, the framework of urban and imperial administration, financial resources, and the distribution of centres of authority. Within this infrastructure, the network of the ulama was supported by specific institutions, in which the various components converged. At least from the 12th century onwards, the basis of this infrastructure was formed by the educational institutions, the *madrasa*s.

Institutions: Hanafite schools

In his history of Islamic architecture Robert Hillenbrand argues that the *madrasa* as an institution originated not so much as a result of ideological struggles with non-Muslim groups, but rather from the internal needs of the community. First developed in eastern Persia in the 10th-11th centuries, it was taken to the Fertile Crescent and Egypt under Seljuk rule, in the form of state-sponsored institutions and law-schools, set up in the form of waqfs. The great expansion of the educational institutions in Damascus occurred in the 12th and 13th centuries, when the number of schools eventually reached more

[8] Pouzet, pp. 25, 30, 107-145.

than one hundred, including Qur'ān and *ḥadīth*-schools. One of the particular characteristics of the *madrasa*s in Syria was that they were large in number, but of relatively small size. Most of them were built to serve a single *madhhab* and these were probably meant to be used by people living in their immediate surroundings. Another explanation, in the case of Damascus, might be the sudden urge of the Ayyubid elite to found schools—often combined with mausolea—in the densely built central urban quarters and by the many immigrant scholars who were eager to establish a location for their own religious and educational activities. They were not the manifestation of a centralized imperial rule, but rather, as in the case of mosques, of a diversification of the elite, who tried to carve out their spheres of influence in the city quarters and in the urban power structure. There was no unity of style, no grandeur and no attempt at centralization.[9] The construction projects were initiated in the 12th century by Nūr al-Dīn al-Zanjī personally, and imitated by his household and emirs, and building activity continued under the first Mamluks, both *intra muros* and in the suburbs, such as al-Ṣāliḥiyya. Although the Shafiites remained the most popular *madhhab* in Damascus, it was the Hanafites who profited most from the spectacular expansion in the 13th century, both in terms of number of locations and of job opportunities. The teaching posts were at first filled by immigrant scholars from the East, but also by scholars from Aleppine ulama-families and, later in the 13th century, by scholars from southern Syria.[10]

In this section we shall deal with the *madrasa* as the object or beneficiary of waqfs and see from a limited number of examples in which ways they were founded and organized. Al-Nuʿaymī divides the schools listed in his survey into four general types, according to their specialization: the *dār al-qur'ān*, the *dār al-ḥadīth* (sometimes the two are combined), the *madrasa* and the *khānqāh* (sufi convent). In general, he gives few details with regard to the organization and personnel of the schools, or the legal and economic aspects of the waqfs, but his information, combined with data from other sources, allows us to get a general impression of the types of institutions. Moreover, the survey of al-Nuʿaymī gives us examples of the way in which ulama careers and official functions were linked to the *madrasa*s.

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[9] Hillenbrand, 175, 177, 183-206; see also Nashabe.

[10] Pouzet, pp. 150-2; Gilbert; Nashabe, p. 58.

As we have seen above, from the 12th century onwards a large number of *madrasa*s were founded by state-officials and members of the Ayyubid and Mamluk elites. The Hanafite Madrasa al-Khātūniyya al-Juwwāniyya was founded in the twelfth century by the wife of Nūr al-Dīn al-Zanjī (d. 1185). In the first century after its foundation the teaching posts were as a rule handed down from father to son and apparently linked to the function of qadi. One of the most prominent teachers was Majd al-Dīn (d. 1278), who came from a family of chief qadis and was born in Aleppo. He travelled to Damascus and Cairo and became so famous that the sultan attended his courses. He was appointed *khaṭīb* of the Ḥākim Mosque in Cairo before receiving the office of chief qadi in Damascus in 1274. He was also the first teacher in the Madrasa al-Ẓāhiriyya. One of his pupils combined the posts of teacher in al-Khātūniyya and al-Nūriyya—see below—with the function of *qāḍī ʿaskar* of Nūr al-Dīn. He was succeeded by Ḥusām al-Dīn al-Rūmī, who was born in Aksaray and came to Damascus in 1276 to become qadi and teacher at al-Khātūniyya. Later he was appointed qadi of Egypt and he returned to Damascus as qadi after the death of the sultan. During his stay in Cairo, his teaching functions in Damascus were taken over by his son, with the permission of the governor. He taught not only in al-Khātūniyya, but also in several other schools. He was chief qadi until his death in 1344.[11]

Another important institution of the Ayyubid period was the Khānqāh al-Sumaysāṭiyya, founded by one of the prominent notables of Damascus, Abū al-Qāsim ʿAlī al-Sumaysāṭī, who was immensely rich and who at his death in 1061 converted most of his possessions into a waqf. He endowed a house that had once belonged to the Umayyad caliphs as a waqf, partly for sufis and partly for the Umayyad Mosque. In the 12th century a scholar came from Nishapur to visit Jerusalem. He took the opportunity to request an audience with Nūr al-Dīn, but when he asked permission to return to his country, Nūr al-Dīn refused and appointed him shaykh of al-Sumaysāṭiyya. In 1167 he appointed Abū al-Fatḥ ibn Ḥamāwī (d. 1172) as shaykh of al-Sumaysāṭiyya and supervisor of all the convents (*rabāṭs*, *zāwiya*s) and other waqfs of the sufis in Damascus, Ḥimṣ, Ḥamāh, Aleppo and Baʿalbakk. Under Sultan Ṣalāḥ al-Dīn this function of *shaykh al-shuyūkh* was conferred upon his sons. In the 13th

[11] Al-Nuʿaymī (1990), vol. 1, pp. 388-397.

century, shaykh Jamāl al-Dīn al-Bizūrī, a well-known merchant, acquired not only this post, but also the supervision (*naẓar*) of the Umayyad Mosque and the Nūrī Hospital, and the functions of qadi and *khaṭīb*. In 1303 the Syrian sufis asked governor al-Afrām to appoint a certain *shaykh al-shuyūkh*. Al-Afrām complied, but later another candidate was appointed by the sultan. This procedure was repeated in 1316 and 1323. In this period the office of *shaykh al-shuyūkh* was as a rule combined with other functions, such as qadi, *qāḍī ʿaskar*, teaching posts and, from the second half of the 14th century, secretary (*kātib al-sirr*) and treasurer (*wakīl*) of the state treasury (*bayt al-māl*).[12]

One of the most important schools in the Ayyubid period was the Madrasa al-Nūriyya al-Kubrā, founded by Nūr al-Dīn al-Zanjī in 1167/8, in a former residence of Caliph Muʿāwiya in Khaṭṭ al-Khawwāṣīn. Among the first teachers, some of them relatives of teachers in al-Khātūniyya, was Jamāl al-Dīn Maḥmūd al-Ḥaṣīrī, who was shaykh of the Hanafite scholars of Damascus under al-Mālik al-Muʿaẓẓam and reciter in the Umayyad Mosque (d. 1239). From the beginning of the 14th century the function was apparently combined with the office of Hanafite qadi, or *nā'ib* qadi, and in 1415 it was assigned to Shihāb al-Dīn ibn al-Kishk, who was also *nāẓir al-jaysh* and Hanafite qadi, an accumulation of functions which had occurred previously in Egypt but never in Damascus. According to al-Nuʿaymī, he was deposed in 1429, since the qadi of Tripoli had bribed the sultan. However, Ibn al-Kishk mobilized the Damascene notables and took them to the Dār al-Saʿāda and the Umayyad Mosque to have himself restored in the 'functions pertaining to the office of qadi'. Finally the sultan decided that the functions should be divided between the two contestants. Ibn al-Kishk renounced the posts of teacher and *nāẓir* of al-Qassāʿayn and al-Ṣādiriyya, but held those of teacher and *nāẓir* of al-Khātūniyya, al-Murshidiyya, *khaṭīb* of the Tankīz Mosque, *nāẓir* of al-Jamāliyya, al-Ḥāfiẓiyya and (for one-half) al-Māridāniyya. Eventually, he was accused of the murder on one of his rivals for the office of *nāẓir al-jaysh*, and, although innocent, paid a fine of 4000 dinars. In total he was forced to pay up to 70,000 dinars as fines to the various sultans under whom he served, but he was still renowned for his richess and extravagancy. He was reputed to have owned 200 mamluks and 200 slave girls. After his death in

[12] Id. (1990), vol. 2, pp. 118-126.

1434 he was succeeded as qadi by his son Shams al-Dīn. At this time the location of the court was moved to the Dār al-Ḥadīth al-Nūriyya, and the qadi-ship was apparently detached from the Madrasa al-Nūriyya. Shams al-Dīn protested against this, however, because he would lose his salary, while he had to pay 1500 dinars to acquire the office of qadi. He refused his appointment and went to Egypt. His successor as qadi, al-Ṣafadī, subsequently claimed the professorship of al-Khātūniyya, while a rival of his demanded the combined functions of qadi and professor at al-Nūriyya. Exasperated by these demands, Sultan Barsbāy appointed a third candidate, who had been *nā'ib* qadi and mufti of the Dār al-ʿAdl, *khaṭīb* of the Yalbūghā and Rukniyya Mosques and teacher at several schools. He was deposed in 1436 in favour of al-Ṣafadī, who was in turn replaced in 1444 by Qawām al-Dīn al-Rūmī, who received a decree in which he was offered 40 dirhams a day instead of the supplementary offices, and the office of mufti at the Dār al-ʿAdl. Apparently, the office of qadi was now combined with that of *nāẓir* of the Hanafite waqfs in Damascus. This episode set the example for the competition between the Hanafite ulama to obtain the office of qadi and the supervision of al-Nūriyya in the subsequent period. The struggle was more often than not decided by the amounts of money the candidates were able or willing to procure for the sultan.[13]

In 1419 Qawām al-Dīn al-Rūmī acquired a professorship at the Madrasa al-ʿIzziyya al-Barrāniyya, which had been founded in 1229 by *ustadār* emir Izz al-Dīn al-Muʿaẓẓamī. He had been *qāḍī ʿaskar* of Egypt, but incurred the wrath of the sultan, whereupon he travelled to Jerusalem and Damascus. He married the daughter of the reciter of the Umayyad Mosque, who was his teacher and who gave him his certificate (*taṣdīr*). Afterwards he acquired the functions of his predecessor, consisting of one-half of a teaching post at al-ʿIzziyya, teaching posts at al-Farrukhshiyya and other schools, and the *wilāya* of the ʿIzziyya waqfs. Since he was unable to fulfil his duties with regard to the prosperity of the waqf, he spent some time in the dungeon of the Citadel. The second half of the teaching post in al-ʿIzziyya was taken up by his father-in-law, who had previously been qadi in Ḥamāh and Egypt. When he came to Damascus he acted for some time as professor of the Umayyad Mosque. His brothers were qadi and mufti of Ḥamāh. After his death in 1424 he was succeeded by Ibn al-Fasīḥ (d.

[13] Id. (1990), vol. 1, pp. 466-499.

1425), who had been witness (*shāhid*) of the Hanafite qadi in al-Nūriyya, before going to Egypt, where he befriended two qadis who helped him to obtain offices in Damascus, such as the post of administrator of the Khānqāh al-Baybarsiyya, one-half of the administration of the Khānqāh al-Sumaysatiyya, one-half of a professorship at al-ʿIzziyya and *nāʾib* of the chief qadi.[14]

An example of a school founded by a scholar in Mamluk times is the Madrasa al-Jawhariyya, founded by qadi Abū al-Ṭāhir ʿAbbās al-Tamīmī al-Jawharī. The document in which the foundation is recorded comprises seven waqf deeds (*kitāb al-waqf*), dating from 1277 until 1310. The *waqfiyya*s show a typical combination of an endowment for the benefit of the family and descendants of the founder and for the upkeep of an institution serving public interests. Moreover, they show how possessions gathered during a lifetime are gradually converted into waqf to preserve them for both the family and a specific pious purpose.

The waqf deeds refer to some pieces of land (*kharāj*-land, gardens, vineyards) in al-Ghūṭa, the fertile oasis surrounding Damascus, and two adjacent houses, one of which was the home of the founder's father, a stable and some storehouses, two more houses and two trading complexes (*qaysāriyya*) in the quarter of al-Balāṭa, a warehouse (*khān*) with two floors, two shops being converted into a perpetual waqf for the benefit of the founder and after his death for the three children of his daughter (each one-third), and subsequently for their children (female children half the share of the male children), and, finally, for the school. The supervision (*wilāya*) was to be taken care of by the founder and after him by his eldest son, then his second son, his third son, the most 'sensible' (*arshad*) of the beneficiaries, and, finally, the qadi of Damascus. The school was to follow the *madhhab* of Abū Ḥanīfa and the revenues were to be used to pay the salaries of a teacher, some Hanafite jurists and students, an imam, a concierge, a muezzin and an curator.

The fourth waqf consists of a house, becoming waqf for the grandson of the founder and the school. The sixth waqf deed concerns a house to be used by the wife of the founder during her lifetime and then by their children. Afterwards the revenues were to accrue to the school and, finally, to the poor Muslims. One fourth of the revenues were to go to the school. Finally, a large house, the residence of the

[14] Id. (1990), vol. 1, pp. 451-4.

founder in the al-Balāṭa quarter and the adjoining bathhouse, known as Badr al-Dīn, were to be converted into a waqf for the founder, his son and his grandchildren, their descendants, the school and the poor. The last three documents were in fact the first endowments, since they are all dated 5 *ṣafar* 676 (1277). In none of the documents are any conditions laid down for the organization, administration or curriculum of the school. As an appendix shows, the documents are systematically confirmed by the subsequent Mamluk and Ottoman chief-qadis of Damascus.[15]

Often the set-up and administration of the school were determined in a detailed way in the *waqfiyya*, smetimes including the curriculum. For example, in 1443 a Dār al-Qur'ān was founded together with a *turba* (mausoleum) by the prominent notable Zayn al-Dīn Dalāma (d. 1449), which was named after him al-Dalāmiyya. In the waqf-deed salaries were allocated to an imam (100 dirhams per month) and a curator (*qayyim*; 100 dirhams per month) in order to teach six poor children, who received 30 dirhams a month each. A sheykh was to be appointed to teach six orphans (60 dirhams; 10 dirhams each), and a reciter of the *ḥadīth* compilation of al-Bukhārī, for three months every year (120 dirhams). Of the administrators the supervisor (*nāẓir*) was to receive 60 dirhams per month, the superintendant (*ʿāmil*) 600 dirhams per year. A yearly budget was specified for the purchase of oil, candles, 15 *raṭl* sweets and two sheep for the functionaries, and a cotton robe, a shirt and a handkerchief for the orphans. Every Tuesday parts of the Qur'ān were to be read by a reciter, and the other functionaries were obliged to recite other parts twice a day. The curator was to perform the duties of the concierge (*bawwāb*) and the muezzin.[16]

Another example, which also shows the dual structure of these waqfs—one component generating revenues, another component consuming them—was the Dār al-Qur'ān al-Ṣābūniyya, which was completed in 1463. The founder stipulated the supervision for himself and his descendants, and afterwards for the governor of Damascus and the imam, probably the chief-qadi. Furthermore, the *ḥadīth* of al-Bukhārī was to be recited and ten poor pupils were to be taught Qur'ān recitation. Provisions were made for a *khaṭīb*, who had to be a Shafiite, and an imam, who had to be a member of the Jabartī

[15] *AL: Waqf al-Madrasa al-Jawhariyya*; see also al-Nuʿaymī (1990), vol. 1, pp. 381-3.
[16] Al-Nuʿaymī (1990), vol. 1, pp. 8-9.

family and a Hanafite. If the Jabartīs were to die out, then an imam would be appointed from the Yemen, firstly, or, secondly, from the Ḥijāz, or, thirdly, from another distant region. For the upkeep of the school a waqf was founded consisting of some villages near Beirut and in al-Ghūṭa, al-Marj, al-Biqāʿ and al-Ḥawrān. Besides, buildings were included outside Damascus, such as the Khān al-Buqsumāt, several other *khān*s, five parts of houses, and twenty-one shops, some of which were shared with the waqf of the holy places, the Awqāf Ḥaramayn al-Sharīfayn. Finally, the waqf of a slave of the founder, consisting of a garden, an apartment and an olive press, was added.[17]

Schools were founded by ulama, emirs and merchants, and were often part of larger waqfs including various kinds of buildings and possessions, sometimes extending beyond the city and its surroundings. Especially after 1417, the share of ulama and merchants in the total number of founders increased.[18] Emirs were not only active as founders, but also involved in the administration and supervision of waqfs. That they sometimes interfered in a drastic way is shown by the example of the *khānqāh* of Jaqmaq, which was part of a waqf that was dissolved, broken down, reorganized and rebuilt several times. This waqf was not only a religious institution, but also, apparently, a repository of wealth, which the emirs tried to skim off. The nucleus of the waqf, the *turba* (mausoleum) of Sheykh Sanjar al-Hilālī, near the Umayyad Mosque, built in 1360, was confiscated by the sultan, on the accusation that the founder had refused to pay the *zakāt*-tax and had made unlawful demands on the emirs. The *turba* was subsequently restored and expanded with a *khānqāh*. This was destroyed by fire during the Mongol invasion and rebuilt by governor Sayf al-Dīn Jaqmaq in 1419, as a waqf comprising a souk built by him near the Bāb al-Jābiyya, a water-mill and a *khān*. The revenues were dedicated partly to the founder, his descendants and other beneficiaries, and partly to the institution. When Jaqmaq fell into disgrace, the waqf was plundered by another emir, who demanded the *waqfiyya* and refused to admit any sufis or reciters. The head of the school was the *kātib al-sirr* (chief-secretary) and *muḥtasib* of Damascus, a member of the Shiite al-Ḥusaynī family, who would later for some time monopolize the function of *naqīb al-ashrāf*.[19] The emirs Manjak, Yalbūghā and Tankīz were famous for their foundations (schools,

[17] Id. (1990), vol. 1, pp. 11-13.
[18] Lapidus (1967), p. 37.
[19] Al-Nuʿaymī (1990), vol. 1, pp. 374-9.

bathhouses, *khān*s, mosques, etc.); their economic interests are illustrated by their efforts to force merchants to move to the commercial centres built by them.[20]

These examples give a general outline of the use of waqfs as a basis for educational institutions in the Ayyubid and Mamluk periods. They show how intimately the ulama were related to the educational institutions, which became the 'locales' that supported the ulama networks. In the Islamic world, the transfer and reproduction of learning was traditionally based on the relation between a scholar and his disciples. The teaching activity, which was often concentrated in mosques, coagulated in the course of time into chains of transmission or schools of thought, connecting scholars with their teachers and predecessors and their contemporary colleagues, and deriving their status from the reputation of individual scholars. When the *madrasa* institution was established during the 10th to 13th centuries, one of the consequences was that the transfer of knowledge became increasingly centred around institutions and specific locations. It has been argued by others that the traditional chains of transmission were not broken by an institutionalization of the educational system and that the link between the sheykh and his pupils was not replaced by the adoption of formal curricula or the introduction of official diplomas by institutions.[21] Nevertheless, the spread of educational institutions had an important impact on the network of the ulama.The reputation of ulama now no longer solely depended on their learning or on the number of students they attracted to their courses, but also on their position within the system of institutions, which in the course of time acquired their own status and function. Moreover, the institutions were focal points for the distribution of revenues destined to support the educational and legal apparatuses, and the creation of professorships and other offices, or *manṣib*s, for the ulama, with an expanding reservoir of financial resources from waqfs, affected the careers of the ulama in a fundamental way. Apart from this, as we have seen, a new interaction evolved between the school system and the official functions which were meant to incorporate ulama into the state apparatus in order to strengthen the judicial and ideological basis of the regimes. Evidently, the information provided by al-Nuʿaymī, from which most of the foregoing examples are taken,

[20] Id., pp. 59-60; Dahmān, pp. 213-5, 191, 167ff.
[21] Chamberlain, 69-81.

gives only a limited view of the dynamism of the ulama networks in Damascus, since he only traces the careers of well-known scholars, who succeeded in acquiring high positions. These represented the higher echelons of the group which most ulama could only hope to reach by a stroke of good fortune. It is sufficient, however, to justify some observations on the impact of the spread of the *madrasa*s in Damascus on the structure of the network of ulama.

The information on ulama careers provided by al-Nuʿaymī and others confirms the idea of the geographical mobility of the ulama within their cultural and political zone, with the aim of improving their learning and to acquire positions within the educational institutions and the administrative apparatus. Damascus attracted scholars from Asia and from the Arab regions, while Damascene scholars studied in the Ḥijāz and Egypt. Especially in the Mamluk period, the pattern of migration was dominated by Cairo, the imperial capital and the centre where official posts were distributed.

As to the reproduction of the educational system, a clear tendency can be perceived to hand down functions from father to son, or from uncle to nephew, or from one brother to another. This mechanism for transfer, which is of course connected with the role of family structures in the general reproduction and transmission of properties and cultural traditions from one generation to another, was achieved mainly by the method of 'substitution' (*niyāba*), the son acting as a substitute for his father until he could formally take over his position. This transfer could be effectuated more easily within the framework of schools, since it enhanced the formalization of patronage systems. According to Pouzet, the Hanafite schools were not, however, monopolized by certain families, as in the case of Hanbalite schools.[22]

In Mamluk times, it was no anomaly that functions were shared by two persons, but at the same time combinations of functions or partial functions developed which in some periods reached a semi-official and quasi-permanent status. Thus, specific teaching posts were increasingly combined with administrative positions and various functions in the judiciary, such as *wakīl* of the *bayt al-māl*, qadi or *qāḍī ʿaskar*. It seems that increasingly only an official status could provide a scholar with lucrative posts at educational institutions. It is here that the links between the system of institutions and the state are most clear. The examples of al-Nūriyya, al-Sumaysāṭiyya and al-

[22] Pouzet, p. 160.

Khātūniyya show how in the Zanjid and Ayyubid periods the foundation of *madrasa*s was used to create functions for the ulama which would enhance the state's control of the institutions and waqfs in Syria, especially through the offices of qadi and *shaykh al-shuyūkh*. Gradually, a separate group of ulama was formed with positions in schools which became the focus of the interaction between the state and the ulama network. Since the state provided the ulama with the highest status-generating positions, these institutions became important centres around which the ulama network took shape. Within the Shafiite and Hanafite networks, groups of schools were formed which provided the basis of the authoritative and financial status of the ulama, since they were linked to certain functions in the state apparatus. This interaction affected the relations between the ulama themselves, since career opportunities ultimately became linked to a large extent to the secular power structure. In some cases this could lead to tensions between the central authorities and local elites, when candidates for offices were controversial.

Our examples show that in the course of the Mamluk period, official ulama functions became a source of wealth, which was probably only partly derived from the reservoir of waqf-revenues. Ever larger amounts were paid to the state in order to obtain appointments, which meant that the waqf system was used as a basic source of revenues that enabled the ulama, by an accumulation of functions, to profit from their administrative position. One can say that the state profited in this way from the waqf-resources, since the capital acquired by the ulama was appropriated by the system of bribes to obtain official appointments.

It is clear from the above that the foundation of schools, whether by sultans, emirs or private individuals, contributed to the symbiosis between the state and the ulama and provided focal points where the two structures were linked together. This symbiosis, in turn, created a new hierarchical pattern within the ulama network.

The Umayyad Mosque and the ulama

The institutions where the state and the ulama networks intertwined were obviously the most important centres of authority in the empire. In the case of Damascus this focal point was the Umayyad Mosque, the care of which belonged to the prestigious duties of the sultans. In

the course of time the Mosque was quite regularly expanded, restored or redecorated by various sultans and emirs and the state looked after the body of personnel for the religious and administrative functions. The four *madhhab*s each acquired their own mihrab, the Hanbalites only in 1220 after some struggle. In 1328 and 1416 the allocation of the mihrabs was altered and in 1299 the sultan ordered an investigation of the budget for the personnel, promising that every employee whose services were needed but who did not receive a salary, would be paid directly from the *bayt al-māl*. In 1420 emir Jaqmaq, the qadi and a number of scholars embarked upon a similar operation in order to carry through financial cutbacks on the budget for personnel. As a result, all *mubāshirūn* (clerks) were dismissed, a measure which saved enough money to pay for the annual restorations. Of the *mutaṣaddirūn* (professors) the majority were sent away, on grounds of incompetence, together with some of the muezzins, Qur'ān-reciters, *ḥadīth*-reciters and *farrāshīn* (attendants).[23]

Under the Mamluks the main state official within the ulama network in Damascus was the qadi, who was appointed by the sultan and allocated a regular salary (*jāmikiyya*). The qadi was inaugurated in the Madrasa al-ʿĀdiliyya and the Citadel. The ʿĀdiliyya was the location of the court, although occasionally a corner inside the Umayyad Mosque was used for trial sessions. In the 13th century the tenure of the qadi lasted for an average of six years, with a maximum of fifteen years, and in some periods it was monopolized by certain families. Initially, the qadi was without exception chosen from the Shafiite *madhhab*, which was the most important legal school in Syria and in the empire, followed by the Hanafites, but in 1266 Sultan Baybars abolished this monopoly and henceforth appointed four qadis, one for every *madhhab*. The incumbent Shafiite qadi was confirmed in his office and three other qadis were appointed, although the Hanbalites and Malikites initially refused their new office. The initiative seems to have been inspired by the wish to dismantle the legal apparatus built by the Ayyubids, which was centred around the network of Shafiite ulama and a single chief-qadi. Apparently, the Shafiite establishment had become too independent and Baybars, who was more favourably inclined towards the Hanafites, wanted to create a new balance within the ulama hierarchy supporting his re-

[23] Al-Nuʿaymī (1990), vol. 2, pp. 302-3, 308, 310-311; other reorganizations, especially by governor Tankīz (1311, 1327), are mentioned by Lapidus (1967), p. 75.

gime. Henceforth, the Mamluks would gradually tighten their relations with the Hanafites.[24]

Other ulama functions, besides that of qadi, included the *khaṭīb* or preacher of the Umayyad Mosque, the military judges (*qāḍī ʿaskar*), the chief muftis, the chief of the public treasury and the censor (*muḥtasib*); these were all appointed by the state. Lesser ulama were as a rule nominated by the qadi for teaching posts and subsequently confirmed in their position by the sultan. Their salary was paid from the revenues of the waqf.[25] The creation of this official corps within the variegated network of the ulama naturally caused a differentiation within the group. On the one hand, it increased the opportunities for scholarly careers and expanded the resources to be appropriated by the ulama; on the other hand, however, it gave the state a considerable influence on the mobility of ulama and the hierarchies within their networks.

The state

The examples above show a growing interference of the state mechanisms in the field of waqf. This interference led to a structuring of the networks of the ulama, by creating functions, providing new resources and endowing new status symbols. Evidently, this structuring was based on the increasing 'institutionalization' of the legal concept of waqf. In the previous chapter the development of the waqf-institution was described within the domain of jurisprudence and it was argued that waqf-rules were to some extent derived from practices and practical circumstances and were eventually systematized. This system was not imposed as a codex, but rather developed as part of a dynamic process which evolved along various tracks. Among the factors influencing this process were the efforts by the state to participate in it. While Nūr al-Dīn, his successors and the imperial elite attempted to resuscitate Damascus as a provincial capital and to integrate the town into a new administrative apparatus, making use of the waqf-institution, at the same time the legislation concerning waqf was refined and, perhaps even more importantly, the administration of waqfs was incorporated into the framework of the state. Supervi-

[24] Pouzet, pp. 71-2, 108-111; Nielsen; about a Shafiite family of ulama, see Salibi.
[25] Pouzet, pp. 131-145.

sory bodies and functions were created, resulting in the linking of the educational institutions with offices allocated by the state.

Under the Ayyubids for the first time the institution of waqf was used in Damascus on a grand scale as a device to support policies of the ruling elite. Waqf was at the basis of the scheme of urban reorganization, both in the construction of waterworks, tombs and *madrasa*s, and in the case of the important urban extension of al-Ṣāliḥiyya (see below, chapter six). To be sure, not all projects were directly initiated by the state, but at least they were sponsored or authorized by officials or members of the ruling elite. Apart from this waqf-revenues were used for investment in new waqf projects. The expansion of the waqf system necessitated efforts to centralize the administration of waqfs, to incorporate it into the administrative framework and to enhance state control. From the Fatimids the Ayyubids adopted the practice of creating a separate diwan for the administration and supervision of waqfs. A *shaykh al-shuyūkh* was appointed for the first time in 1167-8 with the task of supervising the sufis and their waqfs in the whole of Syria. As we have seen above, his residence was the sufi-convent (*khānqāh*) al-Sumaysātiyya in Damascus. The integration of waqfs into the administrative system entailed that some changes in the practice of waqfs had to be implemented. Amīn explains, for instance, that under Nūr al-Dīn for the first time land which was officially the property of the state treasury, or *bayt al-māl*, was turned into waqf. Apart from this, the practice of *ḥikr*, described as the first right of tenancy of the house or plantation on waqf-land, became widespread.[26]

The interference of the state in waqf-practice does not mean that waqfs were appropriated by the central government. Individual waqfs were founded and administered by private individuals, merchants and emirs, and more often than not supported private or family interests. However, the efforts to centralize control and to stimulate the foundation of waqfs by the examples of the ruling family should be seen as a deliberate policy to enhance the grip of the ruling elite on the urban infrastructure of Damascus. This tendency was continued under the Mamluk sultans and emirs, who were themselves active in the field of endowments as founders of large waqf-complexes. New administrative forms were created to centralize the control of waqf-revenues, such as the *dīwān al-aḥbās*, for agricultural

[26] Amīn, pp. 52, 56, 59, 61-2, 67.

lands, the *dīwān awqāf al-Ḥaramayn*, for state waqfs for the holy places, and the *dīwān al-awqāf al-ḥukmiyya*, or charitable waqfs, all resorting under the *dīwān al-awqāf*.[27] At least from 1335 onwards, in Egypt waqfs were registered by the qadi, and no longer left exclusively to the care of the founders and the administrators.[28] It is noteworthy that in this reorganization waqfs were not classified according to legal but according to administrative categories.

In his study of waqfs in the Mamluk period, Muḥammad Amīn describes the state interference in the waqf system as a process of continual negotiation between the sultan and emirs and the leading ulama. He indicates various cases of malpractice, both by secular and religious authorities, but, interestingly, he also suggests that there was no agreement among the ulama with regard to the status and importance of waqfs, and it is clear that their discussions and the jurisprudence which resulted from it were inspired by a specific political context and by specific struggles for power, resources and status.[29] Apparently, the main 'anomalies' in waqf practice were the proliferation of *istibdāl*, efforts to dissolve waqfs and outright usurpation. Other practices involved nepotism with regard to the appointment of waqf officials, investment in the reconstruction of waqfs and the collection of extraordinary levies. An important consequence of these practices in Mamluk times was not so much the loss of waqf possessions, but rather their regrouping and reorganization: new waqfs appeared in the place of old ones and waqf buildings were pulled down and rebuilt within the framework of a new waqf. This latter practice was explicitly sanctioned by the ulama, on condition that part of the new waqf was exploited in accordance with the stipulations of the original waqf. However, sometimes ulama thwarted efforts by the sultan to confiscate waqf land.[30] In Damascus, at least sometimes an administrator of waqfs was appointed and the revenues were scrutinized on a regular basis by inspectors (*kāshifs*) from Cairo, who also collected levies. In the late Mamluk period many cases are recorded of waqfs being sold with the approval of certain ulama. In 1486, 1507 and 1510 decrees were issued by the sultan and the governors to prohibit the sale of waqfs and to warn the qadis to

[27] Amīn, pp. 90-5, 107-9.
[28] Coulson, p. 33.
[29] Amīn, pp. 349, 361ff.
[30] Id., pp. 321-359; al-Nuʿaymī, p. 443; Lapidus (1967), p. 62; Pouzet, pp. 274-5.

respect the sacrosanctity of waqfs and to refrain from taking their revenues. Several transgressors were punished.[31]

The development outlined above had two important consequences. Firstly, the increasing involvement of the sultans and emirs in the practice of waqfs led to a concentration of interests of the state and the political-military elite in the waqf system. Waqfs were manipulated as a source of wealth and symbolic power, and new methods were created to control their administration and revenues. This implied, secondly, that the waqf institution was incorporated into the mechanisms of power utilized by the state to ensure its stability and perpetuation.

Conclusions

The two chapters in the first part of this study aim to present a survey of the development of the waqf institution as the nucleus of a field of social relations and the focus of interests of various groups. The institution and its relations to the parties involved was defined by an increasingly strict set of legal rules, by which its status was linked to the main value-system of the community. It was thus rooted in the system of social relations that grew within this community. Since it endowed certain possessions with a specific symbolic value, which rendered them sacrosanct, but which also made them and their revenues subject to a separate set of rules, the waqf institution contributed to the differentiation of the spatial organization. Moreover, part of the economic potential of the community was, so to speak, reserved to serve as capital within the conceptually, legally and socially defined field. Thus, within the field of waqf symbolic and material assets together formed the capital for whose appropriation various parties competed. This rivalry caused the dynamism of the field, resulting in its continuous reshaping, although the increasing systematization strengthened the original principle.

The first group of participants in the field of waqf consisted, evidently, of the founders, who invested their properties in the upkeep of the waqf system. The founders hoped to profit from the surplus value that their properties thus acquired, in the spiritual and in the material

[31] Ibn Ṭūlūn (1381/1962), vol. 1, pp. 86, 169, 176, 178, 181, 184, 227, 248, 266, 319, 346, 349, 377-8; Laoust, pp. 63, 79, 83.

sense, since waqfs could be a stable, protected source of income for themselves and their descendants, while such investment would also be considered as a pious deed. To have access to the value which the possessions obtained, the founders had to subject them to certain well-described mechanisms conceived for the distribution of their revenues. Although they had the opportunity to exert a large measure of control, the final authority concerning the exploitation of the possessions lay with—ideally—the community, and—practically—the ulama, especially the qadi. The founders could arrange for the distribution themselves, under the supervision of the qadi, or cede it to specific 'consuming' institutions, which represented other focal points in the flow of revenues within the field.

The second group of participants were the ulama, who endowed the institution with its surplus value, which they conceptually formulated and guarded. They invested the authority of the legal tradition, the performance of the rituals and the services of the symbolic system, and the concepts of the welfare of the community in the field of waqfs, structuring it in such a way that part of the material potential was skimmed off to serve as the basis for the maintenance of 'locales' in which the symbolic value of the waqf institution was concentrated and which together formed the infrastructure where religion and social relations converged. Moreover, the measure in which the ulama structured the field by means of their legal authority also secured for them a vital position within the field, as interpreters of the law, supervisors of the foundation and administration of waqfs, and beneficiaries of the capital invested in waqfs. Their efforts were primarily aimed at the preservation of the infrastructure of religious institutions and the reproduction of the system of symbols of the Faith.

The third group of participants consisted of the secular ruling elites, who invested their authority and mechanisms of coercion and their material assets, in order to expand, preserve and control the field of waqfs. Their interest lay in the economic potential of waqf possessions and their revenues, the symbolic potential supporting ideological claims and prerogatives, and the mechanism it represented for social control and social reproduction and for the strengthening of the state apparatus. The material interests were mainly focused on controlling and tapping flows of revenues within the fiscal organization, and the control of the economic function of waqf possession in agricultural production and the chains of trade. As for the

symbolic value of waqfs, it was vital for sultans and emirs to link their authority to that of the religious system, which was the basis of the social and ideological cohesion of the community, and which legitimized their monopoly of the means of coercion. The representatives of the state, lacking the authority to interpret the sacred law, could exert influence on the field of waqf in three ways: firstly by incorporating the waqf system into their administrative system, adapting the existing structure to its needs, for instance by creating categories and *dīwān*s which would enable them to control the flows of revenues and the relations within the field; secondly, by founding waqfs themselves and interfering with the administration of waqfs; and, thirdly, by linking waqfs to the state apparatus by creating official functions which were connected with specific institutions or clusters of institutions. By these means the state was able to integrate part of the ulama networks into its administrative structure and not only shape them according to their interests, but also use them to utilize waqf revenues to its advantage, either directly, by demanding fees from candidates for official functions, or, indirectly, by having ulama supported by waqfs serve their interests.

The interference of the state was not automatically antagonistic to the interests of the ulama, since the state provided new mechanisms and channels for the acquisition of power within the ulama network, which could be exploited by groups and individuals. Moreover, a coordination of interests was essential and beneficial for the maintenance of the field of which the waqf institution was part. Thus, at least some ulama were able to see the state efforts to bring the waqf system under its control as serving their interests, and it was this overlap of power structures and interests that was the driving force behind the structuring of the ulama network around waqfs, schools and state functions. It should be noted that this development also contributed to the crystallization of the state apparatus, since new official functions enhanced the coherence of the administrative system. Finally, it is clear that this development towards forms of institutionalization was intimately connected with the functions of Damascus as a city and is thus linked to the development of its urban structure. The city was one of the focal points of the geography of the ulama networks and of the administrative apparatus built by the state. It provided the 'locales' where the interaction between the two could take place.

The field of waqf, either in its textual guise or in its material

manifestation, was the result of a long process of evolution, which involved the simultaneous growth and systematization of the body of legal regulations, the networks of the ulama and the state apparatus. The texts concerning waqfs were the outcome of legal discussions among the ulama, but these were increasingly linked to parts of the ruling elite, which attempted to harness the theoretical debate to their material and administrative interests. Consequently, the debate on waqf was to a large extent governed by pressures from the interested parties. In the course of time these strengthened the principle of waqf and the definition of the institution, while at the same time adapting the functioning of the institution and the exploitation of waqf possessions to new circumstances. The field of waqf was systematized and structured by the competition over the spiritual and material capital invested in it, and especially by the gradual convergence of interests between parts of the ulama networks and the state.

PART TWO

THE FIELD OF WAQF IN OTTOMAN DAMASCUS

CHAPTER THREE

WAQFS AND THE OTTOMAN LEGAL SYSTEM

After having defeated the Mamluks at Marj Dābiq and having occupied Aleppo, the Ottoman Sultan Selim entered Damascus in *ramaḍān* 1516. His first act was to have a bath and a shave in the Ḥammām al-Ḥamawī. The next day, a Friday, he performed the prayers at the Umayyad Mosque and attended a sermon by the Shafiite chief qadi al-Farfūr. Later that month he had money distributed in all mosques and schools of the city and went to the Madrasa al-Kallāsa to visit the sufi-shaykh Muḥammad al-Bilkhashī. When two months later Selim heard that Jerusalem and Ghaza had been taken from the Mamluks, he visited the tomb of the famous sufi Muḥyī al-Dīn ibn ʿArabī (d. 1240) and some cemeteries, as a token of his thanks. In the same year, on the advice of his imam Ḥalīm Shalabī, Selim appointed an Ottoman architect and allocated an amount of 10,000 dinars to him with the assignment to build a mosque over the tomb of Ibn ʿArabī and an adjoining convent (*takiyya*) for sufis. In February 1518 the sultan performed the prayers in the new mosque.[1]

It is clear from this episode that the conquering sultan took great interest in the function of Damascus as a centre of spirituality and the rebuilding of its infrastructure. This interest was by no means incidental and rather reflected a regular policy adopted by the Ottoman state. After the conquest of Istanbul in 1453, Sultan Mehmed called upon the notables to start constructing large residential houses, bathhouses, warehouses, markets, workshops and places of worship. A period of urban reconstruction followed, which was continued by the later sultans, who initiated large construction programs, mainly centred around the waqf complexes in Istanbul and Anatolia. In most newly conquered towns in Anatolia and the Arab regions reconstruction under the new rulers was connected with the foundation of waqfs, especially to construct welfare institutions combined with trading facilities. These initiatives indicate not only the state's interest in

[1] Bakhit, pp. 10-16; Laoust, pp. 148-150; for a report of the entry of Selim in Damascus, see Ibn Ṭūlūn (1381/1962), vol. 2, pp. 30 ff.

the system of foundations, but also that a policy of active interference was adopted. In 1478 Sultan Mehmed ordered all waqf documents to be examined to pick out the invalid ones and revert the land to the state. He argued that the state was ultimately always entitled to cultivable land that had been conquered from non-Muslims, even if they had in the meantime been converted into waqf. Moreover, many waqfs were in a state of decay, their pious purposes had become obsolete or they served only for the pensions of idle sufis or ulama. The measure aroused much protest, and under Mehmed's successor Bayezid the confiscated lands were restored to their previous waqf status. However, the waqf institution soon became an important mechanism within the administrative structure used to implement policies in various fields.[2]

In this chapter and the next we shall discuss several aspects of the waqf-system as a domain of interaction between the central state and the local authorities. What was the function of waqfs within the power mechanisms linking Istanbul with Damascus, as a provincial capital? To what extent were waqfs part of the power mechanisms controlled by the state, or, conversely, of the regional power system utilized by local elites to build substructures within the state, or even to undermine the authority of the state at the provincial level? Should the waqf institution, in the Ottoman period, be seen as a means to implement state policies, or as a means for officials to create a personal power base and to enrich themselves at the expense of the state? And, finally, how did the functioning of waqfs within the power mechanisms affect the urban structure and the socio-economic activities of the city? Of course, these questions are too complex to be analyzed here in a conclusive way and our observations can only be tentative. Our discussion in this chapter will focus on the way in which the field of waqf was incorporated into the Ottoman administrative system on the imperial level. This was achieved, firstly, by creating a network of imperial foundations; secondly, by the incorporation of the ulama into the state apparatus; and, thirdly, by reforming the sets of rules governing the practice of waqf.

[2] Inalcik, 'The Ottoman state...,' in: Inalcik/ Quataert (eds), pp. 126-7; Vryonis, pp. 30-1; see also Griswold, p. 178; Cuneo, pp. 369-371; Johansen (1988), p. 81.

The imperial dimension

It is tempting for students of Ottoman history to identify the sultan with the state. In some historical instances this identification might be quite appropriate and useful, but in others one should distinguish between the personal attitudes of the head of state and the policies of the large bureaucratic apparatus. A complete separation between the two would not be adequate either, however, since if the sultan was not the personification of the state, he was at least its overwhelming symbol, and in general something in between. This ambivalent status is especially relevant with regard to waqfs, because these can be founded only by individuals, not by institutions such as the state. Imperial waqfs may thus be an expression of the personal inclinations of the founders, in the field of religion (waqfs in favour of certain ulama or sufi-orders), social welfare (soup-kitchens), or politics (self-aggrandizement, support for certain regions, towns, individuals or groups), but they may also reflect state policies, especially in the field of education, economic facilities and estates providing money for certain specific administrative or religious purposes, such as the ḥajj, or the restoration of the mosques of Mecca and Medina. The motives behind each sultanic waqf can probably be situated on a scale somewhere between clearly personal aims and political interests. Of course, these waqfs always had a certain effect on the functioning of the state, even if only to enhance the personal status of the sultan and support the structure of power symbols centred around his person. To make things more complicated, imperial waqfs were founded not only by sultans, but also by other members of the imperial family, reflecting personal attitudes and piety and the interests of political factions in the palace. Waqfs could be endowed, for instance, for the benefit of a certain pretendant, or to strengthen a line of descendants.[3] In this chapter we shall focus on two sultanic waqfs in Damascus, which especially exemplify the use of waqfs as a mechanism for the state to strengthen its structure and its grip on the provincial administration.

As we have seen above, among the first acts of Sultan Selim after the Ottoman conquest of Damascus in 1516 was the endowment a large waqf for the benefit of the mausoleum of Muḥyī al-Dīn ibn ʿArabī, the Andalusian mystic, in al-Ṣāliḥiyya, and a convent and

[3] Crane, pp. 194-5, 197, 201, 205; Pierce, pp. 20, 40, 189, 199-200, 198-218.

soup-kitchen connected with it.[4] The deed of this endowment gives an impression of the motives behind the transaction. Apart from the mentioning in the opening lines of the *waqfiyya* of the spiritual merits to be derived from this kind of foundation by the founder, as a person, explicit references are made to the sultan as a possessor and conqueror of lands, as a religious leader and as a member of the 'House of Osman'. Religious gains are related to worldly aims, and both are reconciled in the person of the sultan and his dynasty. After this lofty introduction, the practicalities of the transaction are summed up: the endowment of four villages around Damascus with their lands, two houses, one inside and one outside the city, a warehouse, shops and souks (179 shops) and two plots of land, for the purpose of rebuilding a mosque, paying for its maintenance and supporting a *ʿimaret* (soup-kitchen) for the poor. After this the personnel and their salaries are specified and the amounts of food to be purchased (for the mosque, nine persons; for the supervision of the waqf, three; for the *ʿimaret*, twenty-four; for the turba, two). The *waqfiyya* is dated 924 (1518).[5]

The second sultanic waqf is the *takiyya* Sulaymāniyya and the associated *madrasa*, probably both founded by Sultan Sulaymān in 1554/1560. I have not seen a copy of the waqf deed, either in manuscript form or in print, but it can be assumed that it did not differ essentially from the waqf founded by Selim: the endowment of agricultural lands and real estate properties in and around Damascus for the benefit of a specific religious institution. The function of this institution was twofold: it was to house a Hanafite law-school and it was to provide facilities for the pilgrims using Damascus as a halting place to join the great caravan to the Ḥijāz.[6]

It is not difficult to comprehend what the purposes of these waqfs were, apart from the personal religious feelings of the sultan. Both waqfs were founded to serve the interests of the state, which, on this occasion, were apparently not primarily economic, since no investment in the economic infrastructure was intended, nor any form of financial gain. The waqf of Selim is primarily of symbolic importance, amplified by the context in which it occurred. As is well known, Selim was a staunch supporter of sufism and especially of the Khalwatiyya Order, which considered Muḥyī al-Dīn ibn ʿArabī as its

[4] Ibn Ṭūlūn (1381/1962), vol. 2, pp. 68, 70, 79, 84, 97.
[5] 'Waqfiyya Sulṭān Salīm ʿalā al-shaykh Muḥy al-Dīn,' in: *AL: Majmūʿa...*
[6] Sack, p. 32; Rihawi/ Ouechek, pp. 217-221.

main sheykh. The Khalwatiyya had strong links with the Ottoman court and their influence became so strong that eventually some sheykhs opposing the Ibn ʿArabī cult were executed. In Damascus, opinions among the ulama were not in favour of this state-sufi alliance and because of this the mausoleum of Ibn ʿArabī had been neglected and even desecrated. Apparently, opposition was so fierce that the works for the construction of Selim's mosque had to be carried out at night, in order to avoid popular unrest, and the people of al-Ṣāliḥiyya had to be placated with tax exemptions. Nevertheless, in the course of the sixteenth century Ibn ʿArabī grew into a kind of city patron of Damascus.[7]

During and after the Ottoman expansion the support and spread of sufi convents had become part of the policy of imperial expansion. Convents were built in rural areas and alongside roads, as a measure to ensure the pacification of newly conquered lands and to secure Ottoman control of sparsely populated provinces. After his conquest of Syria, Selim not only reconstructed the mausoleum of Ibn ʿArabī, he also had a *zāwiya* built for Sheykh Ḥusayn al-Jabāwī in Damascus. The sheykh of the Ṣamādī Order thereupon went to Damascus to request a gift for his own convent, which was subsequently granted. In the end he received a stipend of a yearly amount of wheat from a village in al-Ḥawrān and a convent in al-Ṣāliḥiyya. Furthermore, Selim gave a large endowment to a sufi convent in Palestine, probably partly with a political aim, creating a nucleus in an agricultural area which would be part of the infrastructure controlled by the central authorities.[8]

Selim's waqf for Ibn ʿArabī, therefore, was part of the policy of conquest and pacification, it was an act of symbolic appropriation, the construction of a physical landmark to proclaim the authority of the sultan over the newly conquered lands. This proclamation is not only recorded in the *waqfiyya* and embodied in the mausoleum, but also effectuated and confirmed by the allocation of various properties according to the sultanic will. It is ideologically supported by its religious intention, by its reference to the House of Osman and by the clear will to enhance the status of Damascus within the new religious-political structure. The waqf was an act of incorporation necessary to stress and facilitate the transformation of Damascus into

[7] Geoffroy, pp. 131, 133-4, 231-2, 459-460.

[8] Inalcik, 'The Ottoman state...,' in: Inalcik/ Quataert (eds), p. 123; Geoffroy, pp. 131, 227; Layish; Bakhit, pp. 181-3.

an Ottoman provincial capital, and Syria into an Ottoman province. It is no coincidence then, that the first trustee of the waqf complex was a Turk sent from Istanbul, and that Janbirdī al-Ghazzālī, the first Ottoman governor of Damascus, during his revolt after Selim's death, closed the *takiyya* and the mosque and confiscated their waqfs.[9]

Some of these intentions are shared by the waqf of Sultan Sulaymān, some forty years later, but it seems that here the emphasis lies more on practical policies. Firstly, Damascus had now become the main centre for the hajj in the empire, since it was the place where pilgrims from the north (Istanbul, Aleppo) and the east (Persia) came together and where the caravan to the Ḥijāz was organized. Since the hajj from Istanbul became the religious lifeline of the state, the safety of the Syrian caravan became one of the main concerns of the Porte and one of the pillars of its authority in the Syrian provinces. In fact, the administration of these provinces revolved to a large extent around a successful organization of the hajj. To secure this, an infrastructure was created which was based on facilities in Damascus, the starting point of the caravan. Secondly, the Sulaymāniyya provided the Porte with a stronghold within the religious network of the city. In the course of time, it became the main law-school in Damascus, in which the most prominent scholars taught. Teaching posts were mostly combined with an official function, usually that of mufti, and were distributed directly by the central government. This not only enabled the authorities to influence the corps of ulama, but also, and perhaps more importantly, it supported the transition from a predominantly Shafiite legal system to the Hanafite system endorsed by the state. Thus, the Sulaymāniyya illustrates a second, and less symbolic, phase in the incorporation process: the attempt to foster the integration of the juridical-religious structure into the new administrative organization.[10]

Imperial waqfs were evidently not the only means used by the Ottoman authorities to physically, symbolically and adminstratively incorporate Damascus in their realm by utilizing the system of waqfs. Immediately after the conquest of the city, an inventory was made of waqf institutions and their revenues, clearly with the aim to tighten state control of the waqf possessions. A similar procedure, though apparently less far-reaching, occurred in Egypt, resulting in new ca-

[9] Ibn Ṭūlūn (1381/1962), vol. 2, pp. 97, 124; Laoust, p. 154.

[10] On the importance of the Syrian pilgrimage caravan, see especially Barbir and Faroqhi (1990); Bakhit, pp. 132-3.

dastral surveys, a redefining of the statuses of land and a reorganization of the waqf administration under the auspices of the state.[11] Until now, the revision of the waqf administration in Syria has not received as much attention as that in Egypt, but it is clear that a similar reorganization took place. This primarily concerned the most important waqfs, from an economic or a religious point of view, such as the complexes of the Awqāf al-Ḥaramayn al-Sharifayn, for the holy places, and the Umayyad Mosque, with its various sections. These were put under the direct supervision of the state, expressed by the centralized appointment of *nāẓir*s, trustees and teachers. The administration of other important waqfs was also placed under the control of the government, appointments being effectuated only by imperial endorsement. Finally, many transactions regarding waqfs were monitored by the state through the person of the chief-qadi in Damascus. Difficult cases concerning waqfs could be transferred by him to Istanbul, to be decided upon by imperial decree (*amr sulṭānī*), and in general the qadi acted as a go-between linking the central authorities with the provinces.[12]

The discussion above illustrates the function of waqfs within the power structure of the state from an imperial perspective. Waqfs were used to enhance the system of power symbols and to implement policies, both on the imperial level (the organization of the hajj, the strengthening of the Hanafite system), and on a local level (control of revenues and of ulama appointments). Waqfs of this kind provided the government with a means to interfere directly in local affairs, since the authority of the waqfs belonged to the state and there was no official restriction obliging the state to deal with local groups. Therefore, sultanic waqfs were in a sense enclaves of imperial power, footholds of the state in the provinces, the more so since these waqfs could, in the course of time, come to represent substantial economic assets.[13]

The hajj

It has been argued above that the pilgrimage to the Ḥijāz became one of the most important symbols of the legitimacy of Ottoman

[11] About the reforms in Egypt, see ʿAfīfī and Behrens-Abouseif (1994).

[12] Bakhit, pp. 135-9; see also below, chapters five and six.

[13] An example of the political use of imperial waqfs is given by Peri (1983), p. 59.

power. When Sultan Selim had entered Damascus in 1516, qadi al-Farfūr had called him in his sermon the 'victorious servitor of the two holy cities',[14] and the later sultans too were careful to consolidate this lofty status and meet its obligations, especially by founding waqfs in Mecca and Medina and by seeing to the maintenance and improvement of the main centres of pilgrimage. In Mamluk times several hajj caravans were formed annually which reached the Ḥijāz from various directions, but mainly from Iraq, Egypt and Syria. In the Ottoman period the system was to some extent centralized and organized in two main caravans, from Egypt and Damascus. Of these two, the caravan starting from Damascus was of special importance, since it was the one that carried the imperial *maḥmal*, the treasury containing the waqf-revenues from Istanbul and Syria for the holy places and the *ṣurra*, which was paid to the Bedouin on the way, to prevent them from harrassing the pilgrims. Moreover, members of the imperial family and the Ottoman elite in Istanbul would normally travel to the Ḥijāz by way of Damascus.

In order to secure a successful and stable cycle of yearly pilgrimages, it was necessary to adopt general policies with regard to the requirements of the caravans, resulting in what may perhaps be most adequately termed a policy of integration in various domains. This integration was not achieved at once, but rather built up by a cluster of measures and reorganizations in the domains of administration, finances, security, etc. These measures primarily concerned the provinces of Egypt and Syria, and became an important factor in the relations between the Porte and provincial groups.

Firstly, the holy places themselves had to be incorporated into the administrative and ideological structure of the empire, in order to effectuate and legitimize Ottoman authority. This was achieved by accepting a *modus vivendi* with the political leaders of Mecca, who for some time had enjoyed a form of relative autonomy. This indirect rule and the extraordinary status of the holy places were not antithetical to Ottoman policies in general, which usually took account of regional circumstances and did not try to eliminate local differences. Moreover, the sacred status of the two cities would justify a separate arrangement, exempting them from a full integration in the secular administration.[15] The integration into the Ottoman ideological sphere was realized by the incorporation of the holy places into the

[14] Bakhit, p. 10.
[15] Gaury, pp. 124-163.

symbolic system of the Ottoman dynasty, by sultanic endowments both in the holy places themselves and in other places for the benefit of Mecca and Medina.[16] Finally, the Ḥijāz had to be incorporated into the economic structure of the empire. Since the Ḥijāz itself had insufficient resources to care for its economic needs, arrangements had to be made to provide the area with cereals and other essential foodstuffs. This was aranged in the framework of the reorganization of the waqf system in Egypt, which will be discussed below. The Ottomans placed the waqfs founded by the Mamluk sultans and those of people long deceased under state control and assigned the revenues partly to the purchase of provisions for the holy places.[17] In Damascus, too, the waqfs founded for Mecca and Medina, gathered in the Awqāf al-Ḥaramayn al-Sharīfayn, were put under state surveillance. Thus, a more or less centralized network of resources was upheld providing funds for the holy places and securing their ties to the various parts of the empire.

Secondly, the organization of the pilgrimage had to be arranged, administratively, logistically and financially. In the case of Damascus, a heavy task was laid on the provincial governor, who was ultimately responsible for the successful progress of the hajj. The caravans were organized and commanded by the *amīr al-ḥājj*, usually either one of the provincial governors of Syria, or, in a later period, the governor of Damascus himself. They were accompanied by a military force called *al-jarda*. This force was often led by the governor of Tripoli or Ṣayda and was financed by fixed contributions taken from the tax-revenues in these provinces. Thus, again the imperial dimension of the hajj was stressed by having its organization transcend provincial boundaries and by creating forms of integration to provide the undertaking with a sound and solid basis. Apart from this, an infrastructure had to be built to smoothe the way for the caravans, mainly by constructing and supplying fortresses along the road, providing halting places, food supplies, lodgings, roads and all kinds of services. As Barbir has observed in his study on the significance of the hajj for the province of Damascus, the organization of the hajj gradually came to be of pivotal importance in the administration of the province and thus in the state's policies toward Damascus. The qualities of the governors were increasingly measured by their ability to ensure a

[16] Id., pp. 129-131.
[17] Shaw, pp. 284, 295.

successful hajj. If he duly fulfilled his obligations, his appointment could be extended; if not, he was as a rule severely punished.[18]

The yearly hajj was of immense importance to Damascus, not only as a religious feast, but also in the economic field. Tens of thousands of pilgrims flocked to the city from Anatolia, Persia and Central Asia and the Syrian provinces and had to be provided with all kinds of services and provisions for their journey. Apart from this, the hajj was a large commercial undertaking, attracting merchants who took with them all sorts of merchandise to be sold in the Ḥijāz at the yearly market after the hajj-ritual. It was less for ideological and political reasons than for these economic reasons that attacks on the pilgrimage caravan by the Bedouin were disastrous events for the Damascenes. In accordance with its importance, the departure and return of the caravan was celebrated with great festivities, focused on the imperial *maḥmal*. The Damascene scholar Ibn Kannān (1663-1740) described the ceremony:

> 'The hajj-procession consists of a tour made on the eighth of *shawwāl*, carrying the *maḥmal* and the *ṣanjaq* by the military and state-dignitaries of al-Shām, including even the young *jarabjiyya* [commanders of the Janissaries]. They are clad in their most beautiful robes and bow under gold-plated weapons. The military gather as soon as the sun rises and they depart through the Bāb al-Sarāy of the Sakmān troops, Arnā'ūṭ troops, the Janissaries, the Sibāhīs, the *zaʿīms* [holders of large fiefs], the soldiers of the Citadel and their aghas, the qadi of the *maḥmal* with his turban, the *bāshdaftar*[chief secretary], the agha of the Citadel and the *kātib* [secretary] of the Janissaries, both with their turbans. First the chests and the camels come out, decorated with all kinds of beautiful silk cloths. They are accompanied by the *ʿakkāma* [camel drivers] of the noble hajj in groups one after the other. Then the *amīr al-ḥājj* appears, supervising the whole crowd. They follow the street of the Sināniyya to Marqaṣ al-Sūdān to the road to al-Shāghūr, to Bāb Kaysān and Bāb Sharqī. Then they go to Sayyidī Raslān, Burj al-Rūs, al-Sādāt, al-ʿImāra, al-Abbārīn, after which they pass al-Sarūja to al-Ḥadra and before the Sarāyā, where the *maḥmal* and the sultanic *sanjaq* go in, followed by the emir, with the other *maḥmal* and *ṣanjaq* and feathers. They sit down at the outer gates of the Sarāyā and a banquet is offered with all kinds of food, according to the stipulations of [the waqf of] Nūr al-Dīn al-Shahīd, may God have mercy on him, from which thousands of people eat. Finally, the *maḥmal*s are folded up and put into sealed chests to be taken to the procession for the departure of the hajj.
>
> On the day of the procession of the *maḥmal*, the sixteenth of *shawwāl*,

[18] On the organization of the Syrian hajj in Ottoman times, see Rafeq (1966), Bakhit, Barbir and Faroqhi (1990).

> the military, emirs, the pasha and the qadis appear. If the pasha is *amīr [al-ḥājj]*, he appears with his soldiers. Before him come the teachers, the feathers, the *maḥmal*, the *ṣanjaq*, and then the *yadakāt*. Sometimes the pasha precedes the *ṣanjaq* to the Qubbat al-Ḥājj. There the soldiers dismount, with the feather-holders and the qadis, to write the document of transfer [*ḥujjat al-taslīm*]. Then the pasha takes the camel of the *maḥmal* from them and salutes them there. After this, the qadis go to the *takiyya* of Aḥmad [Kujak] Bāshā, because it has been stipulated in the waqf that on the day of the departure of the hajj a banquet should be arranged by the trustee of the *khānqāh* with various kinds of food and drinks.'[19]

The pasha spends the night at the Qubbat al-Ḥājj, in al-Mīdān, where the road to the south begins, and departs the following day for the first stage of the journey.

In this hajj-ceremony, several components of the power structure of Damascus converge: the imperial power symbols, the military hierarchy, the ulama and their relation with the secular authorities, the buildings of the city with their religious connotations, and the waqf system providing the framework for the whole ritual. It illustrates the role of Damascus as the centre where the spiritual and secular powers converged to perform a ritual which had become vital for the community and the state.

The state and the ulama

In chapter two, forms of structuring the ulama-network have been described as a result of the efforts by the state to incorporate scholars into its power structure. As has been shown by others, this process continued in the Ottoman period and even went so far that ulama networks were to a large extent integrated into the state apparatus and an official hierarchy of functions was established. At the top of this hierarchy was the *shaykh al-islām*, the highest religious-political official, who was personally appointed by the sultan. His power and especially his political role could vary under the different sultans, but generally his influence rose considerably after the appointment of the renowned Sheykh Abū al-Suʿūd to the office by Sultan Sulaymān in 1545. Abū al-Suʿūd became famous as a result of his treatises in which he accommodated Ottoman legal and administrative regula-

[19] Ibn Kannān (1992), vol. 2, pp. 345 ff.

tions to the letter and spirit of the Sharīʿa, thus laying the foundation of the practice of the Ottoman legal system. Henceforth, the *shaykh al-islām* would play a prominent role in judging the implications of the state policies from the perspective of the Sharīʿa, and he acquired a sometimes decisive control of administrative measures. The *shaykh al-islām* was also responsible for the major appointments within the judiciary, such as those of the two *qāḍī ʿaskar*s of Anatolia and Rumelia, who appointed the qadis and muftis of the provincial capitals.[20] The hierarchical structure of the body of ulama was supported by the *madrasa*-system, where the career opportunities of the students were determined. Schools too were harnessed to serve the interests of the state apparatus and were organized in a hierarchical way, especially after the reorganizations carried out by Abū al-Suʿūd. Students could foster their candidacy for high posts by systematically going through the scheduled degrees of learning. Thus, at least in Istanbul, a thorough institutionalization of the ulama networks was carried through by incorporating the educational system further into the state apparatus.[21]

This high level of institutionalization evidently strengthened the homogeneity of the scholarly elite as a class. In the course of time the ulama came to constitute a kind of learned 'aristocracy', monopolizing the control of appointments and the professional mobility of functionaries with little interference of the sultan or the vizier. Functions increasingly became inherited within certain families, and corruption soared.[22] This development had consequences for the administration of the provinces, too, since it affected state control of local ulama networks. As we have seen, the Ottomans did not simply take over the Mamluk system of institutions in Damascus, but actively interfered to revise the institutional set-up. New institutions were erected and existing ones reorganized with two aims in mind: the establishment of Hanafite law as the dominant legal practice and the strengthening of state control of the local ulama. This policy required a strict control of the system of waqfs, which provided the spatial, financial and spiritual basis for the networks of the ulama. Moreover, it required a systematization of legal practice.

[20] Repp (1986), pp. 61-2, 276, 279, 281-2, 294-5.
[21] Id. (1986), pp. 32-3, 44, 52, 54; see also id. (1972).
[22] Id., in: Naff/Owen (eds), p. 277; Itzkowitz, pp. 18-19.

The administration of waqfs

In the Ayyubid and Mamluk periods the expansion of waqfs and the structuring influence of the interference of the state elite in the field of waqfs resulted in the gradual crystallization of the waqf concept into an institution. The functions of waqfs became more diverse and more specialized, as educational facilities and components of the religious and economic infrastructures, while they were simultaneously described in a more detailed way in the literature of jurisprudence. The quantitative expansion and the increase of interested parties implied a diversification of practices with which legal scholars had to deal somehow. As an institution, the waqf concept needed a firm legal basis in order to secure its preservation for those who had invested their financial or symbolic 'capital' in it. Under Ottoman rule this tendency continued and even intensified. This did not mean, however, that the practices and framework of the Mamluks were simply taken over. The network of the ulama, the school system and the religious infrastructure supporting the annual pilgrimage were reorganized to meet new requirements and to be fitted into the new administrative apparatus. This reorganization required administrative measures, which reflected the growing interest of the state in the field of waqfs.

Discussions of legal practice in the Ottoman Empire are often put into the perspective of the Weberian idea of 'qadi justice', a concept which implies a lack of formal and 'rational' coherence in jurisdiction and focuses on the interpretative role of individual qadis. This approach is mainly based on the view that an irreconcilable discrepancy existed between the concepts of Islamic law and their practical implementation. In recent years it has been amply shown that Weber's approach is insufficient to describe the situation of the Ottoman judiciary and that Ottoman legislation was characterized by a high degree of systematization and consistency, and that, moreover, Islamic law and everyday practice were to some extent integrated within the domain of so-called *qānūn*-legislation. In spite of this systematization and as a result of the efforts to create an integrated legal system, the Ottoman system was never rigid, but rather remained a dynamic amalgam of theories and practices. It is true, however, that the qadi acquired more and more importance within the legal apparatus in

the course of time, but mainly because it was he who had to ensure the application of *qānūn*-decrees.[23]

The theoretical foundation of the Ottoman legal system is normally ascribed to the efforts of the famous *shaykh al-islām* Abū al-Su'ūd (d. 1574) to reconcile administrative concepts introduced by the Ottoman authorities and sometimes derived from customary practice or local usages, with the Sharī'a. The revision of legal principles by Abū al-Su'ūd was especially meant to establish a coherent imperial system, which would be supported by the sacred laws but which at the same time would take into consideration the practical requirements of administration. In practice, the work of Abū al-Su'ūd resulted in an ideological justification of the state's predominance in the legal system, but also, perhaps paradoxically, in the possibility of local variances in the application of specific rules, since the legitimacy of *'urf*, or customary practices, was acknowledged.[24]

Ottoman *qānūn*-law essentially consisted of a codification of feudal custom and administrative practices, begun at the end of the 15th century. The codifications became necessary with the expansion of the empire and the incorporation of new areas into the administrative system. The codices were primarily meant as cadastral and fiscal inventories of specific districts, in which the categories and amounts of taxes were indicated. Taxation was of course closely linked to the categories of land ownership, and it is in this domain that Abū al-Su'ūd contributed his main effort. Traditionally the Ottoman system did not acknowledge private ownership of the land, either for the state or for the fief-holders or the peasants. In contrast, the theoretical model of land ownership and taxation developed by Muslim scholars was based on the free ownership of land. It was Abū al-Su'ūd who attempted to reconcile these seemingly incompatible systems.

Abū al-Su'ūd's reform of the model of land ownership was based on the distinction made in Hanafite law between the ownership of the substance of the land (*raqaba*) and the right of disposal (*taṣarruf*). In his view the *raqaba* could only pertain to the sultan, while the occupants held the right of usufruct and the right of disposal. All land was now essentially defined as land owned by the sultan and given in exploitation to fief-holders and peasants, that is as *ḥawz* land, or *arāḍī al-mamlaka*, or *mīrī* land. This implied that, formally, the permission of

[23] On the flexibility of the Ottoman legal system, see Gerber (1994), pp. 27-30, 42, 46, 59, 61-9.

[24] Id. (1994), pp. 61-6; Abou-El-Haj.

the sultan was required for any transaction involving land (sale, waqf, etc.). Although in practice this rule was not strictly enforced, it still strengthened formal state control of the land, since in principle it was the sultan who could confiscate and reassign land according to his will. In accordance with the redefinition of the categories of land, the tax categories were also redefined on the basis of the model provided by legal theory. Again, the new system gave the sultan ample prerogatives. In brief, the measures conceived by Abū al-Su'ūd implied that the system of land tenure was reformed, that Ottoman practice was adapted to conform with the sacred law and that the power of the sultan over land and taxation increased.[25]

With regard to waqfs several measures were endorsed by Abū al-Su'ūd to systematize practices and to increase the control of the state. The court procedures proposed by the Transoxianan Hanafite scholar Qāḍīkhān (d. 1196) were adopted to ensure the legal validity of waqf transactions. These implied that in court the founder formally requested the dissolution of the waqf and the restitution of the properties. Subsequently the waqf was pronounced irrevocable by the qadi, who thus established the validity (*luzūm*) of the waqf. Other measures concerned the decree that permission of the sultan was required for appointments and replacements of waqf functionaries, even if the founder had reserved this right for the trustee (1537). In practice this implied that in the case of minor waqfs the endorsement of the qadi was sufficient. Furthermore, in 1544 it was decreed that *istibdāl* was henceforth allowed only with the permission of the sultan. As we have seen in chapter one, this measure was a clear effort to curb practices which had become customary under the Mamluks and to prevent malpractices. Other measures concerned certain rules for the exploitation of waqfs, the reorganization of waqfs of Christian monasteries and, more importantly, the legalization of the cash-waqf.[26]

The cash-waqf consisted of an amount of money deposited as a waqf with the stipulation that the revenues (the interest) be used for a pious purpose. This juridical construct of course provoked inquiries into its consistency with the prohibition of usury in Islamic law. Although the debate on this type of waqf has hardly been studied, an outline can be given.[27]

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[25] Imber, pp. 41, 44-8, 120-6, 132.

[26] Id., pp. 148-160.

[27] The main sources for the discussion on the cash-waqf and its historical development are Mandaville and Cizakca.

As far as we know, the first cash-waqfs date back to the 15th century and in the first half of the 16th century they had become the dominant form of waqf endowment in Istanbul. Apart from the question whether return on capital was allowed at all, the Hanafite jurists were generally of the opinion that money had no stable value, like land or real-estate properties had, but was in fact introduced to accommodate economic fluctuations in the course of time. However, the cash-waqf was seen as similar to waqfs consisting of moveable properties, which was allowed on the basis of 'accepted practice'.[28] Between 1545 and 1547, however, protests rose against the widespread practice of cash-waqfs and a discussion ensued on their legal implications. The main advocate of the practice was *shaykh al-islām* Abū al-Suʿud, who wrote a treatise defending the cash-waqf on the basis of *istiḥsān* and 'accepted practice' (*taʿāmul, taʿāruf*). Other ulama supported his view and argued that the cash-waqf was 'suited to the conditions of the people of our time.'[29] Although the discussion continued, it was especially the intervention of Abū al-Suʿūd that established the acceptance of the cash-waqf, which nevertheless remained limited mainly to Anatolia. The advantages of cash-waqfs are clear, since they provided a capital injection into the urban economy and a means of borrowing money on relatively stable conditions. The legal complexities were often avoided by combining the cash-waqf with a waqf of real-estate properties, thus creating a less controversial convergence of immoveable and moveable possessions. Although in Syria resistance to the cash-waqf was apparently strong, some cases can nevertheless be traced.[30]

In the Arab provinces the legal system developed by Abū al-Suʿūd had to be imposed on the judicial apparatus which they had inherited from the Mamluks. This implied, firstly, the reorganization of ulama networks to incorporate them into the new state structure, the centralizaton of appointments and the reformulation of the administrative and juridical categories of landed properties. Above we have seen how the Ottomans attempted to structure the ulama networks and the system of appointments, in order to shape the ulama hierarchy according to their needs. Soon after the conquest of Egypt and Syria a start was made to dismantle the Mamluk system of land

[28] Mandaville, pp. 290-6.
[29] Id., p. 303.
[30] Id., pp. 297-305; Cizakca, pp. 314, 330, 335, 351; Masters, p. 17.

tenure. In Egypt the measures resulted in *qānūnnāma*s concerning the land regime, issued in 1525 and 1553. The main aim of these *qānūnnāma*s was to strengthen state control of agricultural lands and to discontinue practices which had grown under the Mamluks. In practice this meant that most lands were proclaimed to be *mīrī* or state lands.

In the domain of waqf the dismantling of the Mamluk regime under the Ottomans implied, firstly, the transfer of the supervision of the major waqf complexes, such as the Awqāf al-Ḥaramayn, from the Shafiite qadi to the Hanafite qadi; secondly, the delegation of the overall supervision of waqfs to the *shaykh al-islām* in Istanbul; thirdly, the appointment of special functionaries (*mufattish*) to check the administration and budgets of waqfs; fourthly, a thorough investigation of the status of lands, on the basis of Mamluk cadastral registers, documents in the hands of private claimants and the records of local courts. One of the main developments in Mamluk times with regard to waqfs and the land tenure system was the gradual encroachment by the state on the principle of private ownership of land and the system of waqfs. According to Johansen, in his analysis of the transformation of the categories of land-ownership, the granting of fiefs by the state from the second half of the 10th century onwards resulted in the conversion of state lands, owned by the *bayt al-māl*, into waqf. These waqfs were classified as a new legal category, called *waqf irṣādī*.[31] Apart from an inventory of waqf lands, it was decreed that land grants (*iqṭāʿāt*) to the military converted into waqfs and *irṣādī* waqfs were confiscated and turned into *mīrī* or state lands, except when the claimant could prove that the land had been bought from the *bayt al-māl* before being converted into waqf. Waqfs that were considered legally sound were acknowledged by a *barā'a*, but subjected to state control. The waqfs of the former sultans and other 'public' waqfs were put under state authority and reorganized into new clusters. The administrators were obliged to deliver annual financial surveys and the collection of revenues was in principle centralized. Waqf lands pertaining to mosques and other charitable institutions were as a rule left intact. These measures implied that lands which had been allocated to military officers and had later been turned into waqf now again reverted to the state.[32]

[31] Johansen (1988), pp. 4, 7, 9, 80-2, 92, 101-3.

[32] ʿAfīfī, pp. 9, 20, 25, 28-9, 33, 35-8, 45-6, 50-60; Behrens-Abouseif (1994), 145 ff.

The Ottomans were not free to implement these measures on their own account. From the start they had to deal with the ulama. One of their main representatives was Ibn Nujaym, who wrote a defence of the waqf system and the procedure that had been used to turn state lands into waqf, on condition that it had been converted into the assignee's private property first. The conversion into waqf of *ḥawz* lands (sequestrated lands deserted by peasants and exploited on behalf of the sultan) was forbidden, as was the founding of land by peasant cultivators who did not pay the *kharāj* tax and were thus not legally its proprietor. On the basis of this kind of reasoning, a reformulation of the rules for land categories was made both to incorporate existing practices and to provide a legal basis for the new regime. Nevertheless, legal cases were started to reverse confiscations of waqfs, which were sometimes successful, but the Ottomans continued to carry through their efforts to strengthen their hold on waqf possessions and their revenues, as part of a policy to control and centralize the revenues from agricultural lands and tap off the resources generated by waqfs.[33]

Ibn Nujaym was one of the main legal authorities for later Egyptian and Syrian scholars, although the latter did not unanimously take over his theories. Although the reorganization of the land and waqf regime in Syria by the Ottoman conquerors was similar to that in Egypt, there was no Syrian 'Ibn Nujaym'. In Syria, too, the status of waqfs was scrutinized, most agricultural lands were turned into *mīrī* land, the administration of waqfs was centralized, and taxes were imposed on waqfs except the major complexes, such as the Awqāf al-Ḥaramayn, the Umayyad Mosque, and the Lālā Muṣṭafā waqf. After the conquest of Damascus, Selim summoned the trustees of waqfs to present their documents. If they were authentic, then the waqf was to be respected. The function of *kāshif* was abolished, but several levies were collected from the *nāẓir*s of waqfs, which made them reluctant to show their documents. Al-Nuʿaymī was requested to hand over his inventory of waqfs in Damascus, which he refused to do.[34] The main proponent of Ibn Nujaym's approach in Syria was the Hanafite mufti of Damascus ʿAlā al-Dīn al-Ḥaṣkafī (1616-1677), whose opinions remained an important reference.[35]

[33] Johansen (1988), pp. 88-93, 98; ʿAfīfī, pp. 47-53.
[34] Ibn Ṭūlūn (1381/1962), vol. 2, pp. 37, 65, 73, 74.
[35] Cuno (1993); Bakhit, pp. 143-4; ʿUlabī, *Dimashq...*, pp. 222-5.

Although measures were taken to enhance the uniformity of the legal and administrative frameworks in regard to land tenure and waqfs, regional discrepancies continued to exist. In fact, the Ottoman legal system was flexible enough to allow a dialectic between local practices and centralized measures. This duality of the system is reflected in the structure of the ulama hierarchy, in which the qadis were the representative of the imperial system and the predominant authority in the domain of centralized legislation, while the muftis were mostly selected from among the local ulama. The latter usually had their education in local or regional institutions and from local sheykhs and were thus versed in the local tradition of jurisprudence. Especially the Shafiite scholars still mainly went to Cairo instead of Istanbul to complete their education. The interaction between local and imperial ulama was probably one of the mechanisms with which the flexibility of the Ottoman judiciary was preserved. With the institutionalization of the office of mufti the importance of fatwas increased as a medium to discuss new rules or ancient practices, variants from theoretical principles or traditional customs. Of course, the fatwas were never detached from the framework of other legal texts, but they represented, so to speak, the interface between rules and practices, between traditions and transformation. Fatwa collections derived their authority from other legal texts and the reputation of the mufti within scholarly circles, and in turn they acquired the status of legal handbooks, especially regarding issues which were not dealt with in older *fiqh*-texts or compendia, or which concerned administrative practices introduced by the secular government.[36]

Still more research is required before we can give a full evaluation of the revision of the land regime in Syria after the Ottoman conquest, although the above shows that efforts were made to systematize and harmonize administrative and juridical concepts to lay the foundation for future government. As far as waqfs are concerned, the outline above makes it clear that the state aimed to incorporate the waqf system into its administrative structure to maximize its control of waqfs as a source of revenues and part of the religious infrastructure. For the ulama it was important to stress the sacrosanct status of waqfs and the preservation of the system of waqfs, which provided them with their institutional and financial support, apart from the necessity to guard the coherence of the legal framework. We have

[36] Gerber (1994), pp. 79-80, 85-6; al-ʿImād, p. 179; Schacht, p. 74.

seen in chapter one how the fatwa text of al-Ramlī reflected the effort to reconcile the categories of the legal tradition with some administrative practices in the field of waqf. Moreover, al-Ramlī discusses regional variations of waqf rules in order to evaluate their validity compared with the sacred law. However, the centralizing tendencies can also be perceived in fatwa texts. As an example, we will now briefly turn to a fatwa-collection which illustrates the way in which the measures taken by the Porte found their way to the corpus of legal texts. We have chosen the collection of Ḥāmid al-ʿImādī, who was the Hanafite mufti of Damascus from 1725 until 1742 or 1758, and whose fatwas were later collected and recorded by Ibn ʿĀbidīn.[37]

The fatwa-collection of Ḥāmid Efendi al-ʿImādī, the mufti of Damascus, is different from al-Ramlī's text in that it is a little more systematic—perhaps the work of editor Ibn ʿĀbidīn—and has more attention for general rules. Al-Ramlī is one of the main sources for al-ʿImādī, next to al-Ṭarābulusī, al-Khaṣṣāf and Ibn Nujaym. Since in most cases his opinions do not essentially differ from those of al-Ramlī, we will confine ourselves here to a few main points.

a. Al-ʿImādī allows the two types of *istibdāl*, on the basis of Abū Yūsuf, al-Ramlī and others. However, al-ʿImādī also refers to the exposé of Abū Suʿūd of 1544, concerning the prohibition of *istibdāl* except with the permission of the sultan.[38]

b. Waqfs of money are permitted, according to the mufti of the Porte, ʿAlī Efendi.[39]

c. A separate discussion is dedicated to the waqfs of 'kings' and 'emirs', which consist of lands of the *bayt al-māl* and which are classified as a separate category, not subjected to normal conditions. According to al-ʿImādī the ulama all agreed that these waqfs were not 'real' waqfs (*awqāf ḥaqīqiyya*) but *irṣādāt*, from which idle ulama profited.[40]

d. In the *Fatāwā al-Ḥāmidiyya* we find the concept of *marṣad*, a deposit on the waqf to cover the expenses for the required repairs and investments. A *marṣad* can be built up by the regular payment of part of the rent as *iqtiṭāʿ*, but it can also consist of a debt on the waqf to the trustee, if he has spent his own money to carry out repairs. If the possibility of a *marṣad* is not stipulated by the founder, the permis-

[37] Seikaly; Gerber (1994), pp. 83-4; Schatkowski-Schilcher, p. 119.
[38] Al-ʿImādī, pp. 133-4.
[39] Id., p. 139.
[40] Id., pp. 243-4.

sion of the qadi is required. According to al-ʿImādī opinions on this issue diverged between the previous scholars and his contemporaries.[41]

e. A lease contract (*ijāra*) concluded in accordance with the *ajr al-mithl* should not be annulled when the market value of the object increases due to a rise in land prices, except when the difference becomes more than one-half of the rent. Opinions on this varied.[42]

f. Several cases are mentioned of *mashadd al-masaka* lands, the exploiter of which has the right to plant and to cede his rights to a tenant.[43]

g. If a founder stipulates that a waqf may not be rented for more than one year, but no tenant can be found, the qadi is allowed to offer it for lease for a longer period.

h. Preferably the revenues of a waqf within a *tīmār* are collected directly by the trustee and not through the intervention of the *tīmār*-holder.[44]

i. According to some, a *farāgh* of functions for money is not allowed and is seen as a form of bribe (*rishwa*). Abū al-Suʿūd said that in some cases substitution (*istināba*) is permissible, for a teacher or a mufti, for instance, if a legitimate excuse is provided and the substitute is equally competent.[45]

In al-ʿImādī's text the centralizing efforts by the state are clearly visible, in the form of references to Abū al-Suʿūd and imperial decrees. In practice, the centralizing efforts by the state were especially focused on the office of the qadi, which as we have seen above, was tightly anchored in the imperial bureaucratic hierarchy. In the main cities of the empire the qadi became the main representative of the Ottoman state, responsible for enforcing state directives, taking over responsibilities delegated to him by the sultan, and acting as an intermediary between the population and the central authorities. The position of the qadi was not only strengthened by his significant role in the mechanisms of state power. In the disussion of the anonymous treatise on *istibdāl* and *ijāra*, in chapter one, we have seen how the legal debates in the Hanafite legal tradition also emphasized the authoritative status of the qadi. The treatise was written, like the com-

[41] Id., p. 227, 223, 257-8.
[42] Id., pp. 261-2.
[43] Id., pp. 203, 211, 251.
[44] Id., pp. 203-4.
[45] Id., pp. 249-250.

pendium of al-Ṭarābulusī, with a twofold aim: to allow a measure of freedom which would make the administration of waqfs more flexible and which would give administrators the opportunity to cope with changing economic conditions, while at the same time condemning unrestrained freedom and arbitrariness, which threatened the system of waqfs. The increasing divergence of opinions among scholars and the increasing difficulty of deriving new regulations from the ancient jurists naturally led to the strengthening of the position of the qadi, as the one who should interpret circumstances and guard the prosperity of waqfs, evidently within the limits of the legal framework. This framework was developed by an increasingly institutionalized body of scholars, who wrote fatwas and treatises to discuss the relation between theory and practice, ultimately supporting the more and more prominent role of the qadi. It may be that one of the incentives for the Ottoman authorities to centralize and institutionalize the legal apparatus was to prevent the divergence of opinions among jurists from paralysing the administration. The position of the qadi and the mufti were formalized within the state apparatus partly to reinforce the cohesion of the scholarly debate, to put it under state surveillance and to direct it at practical requirements.

Conclusions

If we consider the measures taken by the Ottoman authorities to systematize the administration of waqfs, we can make several observations. The process directed at the refining and structuring of the field of waqf, which had already become visible under the Ayyubids and the Mamluks, was continued. It was fostered especially by forceful state interference to reform the Mamluk system and to strengthen state control of the practice and legal framework of waqfs. With the incorporation of the ulama hierarchy into the state apparatus, the authorities were more capable than before to influence the legal debate and to attune administrative measures and policies to concepts of the sacred law. This was one of the bases of Ottoman power in general, and in the field of waqf more specifically. Imperial waqfs buttressed the ideological claims of the Ottoman dynasty, while the religious and scholarly infrastructure was reorganized to accommodate the requirements of the state bureaucracy; the legal debate was, so to speak, 'institutionalized' within the framework of the state, in

order to enhance the uniformity of the law and to strengthen state control of regional customs. It seems that by the end of the 16th century the state had taken almost total control of the field of waqf. Therefore, it is possible in this period to speak of the institution of waqf as an instrument of state policies, rather than as a mechanism utilized by sultans and emirs in their continuous struggles for power, as part of a more-or-less loosely structured ruling elite. In the next chapter we shall discuss the impact of this systematization of the field of waqf on the relation between the imperial administration and the city of Damascus.

CHAPTER FOUR

LOCAL GROUPS

In the previous chapter we have discussed the organization of the field of waqf in the Ottoman Empire on the imperial level and the role and interests of the state. The efforts to reform the system of waqfs was primarily inspired by the wish to centralize the supervision and control of waqfs, both the newly founded endowments and the complexes inherited from the Mamluks. Evidently, the measures taken by the central authorities had to be enforced in the provinces; in fact, they were to some extent intended to foster the integration of the provinces, with their local administrative diversities, into the administrative system of the empire. This implied that the Porte had to deal with local groups representing sometimes complicated sets of interests. It is even justified to say that the almost continual tension between Istanbul and the provincial elites was at the core of Ottoman policy and administration. In this chapter we shall examine how the centrally organized field of waqf was used by the central authorities to structure networks in Damascus, in order to control the system of waqfs, to enhance their grip on local groups and to support policies directed at economic development. We will focus on two categories of officials who played a crucial role in the interaction between Istanbul and Damascus, and who, moreover, assumed a significant task in regard to the field of waqf: the ulama and the governors. Of course, these two categories do not represent all participants in the field of waqf; merchants and aghas, for instance, were also involved, as founders or trustees. Their position is not the same as that of the ulama and the governors, however, if the size of the waqfs and waqf complexes are taken into consideration. Apart from this quantitative argument, the position of the ulama and governors in the Ottoman bureaucracy allowed them to use the power mechanisms connected with the state apparatus and with the local networks to exert influence on the local field of waqf. As a result of their official status, their activities with regard to waqfs can be directly related to power struggles which transcended personal or group interests and touched upon the interests of the state. First, an outline will be given of the role of the ulama concerning the administration of waqfs and the function of

waqfs in the structuring of ulama networks; then the significance of the waqfs founded by governors of the province of Damascus in the Ottoman period will be discussed, as part of policies aimed at economic revivification and as part of the administrative links between the Porte and Damascus.

Functions

It has been observed that, contrary to the view of diminishing central control in the Ottoman provinces, the ties between the Damascene ulama and Istanbul were in fact strengthened in the course of the 18th century, in spite of the prominent role played by some locally based families within the ulama elite. In certain periods a number of local families acquired quasi-monopolies over certain functions in the juridical apparatus and educational institutions, such as those of mufti ('Imādīs, Murādīs), *khaṭīb* of the Umayyad Mosque (Ustuwānīs, Muḥāsinīs, Manīnīs), *nā'ib* qadi (Bakrīs, Ayyūbīs, Muḥāsinīs) or teacher at the Sulaymāniyya, a function that was usually held by the Hanafite mufti. According to Voll, although these families had a firm power base in Damascus, they increasingly exploited their relations with Istanbul to solidify their position. Efforts at advancement as a rule included trips to the imperial capital, to establish ties with prominent ulama, viziers and influential notables, and to study and teach at prestigious *madrasa*s. These relations were often strengthened by visits of magistrates from Istanbul to Damascus, often on their way to the holy places. The intertwinement of the ulama networks in Istanbul and Damascus went so far that shifts in the power balance in the capital, resulting for instance in the removal of a *shaykh al-islām*, could have far-reaching repercussions for appointments in Damascus, while, conversely, pressures from Damascus could sometimes secure the appointment of local candidates at the expense of those favoured by the Porte.[1]

The official representative of Ottoman authority among the ulama in Damascus was the chief qadi, or *qāḍī al-Shām*, who was appointed directly by the central authorities, after 1703 for a maximum period of one year. This office was one of the most prestigious in the empire,

[1] For the functioning of ulama networks in Damascus, see Schatkowski-Schilcher, pp. 116-123; and Voll.

since Damascus ranked fifth in the list of most important cities, and it could be a stepping stone to higher judicial posts or even the post of *shaykh al-islām*. The chief qadi headed the main Sharīʿa court, the Maḥkama al-Kubrā (after 1753 the Maḥkamat al-Bāb), with his personal deputy, and supervised the body of *nāʾib* qadis attached to the five courts in the city-quarters, al-Mīdān, al-Ṣāliḥiyya, al-ʿAwniyya, al-Bāb, and al-Sināniyya. His office belonged to the imperial circuit of appointments, which could not be influenced by pressures from local notables or ulama, and because of his short term of office, he was unable to build up strong ties with the local elite. Damascene scholars could enter this circuit mainly by migrating to Istanbul and acquiring teaching posts at the *madrasa*s there. Only in two instances did a scholar who originally came from Damascus become *qāḍī al-Shām*.[2]

The Ottoman office of chief-qadi differed from that under the Mamluks in several respects. Firstly, the office could only be assigned to a Hanafite scholar who had received his education at one of the state-sponsored institutions. When Sultan Selim entered Damascus in 1516, he was warmly welcomed by qadi Walī al-Dīn al-Farfūr, who succeeded in winning the sultan's favour. However, al-Farfūr was a Shafiite and he could only be maintained in office if he was prepared to change his *madhhab*. This he subsequently agreed to do, and he became the first Ottoman chief-qadi of Damascus.[3] Secondly, at least in the initial period, the circuit for ulama acting as chief-qadis was dominated by Turks, who obviously had the closest relationship with the new regime. It should be noted that the transition to the new regulations did not go smoothly. Objections were raised especially to the new predominance of the Hanafite law-school.[4]

The second important function was that of Hanafite mufti of Damascus. Under the Mamluks the function of mufti was not part of the official hierarchy, but under the Ottomans it was fully incorporated into the state apparatus. The mufti was normally appointed for life and was thus able to develop ties with the local elite. Normally the office of mufti was combined with the professorship of al-Sulaymāniyya and the supervision of the body of *madrasa*-teachers. After the Ottoman conquest of Damascus in 1516 the majority of the

[2] Rafeq (1966), p. 44; al-Budayrī, pp. 177-8.

[3] Al-Farfūr was reputed to be rich and corrupt and was discharged in 1529; he died as a prisoner in the Citadel in 1530; Bakhit, p. 127.

[4] ʿUlabī, pp. 222-5; ʿImād, p. 152.

muftis had been sent directly from Istanbul, but from approximately 1629 onwards the number of appointees originating from Damascus increased sharply. From that year onwards almost all muftis were taken from local families, an indication that the function became the object of local power struggles, rather than the Porte's bureaucratic policies. This is confirmed by the ascendancy of the Damascene 'Imādī family, who held the office, combined with the professorship of al-Sulaymāniyya, during the greater part of the 17th century.[5]

The third prominent Ottoman official was the *khaṭīb* of the Umayyad Mosque, whose functions were rather ceremonial, but who nevertheless had a high official status, as the Ottoman assignee in the main religious institution of the city. As in the case of the mufti, in the course of time this function became monopolized by Damascenes and by certain families. This also applied to the function of *naqīb al-ashrāf*, or leader of the group of descendants of the Prophet. The function was initially combined with that of *nāẓir* of the Madrasa al-Qaymāriyya, and later the *naqīb* acted as general supervisor of schools and mosques. Other functions, such as teachers, *nā'ib* qadis and *kātib* at the courts, were as a rule filled by local ulama. Their nominations were usually presented to the *shaykh al-islām* by the chief qadi and subsequently officially ratified.[6]

This hierarchy of offices indicates the existence of two circuits, one covering the empire as a whole, with Istanbul at its centre, and the other confined to Damascus, but influenced by the interaction of the ulama network with the imperial capital.

In the next section we shall discuss a selection of ulama careers in the 17th and 18th centuries, which are illustrative of the mechanisms involved in the system of appointments, the mobility of the ulama, the interrelationship between the two circuits and the struggles to obtain the most prestigious posts.

Ulama careers

If one looks for patterns in the ulama careers in the 17th and 18th centuries, some observations can be made. Firstly, as in the Mamluk period, there is a high degree of mobility among the ulama, both to acquire knowledge and to enhance career opportunities. Not surpris-

[5] Bakhit, pp. 132-3; al-Murādī (1988), pp. 3, 36.
[6] Bakhit, p. 186; Schatkowski-Schilcher, pp. 114-131; Rafeq (1966), p. 50.

ingly, the centre of attraction shifted from Cairo to Istanbul, where the elite corps of the ulama was shaped by the system of *madrasa*s and by the networks surrounding the imperial palace and the *shaykh al-islām*. Some scholars from Jerusalem and the majority of Shafiite ulama, however, still tended to prefer Cairo as a centre of scholarship. It is remarkable that two circuits seem to have existed which were virtually separated from each other: the circuit of the qadis, which was completely controlled by Istanbul and which depended solely on the bureaucratic policies and networks of the imperial capital; and the local circuits, where ulama competed for teaching posts and official functions in their city, such as those of mufti, *khaṭīb*, administrator of waqfs, *nā'ib* qadi, *naqīb al-ashrāf* and others. There does not seem to have been an intermediate circuit, covering the Syrian regions or even the province of Damascus. A scholar could go to Istanbul and try his luck, but if he failed to be incorporated into the imperial circuit, he would normally return to his home town and aspire to one of the 'local' functions. There also seems to have been less influx of scholars to Damascus than previously, a tendency which reflects the diminishing of mobility within the regional network. It is difficult to say if this was the result of a deliberate policy of the Porte, but one of the consequences was that strong local factions of ulama developed, which sometimes succeeded in monopolizing certain functions.

Secondly, the family was the most important framework for the transfer of positions within the local circuit from one generation to the next. In the course of time some families belonging to the wealthy classes of Damascus established vested interests in the ulama network and succeeded in investing these interests with a semi-official status. Thus, the 'Imādīs and later the Murādīs obtained a quasi-monopoly over the function of mufti, while the Muḥāsinīs, Ustuwānīs and Manīnīs held on firmly to the post of *khaṭīb* of the Umayyad Mosque and others to those of *nā'ib* or *ra'īs al-kuttāb* in the courts. There is no indication, however, that these families formed a coherent 'bourgeoisie' defending local interests against a state threatening to encroach upon their domains. They rather seem to have been factions that competed for functions and ultimately were dependent on decisions taken in Istanbul. It is remarkable that of the efforts to enforce 'local' nominations, none of the cases mentioned seems to have succeeded. It is remarkable, too, that an appeal to the hereditary nature of some offices could in some cases be effective. This becomes less surprising,

of course, if one takes into account that family ties had become one of the main mechanisms for the transfer of functions in Istanbul as well.

The hereditary transmission of functions was not confined to the large families that had vested interests in official and semi-official functions. The lesser ulama, too, often acquired their functions by way of *farāgh* within the family. In some instances these transfers would be regulated by the waqf-deed, in which the *tawliya* or teaching posts could be ceded to descendants of the founder or of a certain scholar. In this way, the perpetuation of a certain family tradition could be secured or at least fostered. In many cases the positions would be handed down from father to son, from one brother to another, from uncle onto nephew, etc. These transfers would then be sanctioned by the qadi, sometimes with a 'sultanic endorsement', or *barā'a sulṭāniyya*. For a scholar at the outset of his career the inherited function would often only give him a foothold in the system, enabling him to start the scramble for other posts. He would eventually build up his own cluster of functions, which would again fall apart by transfers to his sons, or by a redistribution of functions by the qadi. This undulating pattern can be perceived in the case of the Hanbalite qadi ʿAbd al-Ḥayy , who was a teacher at the Madrasa al-Tankīziyya and held one-half of the post of imam at the Umayyad Mosque, and during his lifetime gathered more than thirty-five functions, varying from *tawliya*s to teaching posts. After his death in 1717 these were redistributed by the Hanafite chief qadi to a large number of persons.[7] Although inheritance played a large role in the reproduction of the ulama network, it never resulted in a closed system beyond the control of the central authorities.

Thirdly, in the 18th century it was normal practice, partly due to the inheritance of functions, that positions were shared between two or more scholars, dividing them up into parts of one-half, one-third, one-fourthth, or even one- twelfth. Scholars would thus build up clusters of partial functions, which together would provide them with a sufficient income. This could involve important functions, such as the *tawliya* of large waqf complexes, the *ri'āsat al-mu'adhdhinīn* (head of the muezzins) or *al-muwaqqitīn* (time watchers) of the Umayyad Mosque, etc., but also lesser functions. In 1718 sheykh Yaḥyā al-Ḥijāzī was appointed to the following functions, among others: one-

[7] *Sijillāt*, vol. 34 and 36 (1130), *passim*; Ibn Kannān (1994), pp. 287.

third *naẓar* (supervision of the waqfs of ʿAbd al-Raḥmān al-Qinṭār, one-half *qāri'* (reciter of the Qur'ān), one-sixth imam of the al-Qalʿī Mosque, one-third imam of the ʿAtiya Mosque, one-third *tawliya* of the same mosque, one-third *tawliya* of the al-Qalʿi Mosque, *qāri'* in the same mosque and *nāẓir* of the ʿAtiya Mosque. He received these functions through *farāgh* from his uncle. His father received a similar cluster of partial functions which he subsequently ceded to his son, together with a yearly allowance of wheat from a certain village by his. At the same time Yaḥyā ceded the functions he had received from his uncle to his nephew.[8] This transfer of partial functions could also involve imams of small mosques, reciters, *khaṭīb*s, *farrāsh*s, etc. The case of the Ḥijāzīs suggests that functions circulated between scholars through the system of *farāgh*, with some financial compensation.

Fourthly, the career patterns of the ulama show a complex interaction between local forces in Damascus and the central authorities in Istanbul. It is clear that Damascene scholars could greatly enhance their opportunities by penetrating the networks in Istanbul, to establish relations with notables and prominent ulama, using petitions or intermediaries to advocate their case. Evidently, the wealthy ulama families had a considerable advantage over others, since they were able to pay for services, or to create channels between the networks of scholars and those of traders and brokers. As a family, they were capable of upholding their patronage contacts in Istanbul over several generations. An example is the case of Ismāʿīl al-Muḥāsinī (born 1611) who came from a Damascene family of ulama and wealthy merchants. He himself reflected this duality, since he went into trade, besides becoming *khaṭīb* and imam of the Umayyad Mosque and teacher at al-Jawhariyya. After the death of *naqīb al-ashrāf* Muḥammad ibn Hamza in 1674 he received the *tawliya* and professorship of the Madrasa al-Taqwiyya, after having sent letters to the *shaykh al-islām* and Ibrāhīm Pasha, the governor of Egypt and Syria. After his death in 1691 the office of *khaṭīb* of the Umayyad Mosque was temporarily taken from the Muḥāsinī family in favour of Ismāʿīl al-Ḥā'ik and Muṣṭafā al-Ustuwānī. In 1713 his grandson, Sulaymān al-Muḥāsinī again became *khaṭīb* and teacher at al-Salīmiyya in al-Ṣāliḥiyya, after his father had travelled to Istanbul, had befriended the *shaykh al-islām* and had complained that these functions had of old

[8] *Sijillāt*, 1 *rajab* 1130, 36/31/46; id., 1 *rajab* 1130, 36/31/47; id., 8 *shawwāl* 1130, 36/59/122; id., 8 *shawwāl* 1130 36/59/123; id., 8 *shawwāl* 1130, 36/60/125.

been the prerogative of his family. His father harboured an enmity towards the great scholar al-Nābulusī, who had held the professorship until then, because of a conflict during the latter's term as mufti of Damascus. Sulaymān was appointed at al-Salīmiyya for a few days only, after which al-Nābulusī was reinstated.[9] Of course, close connections with Istanbul could also have the reverse effects. Ulama who enjoyed the protection of the *shaykh al-islām* could lose their position when their patron fell into disgrace and was deposed. The effects of such a crisis could be far-reaching for the ulama in the provinces. A famous case was that of Nāṣūḥ Pasha, who was the first governor of Damascus to retain his office for several years (1708-1714). Apparently he was a protegé of the *shaykh al-islām* of Istanbul, and when the latter was substituted by a new one the governor was deposed and even decapitated. Subsequently the faction supporting the governor in Damascus was rounded up and their possessions were confiscated. Among them was As'ad al-Bakrī, who was *nā'ib* qadi, qadi of Jerusalem and trustee of several waqfs, from whom a sum of 190 *kīs* was demanded, which had been given to him by the adjutant of the previous *shaykh al-islām* and his deputy in Ba'albakk. Eventually the amount was acquitted. Ibn Kannān ascribes the rivalry between Sulaymān al-Muḥāsinī and 'Abd al-Ghanī al-Nābulusī in 1713 over the professorship of al-Salīmiyya to the friendship of al-Muḥāsinī's father with the *shaykh al-islam*; apart from this, the Muḥāsinīs were apparently associated with the political faction of Nāṣūḥ Pasha. Al-Nābulusī, who had been discharged by the governor, was reappointed by the new *shaykh al-islam*, after the fall of Nāṣūḥ Pasha. Later, the trustee of the Salīmiyya in al-Ṣāliḥiyya, a wealthy agha, was hanged on the accusation that he was holding back money of Nāṣūḥ Pasha.[10]

Another factor of pivotal importance in these networks were the governors, who tried to secure the cooperation of scholars by founding waqfs for them or by using them as representatives to conclude real-estate transactions. In certain circumstances the ulama could block efforts to levy money from the population, but, *vice versa*, sometimes the governor succeeded in directing the wrath of the people against the ulama. There are some examples of governors attempting to interfere with ulama appointments, but there is no evidence that this occurred on a regular scale. Scholars could join the retinue of

[9] Al-Murādī (1301), vol. 1, pp. 250-4; Schatkowski-Schilcher, p. 184.
[10] Ibn Kannān (1994), pp. 209-213, 219, 221, 223, 233-4.

pashas hoping to profit from their ascendancy, but this could evidently also lead to failure. If ulama were punished or deposed by pashas they could appeal to the *shaykh al-islām* to have themselves rehabilitated. In 1706, for instance, Asʿad al-Bakrī was exiled to Ṣaydā, together with Ismāʿīl al-Muḥāsinī, the imam of the Umayyad Mosque, for criticizing the efforts by governor Sulaymān Pasha al-Balṭajī to conclude a loan from the Damascene merchants on behalf of the sultan, which was, according to them, tantamount to oppression. After a year they were pardoned by the sultan and received a warm welcome from the Damascene population.[11] Another example was ʿAbd al-Raḥmān al-Qārī, who was born into a rich notable family in Damascus in 1661. He joined the retinue of governor Rajab Pasha (1717-8) and obtained a high position. The governor dismissed mufti Muḥammad Ibrāhīm al-ʿImādī, nominated al-Qārī in his stead and asked for a confirmation from Istanbul. The decree was read in the presence of the Damascene notables and al-ʿImādī was ordered to leave Damascus. Al-ʿImādī warned Rajab Pasha, however, that it would be wiser to pardon him, since a decree ordering his reinstatement would arrive soon. The governor held on to his decision, but after protests of the Damascene population he changed the sentence into house arrest. After a few days a decree arrived pardoning al-ʿImādī and restoring him to the office of mufti. Al-Qārī also held the office of *nāʾib* of al-Bāb and administrator of the Madrasa al-Ẓāhiriyya.[12]

Conversely, the pashas could mobilize the support of ulama when their position was jeopardized by political intrigues by local factions or enemies in the capital. Ulama, especially chief qadis, were to some extent considered as a check on the power of the governors, who sometimes reported to the Porte on their behaviour, and it was important for secular authorities in the province to have sufficient support within the ulama network to use it for their interests. Mufti Khalīl al-Bakrī al-Ṣiddīqī, for instance, led a revolt against the *mutasallim* (the adjutant of the governor) in 1724. However, sometimes the governors succeeded in diverting popular anger against the ulama, especially in the case of price increases and scarcity of food.[13]

[11] Al-Murādī (1301), vol. 1, pp. 223-4; Ibn Kannān (1994), pp. 221, 223, 261; Schatkowski-Schilcher, p. 158.

[12] Al-Murādī (1301), vol. 2, pp. 281-5; id. (1408), pp. 99-100.

[13] Al-Budayrī, pp. 41, 47, 49, 50, 63, 81; al-Murādī (1301), vol 3, pp. 279-287; see also Rafeq (1966), pp.149-151, 162, 164,-5, 168.

Finally, the network of scholars was partially centred around the sheykhs of sufi orders, especially the Qādiriyya, the Naqshbandiyya and the Khalwatiyya. Sheykhs pertaining to one or more of these orders were usually esteemed for their piety and could hold important positions. The centre of the Qādiriyya was the *zāwiya* of sheykh al-Kaylānī in Ḥamāh, that of the Naqshbandiyya in the Murādiyya Mosque in al-Suwayqa and that of the Khalwatiyya in the Bardbey Mosque. There does not seem to have been a centralized framework of the sufi network and their waqfs, such as al-Sumaysāṭiyya had been in the Mamluk period. As has been shown in chapter three, however, at least some of the orders received immaterial and material support from the Ottoman authorities.[14]

Schools and institutions

In his survey of ceremonial processions Ibn Kannān mentions as the four main schools in Damascus al-Sulaymāniyya, al-Nūriyya, al-Ẓāhiriyya and al-Salīmiyya, together with the Qubbat al-Nasr in the Umayyad Mosque.[15] Not surprisingly these schools are the main foundations made by sultans in three subsequent eras, the Ayyubids, the Mamluks and the Ottomans. These institutions, but especially the Ottoman Sulaymāniyya, formed the pinnacle of the educational system in Damascus and simultaneously the intellectual symbol of Ottoman authority. In the years after the foundation of the two Ottoman institutions in the 16th century, few *madrasa*s were built, even in periods when general construction activity was revived. In the 18th century, however, some new schools were erected, especially by the governors of the ʿAẓm family. It was not uncommon, moreover, that governors endowed the *madrasa*s and their teachers and students with sums of money. In 1710, for instance, Nāṣūḥ Pasha distributed the revenues of the village Bālā among schools, students and imams, and in 1712 and 1713 he gave twenty *kīs* to the poor, the teachers, the imams and the *khaṭīb*s.[16]

In this section five institutions will be discussed, the foundations of Darwīsh Pasha and Kujak Pasha, the two *madrasa*s built by the ʿAẓms in the 18th century and al-Sumaysāṭiyya, which was, of course, much

[14] Ibn Kannān (1994), p. 25.
[15] Id. (1990), vol. 2, p. 351.
[16] Id. (1994), pp. 166-7, 195-6, 204.

older. We shall describe the foundations in some detail, since they illustrate not only the nature of this type of waqf, but also the way in which waqfs were used by governors to establish relations with the ulama.

a. The foundation of Darwīsh Pasha (1571/4) will be mentioned below in this chapter. It included appointments of a Hanafite and a Shafiite teacher, Ismāʿīl al-Nābulusī and Ḥasan al-Bīrūnī. The posts were explicitly designated to the Nābulusī family and later went to the descendants of Ismāʿīl, ʿAbd al-Ghanī al-Nābulusī and Ismāʿīl ibn ʿAbd al-Ghanī.[17]

b. In 1635 Kujak Pasha, who had been governor of Damascus in 1629 and 1632, founded the ʿAsālī Mosque and *takiyya* near the Qubbat al-Ḥājj in the village of al-Qadam outside Damascus. He endowed the mosque with several villages in the environment of Ṣaydā and Baʿalbakk, and included a fountain, a stipend for the recitation of sixty chapters of the Qur'ān in the Umayyad Mosque and a sum for the poor of the holy places. It was allocated to Sheykh Aḥmad al-Ḥarīrī al-ʿAsālī, the sheykh of the Khalwatiyya Order in Syria, who recieved one *qirsh* a day.[18]

c. The first ʿAẓm governor who founded a school was Ismāʿīl Pasha. In 1728 he built a *madrasa* in al-Khayyāṭīn, which was later endowed with supplementary waqfs by other members of the family, notably his son Asʿad Pasha. His waqf of a *qaysāriyya* included a provision of 4 *dirham* daily for reciters of al-Bukhārī. In 1749 he endowed the school with a collection of books and some money for a chief librarian. The collection consisted mainly of legal texts of the most prominent scholars.[19]

d. The second ʿAẓm governor founding a school was Sulaymān Pasha, whose waqf deed dates from 1737. The building consists of two floors with sixteen cells, a kitchen, a *masjid* and a library. The waqf objects include seven houses or parts of houses, a bathhouse, a bread-oven, a tannery, seven mills (in al-Ṣāliḥiyya, Sūq al-Sārūja, al-Mazza, al-Marja), and twelve fields in eight hamlets near Damascus. The teacher, Sheykh Muḥammad al-Tadmurī, was to receive 15 *dirham*, Sheykh Ibrāhīm ibn ʿAbbās, the imam, sheykh of the reciters, librarian, assistant teacher and reciter, was to obtain 26 *dirham*. Be-

[17] Badrān, pp. 376-7.

[18] Id., pp. 384-5; Ibn Kannān (1994), pp. 310, 484; see also *AL: Awqāf al-marḥūm Kujak Aḥmad Bāshā*, and above, chapter four.

[19] Al-Munajjad (1980); *sijillāt*, 18 *rabīʿ al-awwal* 1166, 139/56/72.

sides these two, salaries were to be paid to a cook, a cleaner, a concierge and a water-carrier. Only unmarried pupils were to be be admitted to the courses. They were to receive per day four *raṭl* bread, two *raṭl* rice, soup on one day, half a *mudd* lentils on the other, and one *raṭl* meat. In the month of *ramaḍān* they will have some extra butteroil and wheat. Provisions are made for oil for the lanterns and two candles of two *raṭl* next to the mihrab.The allocation of the rooms and the functions are reserved for the *nāẓir*. Later another waqf was added, from which every student was to receive one *qirsh* and some extra food. Three *qurūsh* a day were to be paid for the recitation of the *Dalā'il al-khayrāt*, an important sufi-text[20], and two more for recitation of the Qur'ān, twice a month.[21] Some additional waqfs were endowed by Sulaymān's daughter Amīna, as we shall see in the section on governors' waqfs.

e. The Madrasa al-Sumaysāṭiyya was administered by the leader of the Syrian sufis, the *shaykh al-shuyūkh*, according to the arrangements made by Nūr al-Dīn al-Zanjī, until 1421. Apparently the convent's importance diminished in the course of time, but at the close of the 17th century it was granted a new lease of life by Aḥmad ibn ʿAlī al-Manīnī, who took up residence there and turned it into a school.[22] Some documents from the court records indicate that in the first half of the 18th century it still had considerable possessions. In 1722 a large waqf was founded by a *sharīf* which was partly designated for the Madrasa al-Sumaysāṭiyya, and which consisted of four houses in Damascus and Dūmā, shares in two olive-presses, a soap factory and twenty-six plantations (walnuts, olives, figs, grapes, mulberries) and two *mashadd al-masaka*s. Part of the revenues are to be allocated to the wife and descendants of the founder, and afterwards to the school.[23] A lease contract from the same year concerns a garden to be rented for a period of seven years for 111½ *qurūsh*, 25 of which are to go to the Madrasa al-Sumaysāṭiyya.[24] Apparently the school had large possessions in and around Tripoli, as is shown by a lease contract from 1712, which refers to a house, shares in two villages and twenty-one plots of land. These are to be rented for three years and four months for 400 *qurūsh* a year.[25] Another lease contract

[20] See Brockelmann, vol. 2, p. 252.
[21] Id., pp. 266-269.
[22] Id., p. 277.
[23] *Sijillāt*, end *dhū al-ḥijja* 1134, 44/431/667.
[24] Id., 23 *rajab* 1134, 44/369/582.
[25] Id., 10 *jumādā al-ūlā* 1124, 33/162/262.

concerns a bathhouse in Maḥalla al-Qabāqabiyya, known as Ḥammām al-Silsila al-Kabīr, which was to be for one half in the possession of the school. The *ḥammām* was to be rented for three years for one *qirsh* a day, which was four *maṣārī* above the previous rent. Half of the rent was to accrue to the school.[26] Finally, in 1718 Sheykh Muḥammad Saʿdī Efendi founded a waqf consisting of ten pieces of land in al-Ghūṭa and part of a house for himself and his descendants, and afterwards for the Awqāf Sādāt al-Mu'adhdhinīn (one half) and the Khānqāh al-Sumaysāṭiyya (the other half). Two *qurūsh* are to be allocated to the Great Mosque in Mecca, to be brought by the pilgrimage caravan.[27]

The examples given above show that governors were deeply involved in the setting up of the religious infrastructure of Damascus. They endowed properties for the benefit of certain sheykhs or ulama families and they often gave precise instructions in regard to the organization and curriculum of the school. Moreover, the waqf complexes were often extensive and varied and, as the example of the Sumaysāṭiyya shows, old waqf complexes could be revived by a new impulse. The *madrasa* waqfs were clearly an important source of income for the ulama. These were not only beneficiaries of this kind of waqf, but were themselves active as founders, too, as we shall see in the next section.

Waqfs and the ulama: the case of the Murādīs

The waqfs founded by the higher local ulama in the 18th century, as far as can be deduced from the court records, roughly divide into two types: one type concerns the waqfs to secure the preservation of certain religious institutions, such as schools and the gathering places of sufi orders; the second type consists of possessions endowed, in the first instance, for the benefit of the families and descendants of the founders. Both types show that the local ulema were active in all kinds of real estate transactions, not only as trustees or *nāẓir*s, but also as private persons, or, perhaps more accurately, as heads of family households. Perhaps the clearest example of the way in which important ulama used the waqf mechanism to consolidate their position

[26] Id., 18 *rajab* 1130, 36/23/30.
[27] Id., 5 *dhū al-ḥijja* 1130, 36/85/199.

within the existing power structures is provided by the case of the Murādī family.

The first member of the Murādī family who rose to prominence was Muḥammad Murād al-Murādī (1640-1719), who was born in Bukhara, travelled to India, where he became a Naqshbandī, and finally came to the Ottoman Empire. He performed the hajj several times and visited Egypt, Damascus and Baghdad. After a five-year stay in Istanbul, where he gained the favour of the Ottoman authorities, he finally settled in Damascus, with a *mālikana* estate granted by the government. In Damascus he founded two schools, the Murādiyya (1696; near Bāb al-Barīd) and the Naqshbandiyya al-Barrāniyya (1696; in his own house in Sūq al-Sārūja).[28] His son Muḥammad (1683-1755) was born in Istanbul and was selected to perform the hajj in the name of the sultan, after which he became qadi of Medina.[29] His son ʿAlī (Damascus, 1720-1770) also travelled between the Ḥijāz, Istanbul and Damascus, and executed several functions, including qadi of Jerusalem and teacher at the Sulaymāniyya. He was the first Murādī to be appointed mufti of Damascus (1758).[30] He was succeeded in his three functions by his brother Ḥusayn (1725-1774)[31] and a member of another branch of the family, ʿAbdallāh (d. 1798?), who was also qadi of Jerusalem and who enjoyed the support of the *qāḍī al-ʿaskar* in Istanbul (1775-6).[32] From 1778-1791 Muḥammad ibn ʿAlī (1759-1791) acted as mufti and, for some time, as *nāẓir* of the Umayyad Mosque and *naqīb al-ashrāf* of Damascus. He visited Istanbul in 1778.[33]

Following the example of their grandfather Muḥammad, at least several members of the Muradi family were active in the field of waqf. The two types of waqfs mentioned above are represented by two waqfs of ʿAlī al-Murādī: the endowment of a house for the sheikhs of the Naqshbandiyya in Damascus, their leaders and the sufi community, and afterwards for the Umayyad Mosque and the poor (1761)[34]; and a waqf which is more appropriately a modification of a previous large waqf, consisting of inherited possessions, especially plantations, founded for the benefit of the Murādiyya school. A plot

[28] Al-Murādī (1988), pp. *ālif, bā*; id. (1301), vol. 4., pp. 129-130.
[29] Id. (1988), p. *jīm*.
[30] Id. (1988), pp. *jīm*, 126-135; id. (1301), vol. 3, pp. 219-220.
[31] Id. (1988), pp. 135-6.
[32] Id. (1988), pp. 142-3.
[33] Schatkowski-Schilcher, p. 119.
[34] *Sijillāt*, 9 *shawāl* 1175, 164/284/448; also in al-Kūriyya.

of land is taken out of the waqf and reverted to *milk* status, in exchange for another plot of land and a silo, or *bāyika* (1766), which are included in the waqf. The transaction, which is accompanied by a statement that the founder has stipulated the right of *idkhāl* (adding to the waqf) and *ikhrāj* (taking possessions out of the waqf) in his *waqfiyya*, is not interpreted as *istibdāl*. It shows that the Murādiyya school had become the nucleus of a waqf estate, probably receiving endowments from several family members, and administered by sheykh ʿAlī.[35] These two waqfs show the two main interests of ulama as far as the founding of waqfs is concerned: firstly, the support for religious institutions to secure their preservation, and, moreover, the influence of the family within the institution; and, secondly, the gathering of an estate supporting the family economically, enhancing their status in society and improving the opportunities of family members to acquire official posts. Other *waqfiyya*s indicate that waqfs by other ulama follow the same pattern.[36]

A collection of documents with regard to the waqf possessions of another mufti of the Murādī family, ʿAbdallāh ibn Ṭāhir, confirms the idea that the gathering of real estate possessions by the ulama was not an incidental activity, but a systematic one. In 1776 ʿAbdallāh converted a large complex of possessions into waqf, including three houses, plantations in the surroundings of Damascus (six plantations, three *mashadd al-masaka* lands, four shares of plantations), for the benefit of himself and his descendants and, afterwards, of the Madrasa al-Murādiyya.[37] ʿAbdallāh engaged in several other transactions (especially lease transactions), sometimes acting in his function as *nāẓir* of the waqf of Sinān Pasha: a large lease contract (1776), signed for a period of sixty years, shows that the two waqf estates had to some extent become merged, since the possession of many plantations is shared by both waqfs.[38] Another large transaction concerns the *farāgh*, or transfer, of a *mashadd al-masaka* of part of the waqf of Sinān Pasha, in favour of ʿAbdallāh, for a sum of 10,000 *qurūsh*.[39] In 1783 ʿAbdallāh changed the conditions of his waqf to include the mother of his son among the beneficiaries and to allocate 40 *qurūsh* annually to the

[35] Id., 27 *shaʿbān* 1180, 173/48/77; also in al-Kūriyya.
[36] Id., 16 *jumādā al-ākhira* 1164, 134/26/53; id., 10 *rabīʿ al-awwal* 1166, 139/169/181; also in al-Kūriyya.
[37] *AL: Majmūʿa...*, ff. 1-12, 9 *shaʿbān* 1190.
[38] Id., ff. 24-6, end *shawwāl* 1190; id., ff. 29-31, end *shawwāl* 1190.
[39] Id., ff. 27-8, 5 *shaʿbān* 1190.

holy mosques in Mecca and Medina, 20 *qurūsh* to Qur'ān reciters in the al-Aqṣā Mosque in Jerusalem and 40 *qurūsh* for recitations and *dhikr*s (70,000 times *lā ilāh illā allāh)* for the soul of the founder.[40] In 1784 eight shares of plantations are bought for the waqf, and in 1791 a house is added and subsequently rented for a period of 45 years.[41] From one of the documents it appears that the waqf of the Murādiyya included the Khān al-Sulṭān near Bāb al-Barīd, which was leased out by ʿAbdallāh for a period of 45 years, from 1811 onwards, almost twenty years after the signing of the deed.[42] The ʿAbdallāh documents show how a scholar acted at several levels to secure his interests: as a founder of waqfs, for himself and his family, as a *nāẓir* of his family's waqfs, as a *nāẓir* of an important waqf complex, and as an official. Remarkably, all transactions date from the period when he was mufti of Damascus or later. It is not certain whether he was a teacher at one of the Hanafite law-schools, too.

The first thing that strikes the observer in the career of the Murādīs is the long period in which they succeeded in monopolizing the function of mufti (31 years between 1758-1791), with the *khaṭīb* of the Umayyad Mosque the most important official with a long-term appointment. After the conquest of Syria, Sultan Selim reorganized the ulama corps in Damascus according to the Ottoman bureaucratic system, apparently to centralize the system of appointments and to avoid the monopolization of functions. As has been argued above, this reform was supported by the foundation of the Salīmiyya and, eventually, the Sulaymāniyya, which became the second core of the ulama hierarchy after the Umayyad Mosque. Initially, the majority of the muftis and teachers of the Sulaymāniyya had been scholars coming directly from Istanbul. At first sight, the careers of the Murādīs seem to confirm the tendency to a shift in the power balance between local and central forces. In fact, as the biographer Muḥammad Khalīl al-Murādī remarks, ʿAlī al-Murādī was especially chosen by local notables and the governor for the office, in spite of resistance from groups in al-Mīdān.[43] The accumulation of waqf possessions also suggests that the Murādīs gave priority to the building of a power base in Damascus. However, they seem to have had good relations with the ʿAẓm governors, and al-Mīdān was notorious for its

[40] Id., ff. 41-2, 14 *jumādā al-ākhira* 11??.
[41] Id. ff. 48-51, 10 *ramaḍān* 1199; id., ff. 51-3, end *dhū al-qaʿda* 1206.
[42] Id., ff. 58-60, 7 *rajab* 1208.
[43] Al-Murādī (1988), pp. *jīm*, 126-135; id. (1301), pp. 219-220.

anti-Ottoman factions, so that the conclusion seems justified that in contrast to the ʿImādī family, the Murādīs maintained strong ties with power groups in Istanbul and that at least in some cases they owed their appointment to patrons in the capital. It is noteworthy that the first Murādī who settled in Damascus received *mālikāna* possessions there from the government. It seems, then, that the success of the Murādīs was not merely due to a strong local power base, or to the intervention of the Porte only, but rather to a combination of a local power base and a foothold in the central bureaucratic apparatus. Only this combination enabled them to supersede other powerful local families and at the same time to preserve their influence in Istanbul.

As yet, it is hard to assess how exemplary the case of the Murādīs was in 18th-century Syria, although their importance is beyond doubt. Their case shows the opposite of the theory of 'diminished central control': it supports the view that, on the contrary, central control was strengthened by the co-optation of officials with strong local roots and that the system was controlled by allowing loyal families to build a power base in order to create a balance in local power formations.

The ulama and the administration of waqfs

So far in this chapter we have discussed the organization of the network of ulama and its relations to waqfs and the state. The question remains how the formal authority with regard to waqfs was distributed and how the administration of the waqf system was organized. In this section we will not go into the legal aspects of this question, which are treated in the next chapter, but confine ourselves to the domain of administration.

In a sense waqf objects were part of the common properties of the Muslim community, and although founding a waqf was essentially a transaction concluded by individuals for specific persons or aims, we have seen above that the state not only acquired interests in the system of foundations, but also assumed certain responsibilities as regards their administration. The responsibility for the maintenance and preservation of waqf objects lay in the first instance with the trustee, who was obliged to invest part of the revenues of the waqf to cover expenses for its repair and to ensure a prosperous exploitation.

He was checked by the qadi, who was invested with a general responsibility as a representative of the community. The secular authorities evidently had some responsibility too and it occurred with some regularity that sultans or members of the imperial household donated amounts of money for the restoration of buildings such as the Umayyad Mosque. Governors could also finance the restoration of waqf objects or order the trustee to take care of neglected buildings, sometimes on the instigation of inhabitants of the quarter. Asʿad al-ʿAẓm, for instance, gave orders to repair the Umayyad Mosque in 1749, and to restore the Yalbūghā and Yaghūshiyya Mosques.[44] There are several cases recorded of trustees who were thrown into prison as a punishment for their negligence in this respect. As we have seen above, the secular authorities could also be involved in the reorganization of the financial budget of waqfs and the expenses for personnel, especially in the case of schools and mosques.

Officially, the main supervisor of the Damascene foundations was the Hanafite chief qadi, whose task it was to order the inspection of buildings, usually with the help of a group of notables and a *miʿmārbāshī*, or chief architect. To this end he issued official warrants which normally resulted in an order for restorations to be made. In 1718, for instance, a group of ulama and notables came together with the *wakīl* of the waqfs of the Umayyad Mosque to give a formal order for restorations to be carried out on the building, such as painting of the columns, plastering the walls, repairing the mosaics and Qur'ān quotations, the brass on the doors, the tiles near the Bāb Jāyrūn, etc. The expenses were to be advanced by the trustee himself, since there was not sufficient capital in the waqf. Afterwards, the costs were to be refunded from the remainder of the waqf revenues after payment of the regular expenses and salaries, in the form of an *iqtiṭāʿ*, or deposit. Similar endorsements were given for smaller mosques, especially when the trustee asked permission to borrow the required amount from the waqf.[45]

A second duty of the qadi was to supervise the appointment of teachers, trustees, imams, *khaṭīb*s and other waqf personnel. The functionaries of the larger waqfs were appointed by sultanic patent (*barāʾa sulṭāniyya*) from Istanbul, on the recommendation of the qadi, those of the minor waqfs by a *barāʾa* from the qadi himself. He also supervised legal transactions with regard to waqfs, heard in cases of

[44] Al-Budayrī, pp. 145, 189; Ibn Kannān (1994), p. 281.

[45] *Sijillāt*, 19 *rabīʿ al-awwal* 1130, 36/14/16; id., 2 *rajab* 1130, 36/25bis/?.

complaints by beneficiaries or other interested parties and could order a reassessment of the value or rents of specific waqf objects by an assessor (*kashshāf*). If cases were too complicated they were delegated to Istanbul to be decided by sultanic decree (*amr sulṭānī*). As far as the schools were concerned, the qadi had to cooperate with the mufti, who, at least in the 18th century, acted as the supervisor of the body of teachers.

Apart from waqfs founded by individuals, often administered by descendants of the founder, there existed several large waqf complexes in Damascus, which had either grown in the course of time or had been founded as such by the original founder. Examples of the latter are the Sināniyya waqfs, the foundations of Lālā Muṣṭafā, the Darwīshiyya, etc., including the large sultanic waqfs, the Sulaymāniyya and the Salīmiyya. The other complexes, which had expanded with the passage of time and consisted of huge clusters of waqf possessions, included the main religious institutions, such as the Umayyad Mosque, the waqfs for the holy places (Awqāf al-Ḥaramayn al-Sharīfayn), waqfs for specific functionaries, such as the muezzins (*sādat al-mu'adhdhinūn*) and imams (*sādat al-a'imma*) of the Umayyad Mosque and waqfs for social or ethnic groups (*awqāf al-ashrāf*, *awqāf sādat al-Miṣriyyīn*, etc.). These complexes had their own trustees and *nāẓir*s, who were allowed to conclude all kinds of transactions. In the 16th century some trustees were recruited from the local notables (schools, Ḥaramayn, Umayyad Mosque), while others were sent from Istanbul (Nūrī Hospital, Salīmiyya). At the beginning of the 18th century local Turcoman *aghā*s acted as *nāẓir*s and trustees of several large waqfs (Salīmiyya, Sulaymāniyya, Sināniyya, but also at least sometimes the Ḥaramayn and the Umayyad Mosque).[46] As we shall see below, the administrators of large waqf complexes were very influential, since a considerable part of the economic infrastructure in the city and large possessions in al-Ghūṭa were somehow connected to these complexes. Moreover, lands that were leased out to tenants were as a rule waqf lands, which more often than not belonged to one of the major waqfs, and therefore the administrators were in control of an important part of the economy. The evidence available does not allow us an estimation of the size of the major waqf complexes, which consisted of possessions within the city (souks, shops, *ḥammām*s, *khān*s, residential houses), gardens and orchards in al-Ghūṭa, and posses-

[46] Bakhit, pp. 132-8; Ibn Kannān (1994), pp. 36, 64, 257, 265; al-Muḥāsinī, p. 120.

sions in other Syrian towns, such as Ṣaydā and Aleppo. These possessions were usually leased out on the basis of sharecropping (*mushāraka*) agreements, or *ḥikr*.[47]

There are indications that the delegation of the administration of waqfs to local trustees sometimes led to malpractices. A case in point may be the administration of the waqfs of the complex of the Umayyad Mosque. In his *Silk al-durar* the 18th-century biographer al-Murādī states that at the beginning of the century the *nazar* of the Umayyad Mosque was allocated to Ibrāhīm Saʿd al-Dīn al-Shāghūrī, a Syrian sheykh of the Saʿdī Order who assumed high positions in Istanbul, where he had his own *zāwiya* and disciples. He came from a family of well-known mystics (*majdhūbs*) and had a second *zāwiya* in Maḥallat al-Qubaybāt in Damascus. For some time he was appointed trustee of the waqfs of the Umayyad Mosque, but he delegated this task to his *kātib*, Ḥasan ibn al-Khalīfa. The latter was accused by al-Murādī of flagrant corruption, malpractices and the embezzlement of money, together with his brother Muṣṭafā.[48] Documents from the Court Records show that in 1127 Ḥasan was *nāẓir* of the Awqāf al-Ḥaramayn and Sādat al-Miṣriyyūn and that he clearly held a very powerful position, supervising an enormous variety and potential of economic assets. The Khalīfa brothers concluded all kinds of transactions in the name of their superior, without his knowledge. Ibrāhīm received a large stipend from the sultan, which he transmitted to Fatḥī al-Daftarī, the famous *daftardār* (chief-secretary) of Damascus.[49]

An important role in the administration of waqfs was assumed by prominent notable families of Damascus, who usually built up their wealth by engaging in trade. ʿAbd al-Muʿṭī al-Falāqinsī, for instance, was a rich merchant, who acted as supplier for the army (*amīn kalār*) and as supervisor of many waqfs, including those of the Awqāf al-Ḥaramayn, the Umayyad Mosque and the Sādat al-Miṣriyyūn. He owned many estates and eventually became *daftardār*. As trustee of the Umayyad Mosque, he built the Ḥammām al-Dhahabiyya at the expense of the waqf and had a souk outside Bāb al-Farādīs repaired. Shortly before his death in 1710 he was succeeded by his brother Muḥammad Aghā, who was sent from Istanbul to assume the post of

[47] See below, chapter seven and eight.

[48] Al-Murādī (1301), vol. 1, pp. 41-2.

[49] Al-Murādī (1301), vol. 1, pp. 41-2; Ibn Kannān (1994), p. 498; al-Budayrī, p. 192; see also below, chapter eight.

daftardār al-Shām. Later another member of the family became *daftardār* and trustee of the imperial waqfs, the aforementioned Fatḥī al-Daftarī, who gradually succeeded in becoming the most powerful official in Damascus, by recruiting the support of local notables, the Yerliyya commanders (that is, of the local Janissaries) and the refractory leaders of al-Mīdān. He built a *madrasa* in al-Qaymāriyya (1743) and a coffeehouse and a bathhouse in al-Mīdān. He was decapitated in 1745 after his faction was crushed by Asʿad Pasha al-ʿAẓm, following a petition against him sent to Istanbul by a number of local notables and aghas, including qadi Khalīl Efendi al-Bakrī al-Ṣiddīqī.[50]

The Falāqinsīs, especially Fatḥī, represent a complicated factor in the relations between Damascus and the imperial authorities. On the one hand Fatḥī leaned heavily on local power formations, which in the course of time seemed to defy the authority of the governor, who formally represented the central government. On the other hand, he had a patron in Istanbul who covered him at the Porte, and only after the death of Fatḥī's patron did his position suddenly crumble. It is clear that he acquired more power than his function as *daftardār* would normally justify, and that he drew upon the resources which his family had built up in the course of time. He had financial connections with Sheykh Ibrāhīm al-Shāghūrī, the administrator of the Umayyad Mosque whom we mentioned above and who had delegated this task to the Khalīfa brothers, who were accused of malpractices and malversations. It seems, then, that in contrast to ʿAbd al-Muʿṭī al-Falāqinsī, his influence on the administration of waqfs was mainly indirect, through contacts with others and through administrative measures.

In general, it is clear that the central authorities attempted to keep the administration of waqfs under tight control. In 1720 a case came before the Maḥkama al-Kubrā concerning the post of teacher and administrator of the Dār al-Ḥadīth al-Ashrafiyya. Apparently, in 1709 the functions had been handed over by the administrator of the waqf from a certain al-Kāmilī to his two sons, and their appointment had been confirmed by the chief qadi and the *shaykh al-islām*. However, it appeared that at the time of the transfer (*farāgh*) the function of teacher was no longer in the hands of al-Kāmilī, according to the

[50] Ibn Kannān (1994), pp. 142, 172, 335; id. (1992), vol. 1, pp. 414-5; al-Murādī (1301), vol. 3, pp. 135, 148, 279; al-Budayrī, pp. 17, 49, 51, 60, 75-81; Badrān, p. 187; Sack, p. 112.

account book (*daftar al-muḥāsaba*) of the state treasury (*khazīna al-ʿāmma*). At that point a group of the Damascene population interfered and nominated four Kāmilī brothers, who came from Damascus. However, it was protested that the function did not legally belong to them. After several procedures, the qadi referred the case to Istanbul and it was decided to reappoint the teacher who had held the post at the time of the transfer by al-Kāmilī.[51]

This example indicates that not only was the system of appointment strictly scrutinized; it also shows that a detailed file was kept in Istanbul with all the administrative data on the waqfs in Damascus. This procedure was not limited to imperial waqfs, whose trustees were sometimes summoned to Istanbul for inspection of the files.[52] The organization of waqfs in Damascus ensured the central authorities of a firm grip on their administration. Especially the centralization of appointments and the formal authority of the chief qadi gave the state an almost final say in any transactions concerning waqfs, and it seems that the administrative apparatus had sufficiently crystallized to enable the state to protect its interests in the domain of waqf. This was primarily the result of the systematic integration of the ulama networks and the management of waqfs into the bureaucratic, economic and administrative framework of the state. This conclusion seems to contradict views of the relations between the central Ottoman authorities and the provinces which presume a diminishing of central control and a growing independence of local notables. It seems, rather, that central control was strengthened, not only by strict forms of bureaucratic centralization, but also by the continual co-optation of officials and functionaries with strong local roots. The system was controlled, then, by a careful policy of appointments and of allowing families to build a power base which would create a balance in the local power structure. Waqfs were an important mechanism to achieve this, as a means to structure and integrate networks and institutions, as a way to support and control local networks and at the same time as a way to strengthen the economic basis of state functionaries. By integrating the ulama network into its administration, the state ensured its control of the waqf institution as a mechanism to implement or support policies.

[51] *Sijillāt*, end of *dhū al-qaʿda* 1132, 40/92/274.

[52] Ibn Kannān (1994), 233; see also Yediyildiz, p. 160.

Governors

The Ottoman governor of Damascus was as a rule appointed for a period of one year, together with his adjudant, or *mutasallim*. From the beginning of the 18th century, however, it became usual that appointments were extended annually and covered periods of several years. This development is often seen as evidence that the position of governors *vis-à-vis* the central authorities was strengthened and that central control was weakening. In other parts of Syria, too, governors held their posts for extended, sometimes indefinite periods, and these are often seen as underminers of state authority and architects of substructures within the imperial administrative system. Another view has also been expressed, namely that these rulers were not transgressors of the state decrees, but rather local strongmen deliberately incorporated into the administrative system to enhance political and economic stability in the provinces. In this view, it is suggested that it was a preconceived policy to tolerate ambitious administrators with a local power base, as long as the minimal fiscal obligations of the provinces were met. Although forceful measures were sometimes required to keep these leaders under control, their loyalty to the central authorities was in question only a few times and they were possibly much better equipped to ensure the economic prosperity of the region under their control. Strong local leaders were used to maintain a grip on the local balance of power, securing a measure of influence of the central state.[53]

It has been argued that in the 18th century the Syrian ʿAẓm governors were retained in office for relatively long periods, because they were able, as a result of the local power base they were thus allowed to build, to ensure the safety and the continuity of the annual hajj and to counter-balance the influence of other governors, such as Ẓāhir al-ʿUmar and, at a later stage, al-Jazzār in ʿAkkā. They were themselves rich and guaranteed the regular remittance of the tax dues to the Porte. At least from the 17th century onwards, wealth had become an important factor for advancement within the system, to secure appointments and uphold political influence. It might even be assumed that this balancing between personal and public interests was an accepted practice within the Ottoman system, inducing governors to take initiatives to improve the prosperity of their province

[53] On this discussion, see Faroqhi, 'Crisis and change,' in: Inalcik/ Quataert (eds); Barbir; Van Leeuwen (1994; 1992).

and to profit themselves from the increase of revenues, as long as the flow of taxes to the state treasury was not interrupted.[54] The increased intertwining of personal and public interests became an organic part of the administration.

Whatever their personal power base was, governors belonged to the Ottoman state apparatus and, at least to some extent, their personal interests were not necessarily seen as a threat to the centralized system. In fact, their power constituted an important pillar of the power of the state, as long as the central authorities were able to ultimately monopolize control over the many power mechanisms built by them, in the form of taxation, surplus extraction and the ability to reproduce the administrative system. What was the function of waqfs in this complicated mechanism linking the provincial administration with Istanbul and determining the position of governors within the power system? To assess this, we shall analyze the activities in the field of waqf of six governors of Damascus who contributed most to the development of the city: al-Ghazzālī (1518-1520), Lālā Muṣṭafā Pasha (1563-7), Darwīsh Pasha (+ 1579), Sinān Pasha (1589; 1593), Murād Pasha (1592-3; 1594-5) and Asʿad Pasha al-ʿAẓm (1743-1757).

Jānbirdī Al-Ghazzālī was the first governor of Damascus after the Ottoman conquest of the city, and in line with state policy he embarked upon ambitious reconstruction works. He had mosques, schools and canals restored and ordered the reconstruction of the Dār al-Saʿāda. In 1518, after having been appointed *nāẓir* of the Umayyad waqfs, he had the mosque repaired and redecorated. Furthermore, he had negligent and fraudulent *nāẓir*s of schools punished and the buildings restored.[55]

In 1575 a large waqf was founded by Lālā Muṣṭafā Pasha, who had been governor of Damascus from 1563 until 1567. The waqf consisted of 290 shops in various souks, a bakery, a fountain, a bathhouse, a soup-kitchen in al-Qunayṭra, a *qaysāriyya*, a mosque, a school, lodgings, stables, 62 hamlets and fields, orchards and watermills. All these possessions would be exempted from the regular taxations.[56] In 1718 an evaluation was made of the rent (*ajr al-mithl*) of some shops of the Lālā Muṣṭafā waqf, located in Sūq al-Sārūja (in total 78 *maṣārī* rent per month), Sūq al-Harābīliyya (75 *m.*), Sūq al-

[54] See Barbir, pp. 56-64.
[55] Bakhit, pp. 25-7.
[56] Id., pp. 116-7.

Naṭafjiyya (530 *m.*), Sūq al-Arwām (505 *m.*), Sūq al-Qabāqabiyya (215 *m.*). The objects included workshops with habitation, copper workshops, barbers, tailor workshops, vegetable shops and a butcher's shop.[57]

A waqf that is quite exceptional in this context is the one founded in 1570 by Murād Shalabī, the *daftardār* of the Porte, who was strictly speaking not a governor of Damascus, but who nevertheless belonged to the bureaucratic apparatus. The endowment consisted of a mosque in Damascus, a mosque, a *khān* and a lodging al al-Maʿarra, a Qur'anic scool in Bogāz Ḥiṣār, a fountain in Istanbul, land and mills in Ḥamāh, Sayzar and Ḥimṣ, a *qaysāriyya* and shops in Damascus and shops in Istanbul. Moreover, a sum of 20,000 dinars were deposited, which would be exploited with an interest of ten per cent, for the benefit of Aleppo and Istanbul. Two administrators were appointed, one in Gallipoli and one in Aleppo. The revenues were to be collected by the *nāẓir* residing in Aleppo. The waqf deed contains a discussion on the legal aspects of the money waqf.[58]

In 1571 Darwīsh Pasha built a mosque outside Bāb al-Jābiyya, combined with a bathhouse and a *qaysāriyya*, to which he transferred the silk market, a souk and a coffeehouse. The possessions were to be waqfs for the benefit of the mosque and for Hanafite and Shafiite teachers.[59]

The *waqfiyya* of Sinān Pasha (1595) opens with an extensive eulogy on the founder. The founder acknowledges that the world is just a hospice and a bridge to the hereafter. When a man dies he survives only in three ways: through a pious son, through the things he taught to others, and through his pious deeds. Therefore, waqfs give eternal profit, they are a memorial to the founder which survives him, and an expression of praise for his virtuousness. Then the founder's honorific titles are enumerated, before proceeding with the objects of the transaction. The waqf consists of the following objects: a mosque situated outside the city walls near one of the western gates, a Qur'ān school, a mosque in another part of Damascus, a mosque in a village near Damascus, combined with a soup-kitchen, another mosque and soup-kitchen in another village, with a lodging for travellers, a mosque in the district of Ṣafad, including a soup-kitchen, a lodging

[57] *Sijillāt*, 20 *shaʿbān* 1130, 36/45/83.
[58] The text is published in: Sauvan.
[59] Bakhit, p. 117; Badrān, pp. 376-7; see also above.

for travellers and two *khān*s, or warehouses, a mosque in ʿAkkā, combined with a Qur'ān school for poor children and orphans.

These institutions are supported by a complex of possessions, comprising real estate properties, buildings, villages and agricultural fields, including 74 shops in Damascus, a tannery, a soap factory, a coffeehouse, a *khān*, a mill for cereals, two houses, a bathhouse and a plot of land; in the villages: some shops, twelve mills for cereals and olives in Palestine and Mount Lebanon, several bathhouses, a bread-oven and a *khān*. The endowment furthermore includes parts of the revenues of agricultural lands in several villages near Damascus and in Palestine and Mount Lebanon.

The founder stipulates that he will himself carry out the supervision of the waqf, and after him the most capable of his freed slaves and his descendants; after these, his own male descendants and finally the ruling governor of Damascus. Sinān Pasha concludes his documents by enumerating all functionaries of his waqfs, ranging from imams, muezzins, *khatīb*s and teachers, to cooks, dish-washers, cleaners, candle-lighters and gatekeepers, in total a number of 372 persons.[60]

The first waqf of Murād Pasha (1595) consists of 47 shops surrounding a *khān* which is included in the waqf and which is situated near the Umayyad Mosque. The shops, which apparently had fallen into ruin, had been bought by the founder and were to be restored after permission for the construction would have been obtained. The second waqf of Murād Pasha (1608) concerns a *bazzāzistān*, or market complex, consisting of more than 60 shops, to be newly built. The first waqf deed opens with some pious contemplations about the transitoriness of life, after which the objects of the waqf are enumerated: all 47 shops in Sūq al-Ṭawwāqīn al-Arwām, near Bāb al-Barīd, which are in the possession of the founder. The land of most of these are rented permanently (*ta'ājur thābit*, or *ḥikr*) from waqfs. The shops are are bought from several owners, who owned shares, in total 32 different persons and waqfs. Furthermore, a coffeehouse, one-half of which is rented from a waqf, the other half being bought; a *khān* with shops and twenty storerooms, to be built by the founder with new materials. This used to be the Qaysāriyya al-Kattāniyya. The land is partly bought and partly rented as *iḥtikār*.[61]

[60] The text of the *waqfiyya* can be found in al-Arnā'ūṭ, pp. 123-163; see also Pascual, pp. 32 ff., 43-64.

[61] *AL: Waqf Murād Bāshā...*, ff. 1-54.

The revenues will be used firstly for construction works and repair, and the expenses for the *ḥikr* and salaries, even if this absorbs the total yield. After this, one half of the revenues will revert to the poor of Mecca, the other half to the poor of Medina, to be added to the treasury (*ṣandūq*) of the poor. The *naẓar* is allocated to a specific sheykh and after him to the *nāẓir* of the Awqāf al-Ḥaramayn al-Sharīfayn. The possessions may not be sold or exchanged, nor leased out for a period of more than three years. An appendix from 1607 contains a sultanic decree (*amr sulṭānī*) by which part of the waqf of Murād Pasha is allocated to the merchants of al-Sibāhiyya, who had been moved by governor Aḥmad Pasha to a souk built by him outside the city. This had aroused much protest and trade had declined. Now the previous situation is restored.[62]

Sinān Pasha and Murād Pasha were both appointed within the regular system of the bureaucracy and insofar as they possessed a power base in Syria, it was not based on family interests or clientele networks built up over a long stretch of time. This was different in the case of the ʿAzm governors, several members of which acted as governors of Syrian provinces (Tripoli, Ṣaydā and Damascus) during a great part of the 18th century. Their natural and geographical power base was Syria, especially the town and region of Ḥamāh, where they held large *mālikana* possessions. The first member of the family to rise to prominence was Ismāʿīl Pasha, who was appointed governor of Tripoli and Damascus (1725-1730). During the latter period he built a *ḥammām* and a *madrasa*.[63] His nephew Sulaymān Pasha was the next to acquire the governorship of Damascus (1734-1738; 1741-3). During his career he accumulated many possessions in and around Damascus and founded two important waqfs, a *khān* in 1732 and a *madrasa* in 1737-8.[64] After his death in 1743, most possessions of Sulaymān Pasha were confiscated by the state,[65] but at least part of them were inherited by his daughter Amīna, who converted them into waqf, together with possessions bought from her husband, her sister and her cousins. The waqf consisted of four houses, 73 plots of land and orchards in the villages surrounding Damascus, a

[62] Id., ff. 62-67; see also Pascual, pp. 35 ff., 65-78, 84, 107, 118; and ʿUlabī (1989), p. 457.

[63] Ibn Kannān, pp. 378, 400, 424.

[64] Al-Budayrī, pp. 40, 133; Ibn Kannān, p. 465, 500; on the careers of the ʿAẓm governors, see especially Rafeq (1966) and Barbir.

[65] Al-Budayrī, pp.45-7, 54, 57-60.

coffeehouse inside the city, a tannery, seven shops, a share in a mill, a press and 44 *mashadd al-masaka* lands. The foundress designated herself and her descendants as the beneficiaries and *nāẓir*s, together with the Awqāf al-Ḥaramayn al-Sharīfayn (Mecca and Medina), the al-ʿAqṣā Mosque in Jerusalem and the *madrasa* founded by her father. The *waqfiyya* is dated 1177 (1763).[66] Later she founded another waqf for herself, her daughter and the women of her family.[67]

The third ʿAẓm governor was Asʿad Pasha, who remained in this function for no less than fourteen years (1743-1757). Documents show that from at least 1749 he was actively engaged in real estate transactions, buying land and houses, or acquiring them by *istibdāl*, clearly in order to increase his personal possessions.[68] At least part of these possessions were later converted into waqf, on five occasions, of which at least three *waqfiyyas* have been preserved.[69] The first and largest waqf is a *qaysāriyya*, bought and rebuilt by the founder, several houses, four shops in Damascus and 21 plots of land in the surrounding villages, for the benefit of his descendants, and those of his father and uncle, Ismāʿīl and Sulaymān, the poor of Mecca, Medina, Jerusalem and Damascus and the school founded by his father (1752).[70] The second consists of two houses and ten shops, partly bought and partly built by the founder, to support the al-Ḥazīzātiyya Mosque in Damascus, and especially its trustee and his descendants. The founder retains the right to appoint the functionaries (1753).[71] The third waqf concerns a coffeehouse and ten shops, all built by the founder, for the benefit of a local mosque in al-Maʿarra. The founder has the supervision and the right to appoint the functionaries of the mosque (1765).[72]

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[66] *Sijillāt*, 11 *jumādā al-ākhira* 1177, 170/34/46.

[67] Id., 10 *dhū al-qaʿda* 1179, 175/138/303.

[68] *Misc. Papers, coll. B*, f. 57, 4 *jumādā* 1162; id., *coll. B*, f. 63, 6 *rabīʿ al-thānī* 1163; id., *coll. B*, f. 64, 7 *rabīʿ al-thānī* 1163; id., *coll. B*, f. 66, 16 *rajab* 1163; id., *coll. B*, f. 70, 17 *jumādā al-ākhira* 1164; id., *coll. B*, f. 71, 10 *rajab* 1164; id., *coll. B*, f. 72, 1 *shaʿbān* 1164; id., *coll. B*, f. 74, 16 *ṣafar* 1164; id., *coll. B*, f. 77, 23 *rabīʿ al-thānī* 1166; id., *coll. B*, f. 78, 15 *rabīʿ al-thānī* 1166; id., *coll. B*, f. 67, 15 *rabīʿ al-thānī* 1164; id., *coll. B*, f. 58, 16 *jumādā al-ūlā* 1162.

[69] According to al-Kūriyya, references are made to three *waqfiyya*s of Asʿad Pasha that cannot be found in the *sijillāt* where they should have been recorded (6 *shawwāl* 1162, 10 *shawwāl* 1163, and 12 *shawwāl* 1164; Al-Kūriyya, p. 67.

[70] *Sijillāt*, 18 *rabīʿ al-awwal* 1166, 139/56/72.

[71] Id., 7 *jumādā al-ākhira* 1167, 142/131/279.

[72] Id., 17 *shawwāl* 1179, 146/123/294; see also al-Budayrī, pp. 82, 128, 133, 159, 174, 181; on the construction of the famous ʿAẓm Palace in 1748, see: id., pp. 141-5..

The foundations by the governors have some important characteristics in common. Firstly, they are explicitly economically oriented, their first aim being the (re-)construction of *khān*s, souks, factories and other economic assets; secondly, the founder, his family and his descendants are in most cases mentioned as the first to benefit from the endowment; thirdly, they cover a broad range of public facilities in the field of economic activity, education and worship; fourthly, they tend to cover several parts of the province, not only Damascus and its surroundings, creating a network of institutions and economic assets spread over the region. There is a difference, however, between the ʿAẓm waqfs and those of Sinān Pasha and Murād Pasha. The first are part of a complex of waqfs founded by members of one family, in each case adding possessions to a nucleus of previously founded waqfs. This is conspicuously shown by the waqfs of Amīna, in which part of the family estate is brought together. The waqf of Sinān Pasha is connected with a large waqf complex in Egypt, also founded by him, and is the result of the gathering of possessions during the period of governorship, rather than the accumulation of possessions by a family in the course of several generations. Although by nature similar, these two waqf complexes belong to different contexts and have different functions within the power structure.

It has been rightly observed by Jean-Paul Pascual, in his study of the waqfs of Sinān Pasha and Murād Pasha, that these endowments occurred in a period of economic stagnation. Apparently, Damascus had not yet profited from the economic opportunities offered by the unification of Egypt, Syria and Anatolia after the Ottoman expansion. It seems obvious, then, that the two waqfs were at least partly intended as an investment to revive certain sectors of the economy and to support the expansion of the city. It is conspicuous that the mosque of Sinān Pasha was situated at the south-western gate of the city and provided a new nucleus for an urban extension between the city *intra muros* and al-Mīdān, the gathering place for the hajj caravan. The waqf included provisions for the restoration or reconstruction of warehouses, shops and workshops within the city, but it also created a regional network of institutions and economic undertakings, strengthening the links between the urban economy and its hinterland. The economic activities are not only spread geographically, but also cover a variety of economic sectors, not only diminishing the risks of the investment, but also stimulating the integration of these sectors within a single framework of supervision and exploitation. A

similar intention can be perceived in the waqfs of the ʿAẓm pashas, which represented large economic undertakings, including agricultural lands, orchards, shops and houses, workshops and *qaysāriyya*s, partly constructed with new investments.

Since the economic component is so strong, it is hard not to see the governors' waqfs as part of a deliberate policy of economic reconstruction, rather than as a means of personal enrichment only. Evidently, the waqf possessions strengthened the economic position of the governors and their families, as a stable source of revenues, thereby enlarging their political prospects, but they also served the public interest, reinforcing the economic infrastructure of the city and providing opportunities for economic growth. The same dualism applies to the question of control. The waqfs enabled the governors to interfere in several economic sectors, especially in the case of *khān*s and souks, and to acquire monopolies over trade in certain products. This control was not complete, of course, but restricted by the general regulations for waqfs within the juridical and administrative framework of the state, including, for instance, the necessity to invest the revenues in repair and maintenance of the objects involved. The waqf complexes acquired a sacrosanct status, which ensured their preservation as public facilities and shaped them into a more or less closed circuit of capital funds. Since waqfs were normally subject to taxation, the state could profit, too, from the economic surplus derived from the investments and from the resuscitation of economic activity. If seen from this perspective, the governors' waqfs, as a combination of personal and public interests, are a typical manifestation of a general phenomenon in urban development: the coordinated efforts by individuals and authorities to stimulate and at the same time control the growth of a city and to enhance the welfare of the inhabitants.[73]

As has been noted above, there are some differences between the waqfs founded by the first governors and those founded by the ʿAẓms. Although some motives seem to have been similar, in the context of power formation, in the case of Sinān Pasha there seems to be no intention to create a power base specifically in Damascus, but rather to build a pillar in one of the provincial capitals of the empire for a career not restricted to Syria. It was part of a network of waqfs covering Egypt and Syria which rather emphasized Sinān Pa-

[73] Benevolo, p. 183.

sha's aspirations to the grand-vizierate in Istanbul, whereas the ʿAẓms, themselves of Syrian origin, were systematically building a power base in order to consolidate their position within the area and among local groups. This is not to say that their loyalty to the state was only lukewarm, or that they followed some kind of separatist policy, but it shows another instance of balancing, in the imperial provincial policy, between the interests of the state and those of the governor. It may be apt to mention here that Ottoman administrative ethics did not unambiguously disapprove of the merging of administrative and economic activities, since, according to the 16th century observer Naima, an important pasha claimed that 'a ruler who did not engage in business activities must carry the blame for imposing excessive burdens on his people.'[74] These interpretations of the governors' waqfs are confirmed by the waqf of Murād Shalabī, which incorporated Damascus into a waqf complex that was formally centred elsewhere, in Aleppo and Istanbul. Since part of it consisted of capital, the economic intention of the founder is clear, because this type of waqf was generally founded to provide the urban economy with capital injections.

Conclusions

In the previous chapter we have seen that waqfs were an integral part of imperial policy and were used as a mechanism to foster the cohesion between the centre of authority and the conquered provinces. It seems logical, then, to see the activities of governors in the field of waqfs from the perspective of this imperial policy. In most cases there is no doubt that the waqf complexes founded by governors were first of all part of an imperial network, covering whole provinces, or even transcending provincial boundaries. As the governors moved throughout the empire in the administrative and bureaucratic circuits, they accumulated possessions and chose a town where they could concentrate their pious works.[75] These waqfs remained at least partly under the supervision of the state. The intervention of the state in the waqf of Murād Pasha and the evaluation of the waqf of Lālā Muṣṭafā show that the state was keen to guard the economic exploi-

[74] Faroqhi, 'Crisis and change...,' in: Inalcik/Quataert (eds), p. 549.

[75] Other examples of governors' waqfs can be found in El-Masry, Schwarz/Winkelhane, Simsar, Winkelhane/Schwarz.

tation of the governors' waqf complexes. This is confirmed by a document concerning the possessions gathered by Aḥmad Kujak Pasha in Ṣaydā, Ṣūr and Bānyās, consisting especially of houses, factories, shops, mills and warehouses. Apparently these possessions were reverted to the state treasury, but in 1636 added to the pasha's waqfs by sultanic decree.[76]

Waqfs thus became an important instrument in the administrative links between the capital and the Syrian provinces. Both the sultanic and the governors' waqfs had an important ideological dimension, based on the symbolic value of the waqf institution, and it seems that they indeed buttressed Ottoman authority in Damascus by imbuing state-sponsored projects with religious values. It may be justified to say that in general large urban projects centred around waqf complexes enhanced the governors' reputation as just and efficient administrators. The fact that the founder himself and his family benefited from the waqf does not diminish its moral impact. Apart from the political aspect, the governors' waqfs were apparently primarily meant as large-scale reconstruction projects and investments in the economic infrastructure, showing the waqf system as a repository of capital and economic assets. These assets could be utilized to create new facilities and new centres of economic activity, but also, as in the case of Murād Pasha's waqf, to revive nuclei of possessions which had fallen into disuse and lost their profitability. Of course this was not only part of individual initiatives and the wish to perpetuate personal reputations; it was also part of policies, or at least of common practice within the administrative circuit.

The case is somewhat different for the ʿAẓm governors, who were not only integrated into the imperial bureaucratic circuit, but also had a strong local basis in the Syrian provinces. This basis was maintained by exploiting possessions throughout Syria and by the apparent fostering of family interests for several generations. It should be noted, however, that their local position was at least partly supported by the state. Firstly, their economic position derived ultimately from their *mālikāna* possessions in Ḥamāh, which were granted to them by the state; secondly, they acquired functions through the regular channels of state appointments and not by inciting local rebellions or by manipulating local power configurations. They remained loyal state officials and, although they were reluctant to relinquish their pre-

[76] *AL: Awqāf al-marḥūm Kujak Aḥmad Bāshā.*

rogatives in Damascus, they provided state authority with some measure of stability in the Syrian provinces rather than undermining it. Their careers can thus be seen in the context of state measures to ensure the pacification of Syria by upholding strong power centres counterbalancing each other. The waqf activities of the ʿAẓms, which seem to have been directed at strengthening the local economic basis of the family, enhancing their political and religious reputation and stimulating economic activity, appear to confirm this.

The same is true for the position of the ulama. Strong factions of ulama families were formed which attempted to monopolize certain functions, and sometimes they succeeded in doing so. However, the main families who had access to the most important functions, derived their status not only from their power basis in Damascus, but also from their ties with factions in Istanbul. These families were allowed to strengthen their position in Damascus, but their official status could not be imposed by pressure from local factions. The pattern of appointments was controlled by the Porte, although it was influenced by the complex interaction between Damascene notables and Istanbul.

CHAPTER FIVE

LEGAL TRANSACTIONS

In the first chapter it was argued that fatwa-collections give some indication of the practice of the waqf institution, although they too, like other texts, are moulded to the systems and ideologies of the legal tradition and the state. They present an image of the conflicts and complications involved in the practice of waqfs, but this image is fitted into the traditional legal categories and the administrative system. It is through this accommodation to the ideological and juridical level of practice that they acquire their authority as a source of jurisprudence, thus completing the cycle of dialectic interaction between the text and the practices of the waqf-institution. In this chapter we shall direct our attention to another link in the chain between texts and reality, a type of text which, at first sight, would reach one step closer to reality and present a sharper picture of the actual practice of waqfs: the records of the Ottoman qadi-court, or *al-maḥkama al-shar-ʿiyya*. But before we continue to discuss the documents themselves, we have to find a circumscription of their nature and their place within the structure of texts.

The far-reaching reform effort in Syria and Egypt after the Ottoman conquest entailed a dismantling of the Mamluk system and a centralization of the administration in various fields. This policy of centralization of course required the setting up of a large bureaucracy consisting both of officials organized in hierarchical categories and departments, and chancelleries and archives to handle and collect documents, surveys and records which enabled the central authorities to supervise and control administrative procedures in the provinces. In the foregoing chapters mention has already been made of the system of appointments by *barāʾa*s, for the governors and the ulama, land surveys which formed the basis of the fiscal system, and the centralized control of large waqf-complexes. One of the most elaborate and important corpuses of documents related to the mechanisms of the administration were the records of the Sharīʿa courts in the main provincial towns. The Sharīʿa courts were presided over by the Ottoman qadi and his local *nāʾib*s, and dealt with cases concerning real-estate transactions, marriage and divorce, debts, the implemen-

tation of state decrees, appointments, etc. The minutes of the cases were recorded by a secretary, or *kātib*, who worked under the supervision of the chief-secretary (*ra'īs al-kuttāb* or *bashkātib*), usually a local scholar from a well-known family of *kātib*s, such as the Ayyūbīs in Damascus. These minutes were gathered together in voluminous files, which thus functioned as a register of cases, transactions and verdicts, to be used by later qadis in the case of conflicts or in order to establish previous legal practices. If necessary the file could be used to check the implementation of state policies and decrees in the fields concerned.

The court records are a formidable source for the social history of the Ottoman Empire, since they provide information about all kinds of aspects of everyday life, such as the nature and size of transactions, the relations between subjects of various social backgrounds, the value and distribution of properties, etc. In recent years they have increasingly been used for research in this field and their richness has not yet been fully explored. The profusion of details that can be found in the records, however, can also be a source of complications. After all, it is very tempting to treat the records as a mirror truthfully reflecting everyday life on the level of individuals and social groups. It appears that the records are sufficiently systematic to provide the foundation for a detailed reconstruction of socio-economic structures and individual lives of the common people. Although it is true that information of this kind can be derived from the records, as a historical source they should be treated with caution. It is exactly the comprehensiveness of the material that can be misleading and that obscures the fact that they were written for other aims than to give a representation of socio-economic life. The main difficulties encountered by historians studying the court records may be summarized as follows: firstly, in most cases it is at least difficult and often impossible to assess whether the documents preserved in the records are complete. We have no information on the procedures in the *kātib* offices where the records were put together or on the criteria for selecting and organizing the documents. The volumes available show interruptions and sometimes reference is made to a document which cannot be found where it should have been. It is difficult to say how these lacunae occurred, but one cause may be that the documents were not recorded as a daily or weekly routine, but on a more incidental basis. We do not know if all documents were obligatorily copied, to say nothing of cases which were not put before trial, transactions for

which no registration was required or judgments that were enforced officially, but afterwards changed by informal arrangements.

Secondly, the categorizations used in the documents are not always those desired by historians. The classification of the persons appearing before the court usually refer to their social identity (*ḥājj*, *shaykh*, *sayyid*, *aghā*) and do of course correspond to a certain perception of social stratification. They are intended, however, as a means to enable the identification of the person in question and not as a typology of social groups or data for statistical reconstructions. They refer to a single aspect of his status which does not always determine his position within the socio-economic structure.

Thirdly, on a more theoretical level, it should be kept in mind that the records are part of what might be called the 'discourse' of the state. They are not more or less neutral reports of incidents and conflicts, but are set in a certain constellation of authority and power. This implies that they are to some extent shaped by the laws of internal logic applied to all texts of this category, but also by external factors related to the exertion of authority. The context of the way in which events were recorded was shaped firstly by the vast body of legal texts in which legal concepts had previously been defined and discussed, ranging from the basic sources of Islamic law to collections of fatwas and treatises written by prominent ulama. The court records are thus not an objective reflection of juridical practice as opposed to the theory of legal texts; they are an organic part of this body of texts and are organized and formed according to the same internal rules, such as traditional concepts, categories and terminology, editorial habits of the *kātib*s, questions of format, etc. Apart from this, the context consisted, secondly, of the juridical and political systems of the Ottoman Empire, which meant that concepts were at least partially formulated by the state. These concepts may have clashed with certain regional customs or practices and therefore may have discouraged people from laying their claims before the court. People could then have avoided the necessity to interpret their conflicts in the terms conceived by officials, or to conform their transactions to formats sanctioned by jurisprudence or the state, instead preferring mediation or conflict solving according to custom.

These contexts—both internal and external—are often visible in the documents themselves, firstly in the redaction of the documents, their terminology, their structure and their classification; secondly, in the procedural set-up, for example when the system of formal objec-

tion by a third party is used for the confirmation of a transaction, similar to the formal effort of a founder to withdraw his waqf in order to have the validity of the transaction confirmed by the Hanafite qadi; thirdly, references are made to previous scholars and legal sources to support judgements. As a rule decisions of other judges—contemporaries or predecessors—are confirmed; fourthly, references are made to the rules and decrees issued by the state, and in general methods and procedures are applied which were in harmony with the state-ulama nexus concerning jurisprudence; fifthly, the division of responsibilities between the—Ottoman—chief-qadi and his local *nā'ib*s indicates a mechanism for administrative control; and finally, in spite of the legal context, judgments can be found which are inspired rather by Ottoman policy and practice than by purely legal reasoning. These contexts imbued the text of the documents with its claims to continuity and authority, since they established its place within the legal and political structure.

In spite of these observations on the difficulties connected with the interpretation of the documents of the Sharī'a court as a basis for the reconstruction of socio-economic relations, these documents need not to be discarded as a historical source. It is our intention only to evaluate the position of these documents within the body of legal texts and their relation to authority. Moreover, it should be stressed that, in our case, the court records are too fragmentary to serve as a source to reconstruct a socio-economic survey of waqfs or the quantitative aspects of waqfs in 18th century Damascus. Since this seems to be beyond our reach, we shall confine ourselves to a survey of the legal aspects of waqf, especially the transactions and conflicts concerning waqfs which can be traced in the documents, and their legal and economic implications for the functioning of the institution. The material will not be used in any statistical way nor to support any quantitative conclusion. We will not present a diachronic comparison to discern certain developments, but rather give an inventory of the practices with regard to waqfs in a certain time and place. To achieve this, the court records of Damascus have been studied for the period 1123 until 1134 (1711-1721; vols. 31, 32, 33, 34, 36, 40, 41, 42, 43, 44). It should be noted that for the years 1126 (1714) and 1131 (1719) no records have been preserved. These volumes all concern the Maḥkama al-Kubrā and the Maḥkamat al-Bāb (31, 32, 36, 40), both located inside the walls of the city.

Documents related to the waqf institution

In this section we will give a survey of the various types of transactions and cases related to waqfs as they have been recorded in the registers of the Sharīʿa court of Damascus. The cases are arranged in four groups: waqf deeds, *istibdāl*-contracts, *ijāra*-contracts, and cases concerning *mashadd al-masaka.* It should be noted that the following survey concentrates on different types of transactions and gives no indication as to the frequency of similar cases.

a. *Waqf.* Most of the waqf-deeds in the records have a standardized format and contain the main elements of the *waqfiyya*: a pious introduction, the description of the object, the confirmation that the object is the property (*milk*) of the founder and acquired by legal means (purchase or inheritance), the designation of the beneficiaries and conditions, the nomination of the trustee, the number, kind and salaries of functionaries and the acknowledgment of certain obligations, levies, etc. The procedure includes a formal protest against the transaction, or an effort by the founder to withdraw it, followed by a confirmation by the qadi that the waqf is valid and irrevocable (*luzūm*).

This brief typology of waqf-deeds gives an impression of the main incentives of founders to immobilize their possessions. In most cases the founders are common individuals, often women and widows, who donate their property for the benefit of themselves and their descendants, combined with a specific pious purpose, such as a particular sufi-shaykh or a mosque. In 1720 several houses, acquired partly by purchase and partly by inheritance, were founded for the three daughters of the founder and his future children if any were born. After the demise of all his descendants one-third of the revenues was to be ceded to the Umayyad Mosque, one-third to the Awqāf Sādāt al-Mu'adhdhinīn, and one-third to whoever performed a specified *idhān* (call for prayer) in the al-ʿUrūs Minaret of the Umayyad Mosque. Finally the yield was to go to the poor Muslims of Damascus. The *naẓar* remained with the beneficiaries. Twelve *qurūsh* from the yearly revenues should go to a shaykh for Qur'ān recitation in the Shafiite *miḥrāb* of the Umayyad Mosque, and one sheykh in the Hanbalite *miḥrāb.*[1] The aim of this type of waqf was evidently to preserve possessions as a form of security within the family and to

[1] Id., 10 *rajab* 1132, 40/8/31.

perform an act of piety towards persons or institutions whose religious functions played a role in the daily life of the founder. Only in some cases can a waqf be classified as a major effort to establish links with specific ulama or institutions for political purposes. In 1720 Rajab Pasha, the governor of Damascus, founded eighty *qurūsh* and a collection of books as a waqf for a mosque in al-Qanawāt. The trustee and *nāẓir*, two sheykhs, were allowed to use the interest on the money to buy real-estate possessions or to take 2½ *qurūsh* each in exchange for prayers. From the rest one-quarter was to be paid to the muezzin and *khaṭīb* of the mosque and one-quarter to pupils. The books were entrusted to a third sheykh and his pupils in the same mosque.[2] Likewise, in 1720 ʿUthmān Pasha, the governor of Damascus, converted land and plantation in a waqf, together with a bread-oven and a mill, for the two sons of sheykh ʿAbd al-Ghanī al-Nābulusī, in exchange for the recitation of one *juz'* for the soul of Yūsuf Pasha, the former governor of Damascus.[3]

These waqfs do not suggest that these pashas were involved in large-scale real-estate transactions, but they show how pashas could use foundations to stabilize specific institutions and link them to ulama of their choice, sometimes with detailed regulations for functions, appointments and salaries, thus ensuring and influencing the reproduction of the ulama network and its structuring institutions. Among the pious purposes the Awqāf al-Ḥaramayn al-Sharīfayn and the Umayyad Mosque are most frequently mentioned, an indication of the role of these complexes as the nucleus of clusters of waqfs which were growing in the course of time, after the extinction of the hereditary lines of beneficiaries, a role fulfilled on a smaller scale by schools and minor mosques.

The objects of the foundations were often houses or parts of buildings suitable for habitation or rent, but also gardens and orchards in the surroundings of Damascus, and sometimes a combination of the two. Houses in the city centre were often built on waqf land, for which a *ḥikr* or rent was paid to the waqf to which it belonged, usually the complexes of the Awqāf Ḥaramayn al-Sharīfayn, the Umayyad Mosque or the Nūrī Hospital. Our examples show that the cash-waqf, as we have seen a controversial type of waqf, was not unknown in Syria. For example, in 1720 sheykh al-Balkhi converted a sum of 4000 *qurūsh* into waqf, the interest of which was to be used

[2] Id., 21 *shawwāl* 1132, 40/65/203.
[3] Id., 6 *shawwāl* 1132, 40/116/310.

by himself to buy properties and will then go to the sheykh of the Naqshbandiyya Order in Damascus, their descendants and, afterwards, to the Umayyad Mosque and the al-Ward Mosque in Sūq al-Sārūja.[4]

As for the legal aspects of the waqf-deeds, they correspond generally to the simple format outlined above and involve no legal complications. The cash-waqfs are recorded without any discussion and no references are made to treatises of scholars on the subject or other juridical texts. The overwhelming majority of the founding acts were confirmed by the Hanafite qadi, only a small minority by the Hanbalite qadi. A special and remarkable case is the foundation by a Christian for the European monks of the Franciscan Order living in Damascus. The waqf consists of a building outside Bāb Sharqī and is endowed for the European Monks of Jerusalem (Ruhbān al-Quds al-Ifranj), living in Damascus. It is handed over by the *wakīl* of the founder to Father Tūmā, who represents the monks.[5] The waqf is passed without any discussion of the legal aspects, although, as we have seen above, this type of waqf would officially not be allowed, since it could not be considered as serving a pious purpose from the point of view of the Muslims. Furthermore, there is no mention of any permission of the authorities for the monks to reside there to perform religious duties or to make use of the waqf. It would seem, however, that the endorsement of the qadi was inspired by a state policy which was not in principle against the settlement of foreign missionaries on Ottoman soil and which allowed the Christians some degree of autonomy. It may be an indication, too, of the accommodation of the state to specifically local circumstances, allowing in some places what would perhaps be forbidden elsewhere. It should be stressed that in the view expressed in this study, cases like these are seen not as anomalies caused by the supposedly unsystematic nature of Ottoman law, or by the fact that the court registers are to some extent detached from the official corpus of the law; rather, such cases are seen as part of a wilful and systematic state policy affording some room for manoeuvre to the Christian minorities.

Waqf-deeds of course reflect the quintessence of the waqf institution, but in themselves they only reveal part of the functioning of waqfs in the social and economic structures. The documents show the building stones which form the basis of the system of waqfs, laid

[4] Id., 8 *sha'bān* 1132, 40/84/261.
[5] Id., 6 *muḥarram* 1134, 42/27/67.

by individuals with only limited aims and aspirations, but pertaining to the field of which the large complexes were the most visible expressions.[6]

Some documents reveal that conflicts could occur over the status of waqf objects. In 1712 a case was brought before the court concerning the large waqfs of ʿAbd al-Laṭīf al-Muḥibbī. Al-Muḥibbī had converted into waqf a house in Damascus, a mill, a building, a coffeehouse and eleven plots of land, for himself during his lifetime, his descendants, the children of his brother and, finally, the Awqāf al-Ḥaramayn al-Sharīfayn. In the same year the *nāẓir* exchanged the house through *istibdāl* for an amount of money, which was to be spent on new real-estate possessions. He subsequently bought two shops and a coffeehouse, whose land was rented as *ḥikr* from the Umayyad Mosque, another waqf and the mosque of a village. His daughter had added to this waqf parts of a house and a shop, for the benefit of the children of her sister Zaynab. Since after some time all beneficiaries had died, the waqf possessions were now handed over to the trustee of the Awqāf al-Ḥaramayn al-Sharīfayn, as was stipulated in the *waqfiyya*. However, a woman claimed to have a right to 1½ *qīrāṭ* of these possessions, which allegedly was her property by inheritance from her husband. The claim was rejected since no proper evidence could be procured.[7]

It was not unusual that a person came to court to claim that a waqf was his property by inheritance and had been appropriated (*wāḍiʿ al-yad*) by a trustee or tenant, sometimes for a considerable period. The claim could also be the other way around, a *nāẓir* claiming that possessions were part of a waqf and attempting to recover them from a usurper, and there are examples as well of two waqfs contesting the 'ownership' of certain objects. All these cases were settled in accordance with the regular types of evidence.[8] Claims like these are a recurrent component of *marṣad* cases, which will be discussed below.

b. *Appointments, functions, beneficiaries.* In chapter four mention has been made of a conflict over the appointment of a teacher-trustee of a school. Although this case was singular, because it was referred to

[6] Other *waqfiyya*s: id., 31/234/353; 31/249/373; 32/208/563; 33/14/17; 33/136/212; 33/327/522; 33/412/666; 34/328/841; 34/469/1090; 36/30/24; 40/31/110; 41/46/113; 41/258/700; 42/91/227; 42/119/320; 43/184/327; 43/218/385; 44/51/65; 44/431/667.

[7] Id., 26 *rabīʿ al-thānī* 1124, 32/147/403; 26 *rabīʿ al-thānī* 1124, 32/148/404; 29 *jumādā al-ūlā* 1124, 32/203/558; 6 *jumādā al-ākhira* 1124, 32/205/560.

[8] Id., 15 *muḥarram* 1128, 34/37/94; 3 *dhū al-qaʿda* 1128, 34/24/64.

Istanbul, cases about appointments and functions, although not numerous, were no exception. They usually concerned claims to the *nazar* of family waqfs. More frequent were claims by or against legal representatives (*wakīl*) who acted on behalf of one of the parties concluding transactions, sometimes women or minors, for a certain fee. The conditions and the confirmation of the *wikāla* were sometimes included in the records of the transaction. The controversy was usually settled by regular legal means, especially personal testimonies.[9]

More important, at least quantitatively, were the complaints of beneficiaries against *nāzir*s and trustees. Cases dealt, for example with the right of habitation in waqf buildings, or with claims to part of the revenues of the waqf.[10] Sometimes the trustee had not paid beneficiaries their due because he had spent the revenues on investment or repair, for instance because it was impossible to conclude a long-term *ijāra* without previous investment.[11] In another case the qadi referred to a fatwa of al-ʿImādī on a similar controversy, when the investment was considered unavoidable (*ḍarūrī*).[12] Usually the right of the claimant was confirmed, but the priority of the investment, too. In one case the *qāri* of a *zāwiya* claimed his salary for one year, but the trustee stated that there was no money in the waqf and that he himself still had a claim of 400 *qurūsh* for an investment executed at his personal expense.[13] Sometimes waqfs had the court register confirm that salaries to functionaries had been paid, while in other cases it had to be established whether claimants actually belonged to the group of beneficiaries, being descendants of the founder. This was done by studying the waqf-deed, by confirmation (*iqrār*) or testimonies (*ishhād*).[14] One case concerned a claim by the the guild of the tanners, which used to receive a regular payment from the guild of the sandal-makers, from the revenues of waqfs.[15]

c. *Istibdāl.* The records of the period under study include the following types of *istibdāl* transactions:

An *istibdāl* concluded in 1712 concerned a piece of land in al-

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[9] Examples of claims concerning appointments: *sijillāt*, 34/293/775; 34/296/778; 36/27/40; 36/50/95; 40/96/281; 44/363/573.

[10] Id., 34/31/80; 34/64/162; 36/43/74.

[11] Id., 34/2/207; 34/273/735; 34/347/867; 34/346/864; 41/87/214; 42/14/36; 42/69/169.

[12] Id., 3 *dhū al-qaʿda* 1129, 34/65/325.

[13] Id., 16 *rabīʿ al-thānī* 1133, 41/85/211; see also id., 28 *shaʿbān* 1131, 40/30/108.

[14] Id., 34/145/472; 34/245/673; 34/248/679; 34/250/684; 34/259/706.

[15] Id., 25 *dhū al-qaʿda* 1127, 34/18/53.

Ghūṭa which had been converted into waqf in 1700, allocating the *naẓar* to the sons of the founder. The *nāẓir* argued that the waqf had become partly ruined. There was no money in the waqf for investment and no one could be found who was prepared to rent the land with an advance payment (*salf*). The profitability of the waqf (a rent of 3 *qurūsh* a year) would increase if the waqf were to be substituted by a sum of money (100 *qurūsh*) which would then be considered as waqf. The land would become *milk*. Objections were raised that the possibility of *istibdāl* was not stipulated in the waqf-deed, that the transaction was not in the interest (*ḥaẓẓ wa-maṣlaḥa*) of the waqf, and that the amount of money did not represent the market value of the land (*thaman al-mithl*). These objections were countered by testimonies that led to the conclusion that there was no question of *laesio enormis* (*ghabn fāḥish*) and that the transaction was valid on the basis of the imams of the Hanafite *madhhab*, such as al-ʿImādī, Qādīkhān, Ibn Nujaym, the *Tatarkhāniyya* and the *Jāmiʿ al-Fuṣūlayn*. These allowed *istibdāl* if the *nāẓir* considered it in the interest of the waqf, including an exchange for money.[16]

In the same year part of a house in Damascus was exchanged for a sum of 300 *qurūsh*, which would become waqf for the benefit of a minor. The justifications were that the profitability of the waqf was low, that the other parts of the house were *milk*, that there was no money in the waqf to perform the necessary restorations and that cash money would be more profitable and 'easier to obtain' (*ashal al-tanāwul*). The town inspector (*kashshāf*) and the architect (*miʿmārbāsī*) had inspected the building and the transaction was approved by the qadi, with reference to the aforementioned legal texts and the fatwas of al-Ramlī.[17]

In another *istibdāl* in the following year an amount of 50 *qurūsh* and part of the plantation of a garden in al-Ṣāliḥiyya were exchanged for a part of waqf land belonging to the Muẓaffar Mosque and a house. The rent of the house amounted to 3 *qurūsh*, 1 *qirsh* of which consisted of *ʿawāriḍ* and one-quarter *qirsh* of *ḥikr*. The plantation would yield 4 *qurūsh* every year and the sum of money 10 *qurūsh*. The transaction was concluded without a ruination-clausule or legal discussion or reference.[18]

Evidently, being legally delicate transactions, *istibdāl* cases could

[16] Id., *rabīʿ al-awwal* 1124, 32/78/171.
[17] Id., *rabīʿ al-thānī* 1124, 32/96/232.
[18] Id., 10 *ṣafar* 1125, 32/212/571.

give rise to claims and protests. In 1712, for instance, a controversy occurred concerning the exchange of 15 *qīrāṭ* of a mill for a piece of land, a house and 120 *qurūsh*. Afterwards it appeared that the objects received were not more profitable than the original waqf, and the *nāẓir* claimed the mill back.[19] A similar claim was made by sheykh Safarjalānī, the *nāẓir* of the waqfs of his father, who exchanged a house for several possessions and an amount of money. He now claimed the house back, arguing that the *istibdāl* was not valid, since the proper justifications were lacking and the founder had not included the possibility of *istibdāl* in his waqf-deed. The claim was rejected.[20] In 1717 a claim was raised against the exchange of a house by the father of the claimant for an amount of 200 *qurūsh*. The claimant said that the exchange was not in the interest of the waqf. The qadi, however, ruled that since the qadi of Damascus had at the time allowed the *istibdāl*, because the house was in a bad state and unprofitable, the transaction was pronounced valid.[21] In 1722, finally, a house was claimed by a waqf which had been acquired by the owner as *milk* through *istibdāl*, although the land had remained part of the waqf.[22]

It is remarkable that most of the *istibdāl* cases are taken from the record of the chief qadi, an indication that this type of transaction was not considered as belonging to the routine tasks of the *nā'ib* qadis. It clearly deserved serious attention, or at least the ratification of the highest judicial authority. At the same time, however, there is no doubt about the validity of the concept of *istibdāl*, as it was developed, significantly, by the 'modern' legal scholars. In some cases there is even no question of the ruination of the object, but only of greater profitability of the new waqf-object or a cash sum. The most common form of *istibdāl* seems to have been the exchange of a waqf for another object and an amount of money. Even in the case of an exchange for money, the *istibdāl* would still not be equivalent to a sale, since the money would remain immobilized and only the return could be used as liquid capital. However, it is not unthinkable that in the case of a 'combined' *istibdāl*, the interest or perhaps even part of the money could be used for investment in the new waqf object, to make it more prosperous. This may have been one of the incentives

[19] Id., 6 *rabīʿ al-thānī* 1124, 32/115/294.
[20] Id., 29 *dhū al-qaʿda* 1124, 32/181/482.
[21] Id., 6 *shawwāl* 1129, 34/21/241.
[22] Id., 7 *rabīʿ al-awwal* 1134, 44/106/134.

to conclude an *istibdāl*, apart from, for instance, the preference for one kind of economic activity (shops) over others (orchards), or efforts to reallot agricultural land by restoring its *milk* status, etc. Since no surveys of *istibdāl* transactions in Damascus over a considerable period of time exist, the motives of the parties involved cannot be reconstructed in a clear pattern which would reveal its rationale. The examples show, nevertheless, that the principle of *istibdāl* was incorporated into the theory and practice of the Ottoman legal system.[23]

d. *Ijāra.* In the period under study the vast majority of the documents in the court records refer to the leasing out of waqf possessions in various forms. In fact, the great majority of possessions exploited in the form of rent were waqf and only in a few cases did the object of *ijāra* consist of *milk* property.The typical contract contains the names of the parties involved (on behalf of the waqf the *nāẓir* or the trustee, or both), a description of the possessions in question, the duration of the lease, the yearly or monthly rent and the conditions for exploitation. Then a formal objection is included against the transaction to examine if the required rent is indeed equivalent to the *ajr al-mithl*, or market value, after which the validity of the transaction is confirmed and the taxes due on the possessions are enumerated. Although it is impossible to give a reliable estimation of the total size of the properties involved, it is clear that a large economic potential was exploited in the form of waqf-*ijāra*, both real estate properties within the city (shops, *qaysāriyya*s, *ḥammām*s) and agricultural land and orchards in the surroundings of the city, especially al-Ghūṭa. The lessors could be trustees of small waqfs founded by their ancestors, or of separate institutions such as a *zāwiya* or a *madrasa*, but the majority of the cases refer to possessions leased by the two major waqf-complexes, the Umayyad Mosque and the Awqāf al-Ḥaramayn. From the survey of the documents a clear picture can be derived of the differentiation of the economic activities of these complexes, covering residential houses, commerce and agriculture. Evidently, the revenues from the rents were their main source of income.

The lease-transactions can be roughly divided into two categories, those concerning buildings and those concerning landed possessions. About the first category the following observations can be made. In general lease contracts are concluded for a period of several terms of two or three years (*ʿuqūd*), especially in the case of residential houses

[23] Other *istibdāl* cases: id., 32/124/320; 34/33/87.

and mills. Shops and *ḥammāms* are usually rented for relatively short periods. Sometimes lease contracts are concluded several years in advance, for instance to extend an existing agreement. In all cases it is possible to rent a share (*ḥiṣṣa*) of the property, but sometimes buildings are part of larger complexes which are leased as a whole. All kinds of agreements for the payment of the rent could be conceived by the two parties, in various instalments (*qusūṭ*), advance payments (*salf*), distribution of the rent over several persons, the payment of levies and taxes, etc. Sometimes waqfs leased possessions which they had in other towns, especially Aleppo and Ḥamāh. Finally, many cases refer to houses built by the tenants of waqf land which they rented, at their own expense. The building would normally become their property, in accordance with the elaborate rules given in fatwa collections.

As far as the *ijāra* of agricultural land is concerned, it is remarkable that almost all waqf-lands were rented in the form of a *musāqāh* or sharecropping agreement, in various arrangements (½-½ ; 1/4-3/4, etc. of expenses and ownership; 1/1000 of the profit-1/100). Lands or portions of lands were often located in al-Ghūṭa, but also as far away as in al-Biqāᶜ or the surroundings of Aleppo. Sometimes whole villages were rented, usually for a period of one year. The periods diverged, but normally amounted to various subsequent terms (*ᶜuqūd*).

In two categories of objects, buildings and land, it is sometimes explicitly stated that the rent is higher than in the previous agreement, and in general it is confirmed that the rent is equivalent to the *ajr al-mithl*. However, it is clear that in most cases the rent is not adapted at the renewal or extension of the contract and that rents were fixed for relatively long periods of time. In one unique case the rent was in advance made progressive during the years of the contract, with an index of 5 *qurūsh* every two years, an indication that a rise in land-prices was expected, but not calculated in terms of percentage. Furthermore, it is remarkable that almost all rent transactions were concluded before the Shafiite qadi. In some cases the transaction was afterwards—sometimes on the same day—ratified by the Hanafite qadi. It seems that the Shafiite qadi was less severe as to the conditions of the *ijāra* agreement, especially with regard to the *ijāra ṭawīla*.[24] The transaction itself would be concluded according to Shafiite law, which was of course still within the framework of

[24] See Rafeq, 'City and countryside...,' p. 314.

Hanafite Ottoman legislation, but subsequently rooted in the Ottoman administrative system, to have the official sanctioning by the central authorities. Another reason may have been that Shafiite law was still the most common legal format to conclude this kind of transaction and that customary practice prevailed over official guidelines. In both cases, however, it is noticeable that the Shafiite *madhhab* served as a kind of intermediate stage between the practice of everyday transactions and the formal authority of the state, which found its expression in Hanafite law.

Conflicts concerning lease transactions focused on four issues: the refusal to pay the rent, the dissolution of lease contracts, questions of investment and the ownership of plantations and expansions.

In 1718 a case was tried between Ḥasan ibn al-Khalīfa, the trustee of the Umayyad Mosque, and the notable Muḥammad al-Falāqinsī about a piece of land in al-Ghūṭa. It was claimed that the defendant had usurped the land and had not paid the rent due to the waqf. His father had rented the land from the previous trustee for a period of 12½ years from 1706 onwards, for 80 *qurūsh* a year. He had paid 906 *qurūsh* for the whole period, which had been spent to cover the costs of investment. Apparently, after the death of the father in 1709 the son received the *mashadd al-masaka*, an arrangement which was contested by the trustee in 1711, but deemed valid by the qadi. The arrangement was again confirmed, referring to a fatwa by al-ʿImādī saying that a lease contract does not become invalid with the death of the tenant.[25] A similar case concerned a shop, owned as *milk*, on land rented as *ḥikr* from the waqf of the Umayyad Mosque. Thirteen days after the conclusion of the contract, the tenant died, but his son was allowed to take over the lease.[26] A case of 1720 concerned the demand to pay the rent for three villages, a mill, a piece of land and a souk, all located in Tripoli and its surroundings and pertaining to the waqf of the Sādat al-Miṣriyyūn. The rent amounted to 2200 *qurūsh*.[27] Lease contracts could be dissolved if the conditions of the agreement were not in the interest of the waqf. In one case the lease of some storage rooms in a *qaysāriyya* was dissolved because the tenant had to go on a journey.[28] Another case concerned the lease of a mill, which

[25] Id., 20 *rajab* 1130, 36/35/57.

[26] Id., 6 *dhū al-qaʿda* 1123, 32/21/35; see also id., 4 *jumādā al-ākhira* 1133, 41/73/179.

[27] Id., 11 *dhū al-qaʿda* 1132, 40/101/284.

[28] Id., 13 *rajab* 1134, 44/137/179.

was dissolved with the argument that the rent and advance payment were not sufficient.[29] Other similar cases concern the lease of shops.[30]

In 1717 the lease of a coffeehouse outside Damascus was rescinded, but the tenant claimed that the rescission (*muqāyala*) was invalid. However, in accordance with a fatwa by al-ʿImādī, stating that if the *nāẓir* leases an object to Zayd and Zayd to Amr within the period of the rent and the *nāẓir* considers a *muqāyala* with Zayd in the interest of the waqf, then both leases are to be dissolved. Thus, on the basis of this fatwa and the account of witnesses, the *muqāyala* was deemed valid.[31]

Lease contracts could also be dissolved as a measure to make investment in the waqf possible. In 1722 the lease of the Ḥammām al-Ḥājib in Maḥallat Khān al-Sulṭān of the waqf of the al-Ward Mosque, which is the same as the Barsbāy Mosque, was dissolved for the remaining seven months and thirteen days of a lease term of one year and four months, because money was needed for investment, and no-one was willing to pay the expenses. Subsequently the bathhouse was rented for a period of three years for the same rent, plus 2½ *qurūsh* per month for expenses. The expenses for investment were to be claimed back from the waqf.[32]

Still, legal formalities could prevail over economic considerations. In 1722 a request to annul a lease agreement with the argument that the rent was below the *ajr al-mithl* was rejected, in spite of the fact that it concerned an *ijāra ṭawīla*, since the contract had been approved by the Shafiite qadi.[33]

In the previous chapter mention has been made of the device of *marṣad*, the capital reservoir deposited on waqf objects to be used for repairs and investments. The use and evaluation of the *marṣad* of course had to be scrutinized carefully by both parties and usually the extension of lease-contracts was linked to a calculation of the amounts extant in the deposit. The cases are normally recorded as a conflict, the trustee accusing the tenant of usurping the possession and refusing to pay the rent, the tenant acknowledging that the possession is part of the waqf, but claiming that the waqf owes him a sum of money which he has spent on restorations, or that he has a

[29] Id., 26 *ramaḍān* 1130, 36/77/177.
[30] Id., 44/297/435; 44/298/438; 44/314/479.
[31] Id., 2 *dhū al-qaʿda* 1129, 34/60/312.
[32] Id., 18 *dhū al-qaʿda* 1134, 44/348/556; 2 *dhū al-ḥijja* 1134, 44/353/559.
[33] Id., 3 *jumādā al-ākhira* 1134, 41/259/702.

right to part of the *marṣad.* In other cases the tenant accused the trustee of failing to restitute the *marṣad.* It is virtually impossible to assess in all cases whether the procedure is just a formal one intended to extend the lease-contract with the consent of both parties or have the amount of the *marṣad* confirmed—to be paid by *iqṭiṭāᶜ*—, or, alternatively, a real conflict requiring the intervention of the qadi.

In 1718 a case was brought before the court concerning a *ḥammām* built by the tenant on waqf land which had been empty at the start of the term of lease. The tenant, Muḥammad al-Falāqinsī, had constructed the building at his own expense and now claimed the money back from the waqf, after which the building would become part of the waqf. Thereupon the building was inspected by an inspector and an appraiser and the costs were calculated with the subsequent rent, part of the money being compensated by a *waṣiya*, or bequest, part of the money becoming *marṣad* on the waqf.[34]

In 1717 the tenant of a shop belonging to the waqf of the Umayyad Mosque claimed to have had to pay 22½ *qurūsh* for repairs, since there was no money in the waqf and no-one was willing to rent the shop for a long term with an advance payment (*muᵓājala*). He had acquired the permission of the trustee, but not of the qadi. This permission was not legally required, however, and the amount would remain *marṣad* on the waqf.[35]

In the same year a house was rented for 9¼ *qurūsh* for a period of one year. Within this period the tenant spent 70 *qurūsh* on repairs, with the permission of the trustee. The trustee denied this, but it was confirmed by witnesses. The qadi judged that the money would become *marṣad* on the waqf. Subsequently, the tenant extended the contract for three terms of three years, for the same rent. An advance payment of seven *qurūsh* was given for one year, 2½ *qurūsh* were paid as *ᶜawāriḍ.*[36]

From the transactions it can be perceived that at the beginning of the 18th century many waqfs had a lack of capital for investment and were unable to attract this capital in the form of advance payments by tenants. This is probably one of the reasons why tenancies were sometimes concluded for a very long period, which would facilitate financial arrangements with the tenants. The mechanism of *marṣad*

[34] Id., 20 *rajab* 1130, 36/34/56; 15 r*ajab* 1130, 36/94/219.
[35] Id., 24 *shawwāl* 1129, 34/64/320.
[36] Id., 8 *jumādā al-ākhira* 1130, 34/332/850.

was one of the methods to counter this problem. In practice, the *marṣad* seems to have had two important effects: firstly, since the *marṣad* was built up from expenses incurred by the tenants, to be returned later by the waqf, or by a regular *iqṭiṭāʿ*, it worked in favour of a continuation of the exploitation in the form of rent. Some cases show how the waqf, being unable to pay the *marṣad* debt to the tenant, extended the lease contract to arrange for a compensation, virtually exempting the tenant of the largest part of the future rent. In other cases the tenant simply stopped paying the rent until a settlement was achieved by extending the contract. In still other cases the tenant would built up a financial reserve for the waqf which would strengthen his claims to a prolongation of the contract. Secondly, the *marṣad* became a means to draw the investment of private capital into waqfs. This would on the one hand provide waqfs with the necessary reserves for maintenance, but would on the other hand give individual exploiters interests in waqf possessions and make the waqf more dependent on support from the market circuits. Of course, the first effect should be linked to the second one: the ability of tenants to enforce long-term or continued exploitation was a reflection of their growing importance as a source of capital.

The term *mashadd al-masaka al-filāḥa* refers to the rights of a person to cultivate the land. According to Abd al-Karim Rafeq it is synonymous with *ḥaqq al-taṣarruf*, or the right of disposal, which was transferred when a piece of land was sold.[37] It could also be transferred without selling the land, by way of *farāgh*, when, according to Rafeq, the land had no buildings or plantations. The holder could not only cede the *mashadd al-masaka* to others, it was also inherited by his heirs. It could refer to waqf land and to *mīrī*-land and be subjected to the *mīrī* and *ʿushr* taxes. According to others the *mashadd al-masaka* is an agreement comparable to the *musāqāh*, only for agricultural land which is not necessarily irrigated. An administrator would conclude a *mashadd al-masaka* when he wanted to recultivate land that had been deserted or fallen into decay, ceding the property rights of the plantation to the tenant.[38]

In the documents under study several transactions involving *mashadd al-masaka* can be found. Two such transactions have already been mentioned, one involving the lease of a share of land in al-

[37] Id., p. 307.
[38] Deguilhem (1995), p. 69.

Manīḥa for five *ʿuqūd* of three years, the tenant receiving the *mashadd al-masaka* by *farāgh* from his father. Other documents concern the transfer of the *mashadd al-masaka* from one tenant to another. Usually payment is mentioned.[39] In 1722 a transfer of the *mashadd al-masaka* of a village pertaining to a waqf was arranged for 60 *qurūsh*.[40] In the same year a *taṣāduq* or authentication of a *mashadd al-masaka* was registered.[41] A transfer of the *mashadd al-masaka* of waqf land could only occur with the permission of the trustee. From these documents it is not possible to confirm one of the descriptions of the term. It is evident that it refers to the rights of exploitation, held in *taṣarruf* of the tenant, who thus was allowed to transfer them to someone else who was not a party in the original *ijāra* transaction. This could apparently be done independently from the *ijāra* itself. It is not clear, however, if the new holder of the *mashadd al-masaka* could lay any claim to the land when the tenancy expired or was extended. In our source-material there are no documents containing the details of a *mashadd al-masaka* agreement comparable to those concerning *musāqāh*. There are two cases in which the *mashadd al-masaka* of a certain piece of land was contested by others. In 1716 it was claimed by a certain sheykh that a piece of land of the waqf of Sinān Pasha was his *mashadd al-masaka*. The possessor claimed that the land had been uncultivated for fifteen years and that he had started cultivating it with the permission of the trustee. Nevertheless, the *mashadd al-masaka* was confirmed.[42] A similar case occurred in 1722, a tenant claiming that he had the right of disposal in the form of the *mashadd al-masaka* (*ḥaqq al-qarār al-muʿabbar ʿanhu bi-mashadd al-masaka*) of a piece of land pertaining to the Awqāf al-Ḥaramayn. The tenant had rented the land from the previous trustee with permission to invest money. The rights of the tenant were confirmed by the qadi.[43]

Finally, apparently, the *mashadd al-masaka* was not limited to waqfs or any other category of land.

e. *Conflicts with the state concerning taxes, administration, etc.* The cases which have been discussed until now were all concerned with waqfs and individuals. There were cases too, however, which touched upon

[39] *Sijillāt*, 34/79/205; 34/160/498; 41/9/28; 42/21/54; 42/91/228; 42/44/428; 44/226/317; 44/323/508.

[40] Id., 19 *dhū al-qaʿda* 1134, 44/321/501.

[41] Id., 14 *dhū al-qaʿda* 1134, 44/322/503.

[42] Id., 12 *muḥarram* 1128, 34/47/119.

[43] Id., 5 *dhū al-qaʿda* 1134, 44/407/642.

the relations between waqfs and representatives of the state and the administration. These mostly had to do with fiscal problems, the division of authority and capacities, and the status of the possessions. In 1720, for example, it was claimed before the qadi that some villages in al-Ghūṭa and al-Ḥawrān were part of the Awqāf al-Ḥaramayn. According to others they were a fief on behalf of the sultan. It was decided that they were waqf.[44]

In 1712 the trustee of a school summoned the holder of the *mālikāna* of a village before the court, claiming that part of the village pertained to the waqf. The trustee had to pay 2/10 of the produce (19 *ghirāra* wheat, 10 *ghirāra* barley and 100 *qurūsh* in cash) to the *mālikāna* holder, according to the state registers (*daftar khāqānī*). Instead of several taxes (*ʿushr*, *maqṭūʿ*, and *al-rusūmāt al-ʿurfiyya*) an amount of 600½ *qurūsh* was due. The *mālikāna* holder apparently had increased the levies on the waqf and moreover had sanctioned the transfer of the *mashadd al-masaka* without the permission of the trustee. According to the latter, a sultanic decree (1703) gave him the right to collect the revenues without the interference of the *mālikāna* holder, taking several levies, such as the *rasm al-dūlāb*, the *rasm al-nikāḥ* and the *ʿadād al-maʿazz*. Besides, he claimed to have the *taṣarruf* of the village and no transfer (*farāgh*) of the *mashadd al-masaka* could take place without his authorization. He referred to a fatwa by al-ʿImādī to this effect.[45]

In the same year a petition was presented to the qadi by the inhabitants of al-Mazza, part of the waqf of Sultan Sulaymān, that the village had a debt of 10,764½ *qurūsh* to several creditors. A thousand *qurūsh* was owed to governor Nāṣūḥ Pasha. Since the yearly revenues did not transcend 4000 *qurūsh* in addition to the state taxes and the dues of the waqf, the inhabitants requested to be allowed to pay the debt in instalments. The request was granted.[46]

Another case involving the provincial treasury occurred in 1715, when Muḥammad Āghā ibn Yūsuf, Ḥasan al-Khalīfa and ʿAbd al-Muʿṭī al-Falāqinsī, respectively trustee, *nāẓir* and *kātib* of the Awqāf al-Ḥaramayn al-Sharīfayn received permission to borrow 900 *qurūsh* from the waqf to pay its debts, apart from the 500 *qurūsh* that had been borrowed by the previous trustee to supplement the *ṣurra* (the treasury of the pilgrimage caravan) of 1714. The shortages had been

[44] Id., 26 *ramaḍān* 1132, 40/46/153.
[45] Id., 12 *dhū al-qaʿda* 1124, 32/189/510; see also id., 11 *shawwāl* 1123, 32/11/15.
[46] Id., 15 *shaʿbān* 1124, 32/169/458.

caused by deficits in the remittances of the waqfs of Ṣaydā, as a result of the ruination of several villages and agricultural lands.[47]

In 1718, finally, a case was brought before trial by Muṣṭafā Efendi al-Daftarī against Muṣṭafā ibn ʿAbd al-Raḥīm al-Ḥalabī and qadi Jamāl al-Dīn al-Ayyūbī, *nāẓir* of the waqf of ʿAbd al-Raḥīm. The latter, his brothers and his son had received the village al-Muʿaẓẓamiyya in the *nāḥiya* al-Qalamūn in *mālikāna* in 1706. In 1714 the father had paid 36 *kīs* to fulfil the *mīrī* obligations for nine years (1800 *qurūsh*) and the state levies (1800 *qurūsh*). Subsequently he left Damascus and converted his possessions into a waqf for himself and his brothers. These took over the possessions and failed to pay the *mīrī* due on the village for two years, and a sultanic decree followed that the land had to be sold in order to cover the tax arrears, in accordance with a fatwa of *shaykh al-islām* Abū al-Suʿūd. The defendants acknowledged that the possessions had been turned into waqf, but denied that they had appropriated the tax dues. However, the court judged that the waqf should be annulled, the possessions sold and the debt paid.[48] Other cases followed, ʿAlī Efendi al-Daftarī claiming 1500 *qurūsh* for one-quarter of the *mālikāna* of the village for ten years, of which allegedly 1000 *qurūsh* had been paid.[49] Several sale contracts are included involving the land in question, which was bought by several different notables and aghas. Finally, the sheykhs of the village paid al-Daftarī their *mīrī* debt.[50]

Conclusions

Of course, samples from court registers over a period of eleven years can give only a limited view of the practice of such a complex phenomenon as the waqf-institution. Some conclusions may be drawn from the material summarized above, however, keeping in mind that it does not lend itself for a diachronic reconstruction. Firstly, as has already been observed above, some insight is allowed into the enormous economic potential concentrated in waqf possessions and the variegated economic activities covered by the the various manifestations of the waqf-institutions, either under the auspices of individual

[47] Id., 28 *dhū al-qaʿda* 1127, 34/16/44.
[48] Id., 12 *dhū al-ḥijja* 1130, 36/1/1.
[49] Id., 18 *rabīʿ al-awwal* 1130, 36/2/4.
[50] Id., 36/2/5; 36/6/9; 36/6/10; 36/12/15; 36/14/15.

waqfs, or within the framework of large complexes. Especially the trustees of the waqfs of the Umayyad Mosque and the Awqāf al-Ḥaramayn al-Sharīfayn were in control of a great variety of commercial, industrial and agricultural undertakings, whose smooth functioning and profitability resorted under their responsibility and part of whose revenues went through their hands. While they probably occupied a strategic position within the economic networks that were the core of the city's economic performance, they also upheld a complex in which a large part of the means of production were gathered, and which consequently represented a large capital fund. Although from the documents no major difficulties in the exploitation of these possessions can be deduced, the evidence suggests that the waqf complexes were either in debt, or else suffered from a shortage of liquid capital to secure the maintenance of their possessions, and were thus forced to calculate these expenses within lease contracts.

The differentiation of economic activities is paralleled by a geographic differentiation, since links can be perceived between waqf complexes in Damascus and possessions within the different quarters of the city *intra muros*, the various suburbs *extra muros*, the villages of al-Ghūṭa, in the immediate environment of the city, villages in the Syrian countryside, such as al-Biqāᶜ and al-Ḥawrān, and other provincial towns, such as Aleppo, Baᶜalbakk and Ḥamāh. The examples show that the provincial dimension of waqf-networks was not confined to the large complexes founded by the governors from the 16th century onwards, with the intention of creating a provincial network, but included smaller waqfs which had probably evolved in the course of time. They stress the role of waqfs in strengthening the position of Damascus as a regional centre, where transactions for economic exploitation of these possessions were arranged.

The examples underline the close connection between waqf and rent. Virtually all lease contracts concern waqf possessions and, evidently, lease was in most cases the only way of generating revenues from these possessions. Through the mechanism of *ijāra* the waqfs were linked to market processes and conjunctural changes, and it is no coincidence that in the course of time the *ajr al-mithl* acquired such a central place in legal discussions. The form of *ijāra* was imposed not so much by legal theory as by economic circumstances, which gave rise to practices such as the *marṣad* and *ijāra ṭawīla*. These practices are indicative of the way in which the market forces 'intruded' upon the field of waqfs, shaping forms of exploitation and affecting the position

of the various interested parties. To be sure, legal theory did not lag behind, since in the fatwa-texts provisions were discussed for kinds of rent, for the rights of tenants on the possessions they exploited and for the responsibility for maintenance. It should be stressed that the practices concerning *ijāra* are not necessarily or exclusively detrimental to waqf as an institution. After all, waqfs themselves were active in the field of *ijāra* not only as lessors, but also as tenants, so that they, too, could profit from opportunities provided by the system. If practices such as *ijāra ṭawīla* and *marṣad* coincided with the weakening of the profitability of waqfs or the appropriation or quasi-appropriation of waqf possessions, this was not caused by the concept of these devices, but rather by the destructive influences of the market forces on the autonomy of the field of waqf, changing the balance between various interests. As we have seen, rent contracts could legally be dissolved if it was in the interest of the waqf, but it was economic factors that prevented trustees from doing so, since only the rights built up over the years by tenants and exploiters could guarantee continued exploitation. A careful distinction between the rights of the waqf and the tenant of *ḥikr* land on which a *milk* house had been built, could not solve the practical problem that the owner of the house would be the only one willing to pay a *ḥikr* for land whose market value would be low. The tenants in principle had an interest in the preservation of the waqf, because this was the framework protecting the low level of rents. At the same time, however, the fixation of rents over long periods tended to weaken the financial position of waqfs and to drain their resources. This could be compensated by spreading economic activities over several sectors, and in fact differences can be seen in terms of *ijāra* between landed possessions and, for instance, shops. The device of *istibdāl* could be used to exchange less profitable assets for more lucrative ones, and some examples indicate that this may indeed have happened. This could not solve the main problem, however, which was that waqf possessions needed capital injections to ensure their preservation and economic functioning. The question who was providing this capital was vital for the functioning of the waqfs as part of a 'field'.

It is conspicuous that with regard to cases and conflicts the documents show a high degree of consistency and coherence, both concerning the categories of conflicts and the definition of their nature, and the format of the records. Most cases conform to a standard type, especially those treated by the *nā'ib* qadis. The less regular

cases, such as those involving the state, fief holders, important ulama or notables, or those concerning taxes, large estates, or complicated and delicate transactions, are as a rule judged by the chief qadi, sometimes in the presence of prominent notables or the governor. In these cases the draft of the document could be different from the model, or only somewhat more elaborate.

The standard form of the documents indicates that the majority of the cases were dealt with as part of a standard procedure, to such an extent that sometimes one has the impression that documents were not so much the registration of a real conflict, but rather brought before the qadi to have a certain solution ratified and registered. Little variation is allowed, verdicts and discussions are general instead of specific in their details and very rarely are cases discussed as exceptions to certain rules. It appears that the variation of cases was systematized to fit into the regular procedures, rather than allowing a differentiation within the procedures. This sense of consistency is strengthened by the references to other documents in the court records and to other texts pertaining to the legal framework. As in the case of the transactions, judgments of former qadis, of all four *madhhab*s, are confirmed, even if the circumstances might make a reconsideration logical (for instance when the *ajr al-mithl* is concerned). Furthermore, references can be found to fatwas, especially those of the contemporary mufti of Damascus, Ḥāmid al-ʿImādī, but sometimes of the former *shaykh al-islām* of Istanbul, Abū al-Suʿūd. The fatwas brought forward were always used to support a judgment and judgments were not used to contradict fatwas, again an indication of the tendency to stress the uniformity of legal practice. Cases and conflicts, too, were incorporated into the legal tradition. This is confirmed by the many cases in which the judgment is reached by the general procedures for evaluating evidence.

Among the material under study no cases appear that clearly implied a disruption or distortion of the system of waqfs. The records show no obvious internal contradictions resulting from external influences, few cases of flagrant malpractices by *nāẓir*s or usurpers and few interventions to reorganize or improve the system. Only in cases where the control of the state is concerned is this pattern broken. The rescission of the waqf of al-Muʿaẓẓamiyya, decreed by the Porte to pay tax obligations still due, is not discussed as to its legal aspects and justification, but rather presented as an administrative measure. Neither is one type of case sufficiently dominant to suggest that the

equilibrium within the system had become precarious, for instance showing that the position of specific parties—beneficiaries, trustees—had deteriorated to such an extent that the functioning of the system was undermined.

In general, a clear dialectic can be perceived between the central authorities and the local elite, with the qadi as an intermediate link. The chief qadi was the official charged with the task to execute the sultanic decrees, send cases to Istanbul and compare claims with the official *daftar*s. On the other hand he systematically made use of the fatwas of the local mufti, whose authority derived not only from his official status within the Ottoman system, but also from his status among the local elite and his knowledge of local customs. This confirms the dialectic in legal practice already observed in chapter three. Apart from this, the documents show that in spite of the high degree of centralization as far as the administration of waqfs was concerned, a relatively small group of local notables, ulama and aghas had interests in waqfs, as *nāẓir*s, as exploiters and as beneficiaries. A few families, such as the Safarjalānīs, the Ayyūbīs, the Falāqinsīs, and the Usṭuwānīs, frequently turn up as one of the parties involved in conflicts, but the samples are too limited to allow a statistical evaluation. These families were also involved in the functioning of the religious and judicial apparatus, as *kātib*s, *nā'ib*s and *khaṭīb*s, or as merchants. The aghas, usually not of Damascene origin, probably attempted to acquire the *naẓar* of waqfs (perhaps with the support of the state) to penetrate the networks of the local elite and broaden their local basis. Finally, in the period covered by the documents the secular authorities played a more restricted role and did not seem to be very active as far as the initiation of waqf projects was concerned. The *daftardār* supervised the sale of the waqf possessions enforced by the authorities, the *mutasallim* ordered the inspection of waqfs and the governor incidentally founded a waqf or had interests in the exploitation of certain waqfs, but there is no evidence of large-scale enterprises by these officials. As we have seen, this situation later changed with the ascendancy of the ʿAẓm governors, who were active in the field of real-estate transactions and the founding of waqfs.

Although most cases and conflicts concerning waqfs may have conformed to a predictable pattern—issues of status, exploitation, maintenances, rights—the general administration of waqfs was by no means static. Several cases show how agreements for exploitation were concluded, extended or dissolved, and how waqf possessions

were divided up, exchanged or expanded. The case of the Muḥibbī waqf (see p. 158) shows how waqfs could be split and exchanged to facilitate their administration and how eventually the complex of the Awqāf al-Ḥaramayn al-Sharīfayn was expanded with a large estate, due to the extinction of the beneficiaries. Probably the function of the large complexes as centres of gravity absorbing individual waqfs only increased in the course of time. All cases of this kind show that the flexibility of the administration of waqfs was usually the result of a coordination between private interests and the interests of the waqf, the latter providing a stable framework for investment or exploitation for personal or family possessions, while individuals founded waqfs or provided capital. The flexibility of the system was greatly enhanced by the opportunities offered by the cash-waqf and the *istibdāl* of objects for capital.

The relations between waqfs and the central state were not so much connected with efforts at reorganization, but rather with the integration of waqfs into the administrative structures. The cases show how waqfs were an integral part of the fiscal system and conflicts between waqfs and the state often had to do with the remittance of taxes and questions of the division of authority between administrative agents and waqfs: sometimes claims by holders of tax-farms clashed with those of trustees as to the status of possessions (part of the fief or of the waqf), the levies due to the fief-holder and the way they should be collected, the authority to sanction transactions with waqf possessions, etc. As a rule, prevalence is given to the claimants of the waqfs, protecting them against the possible usurpation by local administrators. However, if the revenues of the central treasury were threatened, harsh measures were not eschewed, as is shown by the case of the Muʿaẓẓamiyya waqf which was dissolved by state decree, not so much on the basis of the invalidity of the waqf, but rather because the exploiters had been negligent in paying their due. It is difficult to reconstruct the considerations of the various parties involved in this case. The founder could not have been induced to convert his *mālikāna* possessions into waqf for fiscal reasons, since normally land under *mīrī* obligation was not exempted from tax when turned into waqf, and perhaps if the exploiters would have owned enough capital to pay the arrears, the waqf would have remained intact. Another possibility is that the measure was inspired by local administrators and notables involved in some local controversy or eager to appropriate the possessions themselves, or, perhaps, that

other creditors were involved. It is not clear, however, what status the land acquired after the sale and if the transaction also resulted in a dismemberment of a *mālikāna*-holding into various *milk* properties. Finally, it is evident that some villages in al-Ghūṭa, which were part of waqf complexes, were unable to pay their due and had to seek arrangements for their debts. Apparently several estates near Ṣaydā which belonged to the Awqāf al-Ḥaramayn complex had fallen into ruination and could not procure the regular amounts of revenues. In some cases merchants were involved as creditors, but also the governors could be among the interested parties. There is no indication that this indebtment of waqf villages occurred on a wide scale and in the cases that can be traced, arrangements were apparently agreed upon without much difficulty. They show how waqfs were connected with financial circuits, which were dominated by merchant families, administrators and ulama.

It would seem from the above that the court records should be studied primarily as a source for legal and administrative history, although they cannot be dissociated from historical influences. For an interpretation the historical context should always be taken into account and one should always reckon with variations according to time and place. For example, part of the consistency of the records of the Damascene court may be caused by the position of the city as the provincial capital and the see of state power. In a city like Damascus the influence of official policies and discourse may have been much stronger than in smaller provincial towns, such as Nāblus, Tripoli or Ḥamāh. Moreover, especially the Maḥkama al-Kubrā may reflect a typical central urban environment, dealing with issues of houses and buildings and the economic ties of a specific segment of the urban elite with the villages in the hinterland. There are few cases that involve peasants and rural officials, showing state control of the cycles of agricultural production, or cases that reflect a local majority of Christians. Thus, the court records that have been discussed are specific not only for Damascus, but even for Damascus *intra muros*, and should not too easily be taken as a model.

As has been argued above, the documents show the variety of types of transactions, complaints and mechanisms that are part of the long-term development of the waqf-institution. It is possible to see which legal devices were in use and which local variations had become accepted as part of waqf practice. The documents show, too, to what extent the administration of waqfs was integrated into the

framework of the state, and they give an indication of the interests of officials, factions and individuals, their conflicts and their arrangements. Finally, they show the consistency of the judicial system and its links to the texts which underlie it. In fact, they are a representation of the everyday practicalities of the field of waqfs, the smaller issues which are not directly recognizable as parts of a larger framework, but which nevertheless form the basis and essence of the waqf institution and the field by which it was shaped: the transactions between individuals who utilized the waqf concept to protect their possessions and to establish some stability in their life and the lives of their descendants. The ties between individual founders and their waqfs were the first stratum in which power relations were formed that were systematized and structured on other levels and gradually turned into mechanisms that were controlled and manipulated as a means to acquire material and immaterial capital, and, ultimately, as a means to profit from the symbolic power they represented.

The court records also illustrate the position of Damascus as a centre of administration and economic control. After all, they are part of a large centralized apparatus that covered an enormous and differentiated empire and that was mobilized from Damascus to impose policies and systems on a relatively large hinterland. In some cases, waqfs administered in Damascus affected the imperial infrastructure, especially when facilities or remittances for the hajj were concerned; in other cases waqfs in the city had ramifications in the surroundings and even in other parts of the province. Their administration, the judgment of transactions, the control of fiscal and other financial aspects, the system of appointments and the evaluation of claims were all concentrated in the provincial capital and to some extent dominated by the Damascene elite. Moreover, they were part of the state system of surveillance, since in the court records information was stored which was indispensable for the exercise of authority and the implementation of policies and rules. Together with the chancelleries in Istanbul, they were the administrative file enabling the authorities to impose their system on the provinces.

CHAPTER SIX

WAQFS AND URBAN DEVELOPMENT

In our discussion of the concept of the city in the introduction we have described the city not so much as a conceptual entity, marked by a definite set of characteristics and by a specific dynamic spurred by inherent 'laws', but rather as a centre in which various structures and networks meet. Cities are distinguished first of all from villages by their size and their function within the regional context, and to a lesser extent by common essential features. From the contributions of several historians and theorists, some main elements can be isolated which together determine the nature of the city: firstly, the measure in which a settlement succeeds in attracting and accumulating people and commodities from its surroundings, both by its appeal as a spiritual centre and by its economic function, as a centre of trade and a market for various goods; secondly, the measure in which it assembles and preserves cultural and material goods and thus serves as a mechanism fostering the continuation of the socio-economic structures of a community; thirdly, the measure in which a town becomes a centre of authority, from which a hinterland of settlements is either directly administered or indirectly shaped by the political and economic predominance of the city.

These ideological, religious, economic and political factors result in a concentration of population, material and cultural goods, and authority. This concentration in turn stimulates several developments, which may be summarized as follows: firstly, a differentiation of institutions, social classes and professions, under the influence of the requirements of the city and its functions; secondly, the development of a sense of identity and value-systems which are at the basis of the self-representation and image of the city; thirdly, the consolidation of mechanisms that are needed to regulate and reproduce the essential functions of the city; and fourthly, the formation of a hierarchical network of towns that are economically, and/or culturally and/or politically related and from which the city partly derives its particular identity and functions. It is these four forces which to a large extent produce what is generally seen as typically urban and that is expressed in the organization and regimentation of space. The

differentiation of space and people is reflected in specific types of buildings, social divisions within the city, specialized occupational facilities and areas, etc. Urban value-systems and identities influence aspects of urbanization, such as architectural styles, symbols of authority and wealth, places of gatherings, monuments, urban patterns, the creation of specific facilities, boundaries around or inside the city, symbols of adherence to broader cultural and political entities, etc. Urban systems, finally, affect especially the economic infrastructure of cities, the types of trade facilities and their design, facilities for migration, travel and deposit, but also signs of appurtenance to overarching political and cultural frameworks with which the city systems overlap.

These forces, then, determine the appearance and structure of a city, not only in the material sense, but also in the symbolic sense. Urban form cannot be dissociated from social relations and immaterial values; it is part of the experiences of the population and integrated into perceptions of life and interpretations of social hierarchies and cultural symbols. These, put into the framework of structures of time and space, to a large extent shape the everyday life of the members of the urban community. As such, urban form is linked to the power structure of the city, in its two forms as the exertion of authority by rulers and dominant classes, and, in the Foucauldian perception, as the set of social relations that produce the form and structure of the city and its community. Cities are places where power mechanisms are concentrated, where they become complex and varied, reflected in the differentiation within the social structure in various fields, and where they are institutionalized and controlled by urban or imperial authorities. In the view of Bourdieu, the organization of space and the definition of urban outlooks are the reflection of relations of power, which endow each element with a material and a symbolic value. The city is the place where the exchange of these 'commodities' is at its most intensive.

Finally, these functions of the city have to be administered and reproduced, not only within the framework of the imperial administration, but also as pertaining to a specific urban entity. Change and reproduction are regulated and controlled, and embedded in structural frameworks. It is our assumption in this chapter that the waqf system played a crucial role in these complex sets of relations that were concentrated in Damascus, as a mechanism both to structure these relations and to preserve them for future generations. Some of

the arguments used in this section have been mentioned before, referring to separate aspects; it is our intention here to put these cases into the broader perspective of the development of Damascus as an urban structure, with special emphasis on the role of waqfs in the Ottoman period.

Religious buildings

Buildings are not merely material constructions or neutral commodities. They occupy a specific space, they are owned, by individuals or by groups, they have a function, or more than one function, they are connected to certain parts of the lives of individuals or groups, they have a specific form, and, finally, in all this they are related to other buildings and to other uses of space. These qualities endow buildings with their material value, expressed in capital, but also with their symbolic value, and the two values together determine its function within the structure of power. In the view of Giddens buildings are 'locales' that contain power, in the sense that they represent the focal points in time and space that organize social and economic activities, where people meet or retire, where institutions are located, where certain acivities are performed and where rituals and ceremonies take place. It is the spatial concentration of these parts of social and economic activities in buildings that make them coherent and subject to control. The transformation of the organization of space has a profound effect on individual and collective lives and the ability to realize it is derived from the mechanisms of power in which it is embedded, such as the possession of properties and material resources, the context of legal rules, political decisions, the ability to mobilize popular support, the ability to associate oneself with religious and political rituals and ceremonies, the ability to define and preserve boundaries, etc. Thus, the organization and manipulation of space is ultimately derived from power relations.

In the introduction we have seen how the construction of the Umayyad Mosque was embedded in a power structure built by Caliph al-Walīd in the domains of political authority, communal symbols and economic resources. It is not surprising, of course, that the mosque is a particular example of a building where these power mechanisms converged, since it is there that individual and communal religious experience was professed, where social relations were

focused, where the daily life of the community was regulated by prayer and rituals, and where the political and ideological cohesion of the community found its expression. The mosque was the primordial spatial entity, or 'locale', which symbolized both sanctity and a new political order, and the Muslim ruler invested his power in the construction of a monument which would in turn become one of the mainstays of his own and his successors' symbolic power.

This power aspect of the construction of the Umayyad Mosque had consequences for its location, form and appearance. As has been argued above, the location was chosen for its symbolic value, in the centre of the city, where religious buildings had succeeded each other from ancient times and around which a fabric of historical and religious myths had been woven. The selection of this place had repercussions for the shape of the mosque, since, as Hillenbrand shows, the two main orientations, the monumental entrance and the *miḥrāb* towards Mecca, were determined.[1] The basic shape of the mosque was also prefigured by the models within the Muslim tradition, but within these limits al-Walīd was able to create a specific new style and architectural form. This form was repeated in another monument from the same period, the Dome of the Rock in Jerusalem, and in later religious buildings in the Maghrib. Al-Walīd's imperial style became a new architectural feature throughout the Muslim world and symbolized its cultural unity. It represented the philosophy of the mosque in its initial phase, as a large single building dominating the life of the urban Muslim community, a building, moreover, that was not an object of personal patronage, but rather fell under the responsibility of the community as a whole.[2]

In the course of time the idea of a single communal mosque, or *jāmiᶜ*, in each city, as was propagated in Hanafite and Shafiite law, had to give way under the pressure of population growth, and from the tenth century onwards it was generally allowed that individual founders constructed *jāmiᶜ*s and smaller *masjid*s. These were often integrated into larger complexes including religious buildings, such as *madrasa*s and mausolea, and secular buildings, such as *khān*s and souks, a practice that was conducive to a general diversification of styles and forms between complexes, but to a greater stylistical uniformity and harmony as far as the buildings within one complex were

[1] Hillenbrand, p. 69-71.
[2] Id., pp. 51, 68; Grabar (1987), p. 35; Lambert, pp. 13-4.

concerned. The construction of mosque complexes gradually acquired the character of large urban projects according to planned schemes, unifying several types of buildings within one conglomerate. These complexes contained the essential elements of the urban structure, such as centres of pilgrimage, centres of learning and the preservation of culture, and focal points for economic activities. As in the case of the Umayyad Mosque, the founder invested his resources in these complexes to profit from the symbolic value with which they were imbued, and from his control of the infrastructural components of the city. These complexes reached their apogee in Ottoman times, both in the form of the governors' waqfs which were founded in cities throughout the empire, and in the form of mausoleum complexes founded by the imperial family and their entourage.[3]

In Damascus the two places where the Muslims gathered after the conquest of the city were a section of the Basilica of Saint John in the centre and the Muṣallā outside the city on the southern edge, until the Umayyad Mosque was built. The Muṣallā remained in use as a place for gatherings and manifestations of popular belief. Here great popular gatherings took place, both to perform prayers and for the departure of military expeditions, or the encampment of caravans. At the beginning of the 13th century a monumental mosque was built on the site by the Ayyubid sultan, where henceforth the prayers at the two Muslim holidays were performed. Still, it remained a centre for protest gatherings, military parades, and for prayer when the city suffered from drought, earthquakes or plagues of locusts. In the latter case the so-called *samarmar* water was hung from the minarets of the Muṣallā Mosque, the Umayyad Mosque, the Takiyya al-Salīmiyya and the Takiyya al-Sulaymāniyya, to attract the birds that, according to folklore, would destroy the locusts.[4] From the beginning of the 12th century the proliferation of *jāmi'*s set in, mainly as a result of the patronage of *atabeg*s and emirs of the Zanjids. In this period, too, the foundation of complexes became widespread, usually a combination of a mosque, a *madrasa* and a mausoleum (*turba*). This practice continued in the Mamluk period and culminated in the large complexes founded by the Ottoman sultans and governors. At the beginning of

[3] See Grabar, 'The architecture...,' in: Lapidus (1969).

[4] Al-Nu'aymī (1990), vol. 2, p. 323; Ibn Kannān (1994), p. 138; al-Budayrī, p. 225; Laoust, pp. 96, 103; Pouzet, pp. 345, 352, 386; al-Munajjad (1949), pp. 52, 60; see also Humphreys, p. 149.

the 18th century there were five *jāmiᶜ*s where the *khuṭba* was read and which therefore had the highest status.[5]

As has been shown above, in approximately the same period the number of schools increased notably at least until the end of the 14th century. At this time the topographical layout of the religious infrastructure was more or less defined: the schools and mosques were centred around the Umayyad Mosque, especially to the north, between the Citadel and the Mosque, and south of the line connecting the two buildings. In Mamluk times part of the construction activity was concentrated in the same area, but several large projects were undertaken outside the city walls: the mosque of Yalbūghā, near Taḥt al-Qalᶜa, the Tankīziyya, west of the Citadel, the Jāmiᶜ al-Muᶜallaq, near the Bāb al-Farādīs, and the Jāmiᶜ al-Ward, west of Sūq al-Sarūja. Schools, too, were more often located outside the city walls, especially near the Bāb al-Jābiya and Taḥt al-Qalᶜa.[6] In the Ottoman period building activity within the city walls was concentrated in the area south of the Umayyad Mosque, and mainly concerned schools and economic facilities. The major mosque complexes were located *extra muros*, notably in al-Ṣāliḥiyya, al-Mīdān al-Khaḍrā and the Bāb al-Jābiya.[7] This tendency illustrates the development towards the foundation of secular-religious clusters, of which a school or a mosque was the nucleus, but a souk or a *khān* was added as a rule. Another development in Ottoman times was the increase of restorations or the tearing down of old buildings to make place for new ones.[8] It is remarkable, finally, that the Sulaymāniyya was erected so far away from the centre of the infrastructure of mosques and *madrasa*s; this may have been in accordance with the intention of the institution, as a school dominated by the central government, which should not be absorbed by local networks, but remain a foothold of the state among the local institutions, to counterbalance the Maḥkamat al-Bāb, which was located in the centre of the city. The eccentric location may also have been inspired, however, by the fields at the western side of Damascus, where pilgrims and officials with their retinue usually camped before entering the city. In the past, it had been the site of the al-Ablaq Palace of Sultan Baybars.[9]

[5] Ibn Kannān (1992), vol. 2, p. 380; Marino; Laoust, pp. 96, 103; Sack, map 4.
[6] Sack, pp. 28-30.
[7] Sack, pp. 31-5.
[8] See the inventory of 16th century constructions and restorations in Pascual, 'Tableau 1', between pp. 18-19.
[9] Sack, p. 32.

Urban development

The historical rhythm and the topographical distribution of the increasing number of mosques in Damascus parallels the main phases of the expansion and development of the city. The tidal waves of urban growth in the first instance followed political patterns inspired by the wish of conquering dynasties to establish their authority in the city, or of governors to transform parts of the city's infrastructure. New rulers implemented new systems, established new centres of authority and created new buildings. Apart from this, conjunctural fluctuations were an important factor influencing building activities, although the relation is not always evident. Some renovations and investments in the economic facilities of the city were meant as an effort to counter economic stagnation, while others may have resulted from economic prosperity. It is remarkable that although political and economic motives may generally have instigated initiatives to reshape and expand the city, the projects that were undertaken were always linked to the religious infrastructure as a way of incorporating them into the various systems of the city. This emphasizes one of the essential roles of the city as the theatre of ceremony and ritual.

The episode of al-Walīd and the construction of the Umayyad Mosque shows the exertion of power structures and integrates the spiritual and material aspects of urban development. The prosperous phase of Damascus ended with the fall of the Umayyads in 750 and the ascendancy of the Abbasid caliphs, who built Baghdad as their residence and degraded Damascus to the status of a provincial capital. In the course of time, Syria became fragmented and dominated by the Seljuk Turks, local dynasties and the Fatimids from Egypt, while the Crusaders established several small kingdoms and city-states in Palestine and the coastal areas. The second lease of life of Damascus is usually ascribed to the efforts of the famous warlord and ruler Nūr al-Dīn al-Zanjī, the emir who tirelessly fought the Crusaders and laid the foundation for the later restoration of the sunnī Muslim hegemony in the Levant.

After two abortive attempts during his campaign to enforce the reunification of Syria, in 1154 Nūr al-Dīn finally succeeded in imposing his authority on Damascus and in transforming the city into one of the mainstays of his administration. He embarked upon an ambitious scheme of building and restoration works, which reinvigorated Damascus as an important political, economic and cultural centre.

Al-Nuʿaymī praises Nūr al-Dīn for his construction projects and his generally beneficial rule. He mentions especially Nūr al-Dīn's suppression of the Shiites (the Fatimids), the construction of legal courts (Dār al-ʿAdl), hospitals and sufi monasteries. He opened the routes for the hajj-caravans and restored facilities for the pilgrimage, by building roads, bridges and lodgings. He was averse to religious fanaticism and patronized the Hanafite, Shafiite and Malikite law schools. Not only Damascus but also Syria as a whole benefited from his efforts.[10]

Nūr al-Dīn al-Zanjī first of all restored the city walls, the Citadel and the gates, and had several towers built. The walls are in general of decisive importance for a city's appearance and spatial organization. They set the city off as an entity and as a seat of secular power, strengthening a sense of identity among the inhabitants and facilitating internal control and the imposition of local regulations. Moreover they determine the first territory that is to be divided among the urban classes and thus influence the distribution of space over the various segments of society. Cities with multiple centres are transformed into single entities whose differentiations are now integrated into a new complex community. The main infrastructure of the city is determined by the gates, where the city touches the outer world. The main gates give access to the major streets, which often cross the centre of town to reach another gate. The gates thus determine the pattern of main streets, which in turn give access to the main centres of commerce, religion and government. Besides, near the gates all kinds of services are located that are related to their hinterland, such as services to travellers, specialized markets, *khāns* and *qaysāriyyas*, etc. Finally, the gates are fixed points where ceremonial processions of all kinds pass by or enter and leave the city.[11]

Obviously, the city walls affect not only the structure of the city they enclose, but also its immediate surroundings. Walls represent the boundary between the inner city and all kinds of spaces which are typical for the fringes of cities, such as cemeteries, playgrounds, shrines, certain industries, waterworks, fields for military parades and camps, etc. These places are particularly apt for the enactment of public manifestations that transcend the social boundaries which characterize the city *intra muros*, and where ceremonies are held which enhance the social cohesion of the population. As part of the

[10] Élisséeff, vol. 2, pp. 401, 443-7, 462-8, 481-5.
[11] Id., pp. 23-4; Kostof (1992), p. 36.

enclosing defence works, citadels symbolize the separation of secular from religious authority and in general emphasize the distance between the ruler and his subjects. Normally citadels in the course of time become the nucleus of suburban activities related to the services required by the royal or military authorities and subsequently of expansions outside the walls. The gates, too, are the starting points for suburban expansions, next to popular areas which are engulfed by population growth and, almost literally, break through the walls to form new suburbs. New expansions may also be purposely created by rulers who wish to broaden the available space for urban growth by constructing religious and commercial complexes *extra muros*.[12]

To a large extent these general patterns apply to Damascus in the Ayyubid, Mamluk and Ottoman periods and they were set in under the energetic rule of Nūr al-Dīn. To be sure, some of Nūr al-Dīn's projects had already been foreshadowed by the measures of the Seljuk Atabegs under Duqāq, who himself built a *madrasa*, a mosque, a monastery and a hospital.[13] Under Nūr al-Dīn, however, the city was given an impetus that would determine its shape for the periods to come.

Among the construction projects initiated by Nūr al-Dīn in Damascus was the Bīmāristān al-Nūrī. After founding a hospital in Aleppo, Nūr al-Dīn had a similar facility built in the centre of Damascus, in the area between the Citadel and the Umayyad Mosque. The costs for the construction were covered by the ransom paid by the Franks for one of their kings, who had been captured by the Muslims.[14] The hospital is described by the travellers Ibn Jubayr, who visited Damascus in 1184, and Ibn Baṭṭūṭa (1326). The latter mentions a legend related to the foundation of the hospital. A Muslim saint called Abū Yaʿqūb fell ill in Damascus and when he recovered, he became the attendant of one of the orchards of Nūr al-Dīn. This gave him the opportunity to meet the sultan and prove his saintliness to him. Later the saint found shelter with a poor family, for whom he changed a large number of copper vessels into gold with an elixir. He subsequently wrote a letter to Nūr al-Dīn:

> '[...]telling him about them [the gold vessels] and exhorting him to build a hospital for sick strangers and to constitute endowments for it. He bade him also build religious houses on the highways, satisfy the

[12] Id., pp. 26-67; Crane.
[13] Sack, p. 23.
[14] Id., vol. 3, 838-843

> owners of the copper vessels and provide for the maintenance of the owner of the house. [...] He at once took to flight, and the owner of the house brought the letter to the king Nūr al-Dīn, who came to that village and carried off the gold, after satisfying the owners of the copper vessels and the man himself. He made search for Abū Yaʿqūb, but failing to find any trace or light upon any news of him, returned to Damascus, where he built the hospital which is known by his name and which has not its equal in the inhabited world.[15]

A second construction project undertaken by Nūr al-Dīn and intended to serve as a centre for the new administration of the city was the Dār al-ʿAdl, or House of Justice; according to popular accounts, Nūr al-Dīn built this courthouse after numerous complaints against one of his emirs, who could not be checked by the local qadi. To break this deadlock in the power structure, Nūr al-Dīn instated a *maẓālim* court under the supervision of the ruler, to treat cases which went beyond the capacities of the qadi. The building was erected south of the Citadel, inside the Bāb al-Naṣr, and later expanded by Ṣalāḥ al-Dīn to become the Dār al-Saʿāda, one of the central administrative institutions.[16]

Nūr al-Dīn and his family also founded several schools. He himself built the first Dār al-Ḥadīth (*ḥadīth* school) in Damascus, which was followed by many others in the course of the century.[17] In 1168 he founded a Hanafite school, the Madrasa al-Nūriyya al-Kubrā, in the building which had previously been a residence of Caliph Muʿāwiya in al-Khawwāṣīn. The school was founded with money from the waqf-revenues, not from the state treasury (*bayt al-māl*).[18]

An important urbanization project authorized by Nūr al-Dīn was the foundation of the suburb of al-Ṣāliḥiyya. The name al-Ṣāliḥiyya was derived from the Abū Ṣāliḥ Mosque in Damascus, where the Qudāma family, Hanbalites from Jerusalem, took refuge after their flight from the Crusaders in 1156. With the consent of Nūr al-Dīn the Qudāmas moved in 1158-9 to a monastery on the slope of the Qāsyūn mountain. The tomb of the family leader, Abū ʿUmar, became a shrine for pilgrims and several governors and merchants founded mosques and *madrasa*s in the area. During the Ayyubid period al-Ṣāliḥiyya expanded rapidly, especially because of the con-

[15] Ibn Battuta, tr. by Gibb, vol. 1, pp. 86-8.
[16] Élisséeff, vol. 3, pp. 843-7.
[17] Al-Nuʿaymī, vol. 1, p. 74-84.
[18] Id., vol. 1, pp. 466-499.

struction of various kinds of religious buildings, such as shrines, sufi-convents and *madrasa*s, as a rule in the form of waqfs.[19]

Finally, two fields were laid out outside the city for horseriding and military parades, the Mīdān al-Khaḍrā, to the west, and the Mīdān al-Ḥaṣā to the south, alongside the road to al-Ḥawrān.

The building activities in Damascus in the 12th and 13th centuries were not confined to Nūr al-Dīn and his successors. Initiatives were also taken by his wife, his descendants and several Ayyubid emirs. As a result, the period witnessed a remarkable strengthening of the religious infrastructure of the city. One could say that Damascus was restructured to accommodate a new vision of power and to become one of the centres of a new integrated poltical and administrative entity, again both in the symbolic and in the material sense.

As far as the consolidation of authority is concerned, two aspects deserve our consideration. Firstly, the Nūr al-Dīn episode shows a dialectic between integration and differentiation which in some theoretical models is seen as typical for urban development. The integration, or re-integration, consisted mainly of the spatial and symbolic expressions of secular authority, such as the Citadel, the Dār al-ʿAdl, etc. These institutions gave Damascus a new status which extracted it from its phase of decline, when it lost its status as a centre where secular and religious power converged. The balance between the religious and secular components of the power structure was once again restored. It is remarkable, however, that the institutions in which this integration took shape were much more differentiated than before. After all, secular power was invested in a restored Citadel, a palace and a courthouse, while religious institutions were established in a great variety of mosques and *madrasa*s founded by different members of the ruling elite. The Court of Justice (Dār al-ʿAdl or Dār al-Saʿāda) later became the residence of the Mamluk governors and remained one of the centres of political activity and ceremony.

As Oleg Grabar observes, this development marks an important phase in the formation of the religious infrastructure in towns throughout the Muslim world. One of the main reasons why al-Walīd built the Umayyad Mosque was the wish to provide the community of Muslims with a single, communal space for prayer and worship, signifying the unity of the community of believers and the indivisible authority of the caliph. By the 12th century, the context

[19] Miura; Sack, p.82-3.

for the meaning of religious institutions had changed: political authority had become fragmented and power structures had become more complex. The political role of religious institutions had perhaps not essentially changed, but since religious authority was no longer invested in a single figure, it became more diversified, as part of a more diffuse set of political relations. This development was concomitant with the organization of space within cities, because mosques or *madrasa*s were founded to express the authority of certain emirs or merchants within specific quarters, which were thus 'marked' as their personal spheres of influence, with their personal clientele. This compartmentalization of the city, which started in the Ayyubid period, was especially perceivable in the subsequent period of Mamluk rule.[20]

Secondly, under the Ayyubids for the first time the institution of waqf was used in Damascus on a grand scale as a device to support policies of the ruling elite. Waqf was at the basis of the scheme of urban reorganization, both in the construction of waterworks, tombs and *madrasa*s, and in the case of the important urban extension of al-Ṣāliḥiyya. To be sure, not all projects were directly initiated by the state, but at least they were sponsored or authorized by officials or members of the ruling elite. Moreover, efforts were made to centralize the administration of waqfs, to incorporate it into the administrative framework and to enhance state control. The interference of the state in waqf-practice did not mean that waqfs were appropriated by the central government. Individual waqfs were founded and administered by private individuals, merchants and emirs, and more often than not supported private or family interests. However, the efforts to centralize control and to stimulate the foundation of waqfs by the examples of the ruling family should be seen as a deliberate policy to enhance the grip of the ruling elite on the urban infrastructure of Damascus. This tendency was continued under the Mamluk sultans.

In 1260 Damascus was conquered and partly destroyed by the Mongols under Hulagu, who ended the period of Ayyubid rule. The Mongols were driven back by the Egyptian Mamluks, however, who became the new masters of the city and turned Damascus into a provincial capital subordinated to Cairo. However, during the reign of Sultan al-Ẓāhir Baybars (1260-1277) the city enjoyed a privileged status which is shown by the construction of some major buildings,

[20] Grabar (1967).

notably the Madrasa al-Ẓāhiriyya. In 1312 Tankīz became governor of Damascus for a period of 25 years and he, too, undertook several construction projects, as well as governor Yalbūghā (1345), who built a mosque which became the spiritual centre of the quarter Taḥt al-Qalʿa. In 1400 Damascus was again besieged and attacked, this time by Timur Lang, who had parts of the city plundered and destroyed, and carried a large number of artisans off to Samarkand. Only under Sultans Barsbāy (1422-1438) and al-Ashraf Qā'itbāy (1468-1495) did trade flourish again and the city could recover from the destructions.[21]

The building activities of the Mamluks were concentrated mainly outside the city walls, and especially to the north. Since the sultans had their military officers settle in the area north and west of the Citadel, a new urban expansion grew which eventually developed into a new centre for various kinds of activity, the quarter Taḥt al-Qalʿa ('Below the Citadel'). East of Taḥt al-Qalʿa was the quarter of al-ʿUqayba, which had been formed at the close of the 11th century, and which now became a residential area for emirs and high ulama. The Ayyubid Sultan al-Ṣāliḥ Ismāʿīl had built mosques and schools in this quarter.[22] In the Ayyubid period economic activities were concentrated in the souks to the east and south of the Umayyad Mosque and especially in the Straight Street, between the Bāb al-Jābiya and the Bāb Sharqī. In the vicinity of the gates in the city wall were market places and to the south-west of the city, outside the Bāb al-Jābiya, was the main animal market.[23] The expansion to the north implied that the Straight Street gradually lost its predominance as a commercial centre and that the core of the economic sector shifted from the inner city and the animal market outside Bāb al-Jābiya to the Sūq al-Khayl—the 'Horse Market' northwest of the Citadel—and the Sūq al-Sārūja, north of Taḥt al-Qalʿa. These markets were specialized for the sale of animals, saddles and bridles for horses, weapons, leatherwork and other requirements for the military. A smaller urban extension can be perceived towards the south, near the Bāb al-Jābiya, especially centred around some *turba*s which were built alongside the road where the annual pilgrimage caravan left the city. Of all the urban extensions in the Mamluk period the core consisted

[21] Id., pp. 28-31, map 6; Lapidus (1967), pp. 14, 22, 26, 28, 29, 32.
[22] Humphreys, pp. 210-1.
[23] Id., pp. 24-8, maps 2, 3, 5.

of waqf complexes built around mosques. The economic infrastructure was strengthened by a number of large *khāns*.[24]

Like the Ayyubids, the Mamluks were especially active in the field of waqfs. Several sultans enhanced their economic position and their prestige by restoring old waqfs and founding new ones. These waqfs were centred around religious institutions, but usually included investments in the economic infrastructure of towns, for instance in *qaysāriyya*s and *khān*s, souks, shops and storehouses. In Damascus, these projects, which were mainly initiated by emirs, included a reorganization of the area around the Citadel and the urban expansion of Taḥt al-Qalʿa, several mosques, schools and mausoleums, *khan*s and souks, and so forth. It is remarkable, however, that these projects added little to the power structure of the city as it had been built by the Umayyad Caliph al-Walīd and Nūr al-Dīn al-Zanjī. Apparently, the main image of the city, as a centre of religious and secular power, had been shaped during the two episodes mentioned above: the incorporation of the city into the domain of the Muslim community under al-Walīd, and the reunification of the symbols of religious and secular power under Nūr al-Dīn, as well as the differentiation of the institutions which were the manifestation of these symbols, also under Nūr al-Dīn. These two phases provided Damascus with the two pillars of its status as a centre of religion and administration. Under the Mamluks the loci of ceremony were still those built by their predecessors.

The transformations that Damascus underwent in the Ottoman period involved mainly the domains of the religious and the economic infrastructure. The efforts were meant to strengthen the hold of the imperial authorities on the city and to revive economic activity, which had stagnated during the 16th century. Partly due to investments in economic projects and the growth of Ṣaydā as a centre of Mediterranean trade, the economic situation of Damascus improved markedly in the first half of the 18th century. This economic recuperation was supported by the city's role as the starting point of the pilgrims' caravan and the ensuing intensification of trade relations with the Ḥijāz. Especially in the 18th century the centre of gravity of Syrian trade shifted from Aleppo to the coastal region, mainly Ṣaydā and ʿAkkā, while relations with Egypt were strengthened. Although

[24] Sack, p. 30, map 6; ʿUlabī (1989), pp. 473-6.

Damascus did not replace Aleppo as a centre of commerce, at least during part of the 18th century economic conditions improved.[25]

The expansion of Damascus in the Ottoman period reflects the growing importance of the hajj as a spiritual and economic undertaking. The pilgrimage not only linked the city directly with the political and religious centres of the empire—Istanbul and Mecca—but also gave it a central position within several trade networks, reaching from Cairo to the Ḥijāz in the south, Baghdad and Central Asia to the east, and Aleppo and Istanbul to the north. The hajj also fostered a local specialization of artisans and merchants providing the pilgrims with everything they needed for their journey. The Sulaymāniyya and the Salīmiyya—the nuclei of extensions in the western direction—were partly dedicated to the care for pilgrims on their way to Mecca, but in other places, too, buildings were constructed to provide the caravans with all kinds of facilities. The halting places at the southern exit road to the Ḥawrān became increasingly important, resulting in a considerable expansion of the suburb of al-Mīdān. The activities in the economic domain were mainly undertaken by four governors of the 16th century, Lālā Muṣṭafā Pasha, Darwīsh Pasha, Murād Pasha and Sinān Pasha. The complexes founded by them have been described in chapter four. They were not only part of a policy aimed at revitalizing the economic infrastructure in the inner city, but also created new centres for urban expansion. With the building of several *khān*s (Khān al-Ḥarīr, Khān Lālā Muṣṭafā Pasha, Bazzāzistān Murād Pasha and various souks) the focus of economic activity again shifted to the inner city, especially the quarters southeast of the Umayyad Mosque, while the Sināniyya and Darwīshiyya Mosques opened up the area outside the Bāb al-Jābiya for urban extensions.[26]

Compared to the 16th century, the 17th century was relatively poor as far as urban development was concerned. No large complexes were built after the large foundation of Murād Pasha (1608-9), although some *khān*s, *ḥammām*s and *takiyya*s were constructed. Two remarkable buildings of this period are the al-Qārī and al-Safarjalānī Mosques, erected east of the Umayyad Mosque, both under the supervision of the Safarjalānī family, who apparently had already estab-

[25] Abd el-Nour, pp. 219, 270, 338-9, 351; Inalcik, 'The Ottoman state...,' in: Inalcik/Quataert (eds), pp. 339, 340, 345, 348; Faroqhi, 'Crisis and change...,' in: id., pp. 484-6.

[26] Sack, pp. 31-4, map 7; Marino; Raymond (1985), pp. 211-2.

lished their position as wealthy merchants. They had many waqfs and were supervisors of the Madrasas al-Muqaddamiyya and al-Jawhariyya. A large house was built by them in the 18th century in the northeastern part of the inner city, near Bāb al-Salām, and a *khān* south of the Umayyad Mosque. In the 18th century then, building activity again revived, mainly through the efforts of the ʿAẓm governors, whose foundations, which have been discussed in chapter four, were concentrated in the new commercial centre, where they also built their residence, the famous ʿAẓm Palace.[27]

By the 18th century, the layout of the city, partly based on age-old patterns, had crystallized around two axes: the Straight Street which led from the Bāb al-Jābiyya to the Bāb Sharqī, and the Sūq al-Bizūriyya and Sūq al-Khayyāṭīn, which linked the Straight Street to the Umayyad Mosque. The three nuclei of the city *intra muros* were the Umayyad Mosque, the Citadel and the ʿAẓm Palace. In Ayyubid times the area between the Citadel and the Mosque had been developed as the centre of administration, containing the military headquarters, the Court of Justice and the main *madrasa*s. This unity of the administrative infrastructure was broken by the Mamluks, whose centres of authority were the Citadel, the residences in and around Taḥt al-Qalʿa and the Dār al-Saʿāda. Under the Ottomans a balance was created between centres inside and outside the city walls, since the main centres of the imperial administration became the Sulaymāniyya, the see of the mufti, the Maḥkamat al-Bāb near the Umayyad Mosque, the Citadel and the Dār al-Saʿada. The Citadel was at some periods used as a garrison for the Qābiqūl, or state troops, and at others for mercenary troops. Moreover, it contained the main state prison. It is not clear where the soldiers of the many different mercenary troops were lodged. Apparently they were not concentrated in certain locations, but rather spread over different parts of the city. The local Janissaries, the Yerliyya, were concentrated in al-Mīdān and Sūq al-Sarūja.[28]

Around the central axes and the nuclei of administration and control were the *maḥalla*s, or residential quarters, connected by main streets and as a rule set off by a gate. Some of these quarters were inhabited by specific groups, notably the Christians in the northeast

[27] Ibn Kannān (1994), pp. 37, 485; al-Budayrī, pp. 141-5; Sack, pp. 34-8, map 7; Rafeq (1966), pp. 85-109, 116-131, 144-8, 161-200; ʿUlabī (1989), pp. 344-5, 482.

[28] Marino, pp. 209, 210, 212, 217; Raymond (1985), p. 73; Rafeq (1966), pp. 31, 35-42, 140, 166, 167; al-Budayrī, pp. 110-1.

and the Jews in the southeastern parts. The quarters, which were supervised by a shaykh, usually contained a *masjid* and a small commercial centre with a coffeehouse. The quarters outside the city walls were normally centred around a mosque and a souk and were of a different character. A special case is al-Mīdān, which extended along the pilgrimage road from the southwestern gates of the city and became an important suburb for several reasons. Firstly, it was one of the places where the pilgrims' caravan acquired their provisions and as such it was a lively economic centre; secondly, the rituals connected with the departure of the hajj caravan were held here, and several shrines added to the sacred character; thirdly, it was here that the cereals from the province, especially the Ḥawrān, were stored and distributed in special silos, and where the animal market was held; fourthly, it was the residence of the Turcoman clan leaders who had interests in the wheat trade and agricultural estates in other parts of the province. These local chiefs had connections with the Yerliyya troops, with the Bedouin tribesmen in the Syrian deserts and with the Druzes of the Ḥawrān and Mount Lebanon. The Mīdān thus formed an economic and political link between Damascus and its agricultural hinterland. The Turcomans were often fought as a rebellious group in the course of the 18th century and were seen as helpers of rebellious chieftains in the province. The ʿAẓm governors had their houses attacked and plundered on several occasions, and they usually took refuge in the countryside.[29]

Apart from its links with the agricultural areas in the Syrian province, especially al-Ghūṭa, al-Biqāʿ and al-Ḥawrān, Damascus was part of several urban systems within the region. The macro-system included Istanbul, Aleppo, Cairo and the holy places, with their port Jedda, and was supported by the organization of the pilgrimage caravans. The exchange between these cities not only consisted of trade, but also of political contacts (appointments, alliances, intermediaries, etc.), administrative connections (the delivery of the treasury, or *khazna*, of Egypt; the arrival of the *ṣurra* from Istanbul; the organization of the caravan for pilgrims travelling from the imperial capital, etc.) and, as we have seen, the ulama networks. Unlike Aleppo, in the 18th century Damascus was not incorporated into the main commercial networks linking the European merchant towns in the Mediterranean, such as Marseille and Livorno, with the Levant, although trade

[29] Id., *passim*; Sack, pp. 81-2; Raymond (1985), p. 205

with the European nations through the port of Ṣaydā steadily increased. This partly determined the role of Damascus within this urban system in the economic field; it was not an emporium of international commodities, but rather a centre of regional trade. Besides, it was not, like Aleppo, a military centre, harbouring garrisons for the regular border struggles with Persia.[30]

Damascus was above all a centre of regional politics and administration. The governor was responsible for the collection of taxes in a geographically, economically and ethnically very variegated area and for making the government of the province subservient to his main task: the organization of the hajj. His military tasks were confined to internal pacification, such as the disciplining of unruly chieftains, the surveillance of the pilgrims and the supervision of the troops stationed in the strongholds along the pilgrimage road, and, finally, the protection against Bedouin tribes. Warfare was an extension of politics, which consisted mainly of balancing the various regional chieftains against each other and forming local political coalitions. It is because of this pivotal role of Damascus that there was always a danger of local power groups undermining imperial authority in the city, but, as we have seen, this danger was contained by carefully upholding the mechanisms that secured the integration of the city into the imperial structure.

Within the microsystem relations with the agricultural areas were of great importance, as were those with some of the regional administrative centres, such as Nāblus and Ṣafad. However, the strongest links were developed with Ṣaydā, Tripoli, Baʿalbakk, Jerusalem and Ḥamāh, towns which were an organic part of the hinterland of Damascus. From Tripoli tobacco was obtained, which was stored in a specialized *khān*; merchants in Aleppo and Ḥimṣ also had their separate *khān*s. Saydā was the main port for the importation of rice from Damietta and the exportation of silk from Mount Lebanon and silk tissues from workshops in Damascus. These towns provided Damascus with an outlet to the Mediterranean, and were capitals of provinces which remitted an important contribution to the finances for the hajj, especially to cover the expenses of the protection force accompanying the pilgrims. The governors of Ṣaydā and Tripoli sometimes acted as commanders of these troops. Ideally, they should have

[30] Abd el-Nour, pp. 338-340; Inalcik, 'The Ottoman state...,' in: Inalcik/Quataert (eds), pp. 340, 345; Faroqhi, 'Crisis and change...,' in: id., pp. 484-6.

been the Pasha's natural allies against refractory chieftains in Mount Lebanon, the Jabal ʿĀmil, Nāblus, ʿAkkā and the southern desert. The role of Ṣaydā as a centre of authority diminished when at the beginning of the 18th century the Palestinian sheykh Ẓāhir al-ʿUmar occupied ʿAkkā and used it as a base to expand his regional influence. Baʿalbakk was the centre of one of the main agricultural areas in the vicinity of Damascus, producing wheat, barley, beans and lentils. As such it had to be protected against incursions of local chieftains, such as the Druzes from Mount Lebanon. Regular expeditions had to be undertaken to restore the authority of the governor of Damascus. Like Jerusalem, Baʿalbakk was also one of the nuclei of the regional ulama circuit.[31]

The integration of the regional urban system was enhanced by the rise of the ʿAẓm family in the first half of the 18th century. Members of the family acted as governors of Ṣaydā, Tripoli and Damascus, sometimes simultaneously, and they acquired possessions and interests in various parts of the three Syrian provinces. The basis of their power was Ḥamāh, where they held considerable landed properties in *mālikāna*, which eventually became an important source of cereals for Damascus. Although their interests were spread over the whole of Syria, there is no doubt that they saw Damascus as the real centre of political and economic power. It was in the provincial capital that they started their building activities, culminating in the palace built by Asʿad Pasha in the 1740s, and it was here that they used their political power to appropriate trade monopolies which enabled them to tap off commercial circuits and accumulate fortunes. Thus, political, administrative and economic integration went hand in hand.[32]

This brief survey of the development of Damascus within the context of the empire and the province shows the structures that determined the urban function of Damascus, as a centre of authority and administration, the preservation of culture and learning, and the economic centre of urban networks and agricultural hinterlands. The question now arises what the function of waqfs was among the factors shaping the urban structure as it has been described above. Can a specific role of the waqf institution, in its manifold manifestation, be defined?

[31] Abd el-Nour, pp. 169, 219, 227, 351.

[32] About the administration of the ʿAẓm governors, see Rafeq (1966) and Barbir.

Waqfs and the urban structure

Our hypothesis in this section is that the main function of the waqf institution in the urban context is that of a mechanism of integration, on different levels. The suggestion of such a general function derives from a combination of arguments provided by the conceptual and historical perspectives on waqf, but it is important to note that a generalization may not be totally justified by historical evidence. As we have seen, the waqf institution went through a historical development and evolved from a controversial concept based on relatively scanty evidence from the Traditions to a fully elaborated juridical device, well adapted to practical needs and administrative models. Consequently, one should not lump all waqfs together and consider them as a monolithic whole, lacking variety and differentiation. It is one of the main contentions of this study that the waqf institution should be treated as a historical phenomenon and not as something which is determined by its 'essential nature' only. It is possible, however, bearing the necessity of historicizing in mind, to discern a certain continuity in the development of the institution, which allows the search for patterns in its theoretical concept and historical enactment. In our view, it is the integrating function in the domains of the economy, the social structure and the administration that represents such a pattern during the evolution of waqf as an institution. Here we will continue to discuss the three particular domains and then try to formulate a synthesis. It should be noted that the discussion refers to functions of the waqf institution which were apparent in the different phases of its development, but which became systematized and coherent in the course of the Ottoman period, when the field of waqf was structured by forceful state interference.

a. *Economic integration.* The economic aspects of waqfs have only superficially been touched upon on a theoretical level. The framework for this discussion has been set out by Max Weber and some of his disciples, who held that the main characteristic of the waqf institution was that it hampered economic progress, represented by the formation of capitalist relations, and that it paralysed the exploitation of real-estate possessions as a source of capital. After all, among the major characteristics of the institution was that waqf possessions could not be sold or pawned. This, one might argue, implied that they were no longer part of the regular process of exchange that determined the values of goods. Thus, by being converted into waqfs,

properties were detached from the fluctuations of the market and lost their value as a commodity. Since the origin of capitalist relations is precisely sought in the privatization of land in Europe and the possibility to incorporate land into the circulation of commodities, it follows that the waqf institution was among the factors preventing economic relations in the Muslim world from developing in the direction of capitalism.[33]

Leaving aside the perception of history that is reflected in this view, four observations can be made in response to this approach. Firstly, some of the variations in waqf regulations, as has been outlined above, are explicitly intended to counterbalance the limitations set upon the exploitation of waqf possessions and the use of their revenues. It is no coincidence that the pragmatic opinions of Abū Yūsuf prevailed in the course of time, as far as waqf rules are concerned, and even at an initial stage, at the level of legal theory, rules were incorporated to facilitate economic transactions and to broaden the economic potential of waqfs. Secondly, since the conversion of properties involved a stabilization of certain rights of possession, these rights themselves acquired a certain value in an economy where property relations were always subject to supervision and restrictions. Devices were developed, such as the *marṣad*, the *ajr al-mithl* and the transfer of rights to others, to link these rights to the capital circuits and economic conjunctures. Thirdly, the stabilization of the status of possessions was often used as an opportunity for the safe investment of capital. As we have seen, waqfs served as the basis for large economic projects or investment funds to revive economic activity and to finance the restoration of buildings, markets and other vital components of the economic infrastructure. Fourthly, the integrative approach of waqf, as will be argued below, shows that the economic value of waqfs was certainly not the only factor that determined their function within power relations. Restrictions on economic exploitation should not be seen as a device to fossilize economic relations, but rather as a strategic means in power struggles which transcended the realm of the economy. It was not a means to create stagnation, but a means to shape, support and control processes of transformation, which are per definition dynamic. It was a means to preserve a certain field in which possessions were concentrated and connected to social and ideological values.

[33] Turner (1978a), p. 46; id. (1978b), p. 124; Weber (1976), pp. 644, 706, 795.

If we want to evaluate the economic significance of urban waqfs, then, we should take into consideration the following points. Waqfs often formed the nucleus of projects of urban (re)construction. The examples cited above show that the waqf institution was an effective mechanism to implement policies with regard to economic stimulation and social provisions. The founder, in this case usually a state official, could design the project himself, execute it as a private individual, within the framework of the law, profit from the positive symbolic connotation of waqfs and personally decide upon the organization, exploitation and administration of the possessions in question. The form of waqf was also apt since it secured the stability of the investment, the objects being protected against confiscation, generally warranted against decay and subject to the duty of maintenance. Furthermore, the waqf concept was a means to perpetuate certain rights the founder and his descendants might have on his properties, or to transfer these rights to other parties of his choice. Finally, the founder was able to integrate several components of his project into a single administrative, infrastructural complex, usually combining religious and social institutions with economic facilities.

This outline illustrates the integrative capacity of the waqf institution in the economic field. Within waqf complexes several segments of the economy were joined within one framework, creating a financial circuit which was theoretically closed and controlled by the founder or the trustee. The money that was generated was partly reserved for investments to preserve the waqf object and its profitability and only a specific surplus was paid to the fisc and the beneficiaries. In this way waqfs functioned as a kind of capital fund, through which the means of production were preserved and maintained. If necessary, the waqfs could be reconstructed or expanded by new capital injections, but in principle they were protected against ruination. Moreover, the components pertaining to different economic domains could complement each other and thus as a whole be more or less stable in times of economic upheavals or recessions. Remarkably, waqf complexes could have components not only in Damascus and the countryside, but also in other provincial towns, thus creating a network of waqf objects within one complex, covering various parts of the province. Buildings such as *khān*s were links between the different towns, where economic interaction took place and which fostered the uniformity of the economic infrastructure within urban systems. Waqfs not only supported this uniformity, being especially suitable

for souks, *khāns*, factories, mills, etc., but also provided a mechanism to control the interaction between towns, as 'locales' where specific activities were concentrated under careful supervision. This not only enhanced the economic integration of the provincial urban system, but also spread economic risks over a larger, more differentiated area.

The economic integration on the provincial level can especially be perceived in the case of waqf complexes that consisted partly of urban real-estate objects and partly of agricultural lands. Not only could a chain of production and distribution be upheld within a single waqf, taking the yields of estates to commercial facilities in the city; it was also a means to skim off revenues in the countryside for investment in the city.The waqfs of the governors in the 16th century show that at times when the economy of Damascus stagnated, the surplus of prospering possessions in other parts of the province could be injected into the urban economy to provide the capital required for reconstruction. These uses of waqf as a way to extract capital from the agricultural areas were the main factor linking the city with its hinterland. Simultaneously, waqfs were an important instrument for control and regulation, creating the possibilty for supervising the channels through which commodities and capital circulated.

b. *Social integration.* The social dimension of waqfs essentially concerns the various aspects of the structuring of social relations and social life. Evidently, the mosque is the quintessential meeting-place for the Muslim community, on the level of the quarter, or of the town as a whole. The mosque was the centre of the temporal cycles of social life, where the daily prayers, festivities and ceremonies were performed, where people could have social intercourse at fixed times and where the political unity of the believers was expressed by religious rituals and the *khuṭba*. The mosque was the foremost symbol of identity and the centre of a whole variety of linked institutions and monuments that buttressed this function. As a result, the mosque was usually located at the centre of spatial structures and substructures where other parts of the social infrastructure were also concentrated, such as coffeehouses and bathhouses. These, of course, were themselves of great significance for urban social life, as meeting-places and centres of ritual practices. Finally, this infrastructure formed the frame for the largest social event of the year, the departure of the hajj caravan.

The mosque, the *madrasa*, the bathhouse and other waqf buildings

provided the basis for the social integration of the urban community. They were public meeting-places which transcended the borders of the alley and the quarter, where social status was confirmed by public appearances and ceremonies and where social networks were developed. Here the main symbols of literary, scholarly and religious culture, the symbolic system, were preserved and kept alive; here the components of the cultural heritage were assembled and distributed among the community. As we have seen, the ulama networks connected with these institutions were in the course of time increasingly incorporated into the administrative apparatus, and concomitantly the methods of scholarship and the transmission of knowledge were more precisely organized. Apart from this, waqfs, being intended to serve pious and charitable purposes, provided also social services in the direct, material, sense: soup-kitchens were founded for the relief of the poor, grants to orphans, stipends for students, public fountains, facilities for travellers and pilgrims, financial security, etc., were all financed from the reservoir generated by waqfs. Evidently, this charitable function was conducive to the social cohesion of the urban community, preventing the disintegration of the social fabric by impoverishment and social isolation.

Since waqfs were a means to stabilize property relations, as a result they became an important means for the transfer of properties from one generation to the next, to preserve properties within the family and, consequently, to reproduce family structures. Most waqfs consisted partly of a legacy for a pious purpose and partly of a rent to be paid to the descendants of the founder. In this way the founder could favour certain lines within the family, or stimulate certain family professions by allocating waqf yields to, for instance, members of the family who became ulama. Often these waqfs served as a financial security for the women of a family after they became widows or otherwise financially dependent. The nuclei of family waqfs could in the course of time be expanded with additional foundations to become the economic basis of several generations of wealthy families.

These social aspects of waqfs show how individual members of the urban community would in some way of another, at various stages of their lives, make use of the facilities offered by waqfs, which thus not only contributed to their sense of well-being, but also strengthened their ties with the social structure of the city.

c. *Administrative integration.* The integrative function of waqfs in the domain of administration follows from their function within the so-

cial and economic domains. After all, the structures that were shaped by socio-economic relations were incorporated into the system of administration and were at the same time manipulated by it. The authorities could utilize the existing infrastructure of waqfs to preserve social and economic cohesion and, as we have seen, found waqfs to influence this infrastructure. Networks of institutions were gradually put under state supervision and large estates spread over the province were used to implement policies and to build economic circuits. Waqfs were an institutional form which facilitated the coordination of investment and urban expansion between individuals and the community, between private interests and public interests, since initiatives to improve and transform the urban infrastructure and to construct new urban extensions were always linked to the common good by using waqfs as their core.

In the context of the administrative apparatus the key-word for the function of waqfs is 'control', since the system of waqfs offered a structure which penetrated deeply into various dimensions of life and could relatively easily be surveyed and manipulated. The waqf institution not only created the facilities for the transmission of knowledge, but also generated the revenues to support a body of ulama which were gradually incorporated into the administrative apparatus and which to a large extent organized the channels of surveillance.

It is important to note that the waqf institution was essentially seen as an act of piety and had a positive, even sacred, connotation. All the functions of waqfs in the various domains should be seen in this perspective, because it leads us to the most essential integrative function of waqfs, as a mechanism linking the domain of the material—wealth, economy—with that of the spiritual—expressions of religious belief and the realm of the sacred. Waqfs were the main support of the system of religious symbols, which shaped the ideological discourse of the community. They were incorporated into the system of divine law and connected the life of individuals to the religious structure that encompassed the whole community. Through the system of waqfs the sacred pervaded the everyday life of the believers, the social life of the community and the material culture of urban form.

This sacred element was thus the dynamic force behind the integrative function of waqf, which gave the institution its 'surplus value', imbuing it with a moral dimension which was essential for its formation into a field or system in which power mechanisms converged. It is here, too, that the texts and historical practice come as close to-

gether as possible. In the text an idea of sacredness is expressed which is subsequently described to accommodate it to practical requirements; in practice a system of property relations is developed which is linked to the idea of sacredness in order to be incorporated into power structures that are based on the duality of material wealth and symbolic power. Waqfs were thus a typical device to build structures which would enable a society to control processes of change, to preserve the two essential assets of the community: the exploitation of material resources and the expression of its system of symbols. It is here, too, that the essential function of waqfs within urban structures should be sought: the connection between *urbs*, the city in its material form, and *civitas*, the idea of an urban community. This dual nature defined it as a mechanism which was essential for the organization of urban space and for the development and expansion of the city. All major urban extensions in Damascus in the period under study and all reorganizations of the spatial structure were supported by forms of the waqf institution. It seems justified to say that the vitality of Damascus derived to a large extent from its strong infrastructure of waqfs.

CONCLUSION

To conclude this study we will now briefly return to some of the theoretical premisses outlined in the introduction above. In the foregoing pages we have proposed an approach to waqfs which, it is hoped, elucidates the functioning of waqfs in general and with regard to urban structures more specifically. As a theoretical framework we have used the concepts of the 'institution' and the 'field' developed by Pierre Bourdieu, since these allow us, firstly, to analyze history as a process of continual transformation, in which contingency and differentiation are related to patterns, correspondences and structures, all of which are often especially created and elaborated to fulfil the need of some sense of order and to ensure the reproduction of social relations. Secondly, they allow us to describe waqfs as a dynamic phenomenon that was developed at least partly in a structural way. Thirdly, they allow us to integrate the various manifestations of waqfs into a single system. After all, the historical practice of foundations cannot be detached from the essence of the institution, which remained stable in the course of time. This essence was only partly determined by the legal concept defining the institution, which provided the framework of rules that structured its development.

The history of the waqf institution refers first of all to the myriad individual foundations that were created in the course of time. However, it also refers to the outcome of the complex interaction between a legal tradition which deployed itself partly according to its internal rules, economic requirements, which tested the practicability of legal forms, and administrative practice, which responded to the needs of power formation and regimentation. Economic and administrative conditions led to an ever greater elaboration of waqf legislation, in order to regulate competition over its assets and to cover newly emerging practices. The elaboration of rules refined the practical aspects of the waqf concept, established its basis as an independent institution and protected its status. Simultaneously, waqfs came to play an increasingly important role in the policies of the state, or, perhaps more precisely, of the ruling elites. Not only did the economic potential of waqfs grow, creating new opportunities for tapping revenues, it also became a mechanism to strengthen the state apparatus by structuring networks and enhance their subordinancy

to state interests. The efforts by the state to penetrate the networks of waqfs and to control them became probably the main force structuring the development of the institution.

The value of waqfs, within this process, was determined by their importance as a source of symbolic power. This power was generated at several levels. Firstly, as an economic asset, representing a certain intrinsic value as capital goods; secondly, as a container of symbolic meaning, both as monuments and as components of the religious system of symbols, which pervaded the ideological structure of the legislation and administration; and thirdly, as networks located in time and space which could be utilized as a means of control and surveillance. According to the approach of Bourdieu, waqf networks were conducive to the regulation of power struggles, the distribution of power and the stabilization of certain power configurations. Consequently, they became a mechanism for the reproduction and transformation of these power configurations.

These functions of waqfs could not be realized without a prominent role of the ulama, the corps of specialists guarding and reproducing the religious system of symbols. In the view of Giddens, 'authoritative' resources that generate power structures are created by the following factors: firstly, the possibilities of surveillance and of collecting and storing information; secondly, the creation of a body of specialized administrative officials, supported by the extraction of a certain part of the surplus production; thirdly, the opportunities to control and punish dissident elements; and fourthly, the creation of conditions that influence the formation of ideology.[1] In this study it has been argued that waqfs play a predominant role in all these factors, which, as Giddens stresses, become especially manifest in the urban milieu. First of all, waqfs were a means to extract part of the surplus production to support the networks of the ulama and at the same time link them to the state apparatus. This created a community of interests between the ruling elite and segments of the ulama networks, which was expressed in ideological outlooks and values, and, to be sure, in the development of law. Moreover, waqfs became a means to strengthen state control, firstly by reorganizing the educational system; secondly by monitoring the economic infrastructure and the waqf possessions of social and political factions; thirdly, by using waqfs as a basis for economic expansion; and fourthly, to justify

[1] Giddens (1996), pp. 14-6.

the keeping of an inventory of properties and draw up registers incorporated into the judicial and administrative archives, preserved by the bureaucracy and the judiciary, enabling the state to effectuate measures and control transactions.

Within this framework the ulama occupied a pivotal position, but the differentiation of waqfs and the ways in which waqfs shaped ulama networks reflected that their interests were not evidently uniform. If one wants to describe categories of waqfs from a historical perspective, one should distinguish them according to a historical 'rhythm'. Thus imperial waqfs coincide with the conjunctures of dynasties and the requirements of far-reaching revisions of symbolic and power systems, while waqf complexes are nuclei of regional traditions and formations which are not essentially influenced by political circumstances, but rather grow steadily over the years. Waqfs founded by ruling elites, such as governors and notables, respond to economic circumstances and policies, reflecting the conjunctures of urban development, whereas waqfs founded by individuals and families were the nuclei in which the acquisitions of life careers and generations were accumulated, thus laying the foundation of the wealth of families. These categories of waqfs have different historical functions and reflect different roles within the power structures with which they are ultimately all connected. The ulama were involved in all these types and perhaps with the state represented the main force integrating them into one system.

These power aspects of waqfs become particularly evident within the context of the city. As we have seen, recent theoretical views seem to have demolished certain views of the city in general and of the Islamic city in particular. If there is no definition of a city as a conceptual entity with its own systematic development and inherent dynamic, cities can only be defined as centres where various political, socio-economic and cultural networks meet and interact. As the centres of these mechanisms, they are also centres of power structures. This concentration of activities, exchange and power does not create cities as entities, but does give them certain specific features, derived from the intensity of their centralizing and integrating role. Seen from this perspective, the *a priori* distinction between Islamic and European cities disappears, since, for instance, the fact that European cities enjoyed some form of official autonomy in contrast to cities in the Islamic world is not an essential difference between two concepts or types of urban entities, but rather the expression of different con-

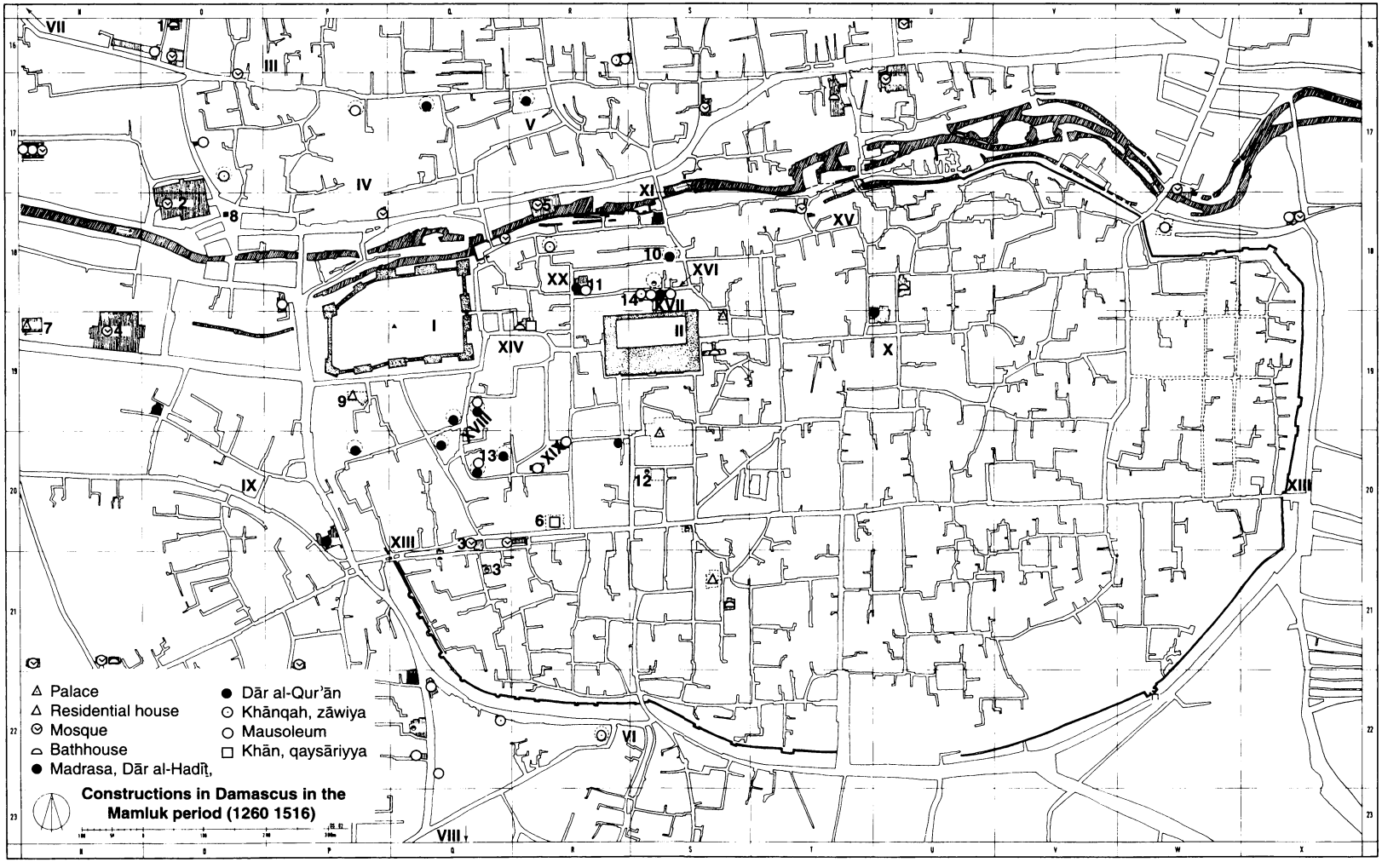
stellations of power within a broad pattern of relations. It is not the formal realization of an abstract idea of the city, but rather one of the ways in which cities were integrated into power structures. After all, whatever the official status of a city may be, it is always embedded in surrounding structures which include other cities. The place of a city within these urban systems at least partly determines its function and type. These power structures and their urban manifestations can be studied without presupposing an essential difference between cultures.

Within this context, general approaches to questions of urban organization can be examined, such as the various statuses of space, the regimentation of space, the influence of social relations on spatial organization, the role of spatial structures in the exertion of authority, the focuses of intertwining networks in spatial organization, and, finally, the relation between urban form and symbolic systems. When sufficient individual cases have been studied on the basis of this type of question, it may be possible to formulate criteria to determine the 'Islamic' character of cities, or at least to find certain common features of cities in the Islamic world in certain periods. In view of the aforementioned considerations, these features should not be seen as merely inspired by religious or cultural attitudes, but rather by the way in which networks were able to incorporate cities into their power systems and thus to impose a certain form. Thus, it is the measure of integration of several urban centres within one hierarchy that seems vital.

We have tried to show above how decisive the role of waqfs was in the formation of urban space in the case of Damascus. Waqfs were the basis of the institutions that determined the role of Damascus as an urban entity, firstly as a centre of authority, secondly as a centre of learning, thirdly as a centre of exchange, and fourthly as a centre of spirituality. Waqfs were a means to stabilize the legal status of these institutions and their links to certain factions and groups. They were, moreover, an important instrument to define the status of properties, making them sacrosanct and establishing and preserving their position within the urban fabric. They were an important means to endow space with meaning, derived from tradition and the religious system of symbols. Finally, they were a mechanism through which private interests and enterprise could be co-ordinated with the interests of the urban community. It is through these functions that waqf networks formed the pattern underlying urban development.

It has been argued above that the essential function of waqfs was to foster the integration of various social, economic and spiritual domains. Since the urban structure was imbued with the waqf phenomenon to such an extent, the spiritual component should accordingly be seen as crucial as a means to integrate the urban society. Urban life was to a large extent organized by the networks of waqfs, since they represented the basis of the spatiotemporal organization structuring social life and social relations. There was probably hardly anyone in Ottoman Damascus whose life was not at one stage or another shaped by the waqf system, either in the form of schools or mosques, or in the form of commercial locales, or in the form of bathhouses, coffeehouses and other social meeting-places, or, finally, in the form of allowances, financial support and provisions. It is of course this social function of waqfs, as an integrating factor in urban society, in which their material and spiritual aspects converge. If the concept of the Islamic city should be revived in a different guise, therefore, perhaps the foremost criterion to be assessed is to what extent urban structures are shaped by waqfs.

MAPS


△ Palace
△ Residential house
Mosque
Bathhouse
Madrasa, Dār al-Ḥadīṯ,
● Dār al-Qur'ān
Khānqah, zāwiya
Mausoleum
Khān, qaysāriyya
Constructions in Damascus in the Mamluk period (1260 1516)
I
II
III
IV
V
VI
VII
VIII
IX
X
XI
XII
XIII
XIV
XV
XVI
XVII
XVIII
XIX
XX

Constructions in Damascus in the Mamluk period (1260-1516).

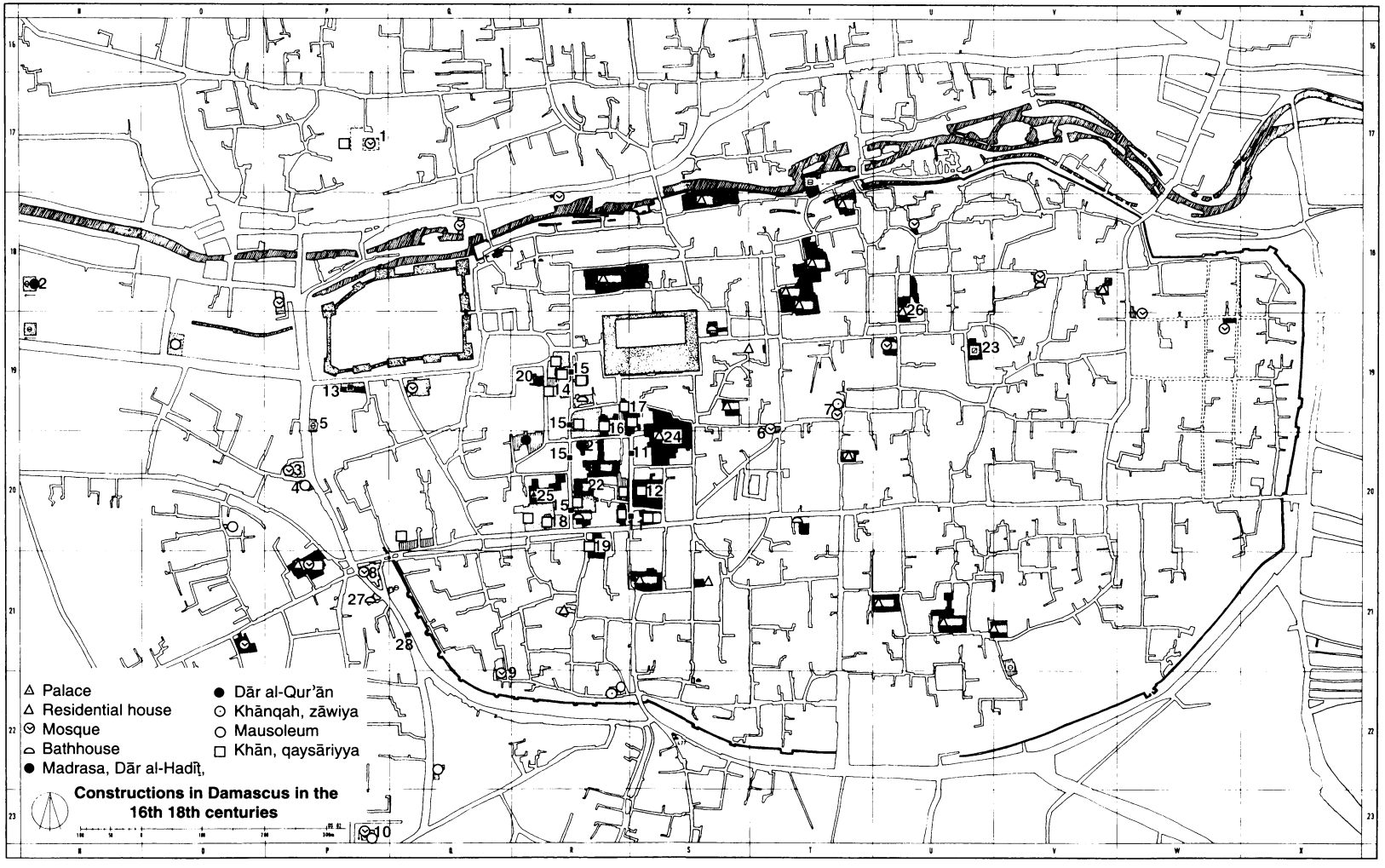
Older buildings, quarters, gates:

I Citadel
II Umayyad Mosque
III Sūq al-Sārūja
IV Taḥt al-Qalʿa
V ʿUqayba
VI al-Shāghūr
VII al-Ṣāliḥiyya
VIII al-Suwayqa, Bāb al-Muṣallā, al-Mīdān
IX al-Qanawāt
X al-Qaymariyya
XI Bāb al-Farādīs
XII Bāb al-Sharqī
XIII Bāb al-Jābiya
XIV Bāb al-Barīd
XV Bāb al-Salām
XVI Ḥammām al-Silsila
XVII Khānqāh al-Sumaysāṭiyya
XVIII al-Nūrī Hospital
XIX Madrasa al-Nūriyya al-Kubrā
XX Madrasa al-ʿĀdiliyya al-Kubrā

Some major constructions:

1. al-Ward Mosque
2. Yalbūgha Mosque
3. al-Qalʿī Mosque
4. al-Tankīziyya Mosque
5. al-Muʿallaq Mosque
6. Khān Jaqmaq
7. al-Ablaq Palace
8. Sūq al-Khayl (Horse Market)
9. Dār al-Saʿāda
10. Madrasa al-Qaymariyya
11. Madrasa al-Ẓāhiriyya
12. Madrasa al-Tankīziyya
13. Madrasa al-Jawhariyya
14. Khānqāh al-Jaqmaqiyya

(Source: D. Sack, Damaskus; Entwicklung und Struktur einer orientalisch-islamischen Stadt, Mainz am Rhein 1989)


Palace
Residential house
Mosque
Bathhouse
Madrasa, Dār al-Ḥadīṯ
Dār al-Qur'ān
Khānqah, zāwiya
Mausoleum
Khān, qaysāriyya
Constructions in Damascus in the 16th 18th centuries

Constructions in Damascus in the 16th - 18th centuries.

1. Lālā Muṣṭafā Mosque and khān
2. Taqiyya al-Sulaymāniyya/ Madrasa al-Salīmiyya
3. al-Darwīshiyya Mosque
4. Mausoleum Darwīsh Pasha
5. Takiyya al-Darwīshiyya
6. al-Qārī Mosque
7. al-Safarjalānī Mosque
8. al-Sināniyya Mosque
9. al-Yāghūshiyya Mosque
10. Murād Pasha Mosque
11. Sūq al-Bizūriyya
12. Khān Asʿad Pasha
13. Sūq al-Sibāhiyya/ al-Arwām
14. Bazzāzistān Murād Pasha
15. Sūq Darwīsh Pasha/ Sūq al-Khayyāṭīn
16. Khān Darwīsh Pasha
17. Khān al-Safarjalānī
18. Khān Jaqmaq
19. Khān Sulaymān Pasha al-ʿAẓm
20. Madrasa Sulaymān Pasha al-ʿAẓm
21. Madrasa ʿAbdallāh Pasha al-ʿAẓm
22. Madrasa Asʿad Pasha al-ʿAẓm
23. Madrasa al-Qaymariyya/ al-Fatḥiyya
24. Palace Asʿad Pasha al-ʿAẓm
25. Maḥkama al-Bāb
26. House of al-Safarjalānī
27. Ḥammām al-Sināniyya
28. Sūq al-Sināniyya

(Source: D. Sack, Damaskus; Entwicklung und Struktur einer orientalisch-islamischen Stadt, Mainz am Rhein 1989)

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