

## Chapter IV

# Women's Waqfs and Their Social Role in Ottoman Algeria

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### Introduction

This paper studies the phenomenon of “women’s waqfs” in Algerian cities such as Algiers, Blida, Miliana, Médéa, Mazouna, and Constantine during the Ottoman period (1519–1830). Our study relies on official documents from this period preserved in the Algerian National Archives, including the registers (*sijillât*) of *Bayt al-Bâylik* and the registers of the tribunal courts *al-mahâkim al-shar‘iyya*. These documents constitute a rich corpus directly related to the topic of women’s waqfs (*awqâf al-nisâ’*,<sup>1</sup> waqfs endowed by or for women), whose study sheds light on the social role of women and their financial responsibilities in Ottoman society in Algeria. The documents studied here give information about women in the roles of wives, mothers, sisters, and daughters in relation to the waqf (*habous* in the Maghreb), whether as its founder or beneficiary. In both cases, the rights and duties of each woman or man within the waqf institution are determined by conditions established beforehand. Some of these conditions place men and women equal terms, while others favour men, even when the waqf in question was created by a woman.

Women’s waqfs, whether in Algeria or other countries in the Arab and Islamic world, have previously been examined in terms of the beneficiaries of the waqf, why the founder designated certain persons as beneficiaries and excluded others. This study focuses on the reasons for differentiation of and discrimination between beneficiaries. We shall also deal with cases of equal rights between males and females and the issue of women’s ownership of property and their financial

<sup>1</sup> The term *awqâf al-nisâ’* (pl. women) does not occur in my documents; rather it is the term I use to talk about women as beneficiaries and endowers of waqf. By contrast the term *waqf al-mar’a* (sing. woman) exists in the documents. Randi Deguilhem and Faruk Bilici spoke of woman endower in reference to women’s waqfs [Deguilhem 2001; Bilici 2006]. See also [Ghettas 1997; Moufid 2006].

responsibilities. We will shed light on the general terms and principles of Islamic law which has developed provisions regarding the waqf in the Muslim world, both east and west, with reference to similarities of women's waqfs in appearances and merits among different environments and countries.

Keeping the above in mind, this paper asks the following questions: What are the religious and social principles underlying the nature of women's waqfs? What is the social role within the urban or rural setting as regards women vis-à-vis waqf?

## 1. The Definition of the Concept “*awqâf al-nisâ*”

Women's waqfs are a type of waqf concerned in some way with women. Women may be the beneficiaries of a waqf founded by a man the founder themselves and the beneficiaries. This was approved by lawyers (*al-fuqahâ*) and judges and be found explicitly referred to in documentary sources known as *waqf al-mar'a*. It should be noted that the attribute following the word “waqf” may refer to the beneficiary or the founder. Thus in the case of “the waqf of Andalusians” or “the waqf of the nobles (*al-ashrâf*),” the attribute refers to the beneficiary community.

On the other hand, the attribute designates only the founder, in the case of “the waqf of Sultan,” “the waqf of the sick person,” or “the waqf of the Christian.” The study of “women's waqf” whether the woman was a beneficiary or a founder relates to gender issues in Ottoman Algerian society.

## 2. Women as Beneficiaries: Conditions and Rights

### 2.1. Various Examples

The woman having rights in the waqf was usually a daughter or, niece of the founder, or a daughter-in-law (the daughter of the founder's wife from a previous marriage). Rarely was it the wife of the founder. Such rights only took effect for beneficiaries, male or female, after the founder's death. Regarding inheritance, Islamic law stipulates in principle that the man's portion is twice that of the woman's.<sup>2</sup> This appears in an example dated 1747 (1160H.), where the founder provided for girls. Everything cited above is declared to be waqf property, primarily for the benefit of the owner al-Sayyid ‘Abdalqâdir during lifetime, and at his death, for the benefit of his daughters Khadîja, Fâṭima al-Zahrâ', and Yamûna, and future children both male or female, finally for the benefit of descendants of the aforementioned

<sup>2</sup> “Allah instructs you concerning your children's (inheritance): for the male, a portion equal to that of two females” [Qur'an, Surat al-nisâ' (women): 11–12].

persons; and the men's share will be double that of the women's [ANA/SMSH/B. 34/D. 112]. In other cases, there were promises of equal distribution between men and women. Al-Sayyid Ibrâhîm Bâÿ from the Chelif Plain in western Algeria,<sup>3</sup> registered his waqf in 1763 (1176H.) in the following terms: "For the benefit of my existing children and children yet to be born to me, both male and female, and for the benefit of their descendants, in equal part between boys and girls" [ANA/SMSH/B. 34/D. 18]. On the same date, Ibrâhîm Bâÿ registered a second waqf in the Chelif Plain. For benefit of the children of one of his agents, al-Sayyid Ibrâhîm ibn al-Ĥâjj Muḥammad ben Şayyâm, again recommending equality between girls and boys [ANA/SMSH/B. 34/D. 39]. Similarly, al-Sayyid Muḥammad Bayt al-Mâlî and Bâsh Abûlakhbâsh of the city Miliana,<sup>4</sup> the founder of a waqf renewed in 1770 (1184H.), gave his minor daughter Khadîja an share equal to that of his son 'Âlî Ibrâhîm Bâÿ of the West. The waqf concerned a house in Miliana beside the tomb of Sîdî Ibn 'Abd Allah al-Şâmit [ANA/SMSH/B. 34/D. 162]. Another example of the equality between the sexes, including parents, close relatives, and even associates, is found in the waqf of Turkish ancestors established in 1771 (1180H.). Here, Khadîja benefited equally with three cousins, Muḥammad Blûkbâshî, Muḥammad al-Injishâyri, and Mustafâ each having a one-fourth share [ANA/SMSH/B. 34/D. 40].

Inequality in the distribution of the waqf is not limited to male and female, as an example of an unequal share between sisters shows. A court register dated 1782 (1197 H.) states:

After his ('Uthmân al-Torkî) death, the waqf returns for the benefit of the daughters of his stepson Aḥmed b. Ḥoucine ben Aḥmed Bâÿ, named 'Âisha, Ruqayya, Khadîja and Umm al-Ḥasan, in the following proportion: a half for 'Âisha and the other half to be divided among the three other sisters. [ANA/SMSH/B. 34/D. 115]

While some founders adopted the principle of double share for the man, others chose gender equality. It is extremely important to note that other cases of founders do not specify the modality of sharing their waqf: whether to allocate according to Islamic rules or by equal share. Such is the case for example in the waqf dated 1725 (1137H.) of al-Ĥâjj 'Abdalqâdir, commander of Miliana, and his brother al-Ĥâjj Muḥammad, and in the waqf of Muḥammad Jilâlî b. Dîdîsh al-Mâzûnî dated 1733 (1146H.) regarding a house opposite the tomb of the patron saint of the city, Sîdî Aḥmed Ben Yûsuf [ANA/SMSH/B. 52/D. 122]. What is more, in a waqf dated 1740 (1153H.), the founder Muḥammad al-Sharîf arranged for his

<sup>3</sup> The Chelif Plain (*al-Shlaf*) is located northwest of Algeria between Oran and Algiers.

<sup>4</sup> The city of Miliana (*Malyâna*) is located about 120 km southwest of Algiers.

sister to be beneficiary only as the last resort in case his own line became extinct. The waqf, concerning a house situated near the oven Kûshat al-Ĥûka was “for the benefit of his (the founder’s) children generation after generation,” and in case of their line ended, the waqf would return to his sister Ruqayya, wife of ‘Âlî b. ‘Âlî âghâ, and then to son of Muḥammad b. ‘Âlî and his descendants [ANA/SMSH/B. 34/D. 113].

Women who were the spouses of the founder were rarely the full beneficiary. In the rare cases where this happened, the benefit was dependent on her widowhood, and her rights to the waqf become nullified if she married. These rights then returned to the children of the founder and only to them, children who had been born to the widow by a different father, that is, the step-children of the founder, also lost their rights when she re-married. We find the expression of such a case in the example of al-Sayyid al-Ĥâjj Muḥammad, one of the descendants of al-Shaykh al-Waliyy Sîdî Aḥmed b. Yûsuf<sup>5</sup> dating from 1762 (1175H.): “and a quarter of the income reverts to his wife Ḥalfîma b. Aḥmed Zarûq ... up on her death or remarriage, her rights revert to her children, excepting his step-daughter Faṭûma” [ANA/SMSH/B. 34/D. 10].

Some founders completely excluded women for all generations, as in the case in a waqf registered at Blida<sup>6</sup> in 1780 (1194H.): “for the male children only, without any benefit for females in any generation at all” [ANA/SMSH/B. 34/D. 168]. Other founders procrastinated over the exclusion of women in the sense that under certain conditions, they could become beneficiaries: if single or widowed, that is, when they did not have a husband [ANA/SMSH/B. 34/D. 140]. Finally, still other founders placed no hindrance to the benefit of women, allowing them to be beneficiaries even when married. Al-Mukram Ḥamûda b. Ḥaydar al-Turkî registered a waqf in Miliana in 1645 (1055H.) benefiting his daughters, three of whom were married [ANA/SMSH/B. 24-1/D. 43].

In most cases, the exclusion of female beneficiaries was related more to a desire to maintain the priority of the male rather than depriving the woman absolutely, as shown in the following cases. The waqf of al-Sayyid al-Ĥâjj b. ‘Âlî b. Sîdî al-Fallâq registered in Miliana in 1770 (1184H.) stipulated that “after the extinction of the male line of the founder, their daughters will become beneficiaries, as well as the daughters of the founder himself” [ANA/SMSH/B. 34/D. 169]. In 1548 (955H.) al-Shaykh al-‘Âlim al-Muḥaqiq Abû ‘Abdallah Muḥammad b. Abî al-Ḥasan ‘Âlî al-Kharûbî al-Ṭarâbulsî, who was recognised as a religious authority and scholar, certified his waqf of lodgings in Algiers<sup>7</sup> and Miliana in the interest of

<sup>5</sup> Sîdî Aḥmed b. Yûsuf (1437–1528) was the patron saint of the city of Miliana and its region.

<sup>6</sup> Blida (*al-Blîda*) was founded in the sixteenth century to house Andalusian immigrants. It is located in northern Algeria 50 km from the capital.

<sup>7</sup> Algiers (*al-Jazâir*) was the capital and largest city of Ottoman Algeria (1518–1830).

his female offspring if the male line died out [ANA/SMSH/B. 27-1/D. 45]. In 1810 (1225H.) al-‘Ālim al-Fāḍil al-Sayyid al-‘Arbî b. Muḥammad b. Sâlah registered as waqf a parcel of land in the territory of the Jandal tribe according to the same procedures as above [ANA/SMSH/B. 34/D. 65].

The celibacy clause as a condition for female participation in the waqf was most widespread in Miliana, and also in nearby places like Mazouna,<sup>8</sup> Ténès,<sup>9</sup> and Médéa.<sup>10</sup> This clause was registered using various expressions. For example, a founder in Miliana in 1548 (955H.) stated “they have the right as long as they are not married” [ANA/SMSH/B. 27-1/D. 45]. Other expressions include “girls are excluded, except in case of need while unmarried (Ténès, 1800 1214H.)” [ANA/SMSH/B. 34/D. 173], “girls are beneficiaries before their marriage, they lose their right upon marriage but regain it in case of the death of the husband (1822 [1238H.])” [ANA/SMSH/B. 34/D. 80], “on condition of her being a widow, regardless of her personal wealth (Médéa, 1744 [1157H.])” [ANA/SMSH/B. 34/D. 140], and “the woman without a husband” (Mazouna, 1806 [1221H.]).

## 2.2. Explanatory Hypotheses

On the differentiation between sexes in the waqf, whether declared or not, we may draw the following assumptions.

1. Founders were inspired by Islamic inheritance law which favours men. The man was responsible for his family, and the guarantor of its expenses. He was expected to study more than women, leaving him less time for work. Parents might then leave more to male children, concerned that they might not be able to maintain a house hold in the future.
2. Gender differentiation seems to have been equally motivated by the short period of time a young girl or a widow remained unmarried. In both cases, their hand was quickly sought in marriage. This placed them under the protection and the care of their husbands, unlike male children who were more vulnerable to poverty.
3. Furthermore, there was a certain familial and/or tribal sensitivity about preserving assets and preventing losses that would profit other families

<sup>8</sup> Mazouna (*Mâzûna*) is a historic city, and it was the first capital of west bâylık during the regency of Algiers (1563–1701).

<sup>9</sup> Ténès (*Tnas*) is a coastal city of the Mediterranean Sea, and is located in northern Algeria, halfway between Algiers (about 215 km to the east) and Oran (about 230 km to the west).

<sup>10</sup> The city of Médéa (*al-Mdiyya*) is located at about 88 km southwest of Algiers. In the Ottoman era, Médéa became the capital of the Titteri bâylık (1517–1830).

and/or tribes. This worked to exclude or minimise women's profit. A waqf registered in 1762 (1175H.) that stipulated "the male children of girls married to strangers have no rights" can only be understood in this light [ANA/SMSH/B. 34/D. 10]. Another founder stated in 1792 (1206H.) that "the girl has rights but they do not apply to the right of domicile" [ANA/SMSH/B. 34/D. 17]. Noteworthy is the authorisation introduced by a learned founder in 1548 (955H.) that included the possibility for beneficiaries of a waqf living abroad to sell it and invest their income to buy the equivalent in their place of domicile [ANA/SMSH/B. 27-1/D. 45].

4. For a woman, being the beneficiary of a waqf under the condition of celibacy could be interpreted as a restriction on marriage. So as not to lose her rights, a girl might avoid marriage, while a married woman might initiate divorce in order to share waqf revenues.
5. In short, the exclusion of women from the waqf, in particular the first generation, was equivalent to a deprivation of their inheritance rights. Indeed, the most important assets of the founder were in the form of waqf.

### 3. The Woman as the Founder of the Waqf: Assets and Social Role

By and large, the general framework which governed the waqf where females were beneficiaries remains unchanged in the waqf founded by women. The waqf begins as a family possession and evolves to into a charitable foundation for the holy places (al-Haramayn: Mecca and Medina), or in rare cases, benefiting Andalusians or the great congregational mosques (al-jâmi' al-a'zam) of Miliana and Algiers [ANA/SMSH/B. 34/D. 25, 43, 113]. Similarly in the case of foundation or profit, the nature of the waqf property involved, its position, the determination of the share, its clauses, and the status of women (mother, sister, wife, parent, etc.) remain unchanged.

Waqf founded by women reveal the fortunes and social roles of women, as well as the characteristics of the female waqf. The property belonging to waqf created by woman founders are almost identical to those of the female beneficiary: the family house, barn (*istabl*, usually located in the town), the vegetable garden, irrigated and fallow land (in preparation for cultivation) located in the suburbs (*al-fuhûs*) and the countryside (*al-awtân*). While the woman founder included here business premises in the form of a shop (*al-hânût/al-dukkân*), we have not found any indication that commercial premises were included in the male waqf. In fact, the waqf testament of Yaḥyâ al-Kuwâsh b. Ghânam dated 1661 (1071H.) explicitly excludes them, specifying "except two shops (*hânût*)" [ANA/SMSH/B. 34/D. 99].

Table 1: Women's Waqfs in Some Algerian Cities

	The Female Founder/Date	Property, Capital/City	The Origin of the Property	The Rule of Distribution to Intermediate Beneficiaries
1	Âmatu Allah Fâṭima al-Sharshâliya /1052 H.: 1642 [ANA/SMSH/B. 34/D. 150].	house ( <i>dâr</i> ) + ground ( <i>arḍ</i> ): <b>Cherchell</b> <sup>11</sup>	inheritance: mother/husband	Man has twice that of the woman
	The final assignee (beneficiary) <i>al-marji</i> ʿ		al-Haramayn al-Sharifayn	
2	Fâṭima b. ʿÎsâ 1095 H.: 1684 [ANA/SMSH/B. 34/D. 95].	garden ( <i>jnân</i> ): <b>Médéa</b>	inheritance: husband/son	None: <i>waqf khayrî</i> (public) [N.A.O.F./1MI/BOB. 16/D. 71, 131].
	The final assignee (beneficiary) <i>al-marji</i> ʿ		al-Haramayn al-Sharifayn	
3	ʿÂysha b. Muḥammad b. al-Shûliya 1174 H.: 1760 [ANA/SMSH/B. 52/D. 47].	house ( <i>bayt</i> ) + room ( <i>ghurfâ</i> ) + 2 small rooms ( <i>ghrîfâ</i> ) + stock-room ( <i>makhzan</i> ) + stable ( <i>iṣṭabl</i> ): <b>Médéa</b>	inheritance: from father/mother/brother purchase	Man has twice that of the woman
	The final assignee (beneficiary) <i>al-marji</i> ʿ		al-Haramayn al-Sharifayn	
4	Khadîja b. Aḥmad b. Rabîʿa 1182 H.: 1768 [ANA/SMSH/B. 52/D. 25].	oven ( <i>furn</i> ) + workshop ( <i>dâr al-ʿamal</i> ) + 2 shops ( <i>ḥânût</i> ) + lime kiln ( <i>kûsha al-jîr</i> ) <b>Médéa</b>	inheritance: husband/collecting a debt from the husband	Man has twice that of the woman
	The final assignee (beneficiary) <i>al-marji</i> ʿ		al-Haramayn al-Sharifayn	
5	Âmina b. Ḥusîn b. Muḥammad b. Ḥusîn /1185 H.: 1771 [ANA/SMSH/B. 34/D. 42].	house ( <i>dâr</i> ): <b>Algiers</b>	property	Equal rights between males and females
	The final assignee (beneficiary) <i>al-marji</i> ʿ		al-Haramayn al-Sharifayn	

<sup>11</sup> Cherchell (*Sharshâl*) is located about 55 miles west of Algiers.

6	Fīṭma b. Banṣârî Muḥammad. 1190 H: 1776 [ANA/SMSH/B. 34/ D. 36].	garden ( <i>jnân</i> ): <b>Médéa</b>	purchase	Equal rights between males and females (first generation)
	The final assignee (beneficiary) <i>al-marji</i> ‘		al-Haramayn al-Sharifayn	
7	Jannât b. al-Ḥâjj Muḥammad b. al-Shûliya 1201 H: 1787 [ANA/SMSH/B. 34/ D. 116].	1/2 house ( <i>dâr</i> ): <b>Miliana</b>	inheritance: husband	Man has twice that of the woman
	The final assignee (beneficiary) <i>al-marji</i> ‘		2/3 al-Haramayn al-Sharifayn 1/3 Great Mosque (al-Jâmi’ al-A‘zam) in Miliana	
8	Râḍiya b. al-Marḥûm Qâṣid ‘aîl Shâwash al-Injishâyri 1202 H: 1788 [AWC/SSB/D. 32].	house ( <i>dâr</i> ): <b>Constantine</b> <sup>12</sup>	property	Equal rights between males and females
	The final assignee (beneficiary) <i>al-marji</i> ‘		al-Haramayn al-Sharifayn Great Mosque (al-Jâmi’ al-A‘zam) in Sîdî al-Kattânî	
9	Khadîja b. al-Ṭayyab al-Gharbiyya 1234 H: 1819 [ANA/SMSH/B. 34/ D. 157].	share from ground ( <i>maqsam</i> ): <b>Miliana</b>	inheritance: brother	In favour of male children and exclusion of women
	The final assignee (beneficiary) <i>al-marji</i> ‘		al-Haramayn al-Sharifayn	

The assets in women’s waqfs come mainly from paternal inheritance; it is rare that the woman purchased a property that would later become waqf. We find confirmation in this regard in a deed dated 1793 (1208H.).

Amatu Allah Khadîja b. al-Ḥâjj Yahya certifies that all her part of the inheritance from her father al-Ḥâjj Yahya, what is known as the field Huwâra, is a waqf. [ANA/SMSH/B. 34/D. 178]

<sup>12</sup> Constantine (*Qasantîna*) is the capital of northeastern Algeria. During Ottoman times, it was the capital of eastern bâylîk (1517–1837).



The same applies in the case of Khadija b. al-Ṭayyib, who registered as waqf property inherited from her brother [ANA/SBB/B. 12/D. 63], and even where the inheritance has not yet been divided (*al-shiyâ'*) [ANA/SMSH/B. 34/D. 26, 179].

It appears from our study that unlike those of men, some women's waqfs took effect only after the death of the woman founder and were often notified on her deathbed. We can therefore speak of a testamentary waqf and a deathbed waqf. This kind of waqf is explicit in the *fiqh* [Al-Zurqâ 1998: 114–115]. The register of Bayt al-Bâylik in the seventeenth century contains the following record:

The waqf of Fâṭima named Sa'ida is a testamentary waqf. During her final illness in al-Ḥijâz she certifies that after her death all seven rice fields (*sab'atu aḥbâli al-arurzz*) are to be waqf. [ANA/SBB/B. 12/D. 63]

Moreover, the woman founder could herself execute waqf procedures, or call on her spouse [ANA/SMSH/B. 34/D. 26], or another person to act as her agent [ANA/SMSH/B. 20-1/D. 19; ANA/SMSH/B. 34/D. 118]. The phenomenon of proxy was also known to in men's waqf. Thus, until her death, the female founder enjoyed for herself the assets promised to the waqf, the same to a man, in accordance with the Hanafi law school (madhhab Abû-Yûcuf). In some cases, the revenue from the property was transferred to the founder's daughter and sister, as in the waqf of 'Ayshûsha b. 'Abd al-Wahâb in 1713 (1125H.) [ANA/SMSH/B. 34/D. 171].

The women's waqf has a feature that distinguishes it from that of a man, in that it can be open to women from outside the family, i.e. a woman neither a daughter of the founder nor her sister. Profiting from the waqf dated 1758 (1172H.) of Fâṭima b. Jân Aḥmad, wife of al-Ḥâjj 'Uthmân Bâi of Bâi'lik Tiṭery (Médéa) were Khadija b. Muḥammad b. Sâlam Aghâ and her descendants. The objects of the waqf were a garden, a house, and two shares of another garden in Miliana [ANA/SMSH/B. 34/D. 29].

Gifts between women were not confined only to waqf property and its foundations. According to an act of distribution of an inheritance dated 1654 (1064H.) for goods in Faḥṣ al-Bâb al-Jadîd in Algiers and shops in Miliana, the deceased (*al-hâlîka*) Faṭûma b. al-Sayyid Aḥmad b. Ghâlib bequeathed one third of her inheritance for the benefit of her mother-in-law (mother of her husband) al-Waliyya Bakhta b. Mûsâ. She also ordered the freeing of a slave (*ama*) valued at 43 *riyâl* [ANA/SMSH/B. 34/D. 99].

Men were also beneficiaries of women's waqfs during the woman's lifetime or after her death, as husband, son, grand-son, or some other descendant. In 1812 (1227H.) a dispute arose that the manager (*nâzir*) of waqf for the two holy cities in Miliana, against al-Sayyid Muḥammad, Governor of Miliana representing the treasury Bayt al-Mâl and al-Sayyid b. 'Alî, the last husband of the deceased al-Zuhra. This dispute was caused by al-Zuhra's registering as waqf her house in

Ḥūmat Shanqūr and her garden in Muqarnât for the benefit of her first husband [ANA/SMSH/B. 34/D. 20]. In 1758 Fâtima b. Jân Aḥmed, wife of al-Sayyid al-Ḥâjj ‘Uthmân Bâi of Bâylîk Tîtery endowed a waqf to her stepson Muḥammad al-Kabîr [ANA/SMSH/B. 34/D. 29].

Although in some cases the relationship between the female endower and the male beneficiary is clearly established, in other cases, this is neither apparent explicit. For example in the waqf of Ḥalîma b. Muḥammad al-‘Aṭṭâfî dated 1753 (1166H.) her house was endowed with only the words “for the child Muḥammad, son of the elderly al-Makkî al-Ḥâjj b. al-Dahlûk” [ANA/SMSH/B. 34/D. 176].

When the male beneficiary was the son of the female founder, the share was made according to the Islamic law that stated “a double portion for the male,” as in the waqf of a couple dated 1675 (1086H.) [ANA/SMSH/B. 34/D. 160]. This Muslim rule holds even before the child’s birth, a mother providing for the application of the rule in case the unborn child is male. A waqf established in 1762 (1175H.) by Khadîja b. Sâlam Âghâ, for the benefit, after herself, of “her existing children, Muḥammad, Aḥmad, and Fâtima, and her unborn child of either sex, a double share to the male beneficiaries” [ANA/SMSH/B. 34/D. 118].

It is readily apparent at this point that, especially when we follow the evolution of the waqf through successive generations women shared the same views as men, since they were linked to an identical Muslim religious and social context.

## Conclusion

Women as founders of waqf have played a crucial role in society, especially in assisting minors, orphans, and the poor. In this role they helped improve social relationship and strengthen family cohesion, even though the women’s waqfs still depended on a male-female differentiation.<sup>13</sup> Women’s waqf also helped bring the outskirts (*faḥṣ*) in to the city: when revenue of a waqf property located in the *faḥṣ* returned to beneficiaries living in the town, new ties were established between urban and suburban and vice versa. On the other hand, these waqf did not allow the tribal order and the spirit of annuity to be overtaken, and so helped to maintain a certain immobility in the social and economic status. What, however, did not appear in the waqf of either women or men in the majority of Algerian cities in Ottoman times was a bequest for parents that was authorised by the legal scholarship (*fiqh*), and waqf for parents.

What were the reasons of this absence? Could this phenomenon be indicative of the life-expectancy of the time?

<sup>13</sup> See the role of women in Damascus society in [Deguilhem 1995].

## Bibliography

### Abbreviations

<i>ANA</i>	The Algerian National Archives
<i>AWC</i>	Archives of the Wilaya of Constantine
<i>N.A.O.F</i>	The National Archives Overseas in France
<i>SBB</i>	Sijillât Bayt al-Bâylik
<i>SMSH</i>	Sijillât al-Mahâkim al-Shar'iyya
<i>SSB</i>	Sijill Şâlah Bâi

B	Box
BOB	Bobbin
D	Documents

### Primary Sources

#### a. The Algerian National Archives:

Sijillât al-Mahâkim al-Shar'iyya:

- B. 20-1/D. 19.
- B. 24-1/D. 33, 43.
- B. 27-1/D. 45.
- B. 28-1/D. 15.
- B. 34/D. 10, 17, 18, 20, 25, 26, 29, 36, 39, 40, 42, 43, 65, 80, 95, 99, 112, 113, 115, 116, 118, 140, 150, 157, 160, 162, 168, 169, 171, 173, 174, 176, 178, 179.
- B. 52/D. 25, 47, 122.

Sijillât Bayt al-Bâylik:

- B. 12/D. 63.

#### b. Archives of the Wilaya of Constantine:

Sijill Şâlah Bâi:

- D. 32.

#### c. The National Archives Overseas in France:

- 1MI/BOB. 16/D. 71, 131.

## Secondary Works

- Bilici, Faruk. 2006. Les Waqfs constitués par les femmes à Istanbul dans la première moitié du XVI<sup>e</sup> siècle. *Awqaf* 10: 11–34.
- Deguilhem, Randi. 1995. Naissance et mort du waqf damascain de Hafīza Hanum al-Murahli (1880–1950). In *Le Waqf dans l'espace islamique, outil de pouvoir socio-politique*, 203–225. Damas: IFEAD.
- . 2001. Self-consciousness: The Muslim Woman as Creator and Manager of Waqf Foundations in Late Ottoman Damascus. *Dirassat insania (Études humaines), revue d'histoire de la Faculté des Sciences Humaines de l'Université d'Alger* 1: 3–19.
- Deguilhem, Randi, and Abdelhamid Hénia, eds. 2004. *Les Fondations pieuses (waqf) en Méditerranée, enjeux de société, enjeux de pouvoir*. Koweit: Fondation Publique des Awqaf du Koweit.
- Dulout, Fernand. 1938. *Le Habous dans le droit musulman et la législation nord-africaine (doctrine, jurisprudence et procédure)*. Alger: La Maison des livres.
- . 1951. *Traité de droit musulman et algérien moderne (doctrine–coutumes–jurisprudence et législation)*. Alger: La Maison des livres.
- Ghettas, Aisha. 1997. Ishâm al-Mar'a fî al-awqâf fî mujtama' madînat al-jazâir [The contribution of women to the waqf in the society of the city of Algiers]. *Al-Majalla al-Târikhiyya al-Maghâribiyya* 85/86: 99–131.
- Guechi, Fatima Zahra. 2013. *Sijill Şâlah Bâÿ lil-awqâf 1185–1207H/1771–1792* [The records of Şâlah Bâÿ of waqf]. Constantine: Dâr Midâd.
- Hoexter, Miriam. 1998. *Endowments, Rulers and Community: Waqf al-Haramayn in Ottoman Algiers*. Leiden: Brill.
- Mercier, Ernest. 1899. *Le Code de habous ou Ouakf selon la législation musulmane*. Constantine: D. Braham.
- Moufid, Khadidja. 2006. Al-Mar'a wa al-waqf: Al-tajriba al-maghribiyya [Women and waqf: the Moroccan experience]. *Awqaf* 10: 156–167.
- Saidouni, Nacereddine. 2007. *Le waqf en Algérie à l'époque ottoman, XIe-XIIIe siècles de Hégire, XVIIe-XIXe siècles, recueil de recherches sur le waqf*. Koweit: Fondation Publique des Awqaf.
- Al-Zurqâ, al-Shaykh Aḥmad. 1998. *Aḥkâm al-awqâf* [Waqf rules]. Amman: Dâr 'Ammâr.

### Appendix 1

There was conflict between siblings in 1739 (1151H.) about a waqf in the city of Médéa where the founder (the father) designated his male children as beneficiaries and, at the same time, excluded his female children from the benefits of the waqf, except for an unmarried daughter who was poor.

The judgment indicated that the girls should receive compensation for “their share” in this waqf of the founder.

«بعد أن كان السيد الحاج عبد العزيز بن الأمين الفاسي حبس جميع أملاكه الكائنة بالمدينة، على نفسه ثم على أولاده الذكور دون الإناث، إلا من كانت منهن خالية عن زوج وفقيرة، وكتب على ذلك وثيقة.

ثم توفي المحبس المذكور عن أولاده ذكورا وإناثا، وقام الإناث على الذكور يرمن إبطال الحبس المذكور، فترافع إذ ذاك الذكور وهم السيد محمد وعبد الرحمان و محمد كل منهم في حقه ومن ناب عن أخواتهن وهن فاطمة التي هي زوجا الآن للسيد العربي بن السيد حسن، وآسية التي هي زوجا للسيد علال بن سيدي محمد بن سيدي محمد بن عيسى، و رقية التي هي زوجا للسيد الحاج بن يوسف الحاج سلامة، ناب عن فاطمة زوجها وعن رقية وآسية ناب علال بعل آسية.

وانعقد المجلس العلمي بالجزائر ... وأدلى كل من الفريقين المذكورين بما ذكر، فكان من دعوى الوكيلين السيد العربي والسيد علال المذكورين أن المحبس المذكور كان حبس جميع أملاكه المذكورة فيما ذكر كما ذكر، وبقيت تحت يده إلى أن توفي عن ما ذكر.

وتخاصم الجميع بمجلس علمي ببلد المدينة حضره كل من مفت وقاض بها، ووقع الحكم ببطلان الحبس المذكور وصيرورته ملكا من أملاك الموروث المذكور ويقسم على ورثته على حسب الإرث.

وكان من دعوى البنين المذكورين أن الحكم المذكور ببطلان الحبس المذكور ليس هو بموجبه شرعي وإنما وقع ذلك ظلما وقهرا أو تعديا من لآة الأمر لتعصب من ناب عن البنات المذكورات بمن ذكر، وقع ذلك وشافته (كذا) ومزقت بين أيديهم

وثيقة التحبّيس المذكور على من ذكر دون من ذكر، وأنهم باقون على حقهم إلى الآن.

وكلف العلماء المذكورون أيدهم الله تعالى البنين المذكورين إثبات ما يدعونه، فاستظهِروا لديهم بالوثيقة الممزقة بمضمن بعضها شهد العالم العلامة السيد يوسف العبادي بأنه سمع من أن المرحوم الحاج عبد العزيز بن الأمين الفاسي وقف لديه في أوائل محرم الحرام الذي هو أول سنة التاريخ.

وأشهد حينئذ وهو في حال كمال الإشهاد عليه شرعا، بأنه كان عقد تحبّيس أملاكه التي له بمحرّوسة المدينة على نمط تحبّيس أولاد سيدي حسين بن حميدة، وكتب على ذلك رسما بالعدالة المرضية من محرّوسة الجزائر المحمية بالله تعالى وضاع منه، ومؤرخ بتاريخ تقدم فيه... وتأخر الأداء والكتب إلى أواسط حجة الحرام عام أحد وخمسين ومائة وألف، واطر فيه خطوط أعلاه وفتت وغيرهم، تتضمن صحة التحبّيس المذكور.

كما استظهِروا أيضا بوثيقة غيرها بمضمن بعضها أيضا شهد السيد أحمد بن ربيعة والسيد الحاج محمد بن الفخار بأن الحاج عبد العزيز بن الأمين الفاسي كان أشهد له في قائم حياته أنه حبس جميع أملاكه على صفة تحبّيس أولاد سيدي حميدة. ولما أشهدوا أيضا، حبس زوج ابنته رقية وقبل دخول زوجها بها ... عوض عما خصص به ذكور أولاده بتحبّيس العقار المذكور، وكذلك كل بنت يزوجها بعد ذلك سواء كانت موجودة أو تحرك له بجميع ما يجهزها به في مقابلته ... ينوبها من العقار الذي عقد تحبّيسه.

وكما أشهد الحاج احمد بن قنيف والمكرم الحاج محمد الفاسي لقبه القصير أنهما سمعا منه وأنه حبس جميع أملاكه على صفة تحبّيس أولاد سيدي بن حميدة... ثم على أعقاب وأعقاب أعقاب ذكورا وإناثا... بشرط أن تكون الأنثى خالية عن زوج وفقيرة... يرجع الحبس إلى فقراء الحرميين وحكم بصحة الوقف وكما حضر لديه أسعدهم الله تعالى قاضي... وهو السيد.

فقرئ الرسمان المذكوران بين أيديهم قراءة تفهم وتدبر، فألقى مضمناها كما

ذكر، وسئل السيد القاضي المذكور وهو السيد محمد بن سلامة كيف كان الأمر بين من ذكر في جميع ما ذكر وكيف صدر الحكم منه لجميعهم.

فاعترف وأن الحكم الصادر منه وممن حضر معه المجلس المنعقد بالبلد المذكور بتبديل وثيقة المحبس المذكور كان كرها وخوفا على النفس والمال ممن ذكر، لا بموجب شرعي، وأن الحق الذي لا محيد عنه هو حق البنين دون البنات، إلا ما اشترط لهن.

وشاع الأمر فيما ذكر لدى من ذكر بين من ذكر بعد ذكر وغيره من لغير بلدهم، وثبت ذلك لديهم الثبوت التام، فتأمل إذ ذاك السادات العلماء المذكورين في القضية المذكورة تأملا شافيا، وأمعنوا فيها نظرهم إمعانا كافيا.

فظهر لهم حفظهم الله تعالى بطريق الشرعي القويم والصراط الواضح المستقيم، أنّ الأولى والأليق إبقاء الحبس على ما حبسه صاحبه على الذكور والإناث بشرطهن. وأن الحكم ببطلانه لا يلزم ولا يلتفت إليه ولا يعول عليه، لكونه لم يصادف محلا ولأن من أكره على فعل ... لا يلزم فعله إن فعل.

فحينئذ سأل البنون المذكورون من السادات العلماء المذكورين الحكم بما ظهر لهم في القضية فأجابوهم إليه، وأشاروا على السيد القاضي المذكور بما ظهر في القضية المذكورة الحكم بذلك.

فأخذه من قولهم وأقوالهم وأشهد شهيد به على نفسه الكريمة أنه حكم بصحة التحبيس الصادر من السيد الحاج عبد العزيز المحبس المذكور، الذكور دون الإناث إلا ممن كانت منهن خالية عن زوج وفقيرة كما ذكره ...»