2

State, Law, and the "Muslim Community"

I arrived early at Dar al-Fatwa, the official Sunni authority in Lebanon, housed in a small complex in Beirut.[1] In the lobby under a Lebanese flag, a police officer in uniform sat behind a table with a register. The officer took down my name and that of the person I was meeting, then asked me to pass through a metal detector. These various signs—the flag, the police, the security—signaled that I was entering a state building. It was one of my earliest meetings with the head of the Directorate General of Islamic Waqfs (DGIW). As I was discussing my project with him and asking for permission to conduct research there, he tried to convince me that a worthy project would be collecting all legislation pertaining to waqf for my dissertation.[2] Coming from the second highest authority on waqf after the grand mufti, this suggestion took me by surprise. Indeed, the DGIW is represented in the legislative council in charge of many of these laws, the Supreme Islamic Legal Council (SILC), so I was puzzled that there was no such collection at the DGIW itself.[3]

1. Dar al-Fatwa, or literally "the house of fatwa," is the complex that houses the grand mufti and the institutions of official Sunni Islam. The term is used figuratively to refer to official religious Sunni Muslim authority.

2. The gendered aspect of such advice, which I received time and again, should not escape the reader.

3. Note how the Sunnism of these institutions is unmarked. For instance, the Supreme Islamic Legal Council is the Sunni one, but the Shiʿi one is qualified with *Shiʿi*. I will discuss the reasons of this unmarkedness in this chapter.

The director then handed me a SILC decision published in 2003 in the *Official (Legal) Gazette of the Lebanese Republic*.[4] The decision required the DGIW to be named the administrator of any new mosque or prayer hall, even if a private individual or an association had funded its construction and upkeep.[5] That was even more puzzling to me because attempts at state control of waqfs, in the form of administration and supervision, had a long history—starting with the Ottomans, before Lebanon even existed as a nation-state—as I knew from reading the literature on waqfs and from various documents I had collected at the Ottoman archives. That the SILC still needed to issue laws to assert the DGIW's control over mosques suggested that the Ottoman project of state control of mosques and waqfs was still not realized two hundred years later in contemporary Lebanon. What do these paradoxes—the DGIW's apparent ignorance of all waqf-related legislation and the continued need to reassert state control of waqfs despite two hundred years of such attempts—tell us about the nature of the modern state and its use of law and about shariʿa-originating practices like waqf in contemporary Lebanon?[6]

This chapter traces these paradoxes to the nature of the DGIW as a part of the modern state and as a new actor added to the cast of characters involved in the administration of waqf before the long nineteenth century. Indeed, this encounter with the director, duly noted in my notebook with plentiful exclamation and interrogation points, drove me to dig into the history of the DGIW and of those in charge of administering and supervising waqfs. I started to look at both library and Ottoman archive anew: Who appointed administrators? What was the procedure for such appointments? What was the role of qadis in these appointments? Before the reforms of the nineteenth century, which affected Beirut waqfs in the 1850s, three main individuals were involved in the administration of the waqf: the founder, the administrator, and the qadi. Under the supervision of the qadi, each waqf was individually administered according to the founder's stipulations as noted in its foundation deed or according to customary practice when no such document existed. Yet, the qadi's supervision was only nominal and there were no audit procedures: qadis interfered only when beneficiaries and administrators filed lawsuits. Centralized waqf administration and supervision was created in 1826 with the foundation of the Waqf Ministry in Istanbul, among modernizing reforms. The genesis of the DGIW in the modern state explains some of the

4. In the legal hierarchy, decisions (*qarārāt*) are at the lowest end of the scale, followed by legislative decrees (*marāsīm ishtirāʿiyya*), laws (*qawānīn*), the constitution, and international conventions.

5. This requirement differs strikingly from the lax *fiqh* requirements with regard to waqf foundation for mosques: if someone builds a mosque, the act of prayer in it makes it into a de facto waqf without the requirement of delivery to an administrator or the ruling of a judge (Ibn ʿAbidin, *Ḥāshiya*, 3:369).

6. I urge the reader not to assume that this lack of control is due to the "weakness" of the Lebanese state, as I explain below. On the effects of the trope of the weak state in Lebanon, see Kosmatopoulos (2011). For a broader review of the anthropology of the state in the Middle East, which addresses the weakness and absence of the state in popular discourse there, see Obeid (2015).

contradictions of the DGIW's (and before it the Waqf Ministry's) lack of control over waqfs and waqf law. I show how intra-state and intra-institutional competition rooted in secular questioning perpetuated the impossibility of the DGIW "controlling" both waqfs and legislation of waqf. Waqf founders and administrators regularly resorted to "jurisdictional politics," conflicts among different state institutions over jurisdiction of waqf, to find the authority most sympathetic to their cause.

At the same time, the specific shape jurisdictional politics takes is historically contingent on the different configurations of the state, law, and Muslim (Sunni) community in the Ottoman, colonial, and postcolonial periods. Therefore, I turn the spotlight on three significant moments in the administration of waqfs in Beirut (1850, 1921, and 2003) to illuminate how these different configurations allowed for different possibilities for the state's administration and supervision of waqf. In some ways, then, the chapter also contours what I called *architecture* in the introduction—the "context" and state configuration (particularly the relation of the state to the shariʿa) under which individual waqf founders operate and which determine the possibilities of waqf practices.

I show how, when an Ottoman Islamic state attempted to take over the supervision and administration of some Beiruti waqfs—what I refer to as "state control" in this chapter as a shorthand—through an 1850 imperial decree (*firmân*) (VGM300.82) and attach them to the Waqf Ministry that had been founded in 1826, it drew on arguments from within the Islamic tradition but also advanced a new ideal of "good management." Most of the regulations the Ottoman state introduced ushered in techniques of micromanagement with standardized procedures of accounting and calculation, or regulations rather than laws, making waqfs a resource to be managed and developed. Such techniques required many innovations: new officials in the peripheries, new chain of approvals, new standardized registers, new offices, and new archives. These requirements produced the effect of a state that now stood apart from society and from these practices (Mitchell 2006). Because this effect is dependent on practices, their continued performance is necessary to maintain it; this chapter suggests that the repeated attempts at regulation are not a failure of the state or a weakness thereof but are a product of what one of my interlocutors called the "*flou*," the blurriness, of waqf law and administration. The *flou* is what necessitates further intervention and practices that seek to reproduce the state effect.

The French colonial power took over the state apparatus and claimed supervision of these same waqfs through a 1921 law that created the General Waqf Supervision to replace the Ottoman Waqf Ministry. The techniques through which waqfs were governed and their conceptualization as "real estate wealth" remained the same; these are modern techniques of government. However, the French Mandate introduced new arguments and a new arrangement for administration reflecting the new architecture of state, law, and religion. In this new

architecture, sometimes termed the dual legal system of personal status law and civil law (Thompson 2000, 113–15), the "Muslim community,"[7] now conceived of as one sect (*ṭāʾifa*) among the eighteen recognized by the state, had jurisdiction over the personal status of its congregants. Because the various communities were independent legal entities with financial autonomy, the state itself defined the waqf directorate as an independent public authority. It remained under the umbrella of the state, in an ever-ambiguous independence, at the "margins of the state."[8] Triggered by the secular questioning that subjected waqf to a legal regime that differentiated between religion and economy, the Mandatory power placed some waqfs within the domain of the religious and created waqf as a patrimony that the "Muslim community" owns, administers, and regulates collectively, dividing jurisdiction over it between sharīʿa courts and the General Waqf Supervision. This transformation of waqf into the religious property of a sect is what I call its sectarianization. Yet, concurrently, because waqfs also involve real estate, they fell under the jurisdiction of civil courts. This attempt to fit waqf into these legal categories and jurisdictions contributes to the *flou* of waqf law in the Lebanese Republic, and in fact applies to much of law, making these observations about institutions at the margins of the state much more central to the modern state. This blurriness allowed waqf practitioners to engage in jurisdictional politics, triggering the constant need for the assertion of state control through regulations like Decision 42 of 2003.

OTTOMAN LATE ḤANAFĪ WAQF ADMINISTRATION: INDIVIDUALIZED AND QADI SUPERVISED

The Interplay of the Founder's Will and the Law

Let us first turn to the library and the way its manuals envisage the administration and supervision of waqfs under an Islamic state that implements the sharīʿa. The administrator, along with the founder and the qadi, form the main cast of

7. Early French archival documents on waqf use *Muslim community* to include both Shiʿi and Sunni waqfs. It was not until 1926 that the Shiʿa were recognized as a sect with their own sharīʿa courts (Weiss 2010, 100–108), and the term *Muslim community* came to be the unmarked designation of the Muslim Sunni community instead of encompassing the Sunnis and the Shiʿa as an unrecognized unorthodox sect. However, in my discussions of French waqf legislation, I continue to use the term *Muslim community*, as used in the law, because the question remains as to how long waqf supervision remained applicable to both Sunnis and Shiʿis and when it came to mean just the unmarked Sunni waqf. Max Weiss's work shows that Shiʿis started to use the Shiʿi courts for disputes over waqfs, but it is unclear whether any of the Shiʿi mosques and shrines were considered seized or semiautonomous by the Ottoman Waqf Ministry and thus fell under the jurisdiction of the new French waqf administration. 1967 Law 72 and Decision 15, which created and organized the Supreme Islamic Shiʿi Council (SISC), also mandated the formation of a General Waqf Committee in the SISC.

8. I borrow this expression from the title of an edited volume of essays on anthropology of the state (Das and Poole 2004).

characters in the library's discussions of waqf. A large part of the chapter on waqf in *fiqh* books of the Ottoman late Ḥanafī library serves to determine jurisdiction: the rights and responsibilities of the founder, administrator, and qadi involved with the waqf. What does each of these characters stand for with respect to the waqf?

As the original owner, the founder of the waqf is the highest authority in decision-making concerning the waqf—guided ultimately by the shariʿa. In the foundation deed, the founder can specify the manner of administration up to the smallest minutiae. As long as these stipulations do not contradict the law (*sharʿ*),[9] they form guidelines that the administrator needs to follow. As the famous dictum goes, "The stipulation of the founder is like God's law" ("sharṭ al-wāqif ka-naṣṣ al-shāriʿ") (Ibn Nujaym, *Baḥr*, 5:245). However, Ibn Nujaym expands on the limits of this statement as a rule, quoting from other scholars in a "consensus of the *umma*" (*ijmāʿ*) that some of the stipulations of the founders are valid and can be followed, while others are not. He follows another scholar's explanation that the dictum is true in "its meaning and guiding principle, and not in its necessity" ("fī al-fahm wa al-dalāla lā fī wujūb al-ʿamal") (*Baḥr*, 5:245). This qualification implies that the text of the founder is understood to be a felicitous representation of the founder's desires and thoughts, and that the language of the text represents common understandings. The administrator and the qadi can go back to the text (*naṣṣ*) of the foundation and use it as an accurate representation of the will of the founder. Contra Ibn Nujaym, Ibn ʿAbidin, writing in the nineteenth century, uses the same phrase, with three positive injunctions: the dictum is true in "its meaning, signification, *and* necessity." This is not to be taken to mean that the stipulations of the founder apply even if they are contrary to the law, but that they are necessary when they do not contradict it. However, if these stipulations contradict the law, the qadi and the administrator have the right or even the duty not to follow them. For instance, an administrator who breaches fiduciary duty (*khāʾin*), whether the administrator is the founder or named by the founder, is to be removed from his position "*even* in the case that the founder has stipulated he should not be removed—that is, that the qadi and the sultan should not remove him—because this is a stipulation that is contrary to the *sharʿ*" (al-ʿAyni, *Ramz*, 1:347, italics mine).

The stipulations of the founder nevertheless occupy a central part in running the waqf. While Islamic law provides general rules on the jurisdiction of the administrator (and that of the qadi), these apply only when the founder has not stipulated particular conditions. For instance, Ibn Nujaym discusses at length when officeholders who receive a share of the revenues of the waqf for the fulfillment of a certain function (like imams, callers for prayers, teachers, and

9. *Sharʿ* shares the same root verb as *shariʿa* and is often used as a synonym. However, when authors of fiqh manuals refer to God's law in its varying appearances and interpretations (like the laws they are producing), they use *sharʿ* rather than *shariʿa*; therefore I tend to use it.

students) forfeit their share: the acceptable length of their absence, the reasons for the absence, their location. However, the section ends with a caveat: "But, if the founder has stipulated conditions [contrary to Ibn Nujaym's recommendation], they shall be followed" (*Baḥr*, 5:227). When the stipulations do not contradict the law, they acquire priority in the running of the affairs of the waqfs over the laws of jurists in commentaries and fatwas. In the presence of founder stipulations, waqfs should be treated not according to their general aims but according to the particulars laid down by the founders. For instance, if a waqf's revenues support stipends of fiqh teachers and students at a particular school, they cannot be spent on these teachers and students if they do not attend this school—even if they are engaged in teaching and learning somewhere else. In the Ottoman canon, the administration of the waqf is very tightly bound to the stipulations of the founder, even if the administrator, as we shall see, takes care of the general benefit of the waqf. The benefit of the waqf is not an abstract good to be achieved as the administrator sees fit. Rather, it is achieved by fulfilling the stipulations of the founder as long as these do not contradict the law.

The Role of the Administrator

The second major character in waqf administration is the administrator, which legal manuals refer to interchangeably as *mutawallī* (administrator), *nāẓir* (supervisor), and *qayyim* (superintendent),[10] even if in practice, one of these terms might be more dominant in a certain area.[11] With the founder no longer an owner, it is the administrator who then makes decisions for the waqf and is responsible and will

10. This multiplicity is reflected in the archive, where the wording of the appointment of an administrator is "[the judge] appointed and assigned him *nāẓiran mutawalliyan* and *qayyiman* who can speak [*mutakalliman*] for the waqf," conflating the three different words for *administrator* (MBSS. S03/160). The structure of the sentence, apposition and alliteration, using parallel phrases (*nāẓiran mutawalliyan* and *qayyiman mutakalliman*) that rhyme, emphasizes the equivalence of these terms. In addition, the document refers to the position of the administrator as "*naẓar wa tawliya*." At the Haṣṣeki Sultan soup kitchen in Jerusalem, Amy Singer distinguishes between a supervisor (*nāẓır*); the chief white eunuch at the Topkapı Palace in Istanbul, who had "ultimate responsibility for its [the waqf's] proper functioning"; and a local administrator or "general manager" (*mutawallī*) (2002, 54–55). It is possible that in Jerusalem as in the rest of the waqfs administered by the chief eunuchs (and other key officials like the grand vizier or the *şeyhülislâm*), the supervisor and administrator are not two separate positions, but that the administratorship held by the chief eunuch is farmed out or delegated to a local administrator. For a similar explanation of these different persons as delegates, see Eychenne's (2018) description of the administrator of the waqfs of the Umayyad mosque in Damascus in Mamluk times.

11. In Egypt, *nāẓir* seems to have been the most common term (ʿAfifi 1991, 86–94), whereas in the Beirut court record *mutawallī* seems to be more prevalent, even though *nāẓir* is also used. Note also that the legal manuals speak of the administrator in the singular when the size of the waqf might necessitate a managerial team with various specialists (ʿAfifi 1991, 83). In Beirut, most waqfs had one administrator, or two at most.

be accountable and liable for any problems due to the administrator's negligence.[12] Indeed, the person whom the founder appoints as an administrator is actually the founder's agent (*wakīl*) (al-Khassaf 1999, 23, 168) and is responsible for carrying out the wishes of the founder as spelled out in the waqf deed. As an agent, the mutawallī, or the *waliyy* in al-Khassaf's terminology, stands in the place of the founder[13] (al-Khassaf 1999, 168). This designation gives the administrator executive power in managing the affairs of the waqf as an agent represents the principal who delegates power to that agent to act on his or her behalf. A similar description of the administrator can be found in Ibn Nujaym's discussion, when he advances that "the mutawallī is the agent [*wakīl*] of the founder" (*Baḥr*, 5:242), and "the nāẓir is either a guardian [*waṣiyy*] or an agent [*wakīl*]" (*Baḥr*, 5:241), where *guardian* and *agent* are used interchangeably because they both act on behalf of another person.[14] What are the duties and areas of jurisdiction of the administrator over waqf affairs? What are the administrator's rights?

The tasks of the administrator fall into three main categories: caring for the waqf (repairs),[15] exploiting the waqf (renting or planting), and fulfilling its purpose (distributing revenues to beneficiaries) (Ibn Nujaym, *Baḥr*, 5:243–44). The general duty of the administrator is to attend to the benefit of the waqf (*yaqūm bi-maṣāliḥ al-waqf*). However, the administrator's duties are not set in stone; they vary with custom (*bi-ḥasab al-ʿurf*), argues Ibn Nujaym, with support from al-Khassaf: "What the founder assigns to the mutawallī does not have fixed limits, but it is determined according to custom and practice [*mā taʿāraf ʿalayh al-nās*]" (*Baḥr*, 5:243). The administrator is not required to do more than what other administrators do. Some of an administrator's duties can be taken up by specific individuals stipulated by the founder: a rent collector (*jābī*) can gather rents and taxes from tenants, and a treasurer (*ṣayrafiyy*) can check and weigh the money (*Baḥr*, 5:244). It is the administrator's responsibility to sue tenants (e.g., if they do not pay rent). All these functions and actions give the administrator privileges and rights to

12. The extent of his or her responsibility is represented in the framing of his holding of the waqf as a *yad amāna* (possession that does not incur liability except for negligence) rather than as a *yad ḍamān* (possession that incurs liability).

13. The administrator also becomes the founder's testamentary executor (*waṣiyy*) if the founder extends the appointment after his or her death.

14. Ibn Nujaym reports a discussion in al-Khassaf's *Adab al-Qāḍī* where he distinguishes between a guardian (*waṣiyy*) and a (waqf) superintendent (*qayyim*). For al-Khassaf, "the guardian is delegated preservation [*ḥifẓ*] and management/taking action [*taṣarruf*] whereas the superintendent is only delegated preservation without prerogative of action" (Ibn Nujaym, *Baḥr*, 5:243). According to this distinction, the waqf superintendent does not have the prerogative to take decisions and actions for the waqf, but simply follows rules. However, Ibn Nujaym establishes that the jurists of this time and place see that the duties of both guardians and caretakers necessitate spending (*infāq*) and therefore they have equal responsibilities, and so the terms are interchangeable and that is the authoritative opinion.

15. In order to produce revenues that will allow the fulfillment of the charitable purpose of the waqf, taking care of the waqfed assets through repairs and renovation is absolutely necessary. Jurists put repairs as a priority even if it is not stipulated by the founder (al-ʿAyni, *Ramz*, 1:346).

waqf revenues, usually in the form of a wage. These rights arise from the labor the administrator puts in as a caretaker for the waqf. If the care of the waqf does not require any labor, the administrator does not have any right to the fee. Ibn Nujaym illustrates this condition with the example of a mill whose beneficiaries take their shares directly from the mill's long-term tenant. In this case, the administrator does not receive any fees, because "what he receives is by way of wage, and there is no wage without labor" (*Baḥr*, 5:244).

The labor of the administrator varied greatly depending on the size and the type of the waqf. In an imperial soup kitchen, supported by dozens of waqf villages and feeding hundreds of poor people daily, the administrator had to coordinate personnel, provisions, and revenues and supervise the functioning of the kitchen, which might require a fair amount of labor (Singer 2002). In large waqfs, like those in Algeria dedicated to Mecca and Medina, known as the Haramayn, which accumulated many smaller waqfs, a board of four members with an average of a five-year tenure was in charge of administration (Hoexter 1998). In smaller waqfs, the administrator acted as a landlord and was responsible for securing tenants, collecting rents, and taking care of repairs. Most administratorships did not constitute full-time jobs in the way we understand them today, since they mostly involved collecting rents for a few assets. Yet, even in larger waqfs, administrators held other functions, such as belonging to the military-administrative class (Singer 2002, 104–5). Small waqf administrators could be merchants, artisans, clerks, imams, or mothers at home. Given that their fees were mostly nominal, one would be hard-pressed to call them a "rentier" class. The administrators of mosque-waqfs, especially a town's congregational mosque (like the ʿUmari Mosque, with its assets and the mosque itself to manage), would have more work than those of small waqfs.

The Role of the Qadi

If the administrator has such wide agentive powers on the waqf, why then is the qadi so present in Islamic legal discussions about the role of the administrator? In what capacity does the qadi intervene with the administrator and within the affairs of the waqf, and what areas fall under the qadi's jurisdiction? The question is especially important given the maxim that Ibn ʿAbidin describes: "The particular jurisdiction overrides the general one" (*Ḥāshiya*, 3:381).[16] Therefore, the functions of an administrator appointed by a qadi with general jurisdiction on waqf as part of the shariʿa cannot be fulfilled, reversed, or superseded by the qadi when the administrator is present, even if the qadi himself appointed the administrator. It would be useful to go into some detail here on who the qadi is, in what capacity the qadi is appointed, and by whom.

16. The maxim is extracted from Ibn Nujaym's classic legal maxims manual, *al-Ashbāh wa al-Naẓāʾir* (1999), and cited by Ibn ʿAbidin (*Ḥāshiya*, 3:381).

The sultan delegates qadis, who thus derive their power from him. The qadi, then, stands in for the sultan in the capacity to administer justice, including in waqf affairs. The sultan, however, retains the "power to do justice in person" (Tyan and Káldy-Nagy 2012), which explains the occasional designation of the ruler—sometimes with a qadi, sometimes not—as a possible player in waqf affairs. For instance, the sultan himself can appoint an administrator.[17] It is also because of this retained power that al-ʿAyni names both the qadi and the sultan as authorities with the power to dismiss an administrator who breaches fiduciary duty (*Ramz*, 1:347). Nonetheless, in this case too, the legal maxim that the particular trumps the general jurisdiction prohibits the sultan from dismissing and reversing a "just" decision by a qadi he appointed. This is the core of the delegation of power.

Yet, Ibn Nujaym finds it necessary to stop his discussion of the administrator's appointment in order to warn about which qadi has the right "to nominate a guardian (*waṣiyy*), a mutawallī, and to supervise waqfs" (*Baḥr*, 5:233). A long discussion ensues about whether any qadi, unrestricted or unqualified, can unconditionally deal with the affairs of the waqf. Ibn Nujaym argues that a qadi can supervise waqfs only if the qadi's appointment letter specifies this domain to be under his jurisdiction. Only the *qāḍī al-quḍāt*, the chief justice, can automatically deal with any and all waqf affairs because "obviously such an appointment is like describing these domains of jurisdiction in the appointment letter" (Ibn Nujaym, *Baḥr*, 5:233). This is obvious to Ibn Nujaym because the chief justice is the highest judiciary authority, to whom all judiciary power is delegated and who has the right to appoint delegates. This quibble over which judges have jurisdiction over waqf arises at the historic conjuncture when Ibn Nujaym is writing because of "well-known" instances of corrupt judges annulling waqfs. It presents an attempt to restrict the actions of regular judges with regard to waqf by making the chief justice the sole authority on waqf.[18]

As delegates of the sultan and his power to administer justice and apply the *sharʿ*, qadis can intervene in the actions of the founder and the administrator.

17. Political theory manuals that define the jurisdiction, authority, and power of the sultan place the supervision of waqfs under the sultan's direct justice (*wilāyat al-maẓālim*) (on the *maẓālim*, see Tillier 2015). It is the duty of the sultan to inspect public (*ʿāmma*) waqfs, which in this context means waqfs serving a broad public, and to make sure that they are serving their purposes based on their waqf deed. In the case of waqfs dedicated to particular individuals and groups, the sultan can interfere only if a lawsuit is brought to him: see Hoexter (1995); and Meier (2002). The Ottomans did not have special courts where sultans administered justice, but one can interpret the sultan's initiatives at accession like inventory and confirmation of public waqfs as a continuation of this jurisdiction.

18. See the discussion in chapter 5 when this issue arises with regard to exceptional substitutions (*istibdāl*) of ruined waqfs. See also van Leeuwen's discussion of a treatise from eighteenth-century Damascus about such exchanges and the power of judges (1999, 59–65). Van Leeuwen notes that substitutions appear only in the registers of the chief justices, showing that the authority of delegate judges was restricted. In Beirut there was only one judge, making it impossible to confront the library with the archive.

The jurisdiction of the judge regarding waqf includes appointing the administrator, making sure the administrator follows the *shar'*, and if not, dismissing the administrator or revoking any of the administrator's decisions, which could include appointments to offices, leases, and other affairs of the waqf.

The qadis' jurisdiction over the appointment of administrators vary according to the stipulations of founders. Many times, administrators are appointed by the founder or based on the founder's stipulations. In this case, and when there is no contention over the administrator, there is no need for an official appointment by the qadi. The appointment of an administrator falls under the qadi's jurisdiction in four cases: if the founder dies without having nominated an administrator;[19] if the administrator appointed by the founder dies after the death of the founder; if the administrator does not fulfill his or her duties towards the waqf; or if the administrator declares to the qadi the wish not to be an administrator anymore (Ibn Nujaym, *Baḥr*, 5:232–35). It is therefore when there is no clear administrator that the judge appoints one.

These pronouncements of the jurists on the role of the qadi in the late Ottoman library are echoed in the archive. The appointments of administrators recorded in Beirut's shari'a court in the first half of the nineteenth century confirm these roles of the qadi; very few appointments for family waqfs exist in the records, as these were usually chosen from the family of the founder or following founder stipulations. In the few appointments that do exist (e.g., MBSS.S02/03, MBSS.S03/160, MBSS.S36/77–8/1052, MBSS.S36/78–9/1055), claimants to the position of administrator brought forward trustworthy community members whose reports confirmed their claims (that the foundation deed gives them the right to be an administrator, and that they are morally upright, and so on). Upon hearing these reports, the judge appointed the claimant as an administrator, urging the claimant to care for the benefit of the waqf, to follow the stipulations of the founder, and to fear God in all the claimant does. All these summaries mention that the position had been vacant, signaling a conflict, which might explain the reason for the few appointments: when there is agreement and transmission of the position from father to son, as is the case for most waqfs, a judge is not involved.

19. Ibn Nujaym is here again much more cautious. He qualifies the absoluteness of this rule with some very pragmatic considerations. If some beneficiaries of a waqf, renowned for their virtue and righteousness, name a mutawallī in the absence of a stipulation, Ibn Nujaym considers this appointment not only valid without the approval of a qadi but also even commendable. Indeed, in "our age, given what is known about the greed of qadis towards waqf property [*amwāl*]" (*Baḥr*, 5:233), such an appointment would uphold the interests of the waqf better. This sidelining of judges continues the attempt discussed above to restrict judges' authority over waqf by allowing only the chief justice to have such jurisdiction. Pragmatic considerations of the character and practices of contemporaries are worth investigating further in terms of the legal reasoning and the weighing of opinions, but they are outside the scope of this book. See van Leeuwen (1999) and Ayoub (2014) for discussion of jurists incorporating arguments about "our present time" in their reasoning.

Whether or not the qadi directly appointed the administrator, a second responsibility of the qadi is supervising the administrator. The qadi makes sure the administrator is trustworthy, renting as required, repairing the assets of the waqf, and distributing the revenues. The qadi does so as a representative of the sultan for the administration of justice, but also as a representative of the poor and the orphans. "The qadi is delegated with looking after the poor and the dead" (Ibn Nujaym, *Baḥr*, 5:246–47). If the administrator stands for the founder, the judge stands for those who are many times the ultimate beneficiaries of the waqf: the poor and the orphans, those who cannot represent themselves (the poor because they are a collectivity, the orphans because they are minors). In both these capacities, the judge supervises the administrator.

The manuals of the library, while making supervision of the administrator a qadi's duty, do not provide a standardized process (like requiring individual administrators to submit accounting records periodically) through which a qadi could discover if an administrator is acting in the best interest of the waqf or breaching fiduciary trust. It seems that the choice of an *upright* administrator was taken to guarantee the care of the waqf and its best interests. One of the rare instances where we get a glimpse of the process through which a judge comes to know about the mismanagement of the waqf is the case of an administrator renting waqf assets below market rate. Ibn Nujaym mentions that the "inhabitants of the neighborhood" (*ahl al-maḥalla*) cannot be excused for remaining silent on such an abuse (*Baḥr*, 5:235). In his example, moral and communal mechanisms reflect a commitment to live as good Muslims, which ensures the good administration of the waqf, rather than a strict process of accountability.[20] Thus, the *administration* of waqf remained in the hands of individual administrators, and the state/imperial *supervision* of waqfs via qadis was limited to contentious appointments and lawsuits rather than being a regular practice that reinscribed the state's sovereignty.

THE 1850 DECREE: WAQF AS REAL ESTATE WEALTH AND THE BEGINNINGS OF STATE ADMINISTRATION

The nineteenth century witnessed a change in this order of waqf administration, one that is most often described as a transition to "imperial control" over waqfs

20. Hoexter (1995) argues that the silence of the fiqh on these issues stems from the fact that waqfs involve rights of God, which are upheld by the state under *siyāsa*. Therefore, the ruler has the prerogative to issue detailed administrative laws about supervision, auditing, and the like. However, this manner of administration would apply only when the waqfs have reached their final eternal charitable beneficiaries. Furthermore, as Hoexter notes, even waqfs that devolved to state administration continued to follow the shariʿa, except with regard to the distribution of income (1995, 151–52). Based on her extensive research on the Haramayn waqf, whose patrimony is mostly constituted of hundreds of small waqfs whose particular beneficiaries have been extinguished and which reverted to the poor of Mecca and Medina, Hoexter found that a fixed amount, rather than all the funds, were sent to the poor of the Haramayn and that income from the Haramayn waqf was also allocated to other endowments.

(Barnes 1986, 3). Indeed, in 1826 the Waqf Ministry was created,[21] and slowly, through a protracted process, imperial orders like the Sultanic Decree (*firmân*) of 1850 [1266] seized various waqfs in the center and the provinces and put them under the administration and supervision of the Waqf Ministry.[22] It is important to note that I am not arguing that this was the first time a central waqf administration or a "waqf bureaucracy" existed in the Ottoman Empire or in an Islamic state.[23] Rather, I am more interested in the types of arguments advanced for such an intervention, how they resonated with the production and administration of law in modern states, and the consequences they had on the ways scholars invoke authority. We will see how, by distinguishing between administrators (mutawallīs) and supervisors (nāẓirs)—terms borrowed, then resignified, from the Islamic legal tradition—the Waqf Ministry, a new organ of the Ottoman state (and not an office like that of the chief eunuch, which kept with individualized administration), inserted itself in the fiqh mix of founder, mutawallī, and qadi, stripping qadis of many of their powers *and* jurists of their legislative power on waqf matters. Although before the creation of the Waqf Ministry, there was no "supervisor" separate from the qadi, following its creation, the ministry became exactly such an institution. This bureaucratization and institutionalization of waqf administration, however, had its limits: it was not a clearly formulated project that was simply applied, but a product of multiple rounds of legislation and revisions that were challenged and intermittently followed.

New Distinctions: Administrators versus Supervisors

In the codified waqf manual written at the end of the nineteenth century, which we encountered in the first chapter, Ömer Hilmi Efendi, writing in Istanbul, starts by defining the various key words associated with waqf, including *nāẓir, qayyim*, and *mutawallī*. He begins with the latter and provides a description similar to al-ʿAyni's earlier one: "He who is appointed to take care of the affairs of the waqf and to look after its benefit according to the stipulations of the founder in his founding document" (Article 8). According to Hilmi Efendi, *qayyim* is synonymous with

21. For the details of the foundation of the Waqf Ministry, see Barnes (1986).

22. VGM300.82. See Meier (2002) for a description of the reactions of the Damascus Provincial Council to the order to seize Damascus mosques.

23. In Egypt, where the Shāfiʿī and Mālikī schools dominated and a good example because it is densely studied, a waqf council (*dīwān al-aḥbās*) had existed since Umayyad rule (seventh century CE) if not earlier. Behrens-Abouseif (2012) mentions that in the Abbasid period, the judges inspected waqfs monthly and collected all incomes and gave them to the council, which spent them on charitable purposes independently of the will of the founder. This latter practice seems very jarring to a student of late Ḥanafīs who consider respecting the wishes of the founder especially as to expenditures to be paramount. It is difficult to know whether this was an exceptional measure in exceptional times or whether flexibility in expenditures was more common in the early doctrine or in other *madhhabs*. In Mamluk Egypt, the waqf council was in charge of the administration of *rizaq aḥbāsiyya* (treasury lands dedicated to particular people for charitable reasons) (Amin 1980, 108–12), and the Shāfiʿī judge managed the charitable waqfs (known as *awqāf ḥukmiyya*) (Amin 1980, 113–16).

mutawallī. The nāẓir is "the person appointed to supervise [*naẓāra*] the actions of the mutawallī and to be a reference [*marjaʿan*] for the mutawallī regarding the affairs of the waqf" (Article 11). Hilmi remarks however, that, in certain regions, the word *nāẓir* denotes the mutawallī. While the caveat is certainly correct, it is worth noting that the mutawallī of the imperial waqfs was called *nâẓir-i evkâf-i hümâyûn*—showing that even in Istanbul the distinction between *mutawallī* and *nāẓir* was not as entrenched at this moment as Hilmi's definition suggests.

Even a history of the Imperial Waqf Ministry written in Istanbul in 1917 by one of the premier scholars of the late Ottoman Empire, İbnüelmin Mahmud Kemal,[24] with another "man of knowledge," Hüseyin Hüsâmeddin,[25] declares that "the administration of waqfs is called supervision [*naẓar*]" (Ibnülemin Inal and Hüsâmeddin Yasar 1917, 5). However, the section continues and describes a *new* development: "Lately, the nâẓir to whom the administration of the affairs of the waqf has been conferred by the authority (*waliyy al-amr*) has been called the mutawallī of the waqf, whereas the title of nâẓir has been used more generally. Consequently, the title of nâẓir has been specifically given to those who have been checking the affairs of the mutawallī and to those who have supervised the general administration of Muslim waqfs" (5–6). Unlike İbnüelmin and Hüsâmeddin, Hilmi does not present this development as a historical one.[26] He separates and clearly distinguishes the positions of nāẓir and mutawallī, thereby naturalizing it. Article 303 of Hilmi's waqf manual, for instance, prohibits a single person from being both an administrator and a supervisor of a waqf.[27]

This new distinction between supervisor and administrator served the Waqf Ministry in Istanbul well by increasing its revenue, as waqfs now administered by the ministry had their incomes forwarded to the Ottoman state. Before the creation of the ministry, all waqfs in Beirut were administered by administrators and (nominally) supervised by qadis. The Waqf Ministry introduced a separate office of a "supervisor," distinct from the qadi. The administration/supervision distinction that is normalized rather than historicized for Hilmi (and for the Ottoman state) represents the attempt of the state to take over the jurisdiction of qadis for certain waqf matters. This distinction couches a new arrangement in the old terms of Islamic law and hints at the reorganization of the production and administration of law, and the role of the state in this process as well as in the life of its citizens.

The new Waqf Ministry started as the administrative body for many endowments of Mahmud II (r. 1809–1839) and his father. Because of their size, these endowments required more than a single administrator. However, Mahmud

24. See "Ibnüelmin" in *İslâm Ansiklopedisi*.

25. See "Hüseyin Hüsâmeddin" in *İslâm Ansiklopedisi*.

26. As I argued in chapter 1, this might be traced to his position as an agent of the state.

27. Writing from a semiautonomous Egypt, Qadri Pasha does not incorporate these changes in his manual, which continues with the fiqh terminology, using *mutawallī* and *nāẓir* interchangeably (see, for example, Article 145).

II started to bring more waqfs under the administration of the Waqf Ministry (Barnes 1986, 72–83). After the creation of the Waqf Ministry, waqfs could be classified into three categories depending on their administration and supervision by the Waqf Ministry: seized, semiautonomous, or autonomous. The "seized (or annexed) waqfs" (*awqāf maḍbūṭa*) had the Waqf Ministry as both their administrator and supervisor. This meant that, instead of an individual administrator for these waqfs, an employee of the ministry took charge of renting, collecting the rents, and paying the beneficiaries. That employee was accountable to the ministry and would send the Waqf Ministry in Istanbul accounting documents and any remainder of the revenues of the waqfs after paying the beneficiaries. Second, the "semi-autonomous waqfs" (*awqāf mulḥaqa*) continued to be administered by local administrators according to the wills of their founders, but here too, the administrators had to report to the ministry, which also claimed the remainder of the revenues. Last, the "autonomous (exempt) waqfs" (*awqāf mustathnāt*) did not provide any accounting or remainder of revenue to the ministry, were administered by their own administrators, and remained under the supervision of local qadis. Because the project of the Waqf Ministry was not to reorganize waqfs but arose from individually targeted seizures of waqfs, autonomous waqfs remained the main baseline of waqf administration.

Arguments of the Decree

This new distinction between nāẓir and mutawallī, which takes the appearance of an old one, allowed the Waqf Ministry to legitimize its jurisdiction over certain waqfs, particularly those classified as seized or semiautonomous. The 1850 decree advanced arguments for the Waqf Ministry seizing (Tr: *zabt*, Ar: *ḍabṭ*) *some* mosques in Beirut and Sidon—effectively sacking their current mutawallīs. In the same register, a very similar decree follows, concerning some of the mosques of the city of Tripoli. It appears, therefore, to be very much a formulaic order and part of the Ottoman state's (latest wave of) efforts to claim control over waqfs. But this scripted quality provides insight into the general order of arguments advanced for the claim to seize the administration of some waqfs.[28] Rhetorically, the *firmân* uses repetition, particularly with the aim of discrediting the current mutawallīs and therefore justifying their dismissal. Every time the decree refers to the current mutawallīs, it uses a variant of "those who *claim* to be mutawallīs" ("mütevellîlîğî

28. The Ottoman state's decision to examine all waqfs in the sultanate and assess whether their administrators were following the founders' wills, and whether they were fulfilling their duties is itself not a new idea. It is part of the duties of the sultan, as described by political theory manuals like al-Mawardi's *al-Aḥkām al-Sulṭāniyya*, as mentioned in footnote 17. As Barnes elaborates in a short chapter (1986, 60–66), such ideas circulated at various times. Barnes describes the advice of a bureaucrat, Koçi Bey, to Sultan Murad IV (1623–40) to examine all foundations for their validity, proposing that only waqfs that supported mosques and shrines were to be allowed to exist, while nullifying all "family waqfs" (1986, 63). Koçi Bey was mostly concerned with increasing the income of the treasury.

iddiʿâsinde bulunân kesâne"). The first time the decree refers to those holding mutawallīship, it laments that these waqfs have been passing from hand to hand ("ṣûnun bûnun eyâdîsine geçerek"), a brusque dismissal of the legitimate claims these mutawallīs might have had to their appointments. The decree does not base its claims on slander, however; it draws on Islamic law and bases the legitimacy of its arguments or conclusions on familiar arguments from Islamic legal manuals and fatwa collections in order to justify the dismissal of current mutawallīs.

The three main arguments for dismissal are embezzlement, the absence of official appointment letters in the hands of the administrators, and the neglect of waqf properties and their maintenance. Each one was sufficient for proving the breach of fiduciary trust of the mutawallī. Let us first turn to embezzlement or, as the decree terms it, "ḥâṣılâtlerî ṣarf-i meʾkel." One of the few characteristics of the mutawallī that is explicitly specified in Islamic legal texts is trustworthiness (*amāna*) (al-Khassaf 1999). Therefore, a mutawallī who appropriates and spends waqf revenues contradicts the very definition of a mutawallī, who is supposed to take care of an object entrusted to him or her. Ibn Nujaym, for instance, allows a qadi to change the untrustworthy persons (*ghayr maʾmūn*) in a group of mutawallīs appointed by the founder (*Baḥr*, 5:227). By accusing various mutawallīs of Beirut mosques of embezzlement, the *firmân* therefore creates the legal (*sharʿī*) ground to dismiss them. The decree does not stop here, however. The mutawallīs and other officeholders, the decree claims, do not have in hand founding deeds or official appointment letters. In addition, no record of their appointment exists in Istanbul. The decree argues that these are necessary for appointments, because where an original founding document is missing, the founder's stipulations cannot be known, including whether the founder named an administrator. The absence of an official appointment document opens the mutawallī to dismissal. The last argument that the decree advances concerns the repair, upkeep, and maintenance of the waqf assets (*taʿmîrât ve tanẓîfât esbâbî*), or rather the absence thereof. Here again, the argument draws on one of the most important responsibilities of the mutawallīs in Islamic legal manuals of the library.

Ḥüsn-i Idâre: *A New Understanding of Administration*

While the 1850 Decree justifies state annexation of waqfs based on Islamic law, like saving the waqfs from embezzlement and disrepair, it also advances a more general principle that uncannily resonates with analyses of modern state power: *ḥüsn-i idâre*, or good management.[29] As discussed in the introduction, the nineteenth century saw the rise of governmentality as a form of power, whereby the population (and not territory) becomes the object of government. Economy, then, or "the

29. I surmise that the development of such a mode of government in the Ottoman Empire is not simply an uncanny coincidence but is the result of the transfer of knowledge through the education of Ottoman bureaucrats in Europe. This takes us back to the debates discussed in the introduction about Western influences versus Islamic roots of these reforms.

correct manner of managing individuals, goods and wealth," becomes essential to political practice (Foucault 1991, 92). This governing of people is linked to the governing of things because the things governed (wealth, resources, means of subsistence) are connected to the population and its well-being (Foucault 1991, 95).

The term *ḥüsn-i idâre* appears earlier than the 1850 Decree and in many documents relating to waqf (Öztürk 1995b, 74).[30] The use of the term signals a new conceptualization of waqfs as real estate wealth, which has a reality of its own greater than the sum of its individual parts—each and every waqf—that needs to be developed and whose administration is an area of expertise for bureaucrats. Indeed, whereas records of most waqfs had been kept since the Ottoman conquest (see chapter 4), it was only with the foundation of the Waqf Ministry and its seizing of administration and supervision that uniform methods of administration, statistics, and new accounting methods entered into use. These new methods defined good administration and regulated in greater detail the theretofore sparse fiqh requirement that "the mutawallī aims in his actions for the care of the waqf and its well-being"[31] (Ibn Nujaym, *Baḥr*, 5:235), with the individualized care based on founder stipulations that it presupposes. Good administration and management, in the form of uniform standards scaled up and applied to a large number of waqf objects, create a new reality, making various waqfs equivalent when seen through the lens of their revenues and expenses. Let us turn to the way the decree rearticulated the responsibilities of the mutawallī and the qadi and the practices of good management (*ḥüsn-i idâre*) it introduced.

The Bureaucratization of Mutawallīship. The decree's main consequence and innovation is to claim, for certain waqfs, the position of mutawallī for the Waqf Ministry, thereby bureaucratizing the previously less-rigid mutawallīship by defining the position, salary, and the location out of which the mutawallī operated. Whereas waqf administration outside of Istanbul had been regulated through imperial orders since 1841 [29 Z 1256], controlling administration was not smooth or simple; it involved experimentation, trial and error, and pushback from the provinces. It took several iterations of the regulations—in 1841, 1842, and 1845—before the 1863 Waqf Administration Regulations (Nizâmât-i Idâre-i Vakfiyye, 19 C 1280)[32] delineated the manner of waqf administration and supervision outside

30. The expression *ḥüsn-i idâre* appears in the Gülhane Edict and, therefore, is part of the language of the Tanzimat. Although it is outside the scope of this book, I would be interested in further investigating whether good government carries over from the Islamicate genres of public law/ political theory and mirror for princes and the notion of the circle of justice therein. Linda Darling (2013) mentions "good administration" in the earliest circle of justice elaborations but argues that the form of this good administration differs in different periods.

31. "Yataḥarrā fī taṣarrufātih al-naẓar li'l-waqf wa al-ghibṭa."

32. In Düstûr (Turkey 1872, 2:143–69).

Istanbul.[33] The mutawallī ceased to be that individual whom the founder named or the qadi appointed, someone known for trustworthiness, soundness of mind, and maturity.[34] Administration shifted to a bureaucratic state apparatus, where the individual bureaucrat was replaceable. This shift signals a change from individualized administration to a uniform state policy applied to all seized waqfs.

While earlier mutawallīs mostly held their positions on the side, even in the larger waqfs, the new administrators followed a "career path" as waqf administrators. This was signaled in the change of the title of administrator from a mutawallī to an *evkâf memuru/müdürü*, a waqf employee/director in the very "state-bureaucratic" meaning of employee/director. The *memur*s/*müdür*s received from the Waqf Ministry a fixed monthly salary according to the hierarchy of provincial waqf directors,[35] 5 percent of the collected waqf revenues for their services,[36] and a uniform fee (Article 47). This bureaucratization also manifested itself in the location from which these mutawallīs operated: earlier mutawallīs probably did their duties as mutawallīs from their home or workplace. The new waqf directors held meetings in the provincial council's building, where the seals and accounting books were kept, signaling that these were tied to the position and not to the individual. With the seizing of many waqfs and their placement under the Waqf Ministry, waqf administration turned into a *service* that the state provided, replacing the three main tasks of the mutawallīs—repairing, leasing and collecting rents, and distributing revenues—and subjecting administration to uniform policies. These practices of administration of many large waqfs in the empire therefore created the state effect, the modern state as an entity independent of those who occupied it, with buildings and bureaucrats' offices, archives, and laws. It created one standard of management for various elements of administration.

The first objects taken by the new management were the accounting techniques of the newly appointed waqf director (*evkâf memuru/müdürü*). Accounting became a "governmental discourse" (Yayla 2011, 11); the 1863 Waqf Administration Regulations contained three long articles describing the way accounting was to be done, from the type of registers to be held to the type of information to be recorded. In total, the waqf director prepared and maintained six types of registers

33. The trial-and-error mechanism, also discussed above in qadi jurisdiction, shows us that there was a necessary process of negotiation between center and periphery. The new system of administration was definitely not a smooth and clean rupture, but a protracted one. As Meier notes, in Damascus, "the old system of control was not replaced all at once, but . . . the reforms were introduced in small steps that led to the coexistence of different controlling agencies" (2002, 215). As this book shows, the new system could not eliminate all previous conditions and practices.

34. This is not to say that administration was always in the hands of a single person, as discussed above, but each waqf was managed differently.

35. According to Öztürk's table of waqf employee salaries (1995b, 101) based on an 1879 revision, Beirut's waqf director, who belongs to grade 1, received a salary of 1,750 qurush (almost double his older salary of 1,000 qurush), while his secretary's salary decreased to 300 qurush (from 400).

36. Except for the Baghdad waqf director who received 10 percent of the revenues.

(a daily register, quarterly registers for revenues and expenditures, a yearly register, a register for seized waqfs, and a register for semiautonomous waqfs, detailing their assets and their beneficiaries). The maintenance of the accounting required a significant amount of labor by the waqf director.

I had gotten a hint at this systematization through my notebook. I was keeping notes during my work at the archive, and as I was ordering the various accounting registers in the Evkaf Defterleri (EV; Waqf Registers) series at the Ottoman state archive in Istanbul, I noticed a variety in the shapes of the accounting books sent from Beirut to Istanbul: most did not amount to more than a few pages, but they were each different in size, type of paper, covers, and binding. No two were alike, but they were never bigger than a large notebook, even if some were tall and skinny. But starting in 1880 (BOA.EV 25057), the registers were printed with fixed column widths and headings. They were truly huge registers (almost 1 m wide and 60 cm tall), which made for long discussions with the staff at the archive on how to make copies as they were extremely inconvenient to handle and were outside the range of the digitizing technology in use (cameras), leading certain sections of the digital copy to be blurry. These new registers were the delayed result of the 1863 regulations in Beirut, which specified that all six types of registers had to follow a sample that the treasury would send (Article 4). It was a new kind of "disciplinary writing technique" (Yayla 2011, 14) where the scribe-cum-bureaucrat was forced by the logic of the register to help create uniform administration, fashioning the bodies of the bureaucrats to the needs of the modern state.[37]

The long list of Beirut accounting records that shows up in the Evkaf Defterleri series at the Ottoman Prime Ministry Archive is a testimony to the productivity of these practices of good management. However, looking more carefully at the registers, one realizes that the regularity and uniformity that good management sought to produce did not materialize as expected, necessitating further instructions and regulation. Thus, despite the over one hundred registers sent from Beirut, covering the sixty-five years of administration by the Waqf Ministry (1850–1914), it is hard to find a series of accounts that is uninterrupted for a few years, particularly with the required trimestrial accounting.

By appending the administration of some waqfs to the Waqf Ministry, the decree also subsumed the collection of revenues to the new ministry, which changed revenue collection both in Istanbul and in the provinces. In the imperial center, instead of a supervisor (like the chief black eunuch) farming out various administratorships, the Finance Ministry employed new waqf collectors (*muaccalât nâẓirî*,

37. The scribes who were at the service of the Porte before the Tanzimat also went through training that subjected them to uniform ways of writing and notation. Looking at a pre-Tanzimat series at the Ottoman archive, like the Mühimme Registers, reveals a consistency in style. As Messick argues in the case of Yemen, in the older order the form of the registers was dictated by the content, because the writer organized the blank pages of registers and registered their writing and authority: "The text was suffused with the human presence" (1993, 240).

or, later, *muaccalât müdürü*) to collect the waqf revenues. In the provinces, instead of the administrators themselves collecting rents, taxes, and various revenues owed to the waqf and then paying beneficiaries and expenditures, salaried collectors took over. The collectors took out taxes (the tithe, *ʿushr*),[38] paid the functionaries of the waqfs, and delivered any remainder to the Finance Ministry, which was to direct that money to the Waqf Ministry—an aim never fulfilled.[39] Instead, it was spent as the Finance Ministry saw fit. Revenues went to modern state building and consolidation needs, like the expenses of a modern army.[40] More importantly, revenues of all waqfs were consolidated into a single fund and spent as necessary, independently of the wills of founders.

The language of the 1850 Decree presents annexation as a way to rid waqfs from treacherous mutawallīs whose negligence appears in their neglect of one of their most important tasks: the repair of waqf assets. Four times, the decree repeats that the seizure will "save the waqfs from ruin" ("awqâf-i şerîfe khayrâtlerînin kharâbiyyetten . . . qûrtârılması") and that the new directors will "complete the necessary repairs and cleaning" ("lâzimgelen taʿmîrât ve tanẓîfât esbâbinî istikmâlî"). The 1863 regulations, however, do not dictate any inspection duties for the waqf director, but they go into great detail about how and when money should be spent on repairs, which underscores the decree's concern about "embezzlement" but also confirms the interpretation of the waqf seizure as an attempt to seize resources to finance the modern state's growing bureaucracy and army (Barnes 1986, 83). The details of the procedure for repairs show a deep concern for the possibility of false claims where the sought-after repair money would go into the pockets of administrators or waqf directors. The state now tightly controlled repair expenses through approval by the provincial council for any repair above 500 qurush, and through approval by the imperial treasury for any repair beyond 2,500 qurush. In such cases, the waqf director was to present a written report to the council, which would send a member with the waqf director and with experts (master builder and waqf experts [*ehl-i vuqûf*]) to inspect the locale to check if it actually needed the described repair. The inspection procedure would continue, from examining the number of repairs to verifying their execution and quality and the payment of the contractors (Article 20). The rest of the section on repairs includes very detailed descriptions of various scenarios (such as assets in faraway places and the amount of repairs) and acceptable expenses and compensation.

38. Contrary to the often-repeated claim that waqfs were exempt from taxes, the accounting registers show that waqf administrators paid taxes.

39. Barnes describes at length petitions from the Waqf Ministry demanding that the Finance Ministry forward waqf revenues (1986, 108–9).

40. Öztürk pushes the argument further and claims that even the necessary repairs, maintenance, and restoration became secondary to these state expenses, contrary to the jurists' requirements. This decision, according to Öztürk, was a deliberate one aimed at eliminating waqfs (1995b, 299).

The other task that mutawallīs used to fulfill and that now fell on waqf directors was the leasing of waqf assets, which afforded an easier avenue for standardization. This change is apparent in the standardization of rent contracts for the seized (*maẓbūṭ*) waqf assets: these are mostly printed annual contracts, with particular details filled out by hand for each case (Gerber 1985, 190). This is not to say that these contracts were no longer negotiated, but it does indicate that the dominant mode of operation became the standardized procedure, and that such a project of uniformization was being undertaken. The regulations about waqf administration lay out in detail the manner of renting, the fees to be charged and to whom they will be forwarded, bookkeeping requirements, the hierarchy of approvals, and the penalties for infringing on rules. Without going into the details of the policies, the regulations sought to limit certain types of contracts and practices prone to giving permanent rights to tenants on waqfs. They also sought to ensure maximum rents (through public auction and strict liability of tenants). The waqfs were no longer left under the care of individual administrators; the state interfered in the manner of administration and exploitation, seeking to increase waqf revenues. They mattered not only because the sultan's duty was to protect the rights of the poor and follow the stipulations of the founders and the shari'a, but also because of the revenues waqfs produced. Such uniform practices then produced the waqfs as a totality, a part of the national economy, real estate wealth.

Redefining the Jurisdiction of Qadis. After discrediting the older mutawallīs, the decree did not turn to the qadis. It did not direct them to apply the *shar'* and replace allegedly corrupt mutawallīs with more trustworthy ones. It gave these prerogatives to the Waqf Ministry. The ministry took over many of the tasks that jurists assigned qadis (appointing, auditing, and supervising administrators) long before it took over the administration of the seized waqfs in 1850 in Beirut.[41] As early as 1841, it made its presence felt in the provinces by creating Waqf Departments (Evkaf Dairesi) there, composed in the case of Beirut of a waqf accountant, a head secretary, a secretary, and a collector (Çelik 2010, 57).

From that early date, the Waqf Ministry requested audits of all charitable waqfs (*khayrāt*) in the city,[42] instituting a procedure for the vague supervision jurists assigned to the qadi. The Waqf Registers series, mentioned above, includes such accounting registers from Beirut starting in 1843 [1256] and recording revenues and expenditures from 1839—the year before the Egyptians surrendered the control of the city back to the Ottomans. In the first iteration of the Waqf Administration Regulations in 1841, the qadi was still in charge of drafting an accounting register based on documentation brought by individual waqf administrators. The archive here mirrors this state of affairs: the 1842 register [17 Ca 1259] in the Waqf

41. Astrid Meier (2002) describes a very similar process of sidelining judges in Damascus.

42. Based on BOA.EV 11192, because the register includes accounting for thirty waqfs, many more than those that would be seized by the Waqf Ministry eight years later in the 1850 decree.

Registers series, summarizing the accounting of Beirut's waqfs for the years 1839–1841, was ratified by the administrators of the various waqfs each with his seal and ended with "penned by" followed by the name and seal of the qadi (and seal of the waqf employee).[43] The summary at the end of the register also notes that, based on a sultanic decree (*firmân*) and regulations (*lâyiḥa*), all remainders from these waqfs (after repairs and payment of employees), were delivered to the waqf employee so that they could be sent to the Waqf Ministry and so that the Treasury could take its dues (BOA.EV11192/40B). The Waqf Ministry seems to have then claimed the remainders of Beiruti charitable waqfs even before some were seized.

The results of this first reorganization were deemed unsatisfactory and blamed on the qadis, who were "too busy to take appropriate care of waqf affairs" (Öztürk 1995, 82), leading to a new proposal by the Waqf Ministry to sideline qadis in audits and mutawallī supervision.[44] Indeed, a new configuration in 1842 handed supervision to the provincial rulers (governor, treasurer, and military commander): the local governor appointed a waqf director from local public and customs employees. The qadi was missing from this new arrangement. The new waqf director was responsible to the provincial council and Waqf Ministry, and not to the qadi (Öztürk 1995, 82). This new organization and restriction of the qadis' jurisdiction on supervision of mutawallīs is confirmed in the archive. In the 1847 [1263] accounting record sent from Beirut to Istanbul (BOA.EV 12403), the qadis are not present at the ratification of the register drafted by the waqf employee.[45] The 1850 decree mentions the audits of 1846 and 1847 [1262 and 1263] and requires the waqf director to send his accounting to the Waqf Ministry once every year in registers detailing the yearly revenues and expenditures for each waqf. By 1863, auditing had increased fourfold to a quarterly basis. The decree, therefore, not only took away the qadi's supervisory jurisdiction over waqfs but also created a procedure that systematized supervision.

In addition to supervision, the Waqf Ministry took over another area from the jurisdiction of qadis: the appointment of mutawallīs and various officeholders in waqfs. Indeed, as John Robert Barnes shows, this particular jurisdiction of qadis over waqf affairs had been limited by 1837 [1253], thirteen years before the 1850 decree. This occurred as a consequence of a report on Izmir qadis who were allegedly appointing the highest-paying candidates, rather than the most-qualified

43. The still crucial role of the judge in waqf supervision is also apparent in my archive. The shariʿa court register of Beirut for that year, which happens to be the earliest register preserved in the archive of Beirut's shariʿa court, contains lists of these same waqfs and their properties (sometimes coupled with the amounts of their monthly rents). These lists seem like notations done during the preparation of the register sent to Istanbul.

44. Öztürk (1995b, 82) does not specify the author of the document discussing these accusations, even though he mentions that there were many experts who testified to this state of affairs.

45. Unlike the earlier accounting register, the accounting here uses the *siyaqat* script, the script used by the treasury, confirming that it was not the judge who drafted it but the waqf officer who now belonged to this specialized group. The mutawallīs of the various waqfs were still present at the provincial council and ratified the draft summary accounting register (BOA. EV 12403/20).

candidates, to vacant waqf offices (Barnes 1986, 103). The qadi's registers in Beirut reveal that qadis did not appoint officeholders to seized waqfs, but did so to the semiautonomous waqfs administered by mutawallīs but supervised by the Waqf Ministry.[46] MBSS.S9/151, for example, is a copy of a letter requesting the Porte for an official appointment letter (*berat*), confirming the qadi's appointment. The details of the entry reveal that officeholders first went to the waqf accountant and took exams that certified their competence. The role of the qadi was limited to the formal appointment, while the actual process to determine eligibility was outside his jurisdiction.

The 1850 Decree subjected all seized waqfs to similar procedures of administration and accounting. By centralizing their revenues and distributing them independently of the stipulations of the founders, the new administrative protocols produced waqfs as an aggregate that had one budget. Instead of individual waqfs individually administered, waqfs grouped together became an important part of the national economy that needed to be well managed and developed. This administration and supervision sidelined qadis in their duties as upholders of the shariʿa.

Under the banner of "good management," the Ottoman state introduced techniques of government that helped produce the state effect. The Ottoman Empire had had a bureaucracy for a long time, and there were surveys, reconfirmations of deeds, accounting and appointment requirements, but they were much more dispersed and not regular enough to create the state effect. So, it is not bureaucratization per se that created the state effect, even if bureaucratization did help in the case of waqf, but these novel methods of accounting and "good management" that did. Uniform practices of accounting, reporting, permission requests, and supervision produced the effect of an overarching structure dictating the way waqf administrators and beneficiaries dealt with waqf.

DECISION 753 OF 1921: WAQF AS "RELIGIOUS" PROPERTY OF THE "MUSLIM COMMUNITY" AND STATE SUPERVISION

The Allied Forces' occupation of the Ottoman Levant at the end of World War I ruptured the connection between the Ottoman Waqf Ministry and the waqfs under its jurisdiction in Beirut. Waqfs were instead attached by the administrators of the occupied territories to the Ministry of Justice (Haut-Commissariat de la République française 1921, 192). In a "note" on the possibilities of organizing waqfs in French Mandate Lebanon and Syria (MEA/251.1/Dossier Arrêté 753/1, 1921), the delegate of the high commissioner on real estate matters, Philippe Gennardi, explained that there were two interpretations of Article 6 of the Mandate's regulations commanding that the "control and administration of wakfs shall be exercised

46. In addition, officeholders who had appointment letters from Istanbul sometimes registered them with the qadi (e.g., MBSS.S3/142), using the qadi as a notary.

in complete accordance with religious law and the dispositions of founders" (Longrigg 1958, 377). The first interpretation of ensuring administration according to religious law would be to protect these waqfs from new legislation aiming to "secularize waqf or to modify its character" without actually interfering in the actual business of administration. Although Gennardi does not elaborate on what "secularizing waqf" means, we can infer from the French experience in Algeria that this referred to the state moving waqfs to the public domain. The second interpretation would be for the Mandatory power to ensure that religious law and the will of the founder are applied, and thus to interfere in waqf administration.

Highlighting that both options do not contravene the shariʿa, Gennardi nonetheless notes that that the second option serves best "our own interests" and those of the territories under Mandate. Indeed, being in charge of waqf administration

> will allow us to exert a direct action over 4,000 religious employees, more than 30,000 beneficiaries and approximately 100,000 people who depend to a certain degree on waqfs. It will also allow us to control strictly the revenues so that they are not used to xenophobic and anti-French ends especially since they are a powerful means of action as we can estimate their revenues to 15 million francs. (MEA/251.1/Dossier Arrêté 753/1.2, 1921)

This was quite a financial resource given the tattered state of the French economy at the time and the budget of the Mandate state, which reached 235.8 million francs (Casey 2019, 93). Gennardi also underlines other advantages of Mandatory control, like restoring monuments without any cost to the state and extending education and public assistance. He notes that such supervision would allow "the regular operation of cultural, charitable, and education works, and prohibit the squandering of their resources" (MEA/251.1/Dossier Arrêté 753/1.2, 1921).

It was this last point, saving charitable waqfs, rather than the other more "self-interested" ones discussed above, that the French Mandatory powers used in their report to the League of Nations to justify the need for their supervision. The report (most likely penned by Gennardi) described the situation of waqfs under occupation as dire:

> Given the absence of any competent person because of the suppression of all control bodies . . . waqfs have been left completely abandoned. There was more and more dilapidation of their revenues and abusive operations. The registers had disappeared in part. Legal injunctions had been contravened. Real rights [quasi-ownership rights] have been constituted on waqfs. (Haut-Commissariat de la République française 1921, 192)

By arguing for the necessity of Mandatory control over waqfs, French powers thus claimed the institutions and the place of the Ottoman state. Among the early pieces of French legislation was Decree 753, on the administration of Islamic waqfs. Its full provisions remained in effect from 2 March 1921 until 22 December 1930, when Decree 157 replaced many of its regulations. Decree 753 created a General

Supervision of Islamic Waqfs (Muraqaba ʿAmma li'l-Awqaf al-Islamiyya) for both Syria and Lebanon. The apparatus of the directorate consisted of three organs: the Supreme Waqf Council[47] (the legislative and administrative apparatus), the General Waqf Committee[48] (an advisory apparatus), and the General Supervisor of Waqf.[49] The decree extended many of the changes introduced by the 1826 Ottoman Waqf Ministry, particularly control of administration through the issuing of multiple regulations and the supervision of waqf administration by the General Supervision of Islamic Waqfs instead of the judges. However, the decree moved waqf administration to the margins of the state: While it remained directly attached to the high commissioner or his representative,[50] the General Supervision was not a ministry, staffed by civil servants paid by the state and with a budget coming from the state treasury. Many institutions all over the world, especially those defined as authorities, share this marginal location in modern states and thus provide an entry point into the production of the state effect. These margins make the work of producing the state effect even more visible because they require constant assertion and negotiation.

Analyzing the preamble of the 1921 decree will show us how its arguments differed considerably from the language of the Ottoman 1850 Decree. However, its effects were more ambivalent: one the one hand, it continued the centralization of the production of waqf law in the state, but, on the other, it initiated the sectarianization of the Muslim waqf and its secularization.

Arguments of the 1921 Decree

Because the Ottoman state took the application of the shariʿa as one of its responsibilities and sources of legitimacy, the arguments of the 1850 Decree for seizing the administration and supervision of waqfs were articulated from *within* Islamic jurisprudence. The French Mandatory powers introduced a new architecture of state, law, and religion, as they had a different relation to the shariʿa

47. Conseil Supérieur des Wakoufs, or al-Majlis al-Aʿla li'l-Awqaf. The council decides on the manner of administration in and outside the center (Article 6.2 and 6.3); on beneficiaries of increases of waqf revenues (Article 6.4); on the ways to rehabilitate Islamic waqfs, increase their revenues, and ameliorate their administration (Article 6.6); and on the number and salaries of the directorate's employees. One of the council's "financial" duties is the auditing of the accounting of the directorate.

48. Commission Générale des Wakoufs, or al-Lajna al-ʿAmma li'l-Awqaf. Even though Article 10 starts by describing the commission as the "highest administrative power," in effect its role was very vaguely defined beyond the discussion of the budget: "it discusses . . . all issues related to the interest of the waqf that the waqf council or the local councils bring to it" (Article 10). It was dissolved in a later revision of the decree.

49 Contrôleur-Général des Wakoufs, or Muraqib al-Awqaf al-Islamiyya al-ʿAmm. The general supervisor runs the daily business of administration. He is the only executive power, takes decisions on administration issues that are beyond the powers of local administrators, and collects fees and rents (Badr 1992, 20). He suggests the budget, the committee discusses it, and the council approves it.

50. A similar setup had been successfully tried in in Tunisia and Morocco, as mentioned in chapter 1.

and a different understanding of their role in the fulfillment of the aims of waqfs and their administration and supervision. The preamble to Decree 753 of 1921 explains the reasoning behind the decree and the role of the French Mandatory power in administration. Its language introduced new concepts, like "religious," "public utility," and "Muslim community."[51] Instead of arguments from the fiqh, the decree used "public utility" as the essential reason behind the supervision of waqfs. The decree placed waqfs in the private affairs of the Muslim community.[52] In so doing, it created a complex situation whereby the state constructed and acknowledged a "religious law" outside a state whose sovereignty resides in its exclusive production and administration of law. It thus became necessary for the state to endorse and authorize certain now-called "religious" laws of waqf; in fact, the decree delegated the creation of waqf law to an "independent" organ "representing" the Muslim community and its most authoritative opinions.[53] Such a policy of state control of waqf falls in line with the Ottoman centralization of the production of waqf law in the state. The way it is achieved, however, necessitates a very different maneuvering and operates distinctly from the Ottoman precedent. While one might assume that this solution would actually leave the production of the so-called religious law undisrupted, we will see how the creation of such a "Muslim" legislative body rearticulates the field of law and knowledge production among Muslim scholars, effectively secularizing the law.

Such state logics are reflected in the argument of the preamble (*asbāb mūjiba*), which begins with the premise that waqfs have a "purely religious Islamic character" ("awqāfuhum hiya dīniyya islāmiyya maḥḍa") and can be administered only by Muslims. The preamble then presents a sketch of waqf administration under Ottoman rule particularly during the Great War. It follows with the principle that "the government [*ḥukūma*] has the right [*ḥaqq*] to supervise the communities [*ṭawāʾif*] and the duty to preserve their interests [*maṣāliḥ*]." However, it continues, waqf follows laws taken from religious law (literally, "religious sharīʿa" [*al-sharīʿa al-dīniyya*]), which are notably different from those of the state. Therefore, it concludes, the supervision of waqfs is required only for the necessities of great public benefit ("mā taqtaḍīh al-manāfiʿ al-ʿumūmiyya al-ʿuẓmā").

The tour de force of the preamble and the premise allowing the complex maneuvering that gives the supervision of the waqf in the final instance to the French

51. The preamble mixes this argument with concepts borrowed from the fiqh, such as "the waqf's interest" but uses them in a different grammar. I will analyze this new grammar in chapter 5.

52. In these discussions of French laws, I continue to use the term *Muslim community*, as I explain in footnote 7 above.

53. The same body is also responsible for the production of "personal status" legislation, which is then ratified as state law. In this process of ratification, the production of the sharīʿa is subsumed under the modern state's legislative process. The logic is exclusive state law on certain issues, but because some of these are acknowledged as "religious" and "private" and at the same time the state cannot leave these to decide for themselves because of legislative sovereignty, the state creates a process through which these religious laws are then endorsed by Parliament. See Méouchy (2006) for a discussion of the way various communities thought about themselves as nations claiming extraterritorial authority.

Mandatory state consist in the characterization of waqfs as "religious." According to the preamble, "Since waqfs, established by Muslims intending beneficence and piety [*al-khayr wa al-taqwā*], have a purely religious Islamic character, they can only be administered by Muslims." Assigning the adjective *religious* to these waqfs is not a characterization I had seen in any of the juristic discussions of waqf, and it is very much tied to the particular architecture of state, law, and religion, in this case, the secular configuration of Lebanon.

Although the juxtaposition of waqfs with *religious* was novel, I do not intend to suggest that the modern term for *religion*, *dīn*, was not used in pre-modern discussions, nor that there was no attempt to classify waqf within a certain category of practices. The modern Arabic translations of *religion* (*dīn*) and *religious* (*dīnī*) gloss over the varied meanings that the Arabic term held prior to the modern era.[54] To give a few examples of these earlier uses, *dīn* appears in the Qurʾan in the sense of judgment and retribution, as in *yawm al-dīn* (the Day of Judgment), and in meaning of cult/worship/the law (Karamustafa 2017, 164). According to an often-quoted hadith known as the hadith of Jibrīl, dīn consists of faith (*īmān*), the practice of submission through the performance of required worship acts (*islām*), and the interiorization of faith (*iḥsān*). *Dīn* also signifies habit or custom (*al-ʿāda*) and worship (*al-ʿibāda*) (Firuzabadi 1863). In short, the "Muslim concept [of dīn] denotes above all the Laws [and ethics] which God has promulgated to guide man to his final end, the submission to these laws (and thus to God), and the practice of them (acts of worship)" (Gardet 2012). Dīn encompasses all the ways one should live one's life as a Muslim.[55]

Despite an all-encompassing conception of dīn, Muslim scholars distinguished between matters and sciences of dīn and those of *dunyā*, with the latter broadly referring to worldly matters: "arithmetic, engineering, astronomy, and the rest of the crafts [*ḥiraf*] and skills [*ṣināʿāt*]" (Abbasi 2020, 208). Scholars also discussed the dīnī and the *dunyawī* advantages of certain actions, or whether the Prophet's authority extended to *dunyawī* matters in addition to dīnī ones (Abbasi 2020, 202–5). Most importantly, all worldly actions can become dīnī if done with the right intent, in submission to God. Furthermore, Muslim scholars attempted to classify

54. As Karamustafa notes in a short chapter on Islamic dīn, there have been very few studies of the concept beyond the Qurʾanic text (2017, 164). He picks a few examples of the variety of meanings the term has in the legal, theological, and mystical traditions; in literature, philosophy, historiography, and science; and in practice—to show that the concept was polysemic and cannot be reduced to the meaning of "religion." A more thorough examination of the pre-modern use of *dīn* remains necessary.

55. In the chapter on Islam in his classic *The Meaning and End of Religion*, W. C. Smith is more concerned with whether *dīn* connotes "religion," noting that the Qurʾan sometimes uses *dīn* in the contemporary Western sense of *religion*, implying both personal piety, as well "a particular religious system, one 'religion' as distinct from another'" (1964, 76). However, he continues his analysis to argue that that word is mostly used in the Qurʾan to speak of religion as *īmān* and *muʿmin*—that is, faith—and that *islām* is a verbal noun meaning "obedience . . . the willingness to take on oneself the responsibility of living henceforth according God's proclaimed purpose" (1964, 103), arguing that the meaning of *dīn* as a reified entity, a "religion," is a later development.

acts, waqf included, between "liturgical acts or acts of worship [*ʿibādāt*] and 'transactions' between particulars [*muʿāmalāt*]" (Johansen 1999, 60). The former are devotional acts to God, usually discussed in commentaries in five sections on ablutions, prayer, fasting, almsgiving, and pilgrimage. They deal with the relation of man and God and are part of the "claims of God" (*ḥuqūq allāh*), while the *muʿāmalāt* deal with "claims of men" (*ḥuqūq al-ʿibād*), including sales, rents, inheritance, marriage, and divorce. Waqf founding falls in both these categories. Done with the aim of getting closer to God (*qurba*), it involves a human being's relation to God. As a nineteenth-century jurist and teacher of the law of waqf argued, waqf "can be said to be like worship" (Yazır 1995, 250). However, it also creates relations between men. The translator of Hilmi's codified waqf manual foregoes the worship act of waqf-making and calls the waqf the "transaction of waqf" (Hilmi 1909, 5). This did not mean that the waqf did not belong to the category of dīn anymore. Both *ʿibādāt* and *muʿāmalāt* fall within dīn. Concurrently, it does not mean that waqf does not have *dunyawī* advantages, like the preservation of property from fragmentation. In this older grammar, describing waqfs as *religious possessions* would highlight their value as acts of worship that bring rewards in the hereafter.

A characterization of waqf as religious under the particular architecture of state, religion, and law instated by the French Mandate in Lebanon—namely, secularism—produces a different meaning. Using the term *religious* to describe waqfs as possessions places them in the "sphere of religion" and therefore as part of the "private" affairs of the community to be managed by the community according to its own laws (which also become characterized as religious); here the classic secular scheme of privatized religion makes itself visible through the proclaimed "autonomy" and "independence" of the various religious communities in the running of their "properly religious" affairs. As mentioned above, Article 6 of the 1921 Mandate regulations states: "Respect for the personal status of the various people and for their religious interests shall be fully guaranteed. In particular, the control and administration of wakfs shall be exercised in complete accordance with religious law and the dispositions of founders" (Longrigg 1958, 377).[56] This article grants "the entitlement to difference [and] the immunity from the force of public reason" (Asad 2003, 8), an essential aspect of secularism. Notably, however, it is the state that provides such an immunity, a state that presents itself as outside these religious communities, as a civil state. The state, the preamble declares, is the "guardian" of the various religious communities (Ministère français des Affaires étrangères 1922, 334).[57] Concurrently, this description obscures both the Catholicism of the French Republic and its use of this Catholicism to secure a connection with and present

56. The 1926 Constitution enshrines this right in Article 9: "La liberté de conscience est absolue. En rendant hommage au Très-Haut, l'État respecte toutes les confessions et en garantit et protège le libre exercice, à condition qu'il ne soit pas porté atteinte à l'ordre public. Il garantit également aux populations, à quelque rite qu'elles appartiennent, le respect de leur statut personnel et de leurs intérêts religieux" (Ministère français des Affaires étrangères, *Rapport*, 1926, 202).

57. "L'état, tuteur légal des collectivités."

itself as a protector of the Maronite Christians, whose existence was a significant reason for France's presence as a Mandatory power.[58] Yet, this private immunity only goes so far. Since it is granted by the state, the immunity is not absolute, as the preamble points out: public benefit might require the intervention of the state, even in these "religious" possessions.

Because of the religious character of waqfs, the "Muslims" acquired the right to administer "their" waqfs according to "religious" sharīʿa. This right entailed the creation of the Muslim community as one among many others within the Lebanese nation-state,[59] a conceptualization that was different under the Ottoman Empire, which remained an Islamic state. Nonetheless, one might argue that the Muslim community already imagined itself as a community, as an "umma." *Umma*, like *dīn*, has a multiplicity of meanings both in the Qurʾan (e.g., the group [*jamāʿa*], followers of prophets, dīn, a righteous man that can be a leader) and in various later writings, but it was not necessarily restricted in the Qurʾan to a "religious" community nor to the Muslim community in particular (Sayyid 1986, 44–47). It had the potential to include all of humanity in its surrendering to God, in all of the world becoming Muslim. It is pregnant with the potential reunification of humanity in "a single human world in the name of Islam" (Sayyid 1986, 41). That Muslim-human world umma was, however, imagined and projected as a universal and all-embracing community through, among other things, property: the common ownership of land and bounty (Sayyid 1986, 83).[60] Therefore, the French Mandate's linking of property and community, as in the preamble's statement "waqfs are like the religious private property of the Islamic community" ("al-awqāf hiya bi-mathābat milk al-ṭāʾifa al-islāmiyya al-dīnī"), is not a novelty. Yet, this analogization of the waqf to the private property (*milk*) of the Muslim community here again displaces God as the owner of waqfs and assimilates waqf into private property, albeit owned by a new entity (the Muslim community). If each individual waqf has a legal person who is its owner, the totality of waqfs belongs to the Muslim community.

Nonetheless, the shape and form of the Muslim community under the French Mandatory nation-state of Lebanon differed radically from the religious imaginary of the umma. It was one community *among others*, outside the state and

58. The presentation of secularism as a universalism severed from particular (Christian) traditions is one of its characteristics; for examples, see Asad (1993; 2003); and Jakobsen and Pellegrini (2008).

59. While I speak of the creation of the Muslim community *as a community*, this concept is tied to that of minorities, which was also produced during the French Mandate, as historian Benjamin White (2011) shows.

60. While in the first Islamic conquests, booty and land were divided among Muslims, later on the first caliph was said to have made certain types of conquered land into waqf, with all Muslims as beneficiaries of the right of use, so as to allow the Muslims of later times access to these lands. However, such waqf was not a legally constituted waqf, but rather a use that indicates a fiduciary relationship, whereby the state is a trustee (Debs 2010, 12). "The ownership of *kharaj* land passed to the Muslim community as a whole" (Cuno 1995, 123–24).

circumscribed within the nation. The French advisor on waqf, Gennardi, was very much aware of the transformation required for such a manner of administration. Indeed, in his explanation of the two options (discussed above) for the Mandatory state to exert its control over the waqfs, the direct and the indirect, Gennardi argues that the choice of the particular setup should depend on the conception of the Muslim "milieux." In places with a non-Muslim majority, where the "Muslim community is starting to distinguish its own personality from that of the state," as was happening in Beirut, Tripoli, and Saida in Greater Lebanon, indirect control should be favored. The Muslims in these places, according to Gennardi, were joining non-Muslim communities, which already thought of themselves as separate communities in the Ottoman nineteenth century because they were *millet*s, self-administering groups.[61] This was not an obvious development among Muslims, as Elizabeth Thompson shows (2000), because many Muslims, both populist and secularist, did not want a sectarian republic and fought it. The Muslim community was finally becoming a "sect," Gennardi was pleased to report, even though many Sunni Muslims contest their designation as a sect up to this day (as is seen in the erasure of all references to the Muslim Sunni "sect" of Decree 18/55 in 1967).

The notion of the Muslim community advanced in such French Mandatory documents differs substantially from the Muslim community as an umma. The umma includes the whole community with a single leader whose duties reflect his leadership of the *Muslim* umma: "guarding the faith against heterodoxy, enforcing [Islamic] law and justice between disputing parties, . . . [protecting] peace in the territory of Islam and its defense against external enemies, . . . receiving the legal alms, taxes" (Madelung 2012).[62] The French Mandatory state divorced the Muslim community in Lebanon from the larger Muslim umma and from the state. It created for it (and for each non-Muslim community) a different "official" leader and representative to the state, the mufti (and the patriarch),[63] whose duties became restricted to the "spiritual well-being" of the congregation and to what came to be defined as "personal status," which includes waqf.[64] Such a restriction of

61. MAE251.1/Dossier Arrêté 753/1.4, 1921. Note, however, that the regime of sects cannot be seen as an extension of the *millet* system of the Ottoman Empire. As Abillama (2018, 150–51) explains, building on Méouchy (2006), the French-instated political sects were based on a secular sovereign power of legal recognition that the state granted to any group that met certain criteria, whereas in the Ottoman Empire the status accorded to communities were the result of privileges and immunities granted to "people of the book" as long as they had a particular relation to the Muslim rulers.

62. The Ottoman Empire was majority Christian until the conquest of Syria and Egypt in 1516–1517, and so their legal recognition as a community was not theorized under the majority-minority assumption that we take for granted today. On the *millet* system and the need to historicize it in the late Ottoman Empire, see Braude (1982).

63. For the institutionalization of these different sects through the creation of an official leader representing the community to the state, see Henley (2013).

64. Whereas I focus on the Sunni Muslim community, Max Weiss examines the way the Shiʿi community was produced as a sect in French Mandate Lebanon (contrary to the dominant narrative

religion to "spiritual well-being" and its confinement to the private sphere is part of the secularization of religion and waqf more specifically.

By doing so, the 1921 Decree actually straddles a difficult line. It places the law of waqfs in the hands of the Muslim community, as a "religious" and therefore private (outside the state) matter, while one of the state's claims to sovereignty stems from its exclusive production and administration of law. The handing of jurisdiction to the Muslim community over these affairs represents a delegation of legislative power to the Supreme Waqf Council, whose decisions are then ratified as state law by Parliament. The creation of such a council thus concentrates the production of law on issues like waqf not in the hands of the Muslim community and its many jurists wherever they may be, but in the members (at first appointed, but then elected) of the Supreme Waqf Council. The waqf was then subsumed under the Lebanese republic's architecture of state, law, and religion, which transformed the Muslim community into a "sect;" it had been sectarianized.

State Production of Waqf Law: The Supreme Waqf Council

The 1921 Decree officially consecrated the modern Ottoman nineteenth-century transformations in state and law: taking the bulk of legislation on waqf matters out of the hands of the scholarly community of jurists and placing it in the hands of the Supreme Waqf Council, which became the highest legislative and administrative authority for the supervision of the waqfs (Article 5). The council was therefore made responsible for legislative changes (pertaining particularly to financial matters). It decided on the "ways that local directors and waqf administrators should follow in the administration of public and family waqfs" (*al-awqāf al-ʿumūmiyya wa al-ahliyya*) (Article 6). Therefore, while the article still assumes and concedes that some waqfs are administered by their own administrators—persons distinct from the director or the directorate and its various local delegates—the laws these independent administrators are to follow were now issued by the council. The council and the directorate more generally assumed the responsibility of legislating on all waqf affairs and for all waqfs; the council decided on "the amendments to be introduced, according to the shariʿa, on the laws particular to Islamic waqfs" (Article 6.1).

Such a statement supposes that the "legislating" members of the council are familiar with the shariʿa. It also assumes a single law for waqf and that the council is the single waqf lawmaking body. If the only enforceable waqf law is the one produced by the council, the legislative efforts of other jurist-scholars become much less central to the production of waqf law. It will be recalled that Ottoman waqf law

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that it became so after independence through its marginalization and then mobilization by Imam Musa al-Sadr) especially through the Jaʿfari (Shiʿi) court and its "re-organization and the re-imagination of the relationship between Shiʿi community and the state, the institutionalization of Shiʿi law through the Jaʿfari court" (2010, 30). In chapter 4 especially, he shows how the practice of going through the Jaʿfari courts to adjudicate religious patrimony (especially waqf) transformed the Shiʿa into sect.

was elaborated in a whole body of literature by jurists, with sultanic orders settling particularly controversial issues. The relevance of this body of literature becomes much less evident when the state adopts a particular opinion from this corpus or even other legislation elaborated by the council (which included some jurists) as "the" law of waqf administration comes to be applied to all waqfs. Yet, as I show later, waqf law produced outside the bounds of the council can still make its way into state-sanctioned waqf law, and the boundaries between state and non-state scholars are not as clear as they appear to be from such an article.

Refiguring Jurisdiction over Supervision

Decree 753 does not stop at extending legislative power over all waqfs to the directorate; it also expands the jurisdiction of the General Waqf Supervisor to include the supervision of all waqfs, without exception. Article 21 states: "As the General Waqf Supervisor, he can supervise the actions and management of the administrators of general and family waqfs [*al-awqāf al-ʿumūmiyya wa al-ahliyya*] and the directors of charitable Islamic associations whatever their purposes are. He also works to force the [above-mentioned] administrators and directors to comply with the rules of the codes in effect and the founding documents of the associations." He had the right to audit and examine the work of these administrators and directors. This article therefore extends the jurisdiction of supervision of the so-called exempt waqfs to the General Supervision, obliterating the category of exempt waqfs and fusing it with the semiautonomous waqfs. All waqfs are now supervised by the General Supervision.[65] The judges lost any jurisdiction they had over the supervision of waqfs. However, the decree does not specify the process through which this auditing is to happen. The audit process therefore remains unsystematic and unenforced unless a particular director, waqf, or case comes to the fore, either because of zeal, disputes, or complaints. Although the absence of systematic auditing might appear as a lack of actual enforcement, such blurriness, or "*flou*," is actually productive, allowing space for maneuvering around waqfs and people, as we will see.

Even though the decree placed the production of waqf law and waqf administration in the hands of the General Supervision, effectively, the French High Commissioner still had the final decision-making power. In general, the opening articles and definitions of the new directorate did not hide the High Commissioner's role in the administration. Indeed, the Directorate General of Waqf is directly attached to the High Commissioner or his representative[66] (Article 2), who appoints the General Supervisor and can dismiss him at any time (Article 24). Hence, the General Supervisor and his decisions are at the mercy of the High Commissioner.

65. Article 23 shows this extension of jurisdiction by making the supervisor of waqfs the legal representative of both "public and family waqfs."

66. A similar setup had been successfully tried in Tunisia and Morocco, as mentioned in chapter 1.

Examining how members of both the Supreme Waqf Council and the General Waqf Committee were chosen, how often they met, and how they operated also shows that their powers became much more limited. Both council and committee emerge as peripheral to the functioning of the directorate, especially since the council met twice a year and the committee once. The council totaled ten members, six of whom were ex officio members.[67] It also had a "representative of the Muslim community [*ṭā'ifa*]" (Article 9.2) in each of the four cities appointed (not elected) by the local government after consultation with the local Muslim community of scholars (*'ulamā' al-islām*). The members of the General Waqf Committee were the same as those of the council with the addition of local waqf directors, a representative of each of the (local) committees of the counties and districts.[68]

Representatives on all boards were therefore appointed directly or indirectly by the High Commissioner. In addition, all bodies were to report to him or to his representative. The council was to inform the High Commissioner of anything illegal (*mughāyiran li'l-qānūn*). Only the High Commissioner could decide on an extraordinary council meeting. Decree 753 also makes the High Commissioner's representative, his advisor on real estate matters, the only means of communication between the General Supervision and all other state administrations during the Mandate. This was in line with the general manner of French administration, where Lebanese directors-general holding executive power were supposed to be the right hand of the governor of Lebanon, but "real power in the administration lay in the hands of the French 'advisers'" (Traboulsi 2007, 88; see also Longrigg 1958, 114–15, 260). Finally, and most importantly, no decision taken by any of the bodies of the General Supervision could be effective unless the High Commissioner ratified it.

While the newly created General Supervision appears to replace the Ottoman Waqf Ministry and to continue and even further the changes that the ministry had introduced, the actual setup and functioning of the General Supervision shows a very different relation to the state. The ministry was part of an Ottoman Islamic state whose attempt at waqf administration, supervision, and waqf lawmaking was couched in the language of the Islamic tradition, even if the arguments and techniques of administration introduced innovations. If the sultan could remove waqf supervision from the hands of judges, it was because their supervisory power emanated from him. In fact, he could make an argument from within the tradition for such a restriction of jurisdiction. The French-created General Supervision is an *independent* authority, which transfers waqf administration, supervision, and waqf lawmaking to the Muslim community. However, because the sovereignty of the French Mandatory state rested partly on its exclusive production and

67. The members are the director of the General Supervision and the highest shari'a judges in Beirut, Damascus, Aleppo, and Latakia and the shari'a judge of appeal (all of which are positions to which judges are appointed after examinations).

68. These committees take on the local administration of waqfs in smaller towns and remote areas.

administration of law, it effectively retains the power to ratify all decisions of the General Supervision. In addition, based on claims of "public utility," it reserves the right to oversee the work of the General Supervision. French supervision was so tight that it almost amounted to French Mandatory state administration, supervision, and legislation over waqfs.

DECISION 42 OF 2003: CLAIMING THE STATE, CONTROLLING WAQFS

Given this history of the ever-tightening grip of the state on the administration and supervision of waqf through the General Supervision, the reader might now better understand my surprise at Decision 42 of 2003, which required any new mosque to have the Directorate General of Islamic Waqfs (DGIW), the heir of the General Supervision, as its administrator, even if a private individual or an association had funded its construction and upkeep. Both the General Supervision and the DGIW, as public authorities, had an ambiguous relation to the state. The DGIW was born out of resistance to Decision 753 of 1921 and reversed some of the advances of that decision, thereby splitting jurisdiction over waqfs and creating more *flou*. This ambiguity allowed waqf founders and administrators to play various agencies and state actors against each other.

Decision 753 had given the Muslim community nominal control over Islamic waqfs, which proved controversial and was heavily contested in the Sunni milieu. Gennardi complained, for example, that "the Beirut mufti refuses to work with the local waqf committee and thwarts the collection of waqf revenue" (quoted in Kupferschmidt 2008, 103). Opponents of the decree and of French control in Damascus, Aleppo, Beirut, Tripoli, and other Mandate cities gathered and organized the Waqf Congress in 1930 in Aleppo, which created a Waqf Defense Committee. As a result, the Supreme Waqf Council issued Decision 10 in 1930 (ratified by the High Commissioner as Decree 157) to reorganize the waqf administration and hand over administration to the "Muslim community" by eliminating the High Commissioner's supervision and transferring the task of administration to elected boards.[69]

The effects of Decision 10 were twofold. On the one hand, it split jurisdiction over waqf supervision between two state apparatuses, the Directorate General of Islamic Waqfs and shari'a courts. The latter regained jurisdiction over waqfs that were once exempt under the Ottomans. This division has persisted and continues to cause jurisdictional debates and competition between the courts and the DGIW and between the chief justice of the Beirut Sunni shari'a court and the grand mufti. On the other hand, Decision 10 created *elected* administrative and scholarly councils

69. Decision 10 also separated the administration of waqfs in Lebanon and Syria.

with extensive executive powers, instead of appointed ones, dwarfing the power of the appointed director.[70] To elect members of these councils, Decision 10 created the Islamic Electoral College, representing the Muslim community—a council that came to acquire a major role, especially after independence, in the election of boards and, most importantly, the appointment of the mufti himself.[71] These administrative and scholarly councils took most of the executive authority in waqf administration, replacing the single-handed administration of the director, who retained a modicum of power in "small" decisions.

The handing of waqf control to the Muslim community—one of the aims of Decision 10—did not sever the DGIW's relation to the state, as can be seen from its designation as a public administration (*idāra ʿāmma*) and its budget. When characterizing the DGIW as a public administration, the *state* needs to acknowledge that mosques and waqfs are *public utilities*[72] which should not be left to individual initiatives and enterprises and that they are best served if administered independently (Yakan 1963, 128).[73] The question then becomes whether waqfs dedicated to worship and Islamic education are a public utility. In other words, is religion a public benefit? In the Lebanese constitution, it is—because the state "assumes the obligations of glorifying God, the Most Exalted" (Article 9), highlighting religion as an important good for the state to promote. Furthermore, because a religious

70. As the directorate fulfills the role of administrator for seized waqfs, there is a rationalization and differentiation of waqf administration such that the decree now distinguishes between the different tasks of the administrators and hands them to two different councils: administrative and scholarly. The administrative council's duties fall mostly under a financial umbrella (Article 24)—from the supervision of the budget and of the expenses to renting out waqfs—under the aegis of caring for the "interest of the waqf" (see chapter 5). The scholarly council's main task is the examination of candidates for the religious positions and their appointment, and also ensuring the shariʿa compliance of the decisions of the administrative council. The decree also creates a "classification committee" whose purpose is to inventory and classify all religious buildings and all their employees, from mosques to schools to charitable foundations, with the aim of standardizing and "rationalizing."

71. The Islamic Electoral College comprised all Muslim members of Parliament and some thirty-two members representing Muslims in liberal professions (lawyers, engineers, pharmacists, etc.), scholars, waqf administrators, official Islamic charitable associations, and the highest Muslim officials: judges, the mufti, the waqf director, and the representative of the descendants of the Prophet Muhammad. The Islamic Electoral College, following very strict rules for its meeting and voting, elects the members of the scholarly council and then those of the administrative council. This structure was retained after independence, but the composition of the Islamic Electoral College is subject to constant debates, especially before the election of the mufti. The Islamic Electoral College represents a modern interpretation of those who are supposed to represent Muslims who matter for consensus (*ijmāʿ*). See, for example, Zaman (2012, 50), for a discussion of Muhammad ʿAbduh and how he widened the definition of consensus to include politicians.

72. Public utilities are a public good or a public need that should be satisfied, and not for profit. On the construction of public utility in opposition to profit, see Birla (2009, 99–100).

73. There are other legal theories on whether it is public utility that defines administrative law, which Yakan outlines (1963, 144–54).

trust that benefits a group or a section of a community is considered to benefit the larger public,[74] concerns that these waqfs benefit only the Muslim community do not arise.[75]

The French Mandatory power also saw waqfs as a way to fulfill public utilities like education. As the 1923 *Report to the League of Nations* notes: "General waqfs, because of their universal character as charitable acts, can provide revenues for increasing public assistance works" (Ministère français des Affaires étrangères 1924, 333). The DGIW can therefore be supervised by the government (approving decisions or auditing accounting) (Yakan 1963, 208) and can also be dissolved if the state decides that the public utility provided is not needed anymore. Thanks to this classification, the DGIW acquired privileges of state institutions (tax exemptions and some salaries paid out of the state budget). This was especially contentious given the DGIW's confessional character and the state's supposed equidistance from all sects.[76] Furthermore, reflecting Ottoman practices of delegating and selling tax collection to individuals, many waqfs in the early Mandate received "fixed amounts from the transmission of the tithe [land tax] and other public revenues dedicated to waqfs . . . and tithes and other public revenues given as freehold to waqfs" (Articles 1.2 and 1.4 of Decision 167 on Waqf Revenues, 22 March 1926). This amounts to earmarking revenues from taxes of citizens for the budget of the DGIW, revealing the myth of DGIW's financial independence, since the Ministry of Finance owed some citizen-paid taxes to the DGIW.[77]

Summoning the DGIW as a State Apparatus

Within these fuzzy relations between the DGIW and the state, Decision 42 of 2003 and its attempt to take control of the administration of new mosques becomes less puzzling. If "state control" of waqfs began as a project for the Ottomans, who could justify it in the ruler's jurisdiction over Muslim waqfs, it became more contradictory in a secular state. Indeed, in the indirect control option enshrined by Decision 10, the waqfs were supposed to be under the administration and supervision of the "community," and waqfs could retain founder-named individual

74. This approach to religion as part of public benefit diverges from the French anticlerical approach, which considers religion a private good that should be left private and which treats any support for religion as an exception (see, for example, Asad 2006).

75. See, for example, Atiyah's (1958) discussion of whether a trust to entertain police is considered a public benefit. Because entertaining police is not a public benefit, one could argue that such a trust is not for the public benefit. However, one could argue that entertainment of police renders them better at their job, which serves the public benefit.

76. For early contestations, see the description in al-Hut (1984, 106–9). For a recent critique of all these exemptions, which the author terms "budgetary and fiscal sectarianism," see Haddad (2015). Law 210/2000 extended various tax exemptions to other sects under a call for equal treatment. Particular exemptions are constantly debated under new proposals. For the latest, see ʿAqiqi (2017).

77. These yearly amounts were eventually settled through one-time payments that amounted to the Ministry of Finance buying out the waqf's share.

administrators.[78] In these contests between individual waqf administrators and the DGIW, the DGIW's director's handing me a copy of Decision 42 was a performative act that restated the DGIW's control over all new mosques. In the decision itself, the DGIW mobilizes the authority of the state to project the DGIW's location within the state apparatus. Decision 42 appeared in the official gazette of the Lebanese Republic, after being endorsed by the grand mufti of the Lebanese Republic. It appeals to previous state regulations to authorize itself but makes three innovations with respect to the process of mosque building and waqf administration. First, anyone who desires to build a mosque or prayer hall needs to first request written approval from the DGIW for the plans and building permit documents and then make the DGIW the administrator (Article 1B). Second, founders also need to make the plot or the part thereof where the mosque/prayer hall stands into a waqf (Article 1D). Finally, no organization, institution, association, or similar organism can take any existing or new mosque or prayer hall as its headquarters, base, address, or private waqf (*waqfiyya khāṣṣa*),[79] from whichever private party (*jiha khāṣṣa*) and for whatever purposes, subjects, or activities (Article 1H). Despite these allusions to an overarching control over Muslim bodies, systems, and institutions, the DGIW's self-proclaimed authority was challenged by other organs of the state, as well as by individuals within and outside it.

Challenges to the DGIW as a Public Authority

The Circulation of Waqf Objects among Various State Apparatuses. The Mandate debates over the authority responsible for waqfs continued in the postcolonial period. The claim that mosques are a public utility does not necessarily imply that the DGIW should be responsible for their administration, as Decision 42 asserts. Indeed, two other state apparatuses can compete for the task: shariʿa courts and the Ministry of the Interior. The competition between the DGIW and the shariʿa courts over waqfs is partly a result of Article 17 of the Organization of Shariʿa Courts of 1962 (Tanzim al-Qadaʾ al-Sharʿi al-Sunni wa al-Jaʿfari), which describes the jurisdiction of these courts as including "the waqf, its rules, bindingness, validity, necessary conditions, beneficiaries" (Article 17, no. 14). The issuing of the waqf-foundation deed is under the jurisdiction of the shariʿa courts. Any waqf deed, in order to be legally valid, needs to be drafted by a shariʿa judge and registered at the shariʿa court. Shariʿa court judges have many responsibilities: they appoint administrators of family waqfs (Article 17, no.15) and fire them, audit the administrators of both family and exempt waqfs (whether they are 'charitable' or family), approve their expenses (Article 17, no.16), give permission to the

78. This contest between individual and central supervision happened in the various Christian denominations, and individual churches were able to keep administering their waqfs. See Mohasseb Saliba (2008).

79. "Taking a mosque as . . . a private waqf" is a strange formulation. I assume it means founding a mosque as a private waqf.

administrators of "pure" (*maḥḍa*) family waqfs, and draft and record waqf deeds in conformity with regulations (*uṣūl*) (Article 17, no.18). Whereas the DGIW is the administrator of seized (*maḍbūt*) waqfs, it is not involved in the supervision of family or associations' waqfs—that is the responsibility of the shariʿa courts. The administration of the DGIW and that of shariʿa courts are actually separate; they are housed in different buildings, in different parts of town. In addition, the shariʿa courts report directly to the prime ministry and do not fall under the purview of the mufti. Even more, these two state apparatuses do not have an official bureaucratic procedure that requires communication and information sharing.[80]

Another contender for the supervision of mosques is the Ministry of the Interior. It oversees most Islamic organizations, which are not waqfs but rather nongovernmental organizations (NGOs), like al-Irshad wa al-Islah. Instead of registering the mosques they create as waqfs in shariʿa courts, these Islamic NGOs could use the jurisdiction of the Ministry of the Interior over NGOs and have mosques as their headquarters without going to the shariʿa court or the DGIW to register these mosques as waqfs. Indeed, in the late Ḥanafī legal tradition, any space that one opens up to public collective prayer becomes a waqf without the need for a waqf-founding act or deed (Ibn ʿAbidin, *Ḥāshiya*, 3:369). Yet, Decision 42 specifically supports the decision by citing "the most authoritative Ḥanafī opinion" (*arjaḥ al-aqwāl min madhhab Abī Ḥanīfa*), which requires a mosque to be registered as a waqf. When NGOs make mosques their headquarters, neither shariʿa courts nor the DGIW have supervisory power. Decision 42 attempts to restrict this possibility by prohibiting any association from having a mosque for headquarters.

The Circulation of Persons between the State Apparatus and "Private Entities" (Jihāt Khāṣṣa). By prohibiting associations from taking mosques as headquarters, Decision 42 paints the DGIW as part of the state apparatus distinct from such private associations. In my notebook, however, that distinction was not as clear-cut. The DGIW does not have the resources to staff all mosques from the graduates of its shariʿa schools.[81] It cannot control the political and ideological affiliations of its religious staff—even if it has the power to dismiss them because of misconduct,[82] and even if it specifies in its regulations that they cannot join any political parties or unions (as defined in Article 35 of the Administrative Regulations of the DGIW, 3 April 1980). Therefore, many of the religious staff and employees of

80. Hajj Tawfiq recounts how he sent a list of the waqfs of al-Birr wa al-Ihsan to the DGIW when Marwan Qabbani was its director, and how Qabbani replied, "Thank you very much, but this will sit on a desk and will not be useful," because the DGIW does not have jurisdiction over such waqfs. Employees of the DGIW complained about the lack of coordination between the DGIW and the shariʿa courts.

81. These schools are Kulliyyat al-Shariʿa and Azhar Lubnan.

82. See for example the case of Mustafa Malas, who was dismissed from his duties as an imam at the Minya mosque in Tripoli (al-Siddiq 2007).

the DGIW belong to the very associations whose activities in and administration of mosques Decision 42 attempts to restrict. Conversely, many private organizations have official employees on their boards. Let me illustrate with two examples from my notebook.

Sheikh Muhammad is the resident imam at one of the Beiruti mosques administered and supervised by the DGIW. He is beloved by the worshippers. One of them, Samer, explained, "He keeps the sermon short and to the point, does not ramble, and does not rebuke constantly—preaching to the choir, us who go to the mosque to pray." Samer was very surprised to hear that Sheikh Muhammad was an active member of the Jamaʿa Islamiyya (Islamic Group). Very closely associated with the Egyptian Muslim Brotherhood since its inception in the early fifties, the Jamaʿa Islamiyya laments the state of Muslims in the world and in Lebanon in particular: fallen prey to materialist desires, abandoning Islam, and lured by the West and its values. It took upon itself to spread the message of the Qurʾan and organize Muslims in a society where "Islam would be the measure of the individual's actions."[83] Implicit in the Jamaʿa's discourse is a critique of the official representatives of the Muslims, the mufti and Dar al-Fatwa, because, had they done their work properly, Muslims would not be in their present condition. Therefore, while the association to which Sheikh Muhammad belonged was critical of the DGIW and Dar al-Fatwa in general, he was able to secure himself a position at a mosque the DGIW administered. Negotiation between the DGIW and "private organizations" then seems to happen on an individual basis, rather than the two being mutually exclusive. When the DGIW mobilizes such a trope of independence and opposition between the DGIW and private organizations, it is to make a claim on the control of mosques and to try to silence some of the groups challenging its authority and criticizing its fulfillment of its duties as the religious head of "the Muslims." By laying claim to these mosques, the DGIW can then staff them and appropriate the platform these mosques provide through Friday sermons and other public educational activities.

The flip side of members of private organizations circulating in the corridors and mosques of the DGIW are state employees staffing the waqf boards of various "private" organizations. Both the chief justice at the Beirut Sunni Shariʿa Court (the "boss of all these judges," according to Hajj Tawfiq), and the Attorney General at the Supreme Shariʿa Court at the time, are on the waqf board of al-Birr wa al-Ihsan. The reader may recall from chapter 1 that this is an NGO that converted itself to a waqf, whose main purpose is the provision of education. The new campus of the Arab University in Dibbiyye, part of the waqf of al-Birr wa al-Ihsan,

83. From its website (http://www.al-jamaa.org, "who are we?" section). The Jamaʿa distinguished itself from its sister organization, Jamaʿat ʿIbad al-Rahman, by its political positions and its military actions: supporting transnational Islamic struggles and the Palestinian cause. Until the early 2000s, for instance, it was very much in line with Hizbullah's positions, especially in Parliament.

includes a mosque that is not under the administration of the DGIW or any formal state apparatus. As a prominent member of the organization rhetorically asked me: "Who is going to stand against us, unless there is a reason?" If it is the very people who are requesting mosques to be administered by the DGIW who are administering some of the mosques outside the DGIW, the constructed opposition in the administration of mosques is not, as the language of the Decision might imply, an opposition between private organizations and the DGIW control of mosques, but one between particular organizations and those dominating the DGIW.

Decision 42 embodies a mobilization of the state and an appeal to its stability and authority by a certain group in order to silence the challenges it is receiving. Telling in that regard was the statement of an advisor to the grand mufti when I asked him about the reasons behind the Decision. He answered, "It was different movements, associations, and parties [*qiwā ḥizbiyya*] producing sheikhs and students, each on their own, without approval, and challenging the authority of the Dar." Such challenges pushed the mufti to try and put an end to the "chaos" (*fawḍā*) the challenges were producing. This veiled explanation referred to the inter-Sunni struggle in the early 2000s, with various associations critical of the official representative of the community taking over the imamships at mosques and using them as platforms for critiques of Dar al-Fatwa. This struggle became especially protracted in the attempt of the Association of the Muhammad al-Amin Mosque to build Beirut's biggest mosque in the city center.[84] Following in the footsteps of the Ottomans, the DGIW used state legislation to silence these various groups. Instead of using epistemic and moral authority to counter the claims of other groups (as the latter do to challenge the DGIW and official Islam), the DGIW used state law to suppress them.

Marshalling Arms and Legs of the State

The human rights waqf I mentioned in the introduction is Al-Karama (Dignity) for Human Rights (http://ar.alkarama.org/), an international human rights organization based in Geneva. According to its website, al-Karama was founded as an association (*jamʿiyya*) in 2004 and became a Swiss foundation (*muʾassasa*) in 2007. Lebanon is but one of eighteen Arab countries where the organization combats arbitrary detention. As the lawyer of the organization narrated, al-Karama's main founder is a Qatari sociologist whose personal experience with arbitrary detention drove him to organize against it. He used to be close to the Qatari emir, Hamad bin Khalifa Al Thani, but was imprisoned without a sentence for a few years because of a criticism he had voiced about Shaykha Muza, the emir's second wife, a highly public and active figure. The reformist Salafi sociologist was released only after pressure from the United Nations. He became convinced of

84. For a discussion of these rivalries and the construction of the al-Amin mosque, see Mermier (2015, 91–119) and Vloeberghs (2016).

the need to create a system to monitor infringements of freedom of speech and to have international connections that could enforce international regulations about such abuses. After a failed attempt at an alliance with secular groups, he eventually founded al-Karama through a collaboration with a group of European-based North African Islamist political refugees who contributed their experience with the human rights machinery. They selected Lebanon to create a waqf that was a human rights organization.

The lawyer of the organization told me that the waqf foundation I had seen served not only for the Lebanese branch but for the whole organization. Indeed, he explained, in Arab countries, nongovernmental organizations cannot be established except in "a very official manner." In Lebanon, foreign organizations need the approval of the cabinet. There are also restrictions, he continued, like the fact that 75 percent of the founders have to be Lebanese, which makes it very difficult for an *international* human rights organization to get a license without political backing. Most international human rights organizations in Lebanon, the lawyer maintained, operate without permits. He explained that the Lebanese state easily hands out permits for international NGOs concerned with women's and children's rights but is very wary of those that are "overtly political."

Faced with these legal restrictions to founding an international NGO, the choice fell on founding a waqf. A senior member of a different association which founded a few waqfs explained that "a waqf is the easiest way to start something like an association because you can do it with $50 and you can start working. It is less than the fees you pay for registering an NGO!" In addition to the ease of founding a waqf and its low cost, the waqf provided al-Karama a different kind of protection as well: it is supervised by the shariʿa courts rather than the cabinet (which it would have been if it was registered as an international NGO).

This supervision by shariʿa courts is also an advantage for *local* organizations registered as waqf, which could have more easily registered as an association for public benefit (sing.: *jamʿiyya dhāt manfaʿa ʿāmma*) or an NGO (sing: *jamʿiyya*), forms that have their advantages. An association for public benefit can profit from tax cuts and various kinds of exemptions and reductions on phone rates as well as access to funding from the Ministry of Social Work, even though such associations are required to have at least five founding members to hold elections.[85] A local NGO can be operated through a simple public notice (*ʿilm wa khabar*), even though it is required to have internal regulations.[86]

85. See Decree 87 on Public Benefit Associations of 1977.

86. See the 1909 Ottoman Law of Associations, still in effect. There is a disagreement between the Ministry of Interior and various social activists about the way an association is founded: whether it needs prior authorization or whether a public notice suffices. The 1909 Ottoman law requires only a public announcement, while a decree issued in 1983 (contemporaneous with the Israeli invasion, converging with the analysis of Hajj Tawfiq regarding the freedom of association and its curtailment) requires prior authorization (*autorisation préalable*). Even though the decree was abrogated in 1984,

Both kinds of organizations, however, are ultimately accountable to an organ of the state—respectively, the cabinet or the Ministry of the Interior—which can dissolve them if they constitute a threat to national security.[87] In the lawyer's discourse, the state appears to be using its power of regulation and protection of national security (in the form of the threat of dissolving NGOs) to produce a "civil society" that does not hold it accountable.[88] Civil society is not a haven outside the control of the state.

Distinct from this kind of accountability, "charitable" waqfs, as I described above with the French Mandate, were left to the Muslim community to regulate as part of its "religious affairs". Furthermore, as al-Karama's lawyer mentioned, waqf law is currently *flou*, and this blurriness afforded al-Karama's founders room for maneuvering. Founders and experts explained to me that since shari'a judges are not bound by a codified law and rule based on the most "authoritative" (*al-arjaḥ*) view of the school, each can exercise their own interpretation, reading, and assessment of the various opinions prevalent in the fiqh, regardless of school.[89] Judges can decide what they think are acceptable objects to waqf, as well as what constitutes charitable purposes. Some, for instance, accept founding "cash waqfs," like al-Karama, while others refuse.[90] One must find a judge who supports such a waqf. Waqfs cannot legally be dissolved without the will of their administrators or beneficiaries. The judge can hold accountable the administrators of the waqf only in the case of misuse of funds or purpose. Many founders assume that judges of the shari'a court share their own political leanings or that they are not as politically motivated as possible governments that might come to oppose Muslim institutions more broadly. Furthermore, as Hajj Tawfiq writes: "Waqfs have their sanctity [*ḥurma*], and their legal personality [*dhimma*] independently of the state; they cannot be confiscated or sold; they can only be exchanged for another parcel or for a monetary equivalent" (Huri n.d., 4). Founders also bank on that sanctity to deter judges from interfering in these waqfs.

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the Ministry of the Interior insists on authorization. The Constitutional Court ruled against the practice in 2003. See Moukheiber (2002) and Report of the Parliamentary Commission on Human Rights (Lajnat Huquq al-Insan al-Niyabiyya and UNDP 2008).

87. The influence of such jurisdictional politics and differing regulations for associations, foundations, and waqfs on the creation of such institutions also plays out in Egypt, albeit in a different configuration (see Atia 2013).

88. Reports regarding freedom of association note the illegal administrative practices of the Ministry of Interior that flipped the meaning of public notice to one that the ministry delivers. See Moukheiber (2002, 18–19).

89. This is not exactly the case, as Clarke (2012, 109) explains, since the president of the court can discipline those decisions through the appeals court.

90. Unlike Ottoman cash waqfs, where a significant amount of cash is waqfed so that its revenue (interest from lending or profit from investing it) could actually be significant enough to support a charitable cause, the $100 of al-Karama is a pro forma "object" to create the waqf. The revenues necessary for the operation of the waqf are collected through donations held by the waqf.

While it appears that al-Karama's founders used waqf to escape the control of the modern state, whether exercised by the Ministry of the Interior or the cabinet, they were instead switching to the control of a different organ of the state, the shariʿa courts. Furthermore, the shariʿa courts themselves turn out to be much less uniform in their stance than first appears: different judges at court can hold different opinions and sanction certain waqfs their colleagues would not accept. Not only did "the state" itself disintegrate into various directorates and ministries competing over jurisdiction, but the unity of these various entities themselves fragmented as individual functionaries turn out to have the discretionary power to uphold different rules and conflicting regulations. We see founders navigating ambiguities of authority and jurisdiction between the grand mufti, the chief justice of the religious courts, the judges, the Ministry of the Interior, and the prime ministry around waqf, even creating a new entity, the "charitable waqf serving public benefit." An attempt by the grand mufti to control the possibilities allowed by these multiple jurisdictions by ordering judges to get final approval from him for every new waqf was impossible to enforce. It also exacerbated tensions between the chief justice of the shariʿa court (particularly in Beirut) and the grand mufti because shariʿa court judges are legally accountable and responsible not to the grand mufti but to the chief justice.[91] Yet, at the same time, the attempt of these founders to escape control of "the state" through the religious courts is itself a result of the modern state that separated some of the administration and legislation on waqf into an entity separate from the courts.

CONCLUSION

In this chapter, by focusing on three moments in the administration of waqf, I have attempted to bring forth the fundamentally different logics of modern state power but also to point at the incompleteness and the contradictions this new order engenders. It is not that waqf administration and supervision have been taken over by the state, but that this is an always-incomplete project that forever calls for new attempts at control. The modern state project is always so: a project. While modern power appears to have an overwhelming logic, when examining it in one particular area—here, waqf administration—its ambiguities and contradictions come forth. What surfaces, as the various moments illustrate, are constant rearticulations with changing conditions.

By tracing the manner of administration of waqf, I have drawn a picture of the architecture of state, law, and religion in the three different moments. Under an Islamic polity like the Ottoman state, many waqfs were seized by the Waqf

91. Back in 2009, rumors abounded that the chief justice of Beirut, ʿAbd al-Latif Diryan, was eyeing the grand muftiship, threatening the then grand mufti, and creating tension. These rumors were confirmed in 2014 when Grand Mufti Qabbani (unrelated to the Qabbani waqf) was forced to resign and Diryan replaced him, following a protracted political crisis in the midst of Dar al-Fatwa.

Ministry and subjected to new regulations and uniform, regular methods of accounting and administration. This process helped to create the state effect and to make the state the primary location for the production of waqf law, competing with its Muslim scholarly production.

With the transformation of the state—from an Islamic polity that granted privileges and immunity to some non-Muslim religious communities to a civic state equidistant from the eighteen recognized religious sects having legal sovereignty over various personal status matters—waqf administration exemplifies the way the Muslim community and waqfs became "sectarianized," while bearing vestiges of the earlier dominance of the Sunnis in the state. The new conceptualization of waqfs made by Muslims as the "property of the Muslim community," rather than individual endeavors now occupies pride of place in general discussions of waqf as an institution. It appeared in the campaign of the DGIW to unify all its property titles in the real estate registry in the early 2000s under the name "Directorate General of Islamic Waqfs—The Waqf of the Sunni Sect". This process of registration was also yet another attempt by the DGIW to produce its authority over these waqfs, indexing the persistence of the connection between particular waqfs and their founders and the localization of waqfs in their neighborhoods.

This sectarianization of waqf was made possible by and further reproduced secular understandings of religion and its place in society: religion now belonged in the private sphere and needed to be separate from economy and politics. Indeed, the new legal regime introduced by the French Mandate differentiated between personal status under religious law and real status under civil law. The making of waqf as "religious" property under religious law is thus a secularization of the waqf. This secularization is a continuous project that incites sovereign control and produces the state-effect. Indeed, carrying over Ottoman state supervision of waqfs through the Ottoman Waqf Ministry and the shariʿa courts, Muslim waqfs remained connected to the state with the DGIW and the shariʿa courts as state institutions splitting jurisdiction over the religious aspects of the waqf. Muslim actors thus employed jurisdictional politics in their waqf practices, necessitating constant reassertions by these different state institutions of their control over waqf.

After this long detour into the context that determines waqf practices, we can now turn to these practices and how their transformations with the modern state opened ways to instantiate new grammars of self, family, and community.