Chapter XI

Colonial States Claiming Waqf: Reflections on a Transregional Approach, from the French and British Near East to British India

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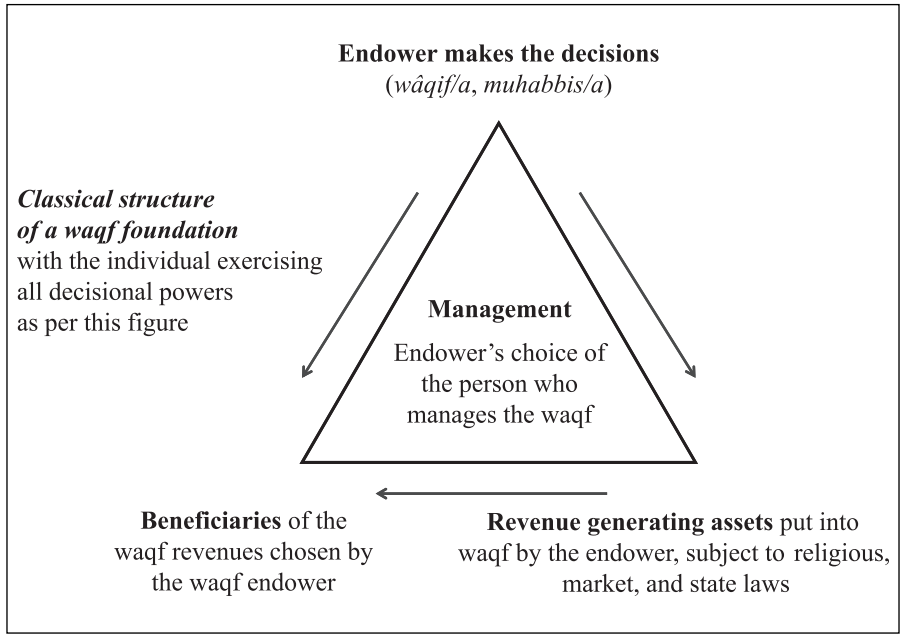
"Colonial states claiming waqf" is an expression used here to refer to a profound transformation which took place during the colonial period regarding the systems which had, up until then, organised Islamic waqf within all levels of society in the Islamic world and which, in many ways, served as a marker of both individual and communal identity.[1] As an example of this, Fig. 1 [Deguilhem 2008: 938] refers to the invidual who, upon creating a waqf endowment, exercises decisional power (within social networks) in choosing both the configuration and the functioning of her/his waqf.

In other words, the individual chooses the properties (built or agricultural assets or a monetary sum) which become the economic revenue-producing base of the foundation and which, from there on, no longer belong to the endower, they become the assets of the foundation. These properties, which were formerly wholly-owned by the endower before the creation of the foundation, now produce revenues distributed to the beneficiaries specifically chosen by the waqf endower according to the percentage indicated by her/him in the foundational charter docu-

[1] As a bottom-line statement and as a reflection of the organisation of society largely based upon religious criteria, Christian and Jewish waqf in Islamic regions (*dâr al-islâm*) fell under the governance of their own religious communities rather than under the aegis of the Muslim authorities or of the state (although persons, whether Muslim or non-Muslim, who rented properties belonging to non-Muslim waqf sometimes had recourse to the *sharîʿa* courts for arbitration or simply to register an act). But on the whole, Christian and Jewish waqfs were traditionally left under the jurisdiction of their respective religious authorities, especially within the Ottoman provinces. A multi-authored volume was recently published on this topic [Saliba 2016]. The situation was similar for waqf created and managed by individuals within Shi'i communities of the Ottoman Empire as well as waqf endowments founded by members of the Druze and Alawite communities which all largely remained outside of state purview except for the occasional document registered with the Ottoman tribunals.



Source: Revised from [Deguilhem 2008: 938]

Figure 1: Waqf: An Individualised Structure

ment (*waqfiyya*). The endower also chooses the person who will manage the foundation which continues to operate after the demise of the individual who created it, whereby the notion of "perpetuity" and "inalienability" of a waqf. This is the structure of a traditional waqf created by an endower whether woman or man: there is no difference in Islamic jurisprudence related to gender concerning the creation or the functioning of a waqf [Deguilhem 2003].

But in colonial times, these networks within a waqf representing circles of power which were institutionalised between an individual endower and the properties and beneficiaries attached to the foundation in question chosen by her/him at the moment of the creation of a waqf were fractured and torn away from the traditional configurational base. A deep-seated and indelible infrastructural change accompanied the installation of the colonial state in Islamic regions for the fact that the colonial state claimed jurisdictional rights, in different ways in different places, over the control of properties belonging to the waqf endowments. The colonial state also asserted its power to remove or change beneficiaries from their allocated part, as designated by the endower, of the revenues generated by the assets belonging to waqf, a fact which dissolved the institutional link between the founder of the waqf and the targeted recipients of the waqf's revenues, breaking the bonds of inalienability and perpetuity of the endowment.

This was an entire upheaval to the waqf system. With this claim by the colonial state, in its capacity as the occupying power, to the right of administrative and legal control over both built and agricultural properties owned by waqf as well as to the pattern of the distribution of revenues accruing from these waqf-held assets, an enormous share of power correspondingly and inexorably shifted away from the individual endower and administrators of waqf to the colonial state. Also to be taken into consideration regarding the colonial state's policy to exercise its self-given right to reconfigure and, in some cases, such as that of Algeria and Tunisia, to literally dismantle the infrastructural system of waqf and its corresponding powers within society, the management bodies which had been independent from both endower[2] and the state apparatus would no longer be applicable. Indeed, this operational distance and independence from both the state and from the endower was a key element within the traditional waqf system which largely operated outside of the state apparatus, functioning within its own parameters although these were nonetheless conditioned by and under obligation to the Islamic religious-jurisprudential framework (*fiqh*) as well as state (*qânûn*) and customary (*ʿurf*) law.

This being said, it is necessary to recall the nineteenth-century reform movements in the Ottoman world which, in the sector of the Muslim Sunni waqf foundations, intensified the centralisation of the management of public and religious waqf within the state apparatus. The movement towards state management of waqf had therefore already begun prior to the presence of the colonial state in Islamic regions but the finality was not the same as will be seen below.

To go a step further in retracing and unravelling the colonial history of waqf in Islamic regions, the *raison d'être* of waqf as a moral entity was either immediately or progressively transformed or, in some cases, destroyed by colonial policy towards the system of the Islamic endowments. To be more precise on this point, the deconstruction or the destruction by the colonial state of the relationship between an individual and her/his waqf destroyed thereby the underpinning in the infrastructural fabric of Islamic society. This is with respect to the fact that a waqf served to institutionalise, for the *longue durée* which superseded the demise of the endower, the relationship between the individual who created the waqf, the cession to the waqf of her/his revenue-generating property, and the meticulously-stipulated distribution of that revenue to designated beneficiaries coming from both the public and private spheres.

The triangular configuration, "endower—waqf assets—designated beneficiaries of the revenues from those assets" [Deguilhem 2008: 938], illustrates the

[2] Once created, the endower relinquishes the right to intervene in the operations of her/his endowment beyond the stipulations already given in the foundational charter except if the endower is also the administrator of the waqf. Nevertheless, even in the latter case, the endower-administrator is beholden to the stipulations noted in the charter document of the foundation except if an initiative is taken before the tribunal.

power of the individual who created the waqf according to her/his desiderata. It is this word, "power," which is key to understanding the fundamental importance of the institution of waqf as an instrument which gives free rein to the individual to intervene in society, financing her/his priorities, leaving a durable imprint within society. It is this precise relationship between individual and designated sectors in society, i.e. the beneficiaries of the waqf which were to be broken apart by colonial policy regarding the Islamic endowments, dissolving the relationships not only within the individual waqf but also with reference to the power relations of the supra-structures (religious and pre-colonial state law) which managed them.

1. A Transregional Approach: Comparing French and British Mandate Policy on Waqf

Within this context, this contribution studies this question from a transregional and comparative viewpoint by analysing the politics of colonial rule on the waqf system put into place by two European empires, British and French, as they moved south-east and east of Europe, occupying different regions in these parts of the world. The research focuses on the dynamics of the British and French colonial strategies to incorporate waqf-owned properties into state-controlled assets or market-available real-estate, thereby transforming the status of the waqf properties to meet the criteria of colonial politics. The first step of such a program was to carry out a cadastral assessment of waqf-owned properties—the colonial archival documents attest to this—and simultaneously creating a legal structure for state control of both family/private and public/charitable/religious endowments usually done by a series of public bidding and sales of built and land assets belonging to the endowments. This work was done within the structure of a Ministry or a Council whose members were composed of both local individuals and colonial administrators.

Of the three case studies examined in this research, two are located in West Asia: Palestine under the British Mandate and Syria under the French Mandate while one example is located in South Asia in British-controlled India.

The issue of controlling waqf within the colonial state apparatus was paramount for the three examples since a considerable portion of the real-estate was held in waqf in that the Muslim Sunni population was majority in colonial Palestine and Syria while waqf was also a commonly-used instrument by individuals in colonial India; the Muslim portion of the population was large enough for considerable parts of real-estate to have been endowed in waqf. Christian and Jewish populations also used waqf in Palestine and Syria while Hindu, Buddhist, and other populations in India likewise had similar types of endowment structures but these were not incorporated within colonial administrative apparatus in the same way as Islamic waqf.

2. Colonial States Claiming Waqf: An Intimate Institution Turned Official

2.1. Preliminary Remarks to Contextualise Waqf

Several preliminary observations will be offered here prior to giving examples illustrating a transregional and comparative methodological approach with the purpose of contextualising the colonial situation regarding waqf. First of all, one should keep in mind the enormous amount of valuable real-estate which belonged to waqf at the beginning of the colonial era. As an example, Muhammad Kurd Ali mentioned that three quarters of urban real-estate in nineteenth-century Damascus belonged to waqf. There was an analogous situation in Ottoman Algiers during the first decades of the nineteenth century where a large portion of properties in the urban areas of Algeria were owned by waqf [Devoulx 1870; Saidouni 2007]. This fact, in and of itself, underlines and brings to the fore the enormous importance of control over waqf properties as the means of access to these resources.

Indeed, when the colonial states began to create their infrastructures in Islamic regions, the importance of the prime and pervasive real-estate belonging to waqf became immediately apparent to the colonial administrators whose policies centred upon the inclusion of the majority of revenue-producing assets into the capitalistic market. In this regard, one of the first tasks that the colonial states gave themselves was to carry out a census of built and agricultural properties, all categories combined.[3] In doing so, the multiple and interlinking networks of waqf became readily apparent to the administrators.

Omnipresent within all socio-economic levels of Islamic societies [Deguilhem 2000], the waqf foundations took the form of individual endowments which expressed the desiderata and priorities of the endower in terms of the safeguard of property put into the specific waqf as well as beneficiaries (individuals and/or religious and public institutions) chosen to receive revenues from the properties put into that endowment. At the same time, these individual waqf endowments were simultaneously part of a larger institutionalised system that was regulated by both religious (*sharîʿa*) and state (*qânûn*) laws.

In studying these questions, the principal issue lies with the shift in power away from local and regional networks as defined and operated within the pre-colonial waqf system made visible via the priorities revealed by individual endowers and their socio-economic and political networks. However, in the colonial system, as seen below via the three examples, decision-making is taken out of the hands of individuals who created their waqf as an autonomous and durable unit but who

[3] Cf. the study being prepared by Tal Shuval on the basis of research carried out by André Raymond on the habous (waqf) properties of the early decades of French colonial rule in Algeria.

also stipulated the conditions for the operations of the waqf following their demise which *a priori* were to remain unchangeable.

In the colonial system of waqf, the importance and impact of decision-making power exercised by individual endowers is removed with that power now given to the state. To examine the details and theory of these dynamics and change in norm and practices with respect to "colonial states claiming waqf" and to deconstruct the specificities related to the networks put in place or institutionalised by waqf, this study will now concentrate on the structures created by the colonial powers to extend government control over the valuable real-estate belonging to waqf, namely by studying the Contrôle Général des Wakfs Musulmans in French-Mandate Syria, the Supreme Muslim Council for British-Mandate Palestine and various structures in British-held India. Needless to say, all three situations were specific to the given history, culture, and society in each place.

2.2. Colonial Waqf Politics in French-Mandate Syria

As a consequence of their experiences in colonial Algeria where the French authorities conducted large-scale sale and confiscation of endowment properties which provoked widespread and fierce opposition by *ʿulamâʾ* associations as well as by individuals and families which resisted this policy, the French-Mandate authorities in Syria (1920–1946) adopted a different approach. Whereas in Algeria, from 1844, the French authorised long-term renters of habous properties to purchase outright those buildings or lands which they rented without regard to the fact that these assets belonged to waqf; in 1858, anyone whether Algerian or foreign, was allowed to purchase waqf assets in Algeria and, in 1873, the colonial government declared that all waqf properties were subject to French legislation and no longer fell within the jurisdiction of *sharîʿa* [Mercier 1899: 91; Cardahi 1945: 121; Tabet 1936: 10; Canon 1984: 369–385], in Mandate Syria, the colonial administration used another approach which was more inclusive.

To try and avoid large-scale opposition to their program destined nonetheless to dismantle the traditional waqf system in Syria with the aim of incorporating it within the state, the French authorities therefore proceeded differently there than in Algeria. From the beginning of its Mandate, the French associated local power groups with their project to gain economic and administrative control over assets belonging to the Islamic waqfs.[4] Barely a year into their Mandate, the French began

[4] It should be pointed out that waqf was not something new to the French government which had already formulated a reaction to the system during the Ottoman Tanzimat Reform movement in the nineteenth century. A report from 1867 by the French Ambassador's office in Istanbul to the Ministry of Foreign Affairs in Paris included a

to reorganise the waqf administration in Syria with the goal of including the management of the waqf into the state apparatus. Thus, the promulgation of decree no. 753 on 2 March 1921 (*Tasdîq qarârât al-majlis al-aʿlâ liʾl-awqâf al-islâmiyya: al-qarâr 753*) which created the Contrôle Général des Wakfs Musulmans composed of influential Muslim religious leaders (*ʿulamâʾ*) in addition to other leading members of the Muslim Sunni community in Syria.

In this way, via the Contrôle Général des Wakfs Musulmans, the Mandate infrastructurally linked part of the Syrian religious hierarchy to its waqf reform program without, however, according decisional power to it. Indeed, documents such as the official bulletin of the state, the *Jarîda Rasmiyya*, reveal that the French High Commissioner held direct decisional authority and veto power over all actions undertaken by the Contrôle Général [Longrigg 1958: 137].

In terms of the structure itself, this decree promulgated on 2 March 1921 instituted a three-tiered administration for the management of waqf which was headed by a Syrian General Comptroller of Muslim Waqfs (Contrôleur Général des Wakfs Musulmans). In this way, the Mandate gave visible primacy and public responsibility for the incorporation of Islamic endowments within the state administrative apparatus on a prominent member of the Syrian religious hierarchy even though he was appointed by and directly responsible to the French High Commissioner himself.

An infrastructural view of the Contrôle Général is as follows:

a. The Contrôle Général des Wakfs Musulmans was the executive organ of the Commission. It was headed by the Contrôleur Général who was named and appointed by the French High Commissioner in Syria to whom he answered directly.

b. The Conseil Supérieur des Wakfs Musulmans was the high council of Muslim waqf. It was composed of the General Comptroller and the presidents of the *sharîʿa* tribunals in addition to a delegate from the Muslim communities in Damascus, Aleppo, Beirut (i.e. this structure preceded the later division by the Mandate between Lebanon and Syria), and Lattakieh. The Conseil Supérieur played a judicial and administrative role, including acting upon suggestions put forth by the General Comptroller, local *mudîr*s, and *mutawallî*s of waqf. The Conseil Supérieur was able to suggest improvements in managing the Contrôle Général and the general administration of waqf, including proposals for investing surplus waqf revenues. It also had the responsibility for reporting irregularities to the French High Commissioner.

translation of the Ottoman "Law on Waqf" from 7 Safar 1284 (1867) which concluded that this reform law was a desired and decisive step toward the assimilation and eventual disappearance of waqf and was therefore beneficial for French interests: [*Documents diplomatiques: le livre jaune*, 1867].

c. The Commission Général des Wakfs Musulmans consisted of the Conseil Supérieur des Wakfs Musulmans in addition to local *mudîr*s and delegates from the districts (*liwâ*s) and provinces (*qadâ'*s) in Syria. The principle purpose of the Commission Général was to examine and verify the waqf budget which was submitted annually to the Council by the General Comptroller.

Under this system, the daily administration of the endowments was conducted within the newly-created branches of the Contrôle Général des Wakfs Musulmans located throughout the country: in Damascus, Aleppo, Homs, Lattakieh, Duma, Zabadani, Jayrud, Idlib, Maʿarrat al-Nuʿman, Jisr, Azza, al-Bab, Ariha, Dayr Kusha, Armanaz, the Hawran, the Euphrates region, the Jazira region, and Qalamun. These branches were placed under the jurisdiction of the Conseil Supérieur.

As mentioned before and as was typically the case for colonial powers upon taking power, the Contrôle Général began its work with the registration or re-registration of every waqf in Syria (as far as was possible). A special department was created for this within the framework of the tribunal *mahkamat tamyîz* which was headed by the director of the Department of Justice, the head of the Land Reform Bureau and the inspector general [Kaylânî 1981: Vol. 3, 293]. The registration of each waqf was to be considered as a point of departure for the establishment of real property rights on the assets owned by the waqf.[5]

In order to register a waqf, the administrator of that endowment was required to provide proof of the name of the endower by producing the foundation document or a certified copy of it, the name of the current administrator by showing the proper document (*hujja*), and all changes related to the management of the assets belonging to the waqf, its administration, and its beneficiaries, showing the relevant documents.

To try to ascertain the property holdings in Syria, including those owned by waqf, a research team directed by two government officials, P. Gennardi, head of the mandatory land services and delegate to the Contrôle Général des Wakfs Musulmans, and C. Dourafourd, head of the cadastral survey section, issued detailed reports about land distribution in Syria including its ownership and disposition (types of land—waqf, private, state-owned) with the purpose of reorganizing land resources to render them more profitable.[6]

In line with these reports by Gennardi and Dourafourd as well as other reports, the Mandate government concentrated its efforts upon the redistribution of arable land which it regarded as the primary source of production in Syria. To this end, the Mandate encouraged investment in land development, including land held in waqf. However, the supply of credit for investment was scarce and the existing

[5] [*Rapport à la Société des Nations sur la situation de la Syrie et du Liban*, 1930, p. 62].

[6] [*Rapport général sur les études foncières effectuées en Syrie et au Liban*, 1921–1931; Tabet 1936: 2, 7, 26].

Agricultural Bank did not meet the Mandate's ambitious program [Longrigg 1958: 19]; the French bank Crédit Agricole stepped in and extended credit with a guaranty for those investing in land [Essaleh 1943]. This included the possibility of using waqf properties as collateral for those persons interested in buying and investing in land. Usufruct resulting from the authorised types of rent on waqf properties could likewise be used as surety for loans [Himadeh 1935: 222].

To sum up these words concerning the policy of the French-Mandate "colonial state claiming waqf" in Syria, we have the example here of a concertation between the colonial political state, an investment bank from the colonial power, and an imposed relationship with colonised networks in the colonised country around the issue of the incorporation of waqf within the colonial structure away from centres of local power. Fig. 2 illustrates the fact that the state replaces the individual who no longer exercises decisional control over the infrastructural configuration of her/his waqf.

2.3. Colonial Waqf Politics in British-Mandate Palestine

The second case study pertaining to "colonial states claiming waqf" regards British-Mandate politics in Palestine.

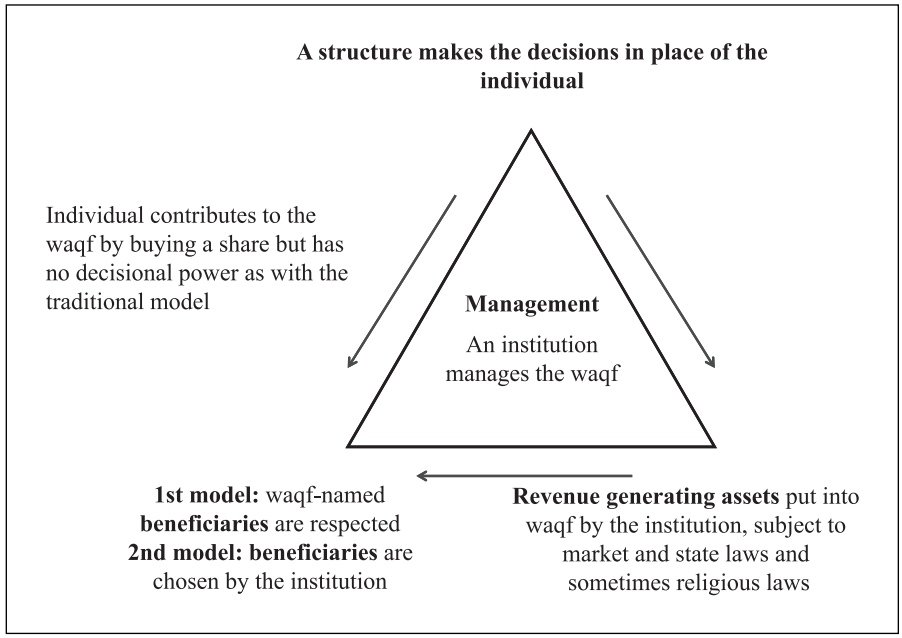


Figure 2: Waqf: A Socio-political Superstructure

In several ways, the organisation of colonial politics on waqf in British-Mandate Palestine closely resembled that in neighbouring French-Mandate Syria, both having been created in the first years after the close of World War One, but the case of Palestine had of course another dimension. Not only did the management of Islamic waqf concern sites which were sacred to the three monotheistic religions[7] but the added complexity of identity politics as tied to waqf was exacerbated within the climate of Mandate Palestine as the Palestinian Muslim and Christian populations, on one hand, and the Jewish one, on the other, fought for political control.

During the very early years of the Mandate in Palestine, precisely on 20 December 1921, the British created the Supreme Muslim Council, transferring to it several important waqf with their accompanying revenues which had been confiscated by the Ottoman government.[8] The creation of the Council was touted by the British authorities as a successful propaganda move on their part which was intended to appease Muslim opinion after the 1921 resistance uprising in Nabi Musa but also as a means to give the British Mandate a favourable opinion among Muslims outside of Palestine.

This is not to say, however, that the Supreme Muslim Council functioned without surveillance by the Mandate authorities. Indeed, a British inspector kept an eye on the financial affairs of the Council and had the power to sanction waqf estimates as he saw fit as well as to nominate the president of the Central Waqf Committee. He also attended the meetings of the Central Waqf Committee in Jerusalem.

While the Mandate sought to showcase, for public-opinion purposes, the autonomy of the Supreme Muslim Council, in reality, it held power over it. Indeed, before the official creation of the Council, the Mandate decided in November 1920 that the government should keep financial control over Muslim waqf in Palestine. The High Commissioner had the power to reject or approve the budget of the Supreme Muslim Council. Of course, not all members of the *ʿulamâʾ* in Palestine agreed to cede these surveillance decisional powers to the Mandate: Muhammad Murâd, the mufti of Haifa at that time, refused to do so.[9]

Concerning the infrastructure of the Supreme Muslim Council which was composed of a president and four members (and which took the place of both the Ministry of Waqfs in Istanbul and the Advisory Council of Waqfs in Istanbul), the Mandate created a Central Waqf Committee in Jerusalem. This Central Committee was placed under the aegis of the mufti of Jerusalem who became president (*raʾîs al-ʿulamâʾ*) of the Supreme Muslim Council and was nominally on an equal posi-

[7] As with the situation in Syria, the non-Muslim waqf did not fall under the jurisdiction of the colonial state nor under the previous Ottoman one but rather under the aegis of their religious authorities.

[8] For the authoritative works on the state management and administration of Islamic waqf in Mandate Palestine, see [Kupferschmidt 1987: 17–18 and *passim*; Reiter 1996].

[9] [*Original Correspondance*, 733/1], as cited in [Kupferschmidt 1987: 23].

tion with senior officials in the Mandate government but did not, in reallity, exercise decisional opinion. This Central Committee held sway over the other waqf committees in Palestine.

The Supreme Muslim Council was both a government body which managed the Muslim waqf in its capacity as comptroller and administrator of the *sharîʿa* courts and, in its capacity as to manage waqf affairs, it was considered to be a separate body. In terms of remuneration of its members, this double belonging meant that the members of the Council received a salary both from the government in relation to their work with the *sharîʿa* courts and also from waqf funds for their work in the sector of the endowments.

As for the tasks of the Council: it was to administer the affairs of the Muslim waqfs, the *sharîʿa* courts and justice on a more general scale as well as administering the works of piety and charity. It was also instrumental in managing the religious institutions and the activities occurring within them (teaching, preaching, managing the religious festivals…but also caring for the "national crafts" in addition to extending loans to peasants). In other words, the Council was responsible for following up on religious and social activities in the community.

Needless to say, as with the Contrôle Général des Wakfs Musulmans in French-Mandate Syria, the Supreme Muslim Council was highly politicised with respect to both the organism itself vis-à-vis the Mandate power but also in relation to the society with members of different families and power groups competing for prime places within the Council, such as in relation to the competition between the Husayni and the Nashashibi families. This competition also spread out to other sectors in the society. For example, the Husayni family was accused by other families of turning the Council into a political instrument for their own advantage. The Husaynis were accused of politicizing the *sharîʿa* courts, abusing waqf revenues. On a more local level, Council members were also accused of graft. In Hebron, for example, the Council was sued by local notables for misappropriation of funds.

In general, there were difficult and stormy relations between the Supreme Muslim Council and the Mandate authorities. Without going into detail here, the Mandate government had a difficult time intervening in the affairs of the Council when it suspected wrongdoing despite the surveillance powers which it gave itself. This also placed the Mandate in a delicate position in relation to London since the Mandate had the responsibility to take care of affairs in the mandated region. Failure to do this and failure to prevent embezzlement and other problems concerning graft would be a deleterious reflection upon the Mandate itself and in relation to the League of Nations in Geneva.

In a word, within the context of British Palestine, "colonial states claiming waqf" meant, in this situation, a distance taken by the mandatory authorities in relation to the Supreme Muslim Council which was an intermediary between the Mandate power and the population in matters of Islamic waqf affairs.

2.4. Colonial Waqf Politics in British-Controlled India

The third and last case study presented in this transregional and comparative analysis of colonial policy towards Islamic waqf, presented albeit in a succinct and selective manner as with the previous examples, pertains to colonial state policy regarding this question in British-controlled India.

In the case of India, the situation is quite different than with the two preceding examples which looked at colonial policy regarding waqf in the Near East: the French-Mandate policies which worked towards the state incorporation of Islamic waqf into the government apparatus in Syria and the British-Mandate's program on Islamic waqf in Palestine, an issue inextricably tied to the political future and identification of Palestine.

In the situation of India, the British colonisation project for the Islamic endowments were different than in Palestine where its Mandate program and its relationship with waqf[10] were so closely intertwined with local and regional identity politics, the question itself linked to international religious politics in Europe and Russia as well as in the United States (i.e. countries which gave themselves the role of protectors of religious communities within the local population). As concerns India, one of the first regions with important Muslim communities colonised by a European power, the British controlled the area as an integral part of its Commonwealth possessions whereas, in Palestine, the League of Nations Mandate gave them interventionist power over a limited period. In India, there was no advance-projected chronological limit to the British presence.

With regard to waqf and the organisation of it within British-controlled India, the colonial administrators understood the endowments in the same way that they approached the application of other practices in the Muslim communities (for instance, questions of inheritance) which they defined by what they considered to be "Islamic law."[11] In other words, the British administrators, via the Anglo-Indian judges, abided by principles found in the Quran and religious exegesis much more strongly than was the case by the local populations themselves before the British occupation in the Indian peninsula.

In their program to create legislation under British jurisdiction with the aim of categorising and classifying informal arrangements, the question of the nature of waqf was considered with two sets of law in mind or, to adopt the parlance of Huri Islamoglu and Martha Mundy [Islamoglu 2004; Mundy and Smith 2007], with different bundles of law which intertwined at various levels. On one hand, the imperial jurists in India underlined the importance of private property rights influ-

[10] This was also the case in late Ottoman Palestine where the politics of waqf on the international level in Palestine was part and parcel of identity [Sroor 2010].

[11] This part of the study on the Islamic waqf in British India relies heavily upon the research conducted by Gregory Kozlowski: for example, [Kozlowski 1985].

enced by the needs of the real-estate market (in principle, Islamic waqfs could only be created from an endower's private assets but, in practice, other types of property were often put into the assets of a waqf). On the other hand, Anglo-Indian jurists created laws from the understanding of *sharîʿa* as it unfolded in court procedures (following the practice of British law) and according to regulations expressed in the Islamic religious jurisprudence on waqf. As a result, the Anglo-Indian courts produced judgements on what they purported to be Islamic law. For example, in the specific case of Islamic waqf in India, a distinction was made during British rule between "public" and "private" waqfs whereas, in praxis, there was no difference between the two.

Similarly, in the realm of innovations which organised henceforth Islamic practices such as waqf, the imperial courts in India created a centralised form of governance with vertical lines of authority reaching down to the waqf with the objective of controlling the endowments. Prior to British rule there, waqf was a means of protecting one's property and ensuring the allocation of revenues coming from it to specific beneficiaries or, in the words of the organiser's text of this symposium [Preface, p. x], waqf as a "body" which was independent of both the state as well as the endower (once the waqf was created). Yet now, under British control, Islamic waqf in India progressively fell under a centralised rule or at least legislation was put into effect for this type of colonial control over it. Along with imperial structures put into place to exercise control over waqf, local Indian leaders and religious institutions found themselves taking sides during the colonial period either in favor of greater control over waqf or against it. Political controversies over waqf revealed the influence of imperial governance in this respect; success was to be found for those who worked within the institutional framework established by the British in India.

Yet, in terms of the actual use of waqf in colonial India as concerns the sphere of the individual and despite court decisions and political debates, the waqf continued to function there in several ways as it had prior to the colonial period. Similarly Indian waqf continued to finance rituals in the neighbourhood mosques as well as prayers for endowers' souls who had set aside revenues for this purpose, adapting waqf to the needs of individuals.

To cite one of the most visible controversies concerning the question of imperial control over waqf in British-controlled India, i.e. the "colonial state claiming waqf," one should turn to the "Mussalman Wakf Validating Act" of 1913 and the role of public opinion among the Muslim community in India in this regard, especially as it played out in local and regional newspapers.[12] The controversy unfolded within the framework of the reorganised Governor General's Council which held

[12] For a recent multi-authored work on the different types, roles, and extent of public opinion in modern and contemporary times within the larger southern and eastern Mediterranean areas, see [Deguilhem and Claudot-Hawad 2012].

its first meeting in January 1910 along with the question of local representation in public governance in India.[13]

The Governor General's Council provided a forum for Indian Muslims to call into question British colonial policy on the Islamic endowments with relation, in particular, to the issue of Islamic family waqf. In this respect, Ali Jinnah, the well-known elected Muslim member of the Council from Bombay, asked a question during the proceedings of the Council, insisting upon the fact that Indian Muslims were in the majority against the system of waqf law as formulated by the Privy Council's recent decisions especially concerning family waqf (*waqf ʿalâ al-awlâd*). In response to the reply that the Council would consider a legislative proposal if supported by the majority of Muslims, the next year, in March 1911, Jinnah introduced the "Mussalman Wakf Validating Act" whose aim was to recognise family waqf.

As mentioned several paragraphs above, British colonial law in India regarding Islamic practices was far more stringent than that which was actually practiced on the ground prior to the British occupation of the Indian peninsula. As a result, the High Courts and Privy Council in British India did not recognise family waqf since it only recognised waqf which was expressly created for "charitable and religious" purposes.

Ali Jinnah pursued his efforts for the recognition of family waqf and after negotiation within the Muslim community, Jinnah presented the bill once more, emphasising the legitimacy of a waqf whose beneficiaries were the endower's own family since this was a form of "charitable and religious" in that "charity begins at home." With the support of prominent members of the Islamic religious community gathered by Shibli Numani as well as concerned large-scale landowners who feared that laws would entail the dismantling of their estates which were organised within a waqf structure, Jinnah argued for the acceptance of family waqf, stressing the appropriate *hadîth*. Jinnah blamed the British for the controversy by implying that family waqf had successfully functioned for centuries. Finally, the "Mussalman Wakf Validating Act" was passed in February 1913 with the proviso that a waqf could not be used to defraud creditors. Jinnah's argument was accepted and family waqf was officially recognised by the British power in India [Kozlowski 1985: 177–191].

Nonetheless, some opposition to the "Mussalman Wakf Validating Act" continued within the Muslim community in India: the problem was not the recognition of family waqf itself but rather the fact that Muslims disapproved of governments meddling in affairs connected with *sharîʿa*. In some cases, Indian lawyers opposed family waqf as a general category of the endowments such as was the situation

[13] [*Proceedings of the Legislative Council of the Governor General of India* (PGGC), v. 48, p. 185 and v. 51, pp. 336–337, 387] as cited in [Kozlowski 1985: 178–179].

with Muhammad Nizam ud-din Hasan, a lawyer from Calcutta, who wrote and published a pamphlet called "Charitable Public Endowments by Muslims." He explained that family waqf was only permissible if the revenues went to poor relations.

Moreover, despite the recognition of family waqf by the Governor General's Council, the colonial government in India did not have a centralised policy on Islamic waqf with Anglo-Indian courts making *ad hoc* decisions. Another problem was that the "Mussalman Wakf Validating Act" was not retroactive and family waqf established prior to the passage of this Act in 1913 were not often recognised by the Anglo-Indian courts.

To conclude these brief words about state policy and management of Muslim waqf in British India, the above is an example of negotiation between local powers and a colonial state claiming waqf although not in the manner of the situation given in the context of the French Mandate nor the British one where the colonial power aimed to integrate waqf property and its management within the state apparatus. In the context of British India, the question is to mould local Islamic practices within those of the metropolitan power but the case cited above reveals notwithstanding that negotiation, using approved colonial means, i.e. legal argumentation before a government approved body such as the Governor General's Council, may very well lead to an accommodation with local practices of waqf.

A Few Words of Conclusion: Waqf, From an Intimate Institution to a Colonial Tool

The colonial governments in Islamic regions not only introduced a new configuration related to the administration and ownership of real-estate properties belonging to the waqf foundations but also regarding the finality in the distribution of endowment revenues, sometimes changing the beneficiary of these revenues to ones other than those originally intended by the donors. These two changes, especially the latter, overturned the very essence of the philosophy of the waqf whereby an individual established an endowment with the express purpose of creating a self-sustaining and "permanent" unit which linked revenue accruing from her/his assets to specific beneficiaries.

Such a profound change in the management of this waqf system whose functions were regulated by Islamic law and Islamic-inspired governments, noting, all the while, the infrastructural transformations in waqf during the nineteenth-century reforms in the Islamic Mediterranean towards a system defined by European colonial state management unalterably reshaped longstanding personal and institutional networks which had permeated deeply into society. The transformation to colonial rule of waqf shattered the socio-economic and political networks which had infrastructurally tied the individual donor with her/his revenue-producing properties put

into waqf and the beneficiaries chosen by her/him.

This triangular structure linking the donor with properties and beneficiaries within a institutional framework functioned during the lifetime of the endower and, just as importantly or more so, after the donor's demise. This structure allowed the individual to institutionalise her/his networks and ensure them after death. It is this very framework which would be definitively altered with the application of colonial policy on waqf.

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